



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 16 June 2009

Mayor: Cr J van Lieshout

**Councillors: Cr B Longland, Deputy Mayor
Cr D Holdom
Cr K Milne
Cr W Polglase
Cr K Skinner
Cr P Youngblutt**



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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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P1 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

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



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

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

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/1265	2 storey dwelling	Lot 9 DP 627840 Clothiers Creek Road, Nunderri	1/6/2009	Clause 22 for setbacks from designated roads	1(c) Rural Living	TLEP2000 stipulates 30m building line from designated road - applicant requested 7.4m building line relaxation	84%	Tweed Shire Council
DA09/0037	two storey addition and deck to existing dwelling	Lot 3 DP 211861 No. 53 Adelaide Street, Tweed Heads	1/6/2009	Two (2) storey height limit	2(b) Medium Density Residential	Addition only three storey for small section. Considered acceptable due to size of allotment, slope of land, narrow elevation of addition, position of addition towards centre of allotment.	Variation to two storey height limit to permit addition which will be partly three storey for a floor area of less than ten square metres.	Tweed Shire Council
DA09/0187	replace an existing old structure with general workshed/garage-boat storage structure & SEPP 1 objection to building setback	Lot 14 DP 729137 No. 797 Clothiers Creek Road, Clothiers Creek	5/6/2009	Clause 22 of TLEP2000 - Designated Roads	1(a) Rural	TLEP2000 stipulates a 30m building line to designated roads - applicant requested an 8m building line relaxation.	74%	Tweed Shire Council
DA08/1080	attached dual occupancy	Lot 17 Sec 16 DP 758571 No. 9 Yao Street, Kingscliff	1/6/2009	Clause 51(a): Multi-dwelling housing densities in Zone 2(a)	2(a) Low Density Residential	The replacement dual occupancy is of a high quality with better overall energy-efficient design which improves the streetscape and amenity of both the site and locality without compromising density controls within Clause 51A.	15.7%	Tweed Shire Council
DA08/1171	addition of deck to existing surf life saving club	Lot 7010 DP 1055324 & Lot 2 DP 1083851 Tweed Coast Road, Bogangar	1/6/2009	NCREP 1988 Clause 32 B (4) (b)	5(a) & 6(a)	The degree of overshadowing does not constitute a major impact on the coastal foreshore area.	The proposal contributed to a minor increase in the level of overshadowing from the existing surf life saving facility	Tweed Shire Council



DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/1254	relocation of existing rural workers dwelling to a new location on the same site	Lot 1 DP 1110417 No. 489 Duranbah Road DURANBAH	29/5/2009	Clause 18(3) of the LEP states that rural workers dwellings require a minimum area of 10 hectares to be erected on land within the 1(b1) zone	1(b1) Agricultural Protection	The applicants have satisfactorily demonstrated that the development standard is unreasonable and unnecessary as the dwelling is an already approved dwelling for the purpose of housing a rural worker. The applicants have also justified reasonably that the dwelling has been continually used as a rural workers dwelling and with the increase in farming practices on the property, the need for a rural worker living on site continues to be necessary	28.75%	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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P2 [PR-PC] Joint Regional Planning Panels - Nomination of Tweed Council Representatives for the Northern Region Panel

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

As part of its broader planning reforms, the NSW Department of Planning (DOP) has recently released details of the introduction of new Joint Regional Planning Panels (JRPP) for the assessment of major development applications, and other advisory functions. JRPPs will act as a development consent authority for designated applications within their particular region. Three (3) State representatives will be appointed for each Region, and will meet with two (2) representatives from the local council area where each relevant development application is located. In a letter dated 5 May 2009 from the Minister for Planning, the Hon Kristina Keneally MP, Tweed Council was requested to advise of their appointment of two (2) representatives (and an alternate) to participate on the Northern Region Panel by 5 June 2009.

Following receipt of the Minister's advice, and consultation with Tweed Councillors, an Expressions of Interest (EOI) process was conducted to obtain nominations to represent Tweed Council on the Northern Regional Panel. The Department of Planning provided certain selection criteria for the assessment of Council nominations. The EOI process involved a Media Release, and advertisements in the Tweed Link and Tweed Daily News, and set a deadline of Tuesday, 2 June 2009 for the submission of nominations.

Initially, an Extraordinary Council Meeting had been organised for 4 June 2009 for Council to determine its JRPP members. However, a further letter dated 29 May 2009 from the Director General of the Department of Planning, advised Councils that they would be granted additional time to determine their Panel nominees through their Ordinary Meeting cycle.

A total of eleven (11) submissions were received in response to Council's EOI process. A summary of the response from each of these submissions to the selection criteria as well as full copies of each of the submissions have also been included in a Confidential Attachment to this report. It is recommended that Council determines two (2) representatives and one (1) alternate to participate in the Northern Region Joint Regional Planning Panel, effective from 1 July 2009.

Given the current lack of detail on the future operations of the proposed JRPPs, it is also recommended that Council write to the Minister for Planning, seeking urgent clarification of the full operational aspects of the Panels, particularly the likely costs to be incurred by participating Councils.

RECOMMENDATION:

That: -

- 1. Council determines two (2) representatives and one (1) alternative member to participate in the Northern Region Joint Planning Panel, effective from 1 July, 2009; and**
- 2. Writes to the Minister for Planning seeking clarification of the full operational details of the proposed Joint Regional Planning Panels, particularly the costs that are likely to be incurred by participating Councils.**
- 3. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(c) of the Local Government Act, 1993, because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.**

REPORT:

Recent Notification from the State Government

Arising from the State Government's Planning Reforms Package of new legislation, NSW Councils have recently received the following correspondence and information regarding the proposed introduction of Joint Regional Planning Panels, effective from 1 July, 2009:

- 23 April 2009: Release of Department of Planning "Discussion Paper: Commencement of Joint Regional Planning Panels."
- 5 May 2009 (received by Council 11 May 2009): A letter from the Minister for Planning, the Hon Kristina Keneally MP, requesting that Council nominate two (2) representatives (and an alternate) for the Northern Region Panel by 5 June 2009, and an accompanying document, "Expressions of Interest and Nominations for the Joint Regional Planning Panels – Information Package for Council Nominees".
- 29 May 2009: The Director General of the Department of Planning advised all councils that an additional period for making JRPP nominations would be allowed through their Ordinary Meeting cycles.

Copies of the above documents have been distributed prior to all Councillors.

Overview of New Joint Regional Planning Policies

The following is an extract from the recent DOP correspondence:

"About Joint Regional Planning Panels

The NSW Government's planning reforms, aimed at delivering a more efficient and transparent planning system, include the establishment of Joint Regional Planning Panels (JRPPs).

The NSW Government is seeking Expressions of Interest (EOIs) for candidates interested in being appointed as State members of the JRPPs. The objective of JRPPs is to create a panel of people with appropriate expertise to determine development proposals of regional significance as well as providing planning advice resulting in stronger-decision making through greater expertise and independence taking into consideration local and regional knowledge.

Six regions are proposed to be established covering metropolitan and regional areas of NSW. The JRPPs are targeted to commence operation on 1 July 2009.

Functions of JRPPs

The functions of JRPPs are to:

1. *Exercise certain consent authority functions for 'regional development'; and*
2. *Where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPP's region.*

JRPPs will also have such other functions as are conferred on them by the Environmental Planning and Assessment Act 1979 (EP&A Act). For example, JRPPs may have a role in relation to Local Environmental Plans (LEPs). This may include being appointed as the Relevant Planning Authority (RPA) for a LEP or, where requested by the Minister, reviewing or providing advice in respect of a proposed LEP. Where a JRPP is appointed as an RPA for a LEP, the Minister may also delegate plan making powers to the JRPP. JRPPs may also, in limited circumstances, be appointed by the Minister to exercise the functions of planning assessment panels under s.118 of the EP&A Act.

In future, JRPPs will also have a role in respect of the new, yet to be commenced, third party reviews. This new type of review will allow third parties to, in certain circumstances, seek a review of a council decision to grant consent which would, if the development proceeded, result in development standards (e.g. height and floor space ratio [FSR]), being exceeded. The JRPP will be the body to whom an application for review is made where the council determined the original development application.

A regional panel is not subject to the direction or control of the Minister, except in relation to the procedures of a regional panel and to the extent provided for in the EP&A Act.

Assessment functions

Councils will assess development proposals that are regionally significant. The council officer's assessment and recommendations will then be referred to the JRPP to make its determination. Regionally significant development is proposed to include:

- *Commercial, residential, mixed use, retail and tourism development with a capital investment value more than \$10 million and less than \$100 million*
- *Community infrastructure and ecotourism developments more than \$5 million both public and private, such as schools, community halls and child care facilities*

- Certain coastal developments currently in Schedule 2 of the [State Environmental Planning \(Major Projects\) 2005](#) (known as the Major Projects SEPP)
- Designated development (development needing an environmental impact statement)
- Development where the council is the proponent or has a potential conflict of interest.

The new system will return the assessment of many developments to local councils from the Department of Planning. These include:

- Commercial, residential, and retail development with a capital investment value between \$50 million and \$100 million
- Certain coastal developments currently in Schedule 2 of the Major Projects SEPP.

Commencement of JRPPs

Under the current Planning Reform Implementation Program, JRPPs are targeted to commence operation on 1 July 2009.

The role of JRPPs in relation to the new third party reviews will not commence until the relevant provisions of the Environmental Planning and Assessment Amendment Act 2008 have commenced. These provisions are not planned to commence until later in 2009.

Consultation with stakeholders

The DoP is currently engaged in a consultation process regarding aspects of JRPPs. Elements of the policy may be varied as a result of the consultations or further reviews that may be undertaken.

The performance of JRPPs will be monitored regarding the number and type of Development Applications (DAs) determined by JRPPs and timeframes. This information will provide the basis for any reviews or regional boundary adjustments.

Membership of JRPPs

The JRPPs are to consist of five members as follows:

1. **State Members:** Three State members appointed by the Minister, each having expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

In appointing the State members, the Minister is required to have regard to the need to have a range of expertise represented among the panel's members. One of the State members will be appointed as the Chairperson of the JRPP.

JRPPs State members may also be members of the Planning Assessment Commission (PAC) and appointed as casual members of the PAC.

- 2. Council Members:** *Two council members appointed by each council that is situated in a part of the state for which a JRPP is appointed. At least one council nominee is required to have expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.*

The council members will participate in JRPP matters when they are located in their local government area. It will be a matter for each council to identify how the nominees are to be selected. Council members will automatically become members of the JRPP for matters in the council area.

The assessment of applications to be determined by the JRPPs is to be undertaken by the relevant council in which the proposed development is located.

If a council within the area of a JRPP fails to nominate one or more council nominees, a JRPP may still exercise its functions in relation to the area of the council concerned.

- 3. Alternates:** *The Minister may, from time to time, appoint a person to be the alternate of a State member, and may revoke any such appointment. A council may, also from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment.*
- 4. Administrative and other matters:** *Administrative and technical support for the operations of the JRPPs will be provided by the PAC Panel Secretariat and through the Regional Branches of the Department of Planning.*

JRPPs are independent bodies, accountable to the Minister, but otherwise not subject to the direction and control of the Minister. JRPP members will be required to act at all times in accordance with best practice probity and accountability requirements and to demonstrate impartiality in the exercise of their functions.

Coverage of JRPPs

Six JRPP regions are proposed, corresponding with the existing DoP regions. These are:

- *Northern Region*
- *Hunter Region*
- *Southern Region*

- Sydney Metro East Region; and
- Sydney Metro West Region.

Currently, it is proposed that matters in the Western Region will be covered by the existing Planning Assessment Commission (PAC). The JRPP provisions do not apply in the City of Sydney, where the Central Sydney Planning Committee (CSPC) will continue to function.

Responsibilities of Members

Responsibilities of JRPP members

The responsibilities of JRPP members are to:

- Exercise their functions in accordance with statutory requirements as set out in the EP&A Act and associated regulations;
- Comply with an approved JRPP Code of Conduct;
- Promote a sense of confidence in the JRPPs as independent decision making bodies;
- Establish and maintain effective working relationships with the councils in the relevant JRPP region;
- Foster a positive working relationship with other JRPP members, the Panel Secretariat and the Department of Planning;
- Follow approved JRPP procedures and participate in regular reviews of procedures, to ensure efficient and effective practices are adopted;
- Perform their functions with integrity, impartiality, honesty, conscientiousness, care, skill, diligence; and
- Participate in/chair panel meetings or hold public hearings or panel meetings in a timely, efficient and cost-effective manner while having proper regard to the issues.

Additional Responsibilities of the Chairperson

The Chairperson of each JRPP has the following additional responsibilities:

- Ensure that the JRPP carries out its roles with integrity and in a timely fashion;
- Establish and maintain effective working relationships with the councils in the relevant JRPP region;
- Chair JRPP meetings and/or public hearings with impartiality and balance, and facilitate the flow of information and discussion;
- Ensure the JRPP delivers on its annual reporting requirements; and
- Ensure JRPP meetings and any related meetings or hearings are conducted in a timely and cost-effective manner while having proper regard to the issues.

Travel

Persons considering making an application for appointment as a State member of a JRPP should be aware that travel throughout their region will be required. This may consist of meetings or site inspections across a range of locations in their region.

Council's Role in Relation to Matters under Consideration by the JRPP

The assessment of applications to be determined by the JRPPs is to be undertaken by the relevant council officers in which the proposed development is located. The council officers are to submit their assessment report and recommendations to the JRPP for determination.

Whilst the council will not be the determining body for JRPP matters, the council will have the opportunity to provide its views about any matters that are to be considered by a JRPP.

The councils view may be provided to a JRPP by way of a submission in the same way that any other submissions about the matter are provided to a JRPP for its consideration in determining a matter.

The JRPP must consult the council prior to determining a matter which is likely to have significant financial implications for the council.

Appointment Terms and Conditions

Statutory Position

JRPPs are statutory bodies representing the Crown. The Chairperson and State members are appointed by the Minister.

Each council within a JRPP region will nominate two members (and an alternate member) to sit on the JRPP with respect to matters that are within that council's area.

Term of Appointment

Each member is appointed on a part time basis for a fixed term (not exceeding three years) as set out on the member's instrument of appointment. Members will be eligible for reappointment at the end of the fixed term.

Appointments as a State member of the JRPP and the filling of vacancies will take into account the current and future needs of the JRPP and the mix of skills, background and experience of the JRPP.

Remuneration

A JRPP member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Private Interests

As part of the application for membership on the JRPP, applicants are requested to declare any private interests that may conflict with the public duties they would be required to perform as a member of the JRPP.

Candidates must declare any significant political activity they have undertaken in the previous ten years.

Pecuniary Interests

If a member of a JRPP has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP, and the interest appears to raise a conflict with the proper performance of the member's duties in relation to consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the JRPP. Unless otherwise determined, the member must not be present during any deliberations by the panel with respect to the matter or take part in any decision of the panel with respect to the matter.

Training

Persons appointed as Panel members will be required to attend a training program that will be provided by the Department of Planning.

Other Matters

- (a) Dealing with the Media:** *A protocol will be prepared whereby the Chairperson can comment on decisions and respond to questions.*
- (b) Disclose or misuse information:** *Members are required under the Act not to unlawfully disclose or use any information received in connection with carrying out their duties under the Act.*
- (c) Appropriate use of Secretariat Resources:** *The JRPP must use resources provided by the Panel Secretariat and the DoP in an effective and efficient manner; and not use such resources for private purposes.*
- (d) Removal from office:** *The Minister may remove a State member from office at any time. A council may remove any of its nominees from office at any time.*

The Minister may remove a State or council member from office if the Independent Commission Against Corruption (ICAC) recommends that consideration be given to the removal of the member because of corrupt conduct by that member.

(e) Vacancies: *A vacancy in the office of a member occurs if the member:*

- *Dies; or*
- *Completes a term of office and is not reappointed; or*
- *Resigns the office by instrument in writing addressed to the Minister or applicable council, as the case requires; or*
- *In the case of a council nominee, is removed from office by an applicable council or by the Minister where ICAC recommends removal; or*
- *In the case of a State member is removed from office by the Minister or by the Governor under Chapter 5 of the Sector Employment and Management Act 2002; or*
- *Is absent from three consecutive meetings of the regional panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the panel or unless the member is excused from the panel for having been absent from those meetings; or*
- *Becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or*
- *Becomes a mentally incapacitated person; or*
- *Is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more and is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.*

(f) Regulations: *Regulations may be made in relation to the procedures of regional panels in exercising their functions, the provision of information and reports by regional panels and other matters.”*

Factors to Consider for the Selection of Council Representatives

The key criteria for Council representatives on the JRPP for the Northern Region:

“2. Council Members: *Two council members appointed by each council that is situated in a part of the state for which a JRPP is appointed. At least one council nominee is required to have expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.*

The council members will participate in JRPP matters when they are located in their local government area. It will be a matter for each council to identify how the nominees are to be selected. Council members will automatically become members of the JRPP for matters in the council area.

The assessment of applications to be determined by the JRPPs is to be undertaken by the relevant council in which the proposed development is located.



If a council within the area of a JRPP fails to nominate one or more council nominees, a JRPP may still exercise its functions in relation to the area of the council concerned."

Summary of Submissions for Tweed Nominees on the Northern Region JRPP

Following an Expressions of Interest process, advertised through the Tweed Link and Tweed Daily News, a total of eleven (11) submissions were received from the following people :

Bennett,	Peter P
Griffin,	Dr John
Grimes,	Steven
James,	Henry
Jardine,	Douglas
McAllister,	Don
Murdock	Tania
Quirk,	Robert
Townsend,	Lisa
Wales,	Dr Ned
Wolff,	Ronald H

A summary of the response to the selection criteria provided by the Department of Planning, as well as copies of each of the submissions is provided in a Confidential Attachment to this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

It appears from the information recently provided by the DoP that Council staff and funding will be required in part to service the operation of the Panels. The full details of these requirements are still to be provided. It is recommended that Council writes to the Minister for Planning seeking further information on the operation of the Panels.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. CONFIDENTIAL - Full copies of all submissions received in respect of the Expressions of Interest process conducted for Tweed Council's participation in the Northern NSW Region Joint Regional Planning Panels (ECM 2067101)
2. CONFIDENTIAL - Table Summary of the response to the selection criteria provided by the Department of Planning (ECM 2067130)



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P3 [PR-PC] Further Report on Development Application DA05/0223.05 for an Amendment to Development Consent DA05/0223 for a Restaurant at Lot 1 DP 553728, No. 4 Wharf Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/0223 Pt2

SUMMARY OF REPORT:

An officers' report was submitted to the 28 May 2009 Planning Committee meeting in respect of DA05/0223.05. A copy of this report is provided again as an attachment. The report recommended the refusal of this Section 96 application, and to seek Council's endorsement to initiate legal action for a series of related matters. At the meeting of 28 May 2009, Council resolved as follows: -

***"RESOLVED** that Development Application DA05/0223.05 for an amendment to Development Consent DA05/0223 for a restaurant at Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads be deferred to seek further advice."*

In response to this resolution Council officers sought advice from its solicitors in respect to the qualification of the owners consent for this application. Advice on this matter has been provided in a Confidential attachment.

In summary, the advice indicates that Council is entitled to refuse the application provided that certain qualifying actions have been undertaken. Council officers have undertaken various actions to verify the owners consent for the application with both the applicant and the owner's solicitors. At the time of finalising this report, no further advice had been received. In accordance with the advice to Council's Solicitors, it is considered that Council is now entitled to refuse the Section 96 application.

RECOMMENDATION:

That: -

- A. Development Application DA05/0223.05 for an amendment to Development Consent DA05/0223 for a restaurant at Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads be refused for the following reasons: -**
- 1. The proposed modification is not considered to be in accordance with the provisions of Clause 8 and 11 of the Tweed Local Environmental Plan 2000, relating to consent considerations and zone objectives.**



2. The proposed modification is not considered to be in accordance with the provisions of Section 96(1)(a) of the Environmental Planning & Assessment Act 1979, in that it is not substantially the same development as that originally approved under DA05/0223.
 3. The proposed modification is not considered to be in the public interest.
- B. Council initiates legal action through Council's Solicitors in relation to:
1. Unauthorised building works;
 2. The premises being used in a different manner from the original consent; and
 3. Outstanding contribution fees.
- C. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act, 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

REPORT:

As per summary of report.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Report on Development Application DA05/0223.05 which was submitted to the Planning Committee meeting of 28 May 2009 (ECM 2064976)
 2. CONFIDENTIAL – Legal advice from Marsden's dated 1 June 2009 (ECM 2064899)
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P4 [PR-PC] Development Application DA08/1240 for a Three (3) Lot Subdivision at Lot 6 DP 618873, No. 582 Upper Burringbar Road, Upper Burringbar

ORIGIN:

Development Assessment

FILE NO: DA08/1240 Pt1

SUMMARY OF REPORT:

This development application is reported to Council due to advice from the Department of Planning requiring applications accompanied by a State Environmental Planning Policy No. 1 (SEPP No. 1) submission where the variation is greater than 10% of the development standard, to be determined by full Council.

The applicant seeks consent to subdivide the subject site into three allotments one of which contains an existing dwelling house. Proposed Lot 3 is zoned part 1(b1) Agricultural Protection and 7(l) Environment Protection (Habitat). The portion of Lot 3 zoned 1(b1) is 12.455 hectares and the portion zoned 7(l) is 4.11 hectares, the latter requiring a variation to the 40 hectare development standard as per the Tweed Local Environmental Plan 2000. The minimum allotment size for land zoned 1(b1) is 10 hectares and the proposal complies with this standard. The Department of Planning has granted concurrence for this variation.

No submissions have been received.

The proposed subdivision is generally consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and relevant policies and the SEPP1 objection to the non-variation with the minimum site area for sites within a 7(l) zone is considered to be well justified in this instance. It is therefore recommended that Council grant consent to this application, subject to conditions.

RECOMMENDATION:

That Development Application DA08/1240 for a three (3) lot subdivision at Lot 6 DP 618873, No. 582 Upper Burringbar Road Upper Burringbar be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects, Sheet 1 of 1 Rev A, prepared by Brown and Haan and dated 4 March 2009 and the Plan Titled "Survey Sketch Plan" prepared by Robert Prikulis and dated 14 November 2008, except where varied by the conditions of this consent.**

Council will not accept the proposed splay as road reserve. The splay is to be removed, with this area remaining in private ownership.

[GEN0005]

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

[GEN0125]

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

[GEN0135]

- 4. Should it be proposed to alter the location of the indicative house sites on proposed lots 1 and 2 additional reports with respect to on site sewage management and contaminated land considerations shall be provided to the satisfaction of the General Manager or his delegate.**

[GENNS01]

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

- (a) Construction of a bitumen sealed access from the edge of the existing bitumen of Upper Burringbar Road to 3m inside each proposed property allotment, in accordance with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual and Council's "Driveway Access To Property – Part 1 – Design Specification"**

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works**
- Drainage**
- Sediment and erosion control plans**
- Location of all services/conduits**
- Traffic control plan**

[GENNS01]

- 6. All works and use of the site must comply with the Threatened Species Management Plan for Lot 6 DP 618873 at 582 Upper Burringbar Road, Upper Burringbar prepared by Biolink Ecological Consultants dated April 2009 (amended May 8 2009).**

[GENNS03]

- 7. Any alteration to the existing on-site sewage management facilities must be approved to the satisfaction of the General Manager or his delegate.**

[GENNS04]

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

- A. Short Term Period - 4 weeks.**

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

- B. Long term period - the duration.**

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

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

[DUR0985]

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

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

[DUR1005]

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

[DUR1025]



- 13. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

USE

- 14. This consent does not include approval to occupy the 'old bails' for human habitation purposes.

[USENS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[PSC0005]

16. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

13 Trips @ \$1094	\$14,222
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S94 Plan No. 4

Sector11_4

(b) Open Space (Casual):

2 ET @ \$570	\$1,140
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S94 Plan No. 5



(c) Open Space (Structured):	
2 ET @ \$653	\$1,306
S94 Plan No. 5	
(d) Shirewide Library Facilities:	
2 ET @ \$688	\$1,376
S94 Plan No. 11	
(e) Eviron Cemetery:	
2 ET @ \$131	\$262
S94 Plan No. 13	
(f) Emergency Facilities (Surf Lifesaving):	
2 ET @ \$200	\$400
S94 Plan No. 16	
(g) Extensions to Council Administration Offices & Technical Support Facilities	
2 ET @ \$1996.8	\$3,993.60
S94 Plan No. 18	
(h) Regional Open Space (Casual)	
2 ET @ \$855	\$1,710
S94 Plan No. 26	
(i) Regional Open Space (Structured):	
2 ET @ \$2327	\$4,654
S94 Plan No. 26	

[PSC0175]

17. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

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

[PSC0825]

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

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

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

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

[PSC0835]

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

[PSC0845]

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

[PSC0865]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

24. The keeping and ownership of dogs and/or cats within the subdivision is prohibited and this prohibition shall be reinforced by a Restriction as to User on each lot created under Section 88B of the Conveyancing Act, 1919-1964.

A Section 88B Instrument creating the restriction as to user shall contain a provision enabling the restriction to be revoked, varied or modified only with the consent of Council.

[PSC0895]

- 25. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.**

[PSC1165]

- 26. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) has been completed.**

[PSC1175]

- 27. Prior to the issue of the subdivision certificate the current owner shall lodge an application to operate the existing on-site sewage management facility (proposed Lot 3) under Section 68 of the Local Government Act, 1993 and obtain an approval to operate.**

[PSCNS01]

- 28. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.**

[POCNS01]

- 29. The provisions within the Threatened Species Management Plan for Lot 6 DP 618873 at 582 Upper Burringbar Road, Upper Burringbar prepared by Biolink Ecological Consultants dated April 2009 (amended May 8 2009) relating to protection of threatened species and protection and restoration of the habitat of threatened species shall be reinforced by a restriction as to user on each allotment created under Section 88B of the Conveyancing Act 1919-1964. A Section 88B Instrument creating the restriction as to user shall contain a provision enabling the restriction to be revoked, varied or modified only with the consent of Tweed Shire Council.**

[PSCNS03]

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

- 1. The subdivision layout is to comply with the proposed plan contained within the Bushfire Threat Assessment Report prepared by BCA Check Pty Ltd, ref.08/221, dated October 2008.**
- 2. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling on proposed Lot 3, to a minimum distance of 20 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document Standards for asset protection zones.**
- 3. Water, electricity and gas are to comply with section 4.1.3 of Planning for Bush Fire Protection 2006.**

4. In recognition that no reticulated water supply exists, a 20 000 litre water supply shall be provided to the existing dwelling on proposed Lot 3 for fire fighting purposes.
5. Property access road for the existing dwelling on proposed Lot 3 shall comply with sections 4.1.3(2) of Planning for Bush Fire Protection 2006.
6. The existing building on proposed Lot 3 is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors, vents, weepholes and eaves.



REPORT:

Applicant: Mr J Peverell
Owner: Mr JD Peverell
Location: Lot 6 DP 618873 No. 582 Upper Burringbar Road, Upper Burringbar
Zoning: Part 1(b1) Agricultural Protection and Part 7(l) Environmental Protection (Habitat)
Cost: \$13,000

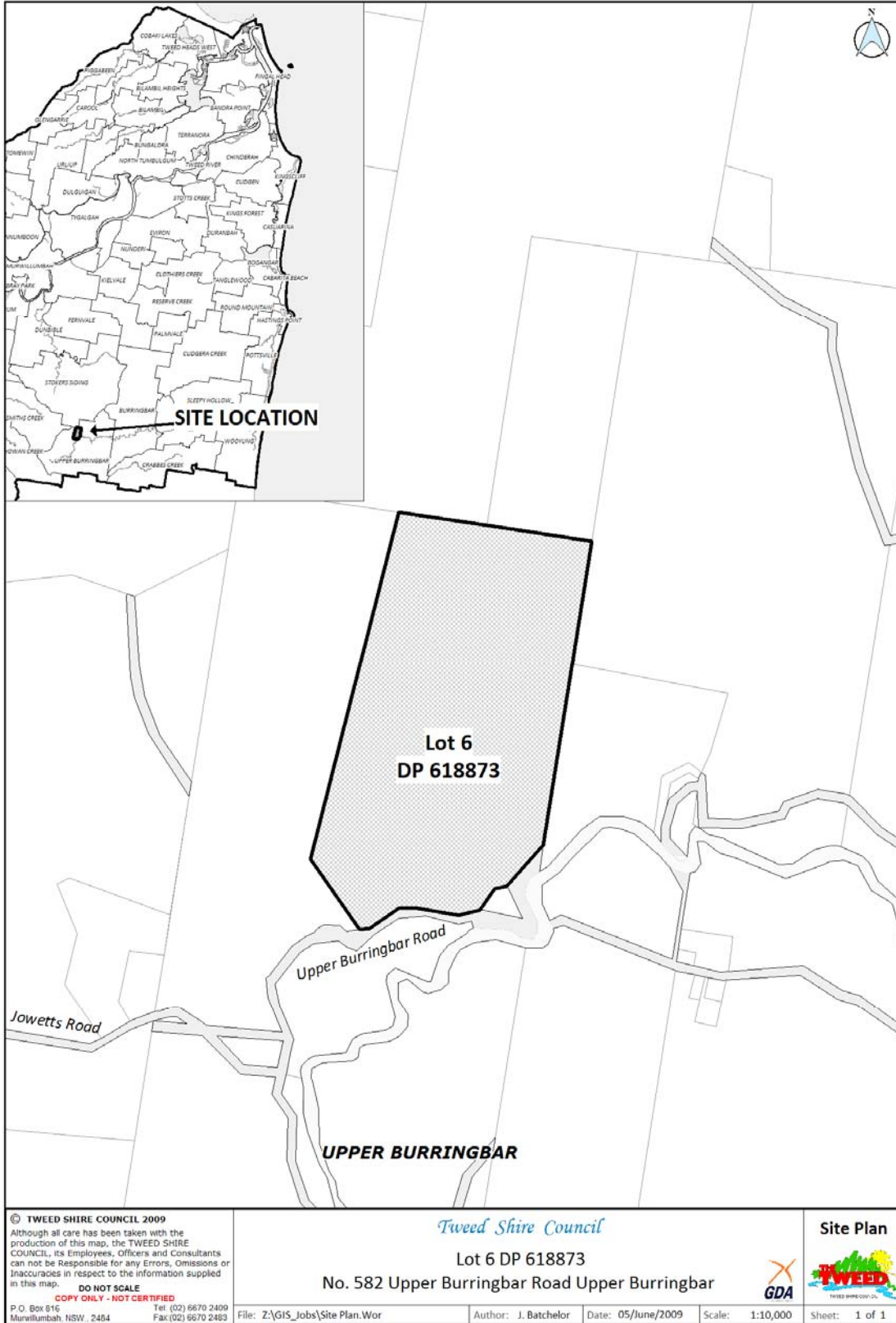
BACKGROUND:

The site adjoins several other properties to the east which appear to be used for low intensity agricultural purposes and contain dwelling houses. To the north of the site is Mt Jerusalem National Park and a property which appears to be vacant. The properties to the site's south west and south east contain a dwelling house.

The site is irregular in shape being 36.59 hectares. The site has frontage to Upper Burringbar Road for approximately 250m, the northern boundary is 414.66m, the eastern boundary is approximately 348.87m, the western boundary is approximately 761.21m and the south-western boundary is approximately 196.23m. The site contains an existing dwelling house and is otherwise used for cattle grazing purposes. The site was previously used as a banana plantation, banana trees exist on the property. The site contains a large dam located approximately 130m west of the existing dwelling.

The applicant seeks consent for a three lot torrens title subdivision. Each proposed allotment is irregular in shape. Proposed Lot 1 is vacant and has an area of 10.003Ha and comprises the south-western section of the site. Proposed Lot 2 is vacant and has an area of 10.008Ha and comprises the central section of the site. Proposed Lots 1 and 2 contain indicative future dwelling house footprints and access tracks. Proposed Lot 3 will accommodate the existing dwelling house and the section of the site zoned 7(l) Environment Protection (Habitat). The Lot has a total area of 16.565Ha and is situated within the eastern and northern section of the subject site.

SITE DIAGRAM:



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

The proposal is consistent with the aims of the TLEP. The proposal is suitable for the subject site and is unlikely to result in adverse cumulative impacts as demonstrated throughout this report.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the four principles of ecologically sustainable development as per the TLEP. The application incorporates habitat rehabilitation and enhancement work within the site.

Clause 8 - Zone objectives

The site is zoned part 1(b1) Agricultural Protection and part 7(l) Environment Protection (Habitat). The 7(l) component of the site is contained within the site's north-west.

The proposal is consistent with the objectives of zone 1(b1). The south-south-east section of the site is categorised as regionally significant farmland, this section will be contained within Lot 2 and Lot 3. Access tracks are proposed within this area, no further development is proposed. It is noted the site is currently used for cattle grazing. The proposal is considered to be compatible with agricultural activities. The proposed allotments are consistent with the 10 hectare development standard.

The section of the site zoned for protection will be contained within proposed Lot 3 and will not be further fragmented as a result of the subdivision. No development works are proposed within this zone other than the habitat rehabilitation and enhancement work proposed within the applicant's Threatened Species Management Plan. The proposal is consistent with the objectives of 7(l) zone.

The TLEP requires allotments within the 7(l) zone to have a minimum area of 40 hectares. As the portion of proposed Lot 3 zoned 7(l) is less than 40 hectares the applicant has provided a SEPP No. 1 submission and is discussed within the SEPP section of this report.

Clause 15 - Essential Services

The applicant proposes to retain the existing on-site septic system and rain water tank. Future development of the allotments will necessitate similar systems and tanks.

Other Specific Clauses

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

The Department of Planning granted concurrence to vary the 40 hectare development standard for the subdivision of the 7(l) portion of the site as per Clause 20(2)(a) of the TLEP. The Department advised to ensure that all zone objectives are maintained the whole of the area zoned as 7(l) must be contained within proposed Lot 3. The plans submitted are consistent with this requirement.

Clause 28 – Development in Zone 7(l) Environment Protection (Habitat) and on adjacent land

As development is proposed within and adjacent to the 7(l) section of the site the impacts on flora and fauna and mitigation measures require consideration. The applicant submitted a Threatened Species Management Plan and an assessment under Section 5A Environmental Planning and Assessment Act 1979, the Environment protection and Biodiversity Conservation Act 1990 and the State Environmental Planning Policy No. 44 (Koala Habitat Protection). An assessment of these reports indicates suitable mitigation measures have been recommended to minimise the impact on threatened species and their habitats. The plan of management is aimed at reducing weeds and improving native vegetation within the site. Council's Special Ecologist has endorsed these reports.

The Department of Primary Industries (DPI) provided comments regarding the proposal in relation to agricultural issues. The DPI advised the DA is considered to be a local development issue and the Northern Rivers Farmland Mapping project and farmland classification has no direct impact on the subdivision as no rezoning is proposed.

The DPI advised the property appears to have significant constraints for sustainable profitable agricultural production primarily due to slope and the extent of vegetation cover and the 1(b1) zone does not reflect the limited agricultural potential or current land use (grazing) of the property. The DPI note the subdivision will fragment rural land though it is highlighted the site is primarily used for low intensity cattle grazing or is heavily vegetated.

The DECC provided guidance in terms of the applicable legislative requirements to be considered in the assessment of the proposal. Many of the matters recommended have been addressed throughout this report. The site is not identified as being of cultural significance.

Clause 39A – Bushfire Protection

The proposed subdivision is unlikely to have a significant adverse effect on the implementation of strategies for bushfire control and the like for the area or result in a significant increased risk to human life.

The NSW Rural Fire Service (RFS) issued a bushfire safety authority subject to several conditions of consent. The conditions relate primarily to the existing dwelling within proposed Lot 3 including an asset protection zone, water and utilities and access.

North Coast Regional Environmental Plan 1988

Clause 12: Impact on agricultural activities

The proposed development is regarded as being compatible with the adjoining agricultural land. It is not anticipated the proposal will result in significant impacts on the use of the site or the predominant land uses in the vicinity of the site given the minor nature of the proposal. A portion of the site in the south-west corner is categorised as being regionally significant farmland as previously discussed. The Department did not raise concern regarding the subdivision of this land stating small scale low intensity cattle grazing and niche crops may operate in the future.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

As discussed previously the applicant seeks to vary the 40 hectare allotment standard for the portion of Lot 3 zoned 7(l). The Department of Planning has granted concurrence for the proposal.

Proposed Lots 1 and 2 comply with the relevant minimum allotment area. Proposed Lot 3 is zoned partly 1(b1) and part 7(l). The applicant advises the portion of Lot 3 zoned 1(b1) is 12.455 hectares and the portion zoned 7(l) is 4.11 hectares, the latter requiring a variation to the 40 hectare development standard.

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

The applicant's complete SEPP No. 1 submission is reproduced below:

“Introduction

This SEPP 1 objection has been prepared in response to the minimum allotment area planning control under clause 20 of the LEP. The site comprises an area of 7(l) zoned land totalling about 4.1 hectares, with the remainder of the site (about 32.466 hectares) being within the 1(b1) zone. Proposed Lots 1 and 2 comply with the relevant minimum lot area planning control and this SEPP 1 objection requires no further consideration of these proposed lots. Proposed Lot 3 is partly within the 1(b1) zone and partly within the 7(l) zone. The part of proposed Lot 3 that is within the 1(b1) zone has an area of about 12.455 hectares which complies with the relevant 10 hectare minimum area planning control applicable to the 1(b1) zone. The part of proposed Lot 3 that is within the 7(l) zone has an area of about 4.11 hectares which is less than the 40 hectare minimum area planning control. That is, all of the 7(l) zoned land comprised within the parent allotment is contained within proposed Lot 3.

The site and area were inspected on 30 October 2008. Photographs of the site and surrounds are provided in Attachment 1 of the Statement of Environmental Effects.

Development Standard to which this Objection relates

Specifically in relation to the circumstances of the case, clause 20 of the LEP states in part:

20 Subdivision in Zones 1(b), and 7(l)

(1) Objectives

- to prevent the potential for fragmentation of ownership of rural land that would:
 - (i) adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.**
- to protect the ecological or scenic values of the land,*
- to protect the area of Tweed's water supply quality.*

(2) Consent may only be granted to the subdivision of land:

- (a) within Zone 7(l) if the area of each allotment created is at least 40 hectares, or*
- (b) within Zone 1(b1) if the area of each allotment created is at least 10 hectares,*

(3) Despite subclause (2), consent may be granted to the subdivision of land where an allotment to be created unless than 40 hectares, or 10 hectares in the case of Zone 1 (b1), if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted.

- (4) For the purposes of subclauses (2) and (3):
- (a) land is taken to be within Zone 1(b1) if it is shown on the zone map by the marking "1(b1)", and
 - (b) land is taken to be in Zone 1(b2) if it is shown on the zone map by the marking "1(b2)".

The LEP map extract provided in the Statement of Environmental Effects confirms that the land is partly within the 1(b) or 1(b1) zone and partly within the 7(l) zone. The 7(l) zoned part is in the north western corner of the site, The 7(l) zoned part of the site has an area of about 4.11 hectares and all of the 7(l) zoned part of the site is contained within proposed Lot 3 in the subdivision. The part of proposed Lot 3 which is zoned 1(b1) complies with the 10 hectare minimum allotment area planning control and the part of proposed Lot 3 which is zoned 7(l) is less than the 40 hectare minimum allotment area planning control.

Purpose

The purpose of this objection is to permit the proposed development with development consent, because it is understood that Council is not empowered to grant development consent to the proposal in the absence of an objection, pursuant to SEPP 1, to the minimum lot area development standard applicable to the 7(l) zone. The grounds of the objection are discussed in the following sections.

Questions to be answered in assessing a SEPP 1 objection

Talbot J in Winten Property Group vs North Sydney Council (NSWLEC 46) established that there are five questions that are required to be answered in the assessment of an objection pursuant to SEPP 1. The questions are:

1. *Is the planning control a development standard?*
2. *What is the underlying object or purpose of the development standard?*
3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 (the 'Act')?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
5. *Is the objection well founded?*

These questions are answered in the context of the provisions of SEPP 1 having regard to the characteristics of the environment and the proposed development, as follows:

1. Is the planning control a development standard?

The minimum allotment area planning control applicable to the 7(l) zone is a development standard because it is a provision of the LEP (which is an environmental planning instrument in accordance with the definition in section 4 of the Act), being a provision by or under which a requirement is specified and a standard is fixed in respect of the area of land (note in particular part (a) of the definition of development standards in section 4 of the Act).

2. What is the underlying object or purpose of the development standard?

The stated objective of the development standard is provided in subclause 20(1), viz:

- *to prevent the potential for fragmentation of ownership of rural land that would:
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.**
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed's water supply quality.*

The objectives of the 7(l) zone provided in clause 11 of the LEP are also considered to be relevant to the objective of the development standard, and these are:

Primary objectives

- *to protect areas or features which have been identified as being of particular habitat significance.*
- *to preserve the diversity of habitats for flora and fauna.*
- *to protect and enhance land that acts as a wildlife corridor.*

Secondary objectives

- *to protect areas of scenic value.*
- *to allow for other development that is compatible with the primary function of the zone.*

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act?

The aim of SEPP 1 is to:

Provide 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.

In this regard the objects of Section 5(a)(i) and (ii) of the Act are:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, 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 part of the site which is within the 7(l) zone and, hence, the area of proposed Lot 3 that is within the 7(l) zone is fixed and cannot be changed. In zoning the land or creating Lot 6 DP 618873, Council made the decision that the 7(l) zoned part need not comply with the 40 hectare minimum lot area development standard. This is probably in recognition that the remaining more useable and accessible part of the site within the 1(b1) zone complies with the minimum lot area development standard applicable to that zone, and that the 7(l) zoned part is just an adjunct part of the land which is a remote yet ecologically significant part of the site. The positioning of the 7(l) zoned part of the land within a remote and less accessible part of proposed Lot 3 ensures its preservation as a significant habitat and wildlife corridor in close proximity to Mt Jerusalem National Park.

The area of proposed Lot 3 is considered to be adequate in the circumstances of the case because of the following grounds of this SEPP 1 objection which are directly related to the objectives of clause 20 and the 7(l) zone:

Clause 20

- the 1(b1) zoned part of proposed Lot 3 has an area of about 12.455 hectares which exceeds the 10 hectare minimum lot area deemed appropriate by Council to prevent excessive fragmentation of ownership of rural land that would:*

- (i) *adversely affect the continuance or aggregation of sustainable agricultural units - there is sufficient 1(b1) zoned land within proposed Lot 3 to allow the owner to use that part of the land for agriculture, whether it be for the current low intensity cattle grazing or for some other appropriate agricultural pursuit. Council has decided that the appropriate land size for the 1(b1) zone is 10 hectares to maintain sustainable agricultural units, probably as a result of a higher expected yield potential of the land, and proposed Lot 3 complies with that development standard. It is not necessary to rely on the 7(l) zoned part of the site to maintain agricultural sustainability because that part of proposed Lot 3 is remote from the existing dwelling house and less likely to be used for agriculture, and the 1(b1) zoned part of the site has an area which exceeds what Council regards as the minimum as a sustainable agricultural unit.*
- (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner - the existing dwelling house is already functioning as a non-isolated residential development with access to any necessary public amenities and services that have been made available in a coordinated and sustainable manner. The site is close to Burringbar Village, a 15 minute drive to either Murwillumbah or the Tweed Coast and a 45 minute drive to the Gold Coast.*
- *No change is proposed or required in relation to the existing development upon the land comprised within proposed Lot 3. Proposed Lot 3 is occupied by an existing dwelling house which has an access driveway to Burringbar Road, and there are tracks which lead to the north eastern and north western parts which appear to be used for low intensity grazing purposes, The 7(l) zoned part of the site is not proposed to be physically affected by this development application, and the ecological and scenic values inherent in that part of proposed Lot 3 are able to be protected.*
- *Proposed Lot 3 is not within a part of the Tweed's water supply catchment area and the proposal will not adversely affect water supply quality.*

7(l) Zone Objectives

Primary objectives

- *The designation of the north western part of the site within the 7(l) zone is confirmation that the relevant part of the site is an area of particular habitat significance requiring protection. No change is proposed in relation to the current use of the part of the site contained within proposed Lot 3, specifically that which is within the 7(l) zone. The remaining part of proposed Lot 3 is within the 1(b1) zone and that area exceeds the minimum lot area for the 1(b1) zone, confirming that Lot 3 is not constrained for its likely continued use for dwelling house and low intensity grazing purposes. The 7(l) zoned part of the site is intentionally located in a more remote and less accessible part of proposed Lot 3 in relation to the existing dwelling house to maximise the potential of that part of the site to be protected.*
- *For the same reasons, the contribution of the 7(l) zoned part of the site to the locality's flora and fauna habitat can continue to be preserved.*
- *It follows that the contribution of the 7(l) zoned part of the site as a wildlife corridor can continue to be protected.*

Secondary objectives

- *Likewise, the contribution of the 7(l) zoned part of the site as an area of scenic value can continue to be protected.*
- *The development application proposes no change to the current use of the land contained within proposed Lot 3 as a dwelling house and low intensity grazing.*

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

On the basis of these environmental and compatibility grounds, requiring strict compliance with the development standard would be unreasonable and unnecessary and tend to hinder the attainment of the relevant objects of the Act. That is, requiring strict compliance with the development standard would hinder the proper management, development and conservation of available resources for the purpose of promoting social and economic welfare and a better environment, and would hinder the promotion and co-ordination of the orderly and economic use and development of the land. The proposed development represents the appropriate response to the control of development given the current use of the site and the compliance of the proposal with the minimum lot area development standard applying to the 1(b1) zone which is the dominant zone applicable to the site and its useable areas.

5. *Is the objection well founded?*

It is submitted that it would be both unreasonable and unnecessary to require strict compliance with the development standard in this case on the basis of the grounds provided in answer to question 3. This objection demonstrates that compliance with the development standards would be both unreasonable and unnecessary and tend to hinder the attainment of the referenced objects of the Act, and is well founded accordingly.

Conclusion

The part of the site which is located within the 7(l) zone is already significantly less than the 40 hectare development standard and no change is proposed in relation to the part of any particular lot that is within the 7(l) zone. That is:

- *the site is one allotment and it currently contains about 4.11 hectares of 7(l) zoned land plus in excess of 10 hectares of 1(b1) zoned land, and*
- *proposed Lot 3 will contain about 4.11 hectares of 7(l) zoned land plus in excess of 10 hectares of 1(b1) zoned land.*

Proposed Lot 3 maintains sufficient area to be a sustainable agricultural unit, and no change is proposed or required in relation to the use and occupation of that part of the site to be situated within proposed Lot 3 which might affect the ecological or scenic value of the 7(l) zoned part of the land. The proposed development is satisfactory having regard to the stated objectives of the development standard and the 7(l) zone and Council is therefore urged to support this well found SEPP 1 objection accordingly.”

Assessment of the applicant’s submission:

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

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

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

The proposal is consistent with the objectives of Clause 20(2)(a) of the TLEP.

It is likely the allotments will be owned individually in the future, this is not thought to adversely affect the continuance of the site being sustainable.

The development results in two additional dwelling entitlements which will be serviced with on-site water and septic systems.

The applicant will be restoring part of the site previously cleared for agricultural purposes and maintaining the 7(l) portion of the site. The development is therefore assisting to contribute to the ecological values of the land.

It is considered unlikely that the development will adversely affect the Tweed's water supply quality.

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

The flexibility of the allotment will not result in any adverse environmental impacts as the entire portion of 7(l) zoned land is contained within the same allotment. It is noted the 7(l) portion is currently less than 40hectares. Enforcing the development standard is therefore regarded as unnecessary in this instance.

The development would not hinder the attainment of the objects of the EP&A Act 1979. As discussed the applicant will be restoring and maintaining the 7(l) portion of the site being of important ecological significance. The development is regarded as being orderly and an economic use of the land.

- 3. Consideration should also be given to:**

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

The proposal was referred to the Department of Planning for consideration, the variation was not raised as being a matter for state or regional significance. The configuration of the subject site is considered to be unique.

The proposed non-compliance with the TLEP 2000 allotment size is considered to be justified in this instance and is not likely to result in an adverse planning precedent. As such, the granting of this application is unlikely to impact upon public benefit.

The SEPP No. 1 variation is therefore considered to be reasonable.

SEPP No. 44 - Koala Habitat Protection

The applicant identified core koala habitat on the subject site. The applicant's TSMP identified potential koala habitat throughout the upper slopes of the site and a small area of core koala habitat within the west of the site. The TSMP identifies management provisions to control future development, prohibit dog and to provide guidance with regards to rehabilitation and enhancement of the site. Council's Special Ecologist has reviewed the TSMP and recommended the plan form part of the development consent.

SEPP No. 55 – Remediation of Contaminated Land

The applicant has provided a contaminated lands assessment as the site has been subject to potentially contaminating activities including banana cropping. The results of site testing indicate the subject site does not warrant remediation.

SEPP (Rural Lands) 2008

The SEPP requires consideration of several matters in determining development applications for land zoned rural and zoned environment protection, where the subdivision of land is proposed to be used for the purposes of a dwelling.

The existing uses on site include rural residential living and low intensity agriculture including cattle grazing. The existing dwelling was granted consent on 2 April 1991 (0315/91B). The surrounding land uses are similar to that of the subject site with the exception of the adjoining National Park.

The proposed development is regarded as being compatible with the adjoining land uses. The proposal is not considered to result in significant impacts on the use of the site or the predominant land uses in the vicinity of the site. The nominated dwelling footprints within each allotment are considered to be suitable given the site's ecological and topographical constraints.

The applicant advises measures proposed by the applicant to avoid or minimise any incompatibility between existing surrounding land uses have not been provided as they are deemed to be more suited to the lodgement for further development on the site.

The proposed subdivision is consistent with the subdivision principles of the SEPP.

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

As per advice from the Department of Planning (Planning Circular 08-013) draft environmental planning instruments exhibited prior to 1 March 2006 and had not yet been gazetted are no longer required to be taken into consideration by consent authorities when determining development applications under section 79C of the EP&A Act. Therefore draft LEP amendment numbers 20 and 21 do not require consideration.

Draft LEP amendment numbers 70 and 76 are shire wide plans however these plans have no specific relevance to this proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed allotments contain sufficient setbacks and total site area to enable a dwelling house and car parking to be constructed in compliance with the DCP.

A5-Subdivision Manual

Lot configuration

The shared boundary between proposed Lot 1 and 2 runs through the existing dam. Concern was raised about the suitability of this boundary given the shared responsibilities including the maintenance of the dam. The applicant provided confirmation from the Department of Lands advising the Department is not concerned with the position of any internal boundaries in a plan of subdivision.

The proposed access track to the existing dwelling shall be consistent with Planning for Bushfire 2006. Future dwellings and access tracks will also be required to be consistent with this requirement and will be assessed separately.

As discussed previously the section of the site zoned 7(I) is wholly contained within proposed Lot 3, the applicant is required to undertake maintenance and rehabilitation works as per the TSMP.

Lot size

The lot sizes required within this section are identical to those required as per the TLEP 2000. The lot sizes proposed have been previously discussed throughout this report.

Access

The entry points into the allotments are situated along Upper Burringbar Road have been situated so as to minimise environmental impacts and to ensure adequate sight distances. Due to the low volume of traffic on this road all access points are deemed to be acceptable. Suitable access on site exists to the existing dwelling future access tracks within the sites will be required to be considered in detail in conjunction with a future application for a dwelling.

Water and Waste Disposal

As discussed the applicant proposes to retain the existing on-site septic system and rain water tank situated within proposed Lot 2. Future developments will necessitate similar systems.

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

There are no clauses of the regulations applicable to the proposal.

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

There are no further impacts anticipated in addition to those previously discussed.

(c) Suitability of the site for the development

The suitability of the site for the development has been demonstrated throughout this report. The proposal is generally consistent with the applicable environmental planning policies, the development control plan and will not result in adverse cumulative impacts.

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

No further submissions have been received to date in addition to those previously discussed.

(e) Public interest

The proposal is regarded as being in the interests of the public.

OPTIONS:

1. Council resolve to approve the development application and SEPP No. 1 submission subject to conditions of consent; or
2. Council resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P5 [PR-PC] Development Application DA09/0074 for an Outdoor Dining Blister at Lot 1 DP 780238; No. 6-8 Commercial Road, Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA09/0074 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for an outdoor dining blister within the road reserve of Commercial Road, Murwillumbah. The dining blister is proposed to be occupied by the Sugarbeat Café.

The proposed outdoor dining blister to be constructed is approximately 11.2m x 3.09m and will result in the loss of one (1) on-street car parking space.

Council Officers have assessed the application and are recommending refusal due to a Council resolution from 23 January 2007. Council resolved to endorse a number of actions to reduce car parking implications within the Murwillumbah Central Business District (CBD) following the Murwillumbah CBD parking Study.

The most applicable resolution stated:

“All applications for outdoor dining in Murwillumbah that consume on street parking are refused unless the business can physically provide the lost on-street car parking spaces with equivalent on-site parking spaces.”

In accordance with this resolution, Council officers are unable to support the proposed application for an outdoor dining blister as the business is unable to provide additional car parking spaces onsite. The applicant has therefore made representations to Councillors and as a result the application has been called up to be determined by Council rather than under delegated authority.

RECOMMENDATION:

That Development Application DA09/0074 for an outdoor dining blister at Lot 1 DP 780238; No. 6-8 Commercial Road, Murwillumbah be refused for the following reasons: -

- 1. Pursuant to Council’s resolution on the 23 January 2007, the application consumes one (1) on street parking space and cannot physically provide the lost on-street car parking space with an equivalent on-site parking space.**

2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 3(b) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the community's welfare and social needs are diminished by the removal of an easy and readily available kerbside car parking space in the Murwillumbah CBD.
3. Pursuant to Section 79C(1)(e) the proposed development is not in the public interest as an additional car parking space will be lost within the Murwillumbah CBD.

REPORT:

Applicant: Mr B Hails
Owner: Yelfor Pty Ltd and Tweed Shire Council
Location: Lot 1 DP 780238; No. 6-8 Commercial Road, Murwillumbah
Zoning: 3(b) General Business
Cost: \$15,000

BACKGROUND:

Council is in receipt of a development application for an outdoor dining blister within the road reserve of Commercial Road, Murwillumbah. The dining blister is proposed to be occupied by the Sugarbeat Café.

The proposed outdoor dining blister to be constructed is approximately 11.2m x 3.09m and will result in the loss of one (1) on-street car parking space.

An outdoor dining blister currently exists for the adjoining tenancy Riverside Pizza and Thai and Sugarbeat Café uses this dining area during the day as Riverside Pizza and Thai are not open.

In 2006, Council received a report titled the Murwillumbah CBD Parking Study. A copy of the report is attached. The report investigated the provision and adequacy of public and private parking within the Murwillumbah CBD. The study also attempted to reconcile the demand for parking created by businesses within the Murwillumbah CBD with the supply of both private and public car parking.

Based on the findings from the study, a series of short term policy and physical options were recommended to Council to address future provision of parking within the Murwillumbah CBD. One such policy option was:

Council has been approving outdoor dining applications that consume on-street parking provided a cash contribution is paid in accordance with Section 94 Plan 23. This has been based on the assumption that adequate public car parks existed to cover the lost car parking spaces. As discussed in the report, this is no longer the case. It is proposed to restrict applications for outdoor dining that consume on street parking to those that can provide alternative customer car parking on the adjoining property. This restriction would prohibit applications that could not provide alternate public parking and reduce the requirement of Council to provide parking in the future.

Note: One (1) unsupplied parking space in Murwillumbah would normally be charged \$12, 747 in accordance with Tweed Section 94 Plan No. 23.

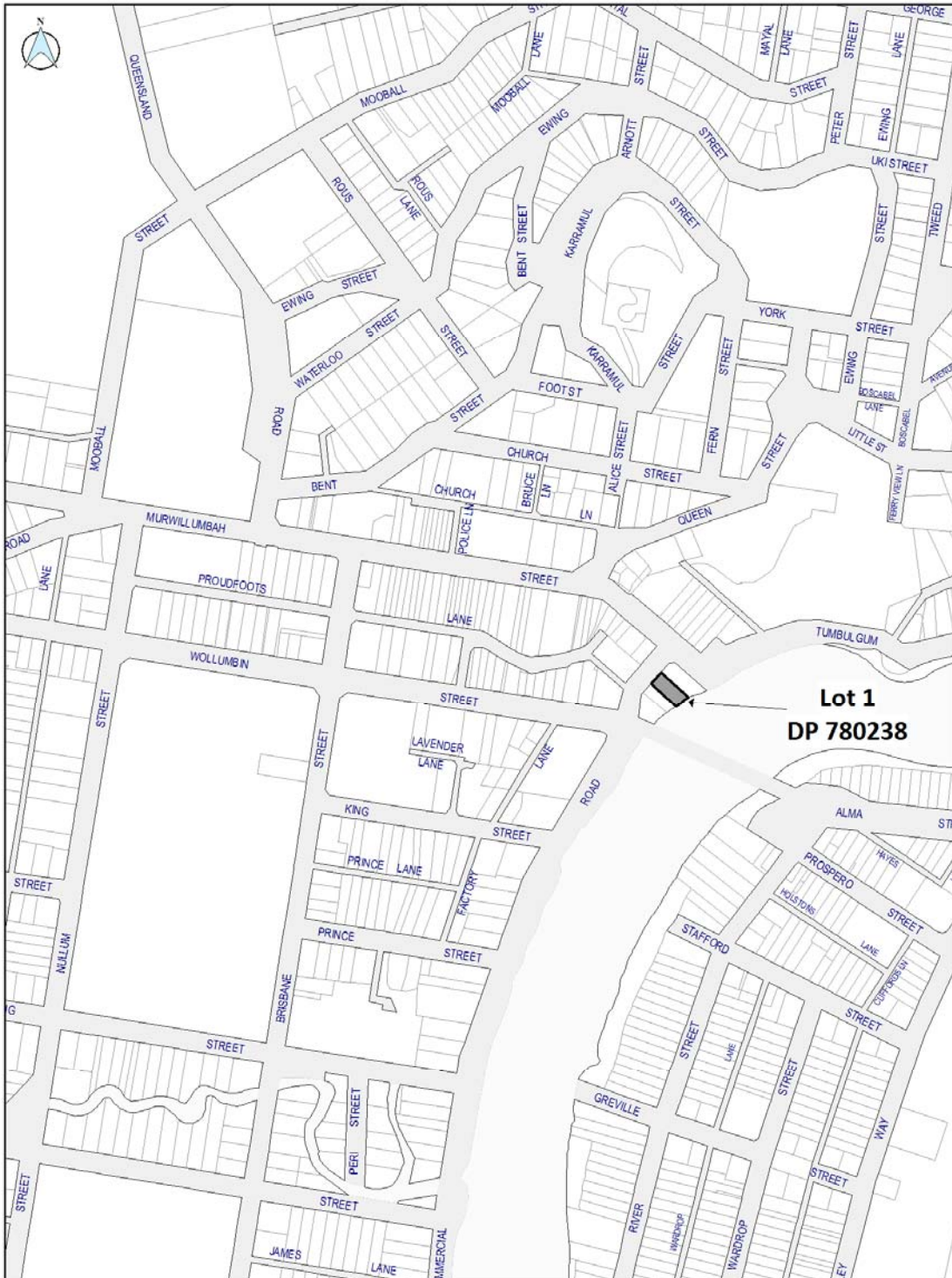
As a result of the findings from the study and the options recommended, Council resolved to endorse a number of short term actions to reduce car parking implications within the Murwillumbah CBD (A copy of the Council resolution and associated report is attached) . The most applicable resolution stated:

“All applications for outdoor dining in Murwillumbah that consume on street parking are refused unless the business can physically provide the lost on-street car parking spaces with equivalent on-site parking spaces.”

In accordance with this resolution, Council officers are unable to support the proposed application for an outdoor dining blister as the business is unable to provide additional car parking spaces onsite.



SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2009 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i></p> <p>Lot 1 DP 780238</p> <p>No. 6-8 Commercial Road, Murwillumbah</p>	<p>Site Plan</p>  
<p>File: Z:\GIS_Jobs\Site Plan.Wor</p>		<p>Author: J. Batchelor Date: 05/June/2009 Scale: 1:5,000 Sheet: 1 of 1</p>

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

The proposed development is considered not to be consistent with the aims of the Tweed Local Environmental Plan as the proposed development is not consistent with the primary objectives of the 3(b) zone. As discussed later within the report.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally compliant with the principles of ecological sustainable development. The proposed development is situated within the existing Murwillumbah CBD. Therefore the proposed development is considered to have minimal impact on the environment and in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8(1) – Consent Considerations

The proposed development if approved would be considered to create an adverse cumulative impact for more outdoor dining blisters to be established which will consume additional car parking spaces within the Murwillumbah CBD despite a recent car parking study recommending otherwise. For the size of Murwillumbah, the CBD currently has a substantial amount of existing outdoor dining blisters which consume a number of car parking spaces. In addition, there are a number of other businesses who have approvals for dining blisters which have not yet been constructed (for example the Aussie Tavern). A further proliferation of dining blisters is not considered sustainable.

Clause 11 - Zone objectives

The subject site is Zoned 3(b) General Business. The objectives of the 3(b) zone are:

Primary objectives

- to provide business centres in which the community's shopping, business, welfare and social needs can be met.
- to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.

Secondary objectives

- to provide for tourist orientated development.
- to encourage upper floor residential or tourist accommodation.

An outdoor dining blister is permissible within the zone with consent. However the proposal is not consistent with the primary objectives of the zone as the community's welfare and social needs is diminished by the removal of an easy and readily available kerbside car parking space in the Murwillumbah CBD. This is reiterated through the Murwillumbah CBD Parking Study which stated that:

“spaces may not be in a location where customers are expecting them and are scattered throughout the CBD which means they may be difficult to locate and this generates the need for customers to circulate within the CBD road network searching for vacant spaces which can cause frustration.”

Clause 13 – Development of Uncoloured Land on the Zone Map

Clause 13 of the TLEP relates to the development of uncoloured land on the zone map.

The objectives of Clause 13 state:

- *to enable the control of development on unzoned land.*
- *to ensure that development of unzoned land is compatible with surrounding development and zones.*
- *to ensure that development of certain waters takes account of environmental impacts and other users of the waters.*

The clause provides that you must not carry out development (other than development for the purpose of an outdoor eating area on a footpath within a road reserve) on unzoned land except with consent.

As this development extends beyond the footpath onto the road carriageway a development application is required.

Whilst the proposed dining blister is compatible with the existing surrounding development it is not in accordance with a previous Council resolution and accordingly the application is recommended for refusal.

Clause 15 - Essential Services

Clause 15 of the TLEP requires adequate essential services be available to the site. All essential services are available to the subject site.

Clause 16 - Height of Building

Clause 16 of the TLEP requires that development be carried out in accordance with the building height limitations. The proposed outdoor dining area is consistent with the sites allowable building height limit of 3 storeys.

North Coast Regional Environmental Plan 1988

There are no applicable clauses within the North Coast Regional Environmental Plan relevant to this application.

State Environmental Planning Policies

There are no State Environmental Planning Policies applicable to this application.

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

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

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

Tweed Development Control Plan

Tweed DCP Section A2 specifies that a refreshment room needs to define internal dining area to calculate parking (one space required for every 7m² of internal dining area plus provision for staff and service vehicles). Furthermore it states that footpath dining areas are to be considered in accordance with Councils Footpath Dining Policy.

Historically this was to encourage alfresco dining which adds to the character of our towns.

The Policy does not specifically contain car parking rates for a dining blister and therefore accordingly Council has historically only charged applicants for the loss of any on street parking spaces instead of the additional blister area as internal dining space.

The proposed blister equates to 34.6m² and results in the loss of one on street parking space.

As the applicant is unable to compensate for the loss of one (1) on site parking space within their site, this application is recommended for refusal in accordance with the previous Council resolution of 23 January 2007.

Footpath Trading Policy

Council has developed a footpath trading policy to maintain a balance between pedestrian movement, convenience and safety and footpath trading activities. The Policy identifies many requirements for footpath trading including a two metre wide thoroughfare to be maintained at all times.

The proposed outdoor dining blister extends beyond the footpath area and is accordingly subject to greater controls in regards to parking as detailed above. Where applicable the application is generally in accordance with the requirements in the policy.

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

None are directly applicable to the proposed application.

(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

Loss of on-street car parking

As discussed previously, the proposed outdoor dining blister will result in the loss of one (1) on-street car space.

Council for a number of years had been approving outdoor dining applications within Murwillumbah that consume on-street parking provided a cash contribution is paid in accordance with Section 94 Plan 23 (\$12,747 in Murwillumbah). This had been based on the assumption that adequate public car parks existed to cover the lost car parking spaces.

The main concern for Council in considering this application is ensuring that a precedent is not established that will continue to erode the current parking situation within the Murwillumbah CBD.

The results detailed following the Murwillumbah CBD Parking Study revealed that whilst the theoretical calculated shortfall in the total number of car parking spaces in the CBD is 244 spaces (1192 - 948), this shortfall was based on an estimated demand for 2092 car parking spaces in the CBD.

After construction of the multi level car park the calculated parking deficiency of 244 spaces was reduced to 151 spaces, therefore, it can be concluded from this report that in theory after the multi-level car park has been constructed an estimated shortfall of 151 spaces currently exists in the CBD. In reality car parking spaces are generally always available even though they may be difficult to locate and not in ideal locations which indicates that the availability of public parking is not currently at critical levels. However, this is based on current demand but it is expected that even if the total floor space of the CBD remains the same the trend for increased car ownership and usage may result in the parking situation deteriorating in the future.

Because there still remains a shortfall of public car parking spaces not provided, the study examined options for improved car parking supply and made recommendations on policy and physical options to ensure that the supply of customer car parking for future development in the CBD is provided at appropriate rates.

The most applicable recommendation from the report which Council resolved to adopt was that:

“All applications for outdoor dining in Murwillumbah that consume on street parking are refused unless the business can physically provide the lost on-street car parking spaces with equivalent on-site parking spaces.”

Because the business cannot physically provide an additional space onsite, Council’s Environmental Health Unit and Engineering and Operations Unit advised that:

“In consideration of the Council resolution on the 23 January 2007, and the lack of provision for on-site parking to accommodate lost car parking spaces the application cannot be supported.”

Impact on the streetscape

The application has been reviewed by Council’s Landscape Architect. The landscape architect had some concerns with the proposed bollards and recommended that the proposed bollards to be erected are to be Street Furniture Australia Bollard B5F 11mm diameter galvanised steel and powder coated body windspray 84760 with Polished cast aluminium flat top and pre drilled holes to take 8 strands of stainless wire, should the application be approved.

(c) Suitability of the site for the development

Given the earlier comments detailed within this report, the subject land is not suitable for the development as proposed.

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

The application was notified for a period of 14 days from 1 April 2009 to 17 April 2009 in accordance with Council’s Notification Policy.

No submissions were received.

(e) Public interest

It is considered that the proposed outdoor dining blister will not be in the public interest as the applicant cannot provide an additional onsite car parking space replacing the lost on-street car parking space. Therefore, an additional car parking space will be lost within the Murwillumbah CBD.

OPTIONS:

1. Determine the application by way of refusal in accordance with the recommendation.
2. Support the proposal and request appropriate conditions for approval be submitted to the next Council Meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Should the recommendation of this report not be upheld, no direct policy implications will occur, however a precedent will be set for similar applications to be supported.

CONCLUSION:

In consideration of the Council resolution on 23 January 2007, and the lack of provision for on-site parking to accommodate lost car parking spaces the application cannot be supported.

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. Murwillumbah CBD Parking Study (ECM 2067509)
 2. Council Report and Minutes 23 January 2007 (ECM 2067490)
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P6 [PR-PC] Development Application DA06/1054 for a Staged Development Application under Section 83(B) of the EP&A Act 1979 for a Concept Plan Approval for a Village and Ancillary Development and Stage 1 Works Involving Construction of Access Road to the Village and Ancillary Development and Stage 1 Works Involving Construction of Access Road to the Village

ORIGIN:

Development Assessment

FILE NO: DA06/1054 Pt12

SUMMARY OF REPORT:

Council considered a report on 5 May 2009 regarding the proposal. Council was required to indicate its intention to grant consent to the proposal in accordance with Clause 44(b) of the Tweed Local Environmental Plan 2000. This Clause requires Council to refer the proposal to the Department of Environment and Climate Change (DECC) for comment and to consider those comments in relation to Aboriginal Heritage Significance. Council resolved to refer the application to the DECC in accordance with the Clause and the DECC's comments were received on 26 May 2009. The comments from the DECC are provided in the assessment section of this report under the heading "Clause 44 – Archaeological Sites" and are double underlined. In response to the DECC submission additional conditions and amendments to existing conditions are recommended and these are also identified by double underlining in the recommendation.

Council is now required to make a determination on the proposal.

The Nightcap Village proposal is a development proposed to be undertaken in stages. The EP&A Act (S.83B) permits a concept plan for the whole development to be submitted accompanied by detailed information for one or more stages of the whole development. In this instance approval is sought for the overall concept and stage 1 which consists of a six lot master lot subdivision, construction of public roads, carparking, access and a road bridge crossing of the Tweed River. Future tenure of the Village will be via community title. The community association will be responsible for all funding and maintaining and replacing of water, sewer, roads, stormwater, open space and roads with the exception of the public roads proposed as part of stage 1.

The concept is a plan for the construction of an entire new community or village that is to be generally developed in stages. The concept plan includes the provision of water and sewer services, electricity and communication services, roads, community facilities, areas of low and medium density housing, 1000m² of retail floor space, conference centre, health centre, open space and rehabilitation areas. The overall concept proposal

is stated to have an indicative yield of 430 dwellings with an expected population of approximately 1000 persons.

Water is to be supplied via tanks, dams, groundwater and recycled water. Effluent is to be treated via a sewerage treatment plant with a reuse scheme for non potable purposes and irrigation.

The application is recommended for conditional approval. Whilst the proposal represents significant change to the locality it accords with the zoning of the land.

The Concept proposal is described by the applicants as follows -

Village Housing - This housing comprises residential dwelling units normally provided in townhouses and villa housing but may also embrace residential flat buildings with the development being up to three storeys in height. The more peripheral units will not be more than two storeys in height.

Village Lots - These lots are proposed to allow dwelling houses to be constructed. The minimum area for any village lot is to be no less than 450m² with the average village lot being about 600m².

Mixed Village Uses - This area of land comprises the Village Centre and will embrace mixed uses of commercial, retail and residential development. There may also be uses embraced within the development which would not comprise activities under the definitions of these uses, such as tourist uses, medical centre, etc., but would be found in the mixed village area.

Tourism and Special Use Site - These tourism and special use sites are located in areas where they are accessible to visitors to the site and to residents utilizing the market garden area on the western extremity of the Village.

Open Space Areas - These areas will embrace the sports and market area and the village green together with the market garden area itself.

Environmental Open Space - This type of land permeates through the whole of the Village and is designed to preserve those special features of the site which are significant for environmental reasons. The Aboriginal archaeological areas which are to be protected are included within this type of area.

Parking Areas - These areas are located adjacent to the access roads from Kyogle Road and adjacent Village Centre. They are intended to provide convenient parking for people attending the Village Centre area and the sports and market area.

The Tweed River Corridor - This land embraces a corridor along the Tweed River including a riparian zone which is identified on the Village Plan

The Public Roads - These roads are illustrated in a bold black line on the Village Plan and the private roads are indicated by a much thinner grey line. The public roads form part of the Stage 1 development application and the private roads will be the subject of future development applications.

Infrastructure - The staging of the total development is illustrated on the Staging Plan with the public utility services being provided to each stage of the Village as it is developed. The works required for water and sewerage will be staged so that they satisfy the needs of the development at any point of time as the land is being developed.

A sinking fund provided by the developer is to be used to supply and manage the infrastructure. As the community grows and the Community Association is established full funding of infrastructure maintenance and operation will transfer to the Association. Council's interest in this arrangement is to ensure that the infrastructure operation and management will not fall back to Council to fund. Conditions have been imposed to prevent this occurring including supply of reports documenting the financial and technical performance of the infrastructure.

A number of technical issues had remained unresolved until the submission of information on 22 January 2009 which included owners consent, final proposed works, infrastructure management and funding, staging, aboriginal heritage assessment and impact, flooding impact and integrated approval from the Department of Water and Energy. Further information was supplied following a without prejudice meeting with the applicant and its representatives on 11 February 2009.

The technical issues have been resolved through provision of information or via recommended conditions. The most significant issue that has been required to be conditioned involves water supply. Agreement was reached through the assessment that the volume of potable water was to be 150 litres per person per day. The information submitted on 22 January reduced this to 110 litres per person per day. As the site is not and will not be connected to Council's water supply and therefore is proposing tanks, dams and groundwater to supply potable water it is crucial that the water supply system is adequate so that Council's system (via water tanker) is not relied upon to supply the Village. The demand for water apart from being a basic necessity has implications for the size of household tanks and security and reliability of supply. The size of tanks has urban design implications given that the Village concept includes multi dwelling units. The minimum water supply acceptable is 225 litres per person per day comprising 150 litres per day potable water and 75 litres per day recycled water for toilet flushing and outdoor use. The 225 litres per day made up of the potable and recycled components is an essential and critical element of the assessment of the proposal and recommendation. The proponents have agreed to supply 150 litres per day of potable water.

The recommended conditions are in two sections with the first section relating to the overall concept plan and future stages and the second section relating to the stage 1 component. It should be noted that further development of all other stages of the concept plan require lodgement and approval of a development application including the water and sewer infrastructure such as the sewerage treatment plant.

Conditions have been imposed regarding environmental rehabilitation of existing areas including the riparian zone, a 50 metre buffer to the Tweed River, threatened species including prohibiting cats and dogs, water and sewerage including full funding of all aspects by the developer and community association and management of Aboriginal archaeology including an Aboriginal Heritage Display.

A condition has also being imposed regarding the formulation and approval of a design code for the Village to guide future built form.

Clause 44(1)(b) of the Tweed LEP requires Council to notify the Department of Environment and Climate Change (DECC) if it is intending to grant consent to a development on a site that has Aboriginal heritage significance. The DECC has 28 days to comment and Council is required to consider any comments received. The process has two (2) stages if Council is intending to grant consent. The first stage is indicating Council's intention to grant consent and advising the DECC. The second stage is taking into consideration the comments of DECC and determining the application. Indicating an intention to grant consent at Stage 1 of the process does not bind Council to the same decision at Stage 2 of the process. It should be noted that the Class 1 Appeal is still on foot.

In accordance with Clause 44 of the LEP Council resolved the following on 5 May 2009:-

- “1. Council notifies the Director General of the Department of Environment and Climate Change that it intends to grant consent subject to conditions to DA06/1054 for a staged development application under Section 83(B) of the EP&A Act 1979 for a concept plan approval for a village and ancillary development and stage 1 works involving construction of access road to the village from Kyogle Road, construction of car parking area for 69 cars and 3 bus bays and a 6 lot subdivision at; Lot 3 DP 771335; Lot 4 DP 737440; Lot 121 DP 134446, Kyogle Road Kunghur and Crown Roads.*
- 2. Following the receipt of comments or expiration of 28 days from notification whichever occurs first, DA06/1054 be reported to Council for determination including consideration of the comments received if any, from the Director General of the Department of Environment and Climate Change.*
- 3. The following draft conditions, be received and noted.”*

The DECC's comments were received on 26 May 2009. Additional conditions are proposed as a result of the comments. The submission from the DECC setting out those comments is provided in the assessment section of this report.

RECOMMENDATION:

That Development Application DA06/1054 for a Staged Development Application under Section 83(B) of the EP&A Act 1979 for a Concept Plan Approval for a Village and Ancillary Development and Stage 1 Works Involving Construction of Access Road to the Village from Kyogle Road, Construction of Car Parking Area for 69 Cars and 3 Bus Bays, Road Bridge and a 6 Lot Subdivision at Lot 3 DP 771335; Lot 4 DP 737440; Lot 121 DP 134446, No. 2924 Kyogle Road, Kunghur and Crown Roads be approved subject to the following conditions:

DEVELOPMENT CONSENT - DA06/1054

Consent is granted in accordance with Section 83 B of the Environmental Planning and Assessment Act 1979 to staged development application 06/1054 which sets out a:

- a) Concept proposal for a Village; and
- b) Detailed proposal in Stage 1 for a six lot subdivision, carpark (69 cars and 3 bus bays), road bridge and public road works

on Lot 121 DP134446, Lot 3 DP771335, Lot 4 DP737440 and Crown Roads subject to the attached conditions of consent below. This consent comprises parts A, B, C and D. In this consent, except insofar as the context or subject matter otherwise indicates or requires, the terms used have the meanings indicated in Part D.

PART A – CONCEPT APPROVAL FOR VILLAGE**Concept Proposal**

1. The concept proposal is to be undertaken in accordance with the following plans except where varied by the conditions of this consent-
 - (a) Concept Plan Diagram 1 dated 16 January 2009 Project No. 3500/53
 - (b) Village Plan Diagram 2 dated January 2009
 - (c) Staging Plan Diagram 3 dated January 2009
 - (d) Watercourses Figure 3 dated 16 January 2009
2. Lot 121 DP 134446 Lot 3 DP 771335 and Lot 4 DP737440 are to be subdivided into 6 lots. Proposed Lots 13, 14 and 15 of the 6 Lot subdivision are to be the subject of a future Community Title subdivision in accordance with the concept proposal. Community Property is to include:
 - (a) The Village Green;
 - (b) The Sports and Market area;
 - (c) The Sports and Market Area Parking;
 - (d) The Kyogle Road Car Park;
 - (e) The Market Garden;
 - (f) The Market Garden Footbridge;
 - (g) The Tweed River Footbridge;
 - (h) Community Association Infrastructure;
 - (i) The Environmental Open Space;
 - (j) The Protected Archaeological Areas being NV1 and NV4 and Aboriginal Heritage Display;
 - (k) Roads other than the two roads identified on the Concept Plan Diagram 1 which are to be public roads dedicated to TSC.
3. Consent is granted for Stage 1 of the development without the need for further development consent. This consent does not otherwise authorise the carrying out of any development until Stage 1 is completed and consent is subsequently granted following a further development application.

4. This consent does not approve any concept proposal for fill, excavation, earthworks, lot sizes, building height, site cover, floor space ratio or setbacks, except as explicitly set out in this consent. No further part of this development may be approved until Design Guidelines prepared by the Developer have been approved by Council for each Precinct. The Design Guidelines are to address, but not be limited to, lot sizes, building height, site cover, floor space ratio, setbacks and landscaping. The Design Guidelines are to detail and justify any variation to the relevant sections of Council's Development Control Plan (TDCP). The Design Guidelines must restrict height in the Village Lot precincts to two storeys. The Design Guidelines will not extend to engineering design and construction specifications for fill, excavation or public and Community Association Infrastructure. Any such works must be in accordance with TSC Subdivision Manual, section A5 of TDCP. No guarantee implied or otherwise is given that Design Guidelines inconsistent with TDCP will be approved.

General Conditions for Concept Approval and Future Stages after Stage 1

5. Any development application next after the Stage 1 approval must include all major Community Association Infrastructure that cannot be practicably built in stages. This Infrastructure must be constructed and operational prior to the release of any subdivision certificate or occupation certificate for the next development application whichever occurs first. In addition each development application subsequent to the Stage 1 application must provide sufficient Infrastructure to meet the requirements of that proposed stage to Council's satisfaction.
6. The developer must lodge a bond in the form of an unconditional Bank Guarantee, not limited by time, in favour of Tweed Shire Council prior to issue of the first subdivision certificate or occupation certificate after stage 1 which ever occurs first. The bond is to be for the amount of \$200,000. The bond will be held by Council until such time as 100 equivalent tenements are connected to the plant and the Council is satisfied that the treatment plant is being operated and maintained in a manner that ensures satisfactory treatment of Sewage. If the proponent or community association fails to comply with any consent conditions or other agency licence or approval which relate to the Sewerage system then Council at its discretion alone can use the bond to undertake such works and operations to operate, maintain and refurbish the Sewerage System.
7. The next development application after the Stage 1 application must include the final form of the Community Management Statement (CMS) for approval by Council.
8. The land designated "Tourism & Special Uses" in the south western corner of the development on Concept Plan Diagram 1 dated 16 January 2009 must not contain any permanent or temporary accommodation. Land uses in this area must be flood compatible, and not create any significant adverse impacts on surrounding land or local flood behaviour.

9. Solar powered hot water systems must be used for all development. The Community Management Statement and Design Guidelines are to stipulate that solar powered hot water systems must be utilised for all development within the Village.
10. A community bus is to be provided by the Developer and maintained for use by occupants of the Village. The bus is to be available for use prior to occupation of any residential premises for Village Lots or Village Housing or Mixed Village Uses whichever occurs first. The bus is to be a minimum size of eighteen passenger seats. The bus is to be maintained and fully funded by the Community Association with appropriate provisions provided in the Community Management Statement.
No dog, cat, rabbit, ferret or hard hoofed animal is permitted on the site
11. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of the site or part thereof may own or allow to remain on the site or any part thereof any dog, cat, rabbit, ferret or hard hoofed animal (excluding any assistance animal permitted under the *Companion Animals Act, 1998 (NSW)* and the *Disability Discrimination Act, 1992 (Cth)*). The consent for the community title subdivision must make provision for a restrictive covenant acceptable to Council pursuant to section 88B of the Conveyancing Act and the CMS is to provide for an appropriate by-law to address this requirement.
12. Slab on ground dwellings must not be constructed in those areas that exceed a slope of 20% or more as nominated on sketch 103A – “slope analysis” prepared by Cardno dated 18 February 2009.
13. The Village Lots in the north eastern corner of the Village with boundaries on the eastern boundary of the Village are to be a minimum lot size of 1200m². No dwelling must be constructed on these lots within the Agricultural Buffer or Asset Protection Zone.
14. All archaeological excavations and assessments required by the Aboriginal Cultural Heritage Assessment and Management Plan dated March 2009 and this consent must be completed prior to commencing Stage 1 or granting consent to any future stage of the proposal.
15. An Aboriginal Cultural Education program must be developed and delivered as part of the induction of personnel and contractors involved in the construction activities on site. The program should be developed in collaboration with the Aboriginal community.

Emergency Services

16. The Developer is to fund the upgrading of the existing NSW Rural Fire Service Category 1 tanker to a 3000 litre capacity to operate from the existing Kunghur RFS post. The Developer is also required to fund the following:
 - (a) any improvements needed to the existing post to garage the upgraded tanker,

(b) resurfacing of the existing carpark to ensure the vehicles of staff and volunteers are not obstructing the roadway; and

(c) equipping the post with breathing apparatus.

The above items are to be in place prior to release of the first stage subdivision certificate for Village Lots or Village Housing or Mixed Village Uses whichever occurs first. The Developer is responsible for obtaining and implementing any development consents/approvals required to fulfil the above requirements.

17. An Emergency Response Plan incorporating an early warning system must be prepared in consultation with the Local Emergency Management Committee. The Emergency Response Plan must be in place prior to release of any subdivision certificate for Village Lots or Village Housing or Mixed Village Uses whichever occurs first. The Developer is responsible for obtaining and implementing any development consents/approvals required to fulfil the above requirements. A copy of the Emergency Response Plan is to be submitted to Council.

Water Supply – General

18. The development will not at any stage have access to Tweed Shire Council's (TSC) water supply. Potable and recycled water supplies must be provided at each stage without any reliance on TSC water supply and must be self-sustaining. A minimum water supply of 225 litres per person per day (L/p/d) must be provided made up of a minimum of 75 L/p/d of recycled water and 150L/p/d/ of potable water.
19. All private water suppliers, as defined within the NSW Health *Private Water Supply Guidelines*, must register their supplies with Tweed Shire Council and pay the appropriate fee as adopted within Council's Fees and Charges Policy. Each supply must be the subject of inspection and assessment of monitoring records, as required, by an authorised officer of Tweed Shire Council.
20. The supply of potable and recycled water must at a minimum meet the requirements of the *Australian Drinking Water Quality Guidelines 2004* by the National Health and Medical Research Council and the Natural Resource Management Ministerial Council and *Australian Guidelines for Water Recycling* by the Natural Resource Management Ministerial Council, Environment Protection and Heritage Council and the National Health and Medical Research Council. If more stringent requirements apply at any stage of the development, then those requirements must be met.
21. An appropriate and adequate water supply must be provided for fire-fighting purposes, to the satisfaction of the NSW Rural Fire Service and Tweed Shire Council.

Water Supply – Recycled Water

- 22. A recycled water system must be provided to supply recycled water for the purposes of toilet flushing, residential outdoor usage, irrigation of public open space, the market garden area and fire fighting. Recycled water must not be used for irrigation of the Riparian Buffer Zone . The recycled water system must have the capacity to supply a minimum of 75 L/p/d for residential use plus all other non-residential demands. The reticulation system must be sized to permit fire fighting demand based on the criteria in Council’s Subdivision Design Specification D11 Water Supply. The system must comply with the Australian Guidelines for Water Recycling and provide water that is fit for residential reuse, public irrigation, market gardening, and any other potential use.**
- 23. The recycled water system is to provide the water supply for all toilet flushing. The system must be designed to have enough recycled water stored to provide for a breakdown of seven days duration (minimum) in the treatment plant supplying the recycled water. The recycled water system must also provide adequate storage of recycled water for a four hour fire fighting demand of 15L/s in addition to the seven day breakdown storage. A total storage of a minimum of 500kL is to be provided.**

Water Supply – Potable Water

- 24. The development will not have any access to TSC water supply for potable water. The Developer must provide a potable water supply system that will ensure that the development will have no reliance upon the Tweed Shire Council Water Supply. The potable water supply design must be based upon a design minimum potable water demand of 150 L/p/d at all times.**
- 25. The system will include the use of roof water tanks and other sources of potable water complying with the Australian Drinking Water Quality Guidelines 2004 by the National Health and Medical Research Council and the Natural Resource Management Ministerial Council. The potable water supply must not be used for toilet flushing and/or outdoor uses. Each dwelling and non residential building must incorporate standard water saving devices/water reduction fixtures.**

Note: The Developer must determine whether Water Industry Competition (WIC) Act licenses are required for any part of the water supply system, and obtain such licenses if required.

26. Tank water supply will be supplemented by a trickle feed reticulation system which will operate at all times to meet total demands. The source of water for the trickle feed system must be a surface impoundment (Dam) to be constructed upstream of the STP, and an existing groundwater bore. The surface impoundment dam must have a minimum volume of 60 ML and a Catchment Area of a minimum of 10 ha. The Catchment Area must remain in a natural, undeveloped state and must be appropriately fenced to prevent animal and human disturbance. The Catchment Area must be located wholly within land owned by the Developer and must not include areas of land used for effluent irrigation or other structures.
27. A Catchment Management Plan must be submitted for approval by Council with any future development application for the construction of the dam or the next stage of development after Stage 1 to ensure the long term integrity of the Catchment Area. The Catchment Management Plan must also consider activities outside the designated catchment area that may adversely impact on the raw water quantity and quality.
28. The construction of the 60ML surface water impoundment dam must be the subject of further development consent. The Developer must obtain all necessary approvals/licenses required under the provisions of the Water Management Act.
29. A Water Supply Treatment Facility will be constructed on site to ensure that water sourced from catchment runoff and groundwater is suitable for potable use.
30. Each individual tenement within a multi-unit or mixed use building and each single dwelling house must have a separate tank with a trickle feed top up system to meet water supply requirements. The trickle feed system will have a activation trigger point at 25% of the tank capacity. When the water level in each tank is at 25% of tank capacity the tanks must be filled to 50% of tank capacity by the trickle feed system over a continuous period of 20 hours. The following minimum tank sizes and roof areas must be provided:

USE	Minimum Tank Capacity (kL)	Minimum Roof Area (m ²)
Residential		
1 bed apartment	20	60
2 bed apartment	25	120
3 bedroom dwelling	50	180
>3 bedroom dwelling	50	240
Commercial & Retail	0.2 per m ² of GFA	0.5 GFA
Restaurant & Food Outlets	0.4 per m ² of GFA	0.5 GFA
Notes:		
GFA: Gross Floor Area		

31. Each tank must be internally plumbed to provide water for potable purposes within each tenement or dwelling. This must not include water for toilet flushing purposes or for external usage which is to be provided from recycled effluent. The potable water supply system must be designed so that the first 1mm of roof runoff from each storm event will be diverted from the supply and wasted as first flush protection. Each tank must connect directly to an under-bench UV disinfection system which will be operated to prevent microbial contamination. Each tank system, including the disinfection equipment, must be inspected annually by a qualified person acting under the control of the Community Association, and repaired and maintained as required.
32. The Developer must comply with the requirements of the provisions of the Water Industry Competitions Act and, where required, obtain all necessary approvals and licenses for the provision and operation of water supply infrastructure, including recycled water.
33. Prior to the occupation of any future domestic, residential or commercial structure in any stage of the development provided with a water supply, including individual tank supplies, the Community Association must provide to each individual household and commercial tenement a Water Supply Management Plan. The Plan must be prepared in general accordance with the NSW Health *Private Water Supply Guidelines* and NSW Health *Guidance on use of rainwater tanks*. The Plan must include the responsibilities of both the occupier and the Community Association and 24 hour emergency contact details of the Community Association.
34. Approval for any subsequent stage of development after stage 1 must not be granted unless Council is satisfied of the adequacy of the technical performance of the water supply infrastructure and the sinking fund or financial arrangements required to cover the costs related to the water supply infrastructure for the next stage of the development.

Population Density Restrictions

35. The density of development must be restricted at each and any stage by reference to the capacity of the proposed sewerage treatment plant (STP) and in any event the population density of the development is not to exceed 1000 Persons at any time. Such population density includes all employees and any persons occupying any form of tourist accommodation.

Sewerage and Waste Water

36. The development will not have access to, or be serviced by, TSC sewerage systems. All sewerage and waste water systems for the development must be self sustaining. No separate on-site sewerage systems will be allowed or installed for individual dwellings or non-residential uses. No pump-out systems or disposal of sewage by tanker or other means will be permitted. All waste water generated by each and every stage of the development must be collected, treated, stored and reused within the development.
37. The Developer must provide an on-site waste water treatment system with sufficient capacity to treat waste water from the development and be designed such that it can handle low initial flows as well as the ultimate design load. The ultimate design load is limited to 1100 EP. The disposal of sewage by tanker from the development is not permitted at any stage. The effluent quality from the sewerage treatment plant must comply with the Australian Guidelines for Water Recycling for water for the residential reuse and public irrigation areas proposed and with the requirements set out in the table below as a minimum. If other more stringent quality criteria are required either by a licence under the POEO Act or any other statutory or licence provisions, then the higher standard must be met.

Parameter	Requirement
pH	6.5 – 8.5
Suspended Solids	<10mg/L
BOD	<10mg/L
Total Nitrogen	5mg/L 90%ile, 10mg/L 100%ile
Total Phosphorous	1mg/L 90%ile, 3mg/L 100%ile
Coliform/E.Coli	<1 cfu/100mL
Turbidity	<2 NTU 95%ile, <5 NTU max.
Total Dissolved Solids	<500 mg/L 90%ile <1000 mg/L 100%ile
Coliphages	<1 pfu/100mL
Clostridia	<1 cfu/100mL
Disinfection	Chlorine residual 0.2 – 2.0 mg/L

38. The Developer must determine if Water Industry Competition (WIC) Act licences are required for the sewerage collection and treatment system, and obtain such licences if required.

39. The waste water treatment system must be designed to have the ability to endure a breakdown of a minimum of seven days duration without overflow to the environment.
40. Sewerage pump stations must be designed to achieve a very low risk of overflow to the environment in accordance with the Department of Environment and Climate Change (DECC) Licensing Guidelines for Sewage Treatment Systems - Risk Assessment Guideline, and may require more storage than the minimums specified in Council's Design Specifications and WSAA 04 Pump Station Code of Australia.
41. The waste water treatment system must provide an effluent irrigation system on a suitable area of land with a minimum of 20ML of usable storage capacity (not including free board requirements and volume below bottom operational water level) for effluent storage during periods of wet weather and when the soil conditions are not suitable for irrigation. The storage must be designed that there can be no uncontrolled discharge of effluent but may make provision for a controlled precautionary discharge that will prevent uncontrolled over-topping of the storage to be made in no more than 25% of years, such discharges to be timed to coincide with peak flow events in the Tweed River so as to maximise dilution. Note: A licence under the POEO Act will be required to permit this discharge.
42. The sewage collection and pumping main systems must be designed and constructed in accordance with Tweed Shire Council Subdivision Design and Construction Specifications and relevant WSAA Codes and in accordance with the Department of Environment and Climate Change (DECC) Licensing Guidelines for Sewage Treatment Systems - Risk Assessment Guideline.
43. The STP will be designed to permit construction in stages to meet relevant population requirements of the development as it proceeds. During initial stages of development when sewage flows from the development will be low, such flows will be augmented by water provided by the Developer to ensure that septicity is avoided and treatment efficacy maintained. Pump out systems, tankering of waste water on public roads and individual on-site sewerage systems are not permitted.
44. Prior to the submission of any subsequent development application to create additional allotments or to expand the capacity of the STP, the Developer must submit a performance report to Council which provides details of the viability of the STP and effluent reuse facilities up to that time, particularly in respect of financial and technical performance.

In addition, the Developer (or Community Association after its creation and incorporation) is to provide the Council with six monthly performance reports on the technical performance and financial viability of the STP and sewerage management system for the life of the development.

45. Approval for any subsequent stage of development after Stage 1 must not be granted unless Council is satisfied of the adequacy of the technical performance of the STP and the sinking fund financial viability required to cover the costs related to the STP and sewerage infrastructure for the next stage of the development.
46. Prior to the sale of any residential or commercial unit, the Developer must provide details of the community association accounts to all prospective purchasers.

Water Quality

47. The Developer must provide sufficient water quality management infrastructure to ensure compliance with Council's requirements, as set out in specification D7 of Section A5 of the TDCP.
48. No existing water bodies on the whole site are to be used for water quality management and analysis must demonstrate that runoff entering such bodies after treatment already satisfies the requisite standards.
49. A water quality monitoring program is to be undertaken weekly during any earthworks and construction activity for any runoff from exposed areas of the site, and is to continue until stabilisation of any exposed areas. Parameters to be measured include pH and suspended solids (mg/L), and criteria must accord with the following table:

Parameter	Requirement
pH	6.5 – 8.5
Suspended Solids	<50mg/L

Any runoff to the Tweed River or to existing water bodies, watercourses and dams that breaches the above standards must be reported to Council and the report must include adaptive management measures proposed to rectify the breach. Water quality monitoring results must be available to Council on request.

50. Environmental safeguards (silt curtains, booms etc.) are to be utilised during construction/installation of the bridges or in-stream structures to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works until exposed areas are stabilised.
51. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the Tweed River or existing damson Lot 121 DP134446 unless surrounded by sediment control measures adequate to prevent escape of stockpiled material.
52. Permanent stormwater quality treatment must be provided in accordance with the following:
 - (a) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

- (b) Permanent stormwater quality treatment must comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
 - (c) The stormwater and site works must incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
53. The Community Management Statement must require the Community Association to be responsible for installation and maintenance of signage sufficient to clearly indicate the prohibition of cats, dogs, rabbits, ferrets and hard hooved animals at any and all entrances to the development at all times.

Provision and Funding of Community Association Infrastructure

Legal Tenure Over The Infrastructure Land

54. Development Consent must not be granted to any future development application for any stage of the development and/or any development application or approval concerning the physical construction of the Community Association Infrastructure unless Council is satisfied that satisfactory legal arrangements are in place for access by the Developer and the Community Association (including easements and other necessary restrictions, covenants agreements or the like) to current Lot 4 in DP 737440 and the Infrastructure Land.
55. The Community Association must have a suitable legal tenure of all Community Association Infrastructure and over all Infrastructure Land containing Community Association Infrastructure including water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, environmental open space, asset protection zones, agricultural buffer zones, catchment area for water supply. Development Consent must not be granted to any Stage of the development after Stage 1 unless Council is satisfied with the arrangements for legal tenure of the Community Association Infrastructure and the Infrastructure land containing Community Association Infrastructure.



Creation of Sinking Fund by Developer before establishment of Community Association

56. Prior to the community title subdivision and the creation and incorporation of the Community Association and before any future development or stage after Stage 1, a sinking fund or funds must be established by the Developer which is to provide for the on going operation, servicing, maintenance, renewal and replacement of Community Association Infrastructure. This sinking fund or funds is to be transferred to the Community Association upon its creation and incorporation so as to form the sinking fund required to be established and managed under the CLD Act.

Maintenance and Increase Of Sinking Fund And Infrastructure By Developer

57. Prior to any development or stage after Stage 1, the sinking fund or funds must be maintained by the Developer so that the on going operation, servicing, maintenance, renewal and replacement of Community Association Infrastructure can occur notwithstanding that the Community Association is or may be incapable of levying sufficient funds to attend to the same.
58. Development consent or other approval must not be granted to any development of the Village and/or Community Land or Infrastructure Land after Stage 1 unless the Developer has provided evidence to Council, and Council is satisfied, that there are adequate funds in the sinking fund or funds to provide for the future needs for the ongoing operation, servicing, maintenance, renewal and replacement of Community Association Infrastructure. If Council considers the funds are inadequate, the fund must be increased by the Developer by cash deposit by way of gift and not by way of loan. Evidence as to adequacy of the sinking funds must be in the form of a detailed report by a suitably qualified and independent financial auditing consultant with expertise in the operation of sinking funds and must include input from an engineering consultant with expertise in water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, catchment for water supply, environmental open space and asset protection zones, agricultural buffers and riparian buffer zones.
59. Prior to the creation and incorporation of the Community Association and before any future development or stage after Stage 1, development consent or other approval must not be granted to any development of the Village, Community Land or Infrastructure Land after Stage 1 unless the Developer has provided evidence to Council, and Council is satisfied, that the performance of any Community Association Infrastructure is adequate.

Transfer Of Sinking Fund And Infrastructure to Community Association and Maintenance of Sinking Fund and Infrastructure After Transfer from Developer

60. Upon creation and incorporation of the Community Association, the Developer must transfer the sinking fund or funds for the Community Association Infrastructure to the Community Association. The Developer must not transfer the sinking fund or funds unless the Developer has provided evidence to Council, and Council is satisfied, that there are adequate funds in the sinking fund to provide for the future needs for Community Association Infrastructure. If Council considers the funds are inadequate, the fund must be increased by the Developer by cash deposit by way of gift and not by way of loan. Evidence as to adequacy of the sinking funds must be in the form of a detailed report by a suitably qualified and independent financial auditing consultant with expertise in the operation of sinking funds and must include input from an engineering consultant with expertise in water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, catchment for water supply, environmental open space and asset protection zones, agricultural buffers and Riparian Buffer Zones.
61. Upon creation and incorporation of the Community Association, the Developer must, to the extent not already affected or implied by law, act to transfer the Community Association Infrastructure constructed at that time to the Community Association. The Developer must not transfer the Community Association Infrastructure to the Community Association unless the Developer has provided evidence to Council, and Council is satisfied, that the performance of any Community Association Infrastructure is adequate.
62. Subject to other conditions of this consent, after the creation and incorporation of the Community Association, the Community Association must be responsible for the operation, maintenance and eventual replacement of all Community Association Infrastructure. The Community Association must maintain the sinking fund or funds transferred to it by the Developer sufficient to cover all anticipated costs of the Community Association Infrastructure in perpetuity, and must appropriately levy residents and owners within the development to maintain this sinking fund at the required level at any specified time. Such matters must be set out in the Community Management Statement.
63. Prior to the sale of any residential lot or dwelling or commercial unit, the Developer must provide details of the sinking fund or funds for the Community Association Infrastructure to all prospective purchasers

64. The Community Management Statement must include:
- (a) the requirement for the Community Association to maintain the sinking fund and report to Council upon its adequacy at periods of not less than three years, in the form of a detailed report by a suitably qualified and independent financial auditing consultant with expertise in the operation of sinking funds and must include input from an engineering consultant with expertise in water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, environmental open space and asset protection zones, agriculture buffers and Riparian Buffer Zones.
 - (b) the requirement that the Community Association make up any short fall in the sinking fund identified by the report within 12 months.
65. Establishment, maintenance and management of any Bushfire Asset Protection Zones required in accordance with this consent and *Planning for Bushfire Protection Guidelines* must be the responsibility of the Community Association. This responsibility must be reflected within the Community Management Statement.
66. Maintenance, management and ongoing rehabilitation of environmental open space areas is to be undertaken by the Developer and the Community Association in accordance with the conditions of this consent and the approved Environmental Open Space Management Plan (EOSMP) and Threatened and Significant Protected Species Management Plan required at Stage 1. This responsibility including funding requirements and responsibilities must be reflected within the Community Management Statement.
67. Maintenance, management and ongoing rehabilitation of the agricultural buffers and asset protection zones are to be undertaken by the Developer and the Community Association in accordance with conditions of this consent and the approved agricultural buffer management plan and the asset protection zone management plan required at Stage 1. This responsibility including funding requirements and responsibilities must be reflected within the Community Management Statement.

Protected Archaeological Areas (NV1 and NV4)

68. The Protected Archaeological Areas as identified on the Village plan (Diagram 2) and Staging Plan (Diagram 3) are to be preserved with no work, building or sub-surface impacts to occur on these areas during construction or operational phases of the development and/or use of the site. In this regard further survey work must be undertaken to define the spatial extent of these areas to inform the location of fencing, prior to future works in these areas (NV1 and NV4) commencing.

69. During the construction of adjacent areas of the development site (including road and sewer works), the Protected Archaeological Areas must be fenced to a standard required, and for the duration determined by the Tweed Byron Local Aboriginal Land Council.

70. The Protected Archaeological Areas as identified on the Village Plan (Diagram 2) and Staging Plan (Diagram 3) are to be managed in consultation with relevant Aboriginal stakeholders.

Future Archaeological Investigation Areas (NV1, NV3, MS2 and NVIF2)

71. Prior to the lodgement of any future development application relating to development on land within an area of further archaeological investigation as identified on the Village Plan (Diagram 2) and Staging Plan (Diagram 3):

- (a) an application pursuant to section 87 of the *National Parks and Wildlife Act, 1974* must be made to the Director-General of the Department of Environment and Climate Change (DECC) for a permit to investigate these areas for the purposes of discovering an Aboriginal object;
- (b) further archaeological test excavations should be carried out to determine their extent and significance by a suitably qualified archaeologist in consultation with the local aboriginal community.

72. The results of these s87 investigations will determine the degree of constraint or opportunity the investigation areas might represent to the proposal and are to be provided to Council with any development application for any further stage affecting the areas.

73. The section 87 applications identified in condition 71 above must:

- (a) be accompanied by a copy of the Aboriginal Heritage Report and an Archaeological Research Design for the proposed investigation area; and
- (b) identify the interest of the Tweed Byron Local Aboriginal Land Council and other registered Aboriginal stakeholders.

S90 Aboriginal Heritage Impact Permit Items (NV2, NV5 and NVIF1)

74. Prior to the lodgement of any future development application relating to development on land that requires a "s90 Aboriginal Heritage Impact Permit (with collection) Item" as identified on the Village Plan (Diagram 2) and Staging Plan (Diagram 3), an application pursuant to section 90 of the *National Parks and Wildlife Act, 1974* must be made to the Director-General of the DECC for a permit (with collection) to remove these items from their current location. Any artefacts in those areas are to be collected and interpreted in accordance with that permit and in consultation with the Local Aboriginal Community.

75. The s90 application identified in condition 74 above must:

- (a) be accompanied by a separate application for a care agreement for Aboriginal objects; and

- (b) identify the interest of the Tweed Byron Local Aboriginal Land Council and the other registered Aboriginal stakeholders.

76. Aboriginal Archaeological Site NV5 is to be clearly marked on the ground prior to commencement of any work and maintained throughout construction so that the road and associated construction activities do not impact on the site.

Aboriginal Heritage Display

77. The Aboriginal artefacts collected under any s90 permit (condition 74) and retrieved under any s87 permit (condition 71) must be retained at a secure location on the site and form part of an Aboriginal Heritage Display to be included in that application.
78. The location, nature and management of the Aboriginal Heritage Display must be developed in consultation with the relevant Aboriginal stakeholders. In this regard consultation with relevant Aboriginal stakeholders must be undertaken regarding the history of the whole site as it relates to Aboriginal culture and heritage. Cultural and heritage issues are to be included in the Aboriginal Heritage Display where considered appropriate by the aboriginal stakeholders.
79. The village green, the sports and market area, the market garden and all streets are to be named from the Aboriginal dialect appropriate to the area with the English translation underneath. These names are to be submitted to the Aboriginal Advisory Committee for approval before being actioned.

Additional Archaeological Investigations

80. Prior to the granting of consent to any further stage relating to development of the sewerage and water supply infrastructure, including but not limited to gravity feed trenches between the STP and the irrigation areas as identified on the Concept Plan (Diagram 1), and any surface water impoundment (dam), an archaeological survey of these areas must be carried out to determine whether there are any Aboriginal objects in these areas.

Aboriginal Cultural Heritage and Assessment Management Plan

81. (1) The Developer must amend the Aboriginal Cultural Heritage Management Plan, before any physical earthworks commence. This amendment to include:
- (a) undertaking further consultation with the Aboriginal Community to provide all knowledge holders an opportunity to comment prior to the commencement of Stage 1 works, and
 - (b) an appropriately funded inspection by the Aboriginal Community and an archaeologist after each stage of earthworks, including initial ground clearance.

Riparian Buffer Zone within Environmental Open Space

- 82. A Riparian Buffer Zone (RBZ) generally a minimum of 50 metres between any development and each high bank of the Tweed River must be provided to Council's satisfaction. Minor exceptions to the 50m RBZ requirement may be permitted for the main entry road and bridges into the development. The footprint of all proposed buildings must be outside of this 50-metre buffer. The 50-metre Riparian buffer will comprise a 30 metre core buffer of dense local native vegetation, rehabilitated or replanted as necessary, and ranging from the surveyed top of bank to a line 30 metres from the high bank perpendicular to the river; and a 20 metre outer buffer of planted native vegetation of lesser density which has some limited potential for compatible or existing land uses, such as parkland and other recreational uses. The Community Management Statement is to make appropriate provision for maintenance of the RBZ.**
- 83. Tourism, special uses and market garden uses are not permitted within the Riparian Buffer Zone.**
- 84. Prior to the commencement of any works a highly visible and durable traffic barrier must be erected parallel with the surveyed top of river bank and located at the eastern extent of the dripline of riparian vegetation for the full length of the development site. No machinery must enter beyond the traffic barrier and no stockpiling or storage of materials, plant or equipment must occur within this zone, or in any case within 20 metres of the river top of bank. The traffic barrier is to remain at all times during earthworks and construction activities but may be removed between development stages.**

Agricultural Buffer

- 85. An agricultural buffer in accordance with Tweed Development Control Plan Section A5 Subdivision Manual must be provided between the Village site and adjoining lands. All buffers are to be located within either the Village site (currently Lot 121 DP134446) or Lot 4 DP 737440. An Agricultural Buffer Management Plan is to be prepared and to be submitted to Council for approval by the Council or delegate prior to the issue of a construction certificate for Stage 1 and is to include at a minimum composition, maintenance and management of the said buffer. The Agricultural Buffer Management Plan is to incorporate the principles set out in the NSW Department of Primary Industries, publication titled "Living and Working in Rural Areas - A handbook for managing land use conflict issues on the NSW North Coast" The Agricultural Buffer Management Plan is to be cognisant of bush fire management issues and is to be consistent with the specifications of the development's Asset Protection Zone Management Plan.**

Asset Protection Zones

86. Asset protection zones must be provided in accordance with the Planning for Bushfire Protection Guidelines 2006 and Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual. An Asset Protection Zone Management Plan is to be prepared and is to be submitted to Council for approval by the Council or delegate, prior to the issue of a construction certificate for Stage 1, and is to include details concerning the locations, dimensions, forms, maintenance and management of the Asset Protection Zones. The Asset Protection Zones are to be in accordance with Planning for Bushfire Protection Guidelines 2006. The Asset Protection Zone Management Plan is to be cognisant of threatened species management issues and be consistent with the specifications of the approved Threatened and Significant Protected Species Management Plan. All asset protection zones are to be located within either the Village site (currently Lot 121 DP134446) or Lot 4 DP 737440.

Threatened and Significant Protected Species Management Plan

87. A Threatened and Significant Protected Species Management Plan (TSPSMP) must be prepared and submitted to Council for approval prior to the issue of a construction certificate for Stage 1. The TSPSMP must consider both construction and operational phase avoidance and mitigation measures and must include as a minimum:
- (a) Measures to conserve Koalas (*Phascolarctus cinereus*) and their habitat including details of Koala usage of Lot 121 DP 134446 and Lot 4 DP 737440 and measures to be undertaken to avoid or mitigate impacts from known threats to Koalas arising from urban development being road strike, loss and degradation of habitat, dog attack and drowning. The Management Plan is to include a plan identifying the location of the primary koala food trees.
 - (b) Measures to conserve Green-leaved Rose Walnut (*Endiandra muelleri subsp. bracteata*) and their habitat, including measures to be undertaken to avoid or mitigate impacts from known threats to Green-leaved Rose Walnut arising from urban development being clearing and fragmentation of habitat for development and road-works, infestation of habitat by weeds, frequent fire and trampling by visitors. The Management Plan is to include a plan identifying the location of the Green-leaved Rose Walnut.
 - (c) Measures to conserve any further threatened species and their habitats that may be located during development of Lot 121 DP 134446 and Lot 4 DP 737440.
 - (d) Measures to conserve Platypus (*Ornithorhynchus anatinus*) and their habitat including measures to be undertaken to avoid or mitigate impacts from known threats to Platypus arising from urban development including loss or damage to river banks and burrows and pollution, algal growths and siltation of waterways.

- (e) Measures to assess the possible occurrence of the Giant Barred Frog and their habitat including measures to be undertaken to avoid or mitigate impacts from known threats to the Giant Barred Frog arising from urban development including loss or damage to river banks and burrows and pollution, algal growths and siltation of waterways.

Environmental Open Space Management Plan

88. The Developer must lodge with the Council for approval prior to the issue of a construction certificate for stage 1 an Environmental Open Space Management Plan (EOSMP) for all areas of Environmental Open Space as indicated on the Village Plan. The EOSMP must not conflict with any provisions of the TSSMP, Asset Protection Zone Management Plan or Agricultural Buffer Management Plan and must separately address the treatment, function, maintenance and management of the following:
- a. the Tweed River Riparian Buffer Zone;
 - b. the northern environmental open space containing the Green-leaved Rose Walnuts;
 - c. Primary Koala Food Trees, and
 - d. Fig trees and other significant native trees within Environmental Open Space. The EOSMP must provide for improved biodiversity outcomes and contain the following as a minimum:
 - aims and objectives;
 - sufficient background information and site assessment to justify the proposed works,
 - description of specific ecological restoration and management actions including the timeframe required to meet each particular outcome;
 - details of ongoing monitoring and reporting requirements including measurable outcomes;
 - contingency planning options in the case of system failure or natural events which hinder progression; and
 - means of ensuring rehabilitation for a minimum five-year period and ongoing management by the Community Association in perpetuity.
89. Development must be undertaken in accordance with the requirements of the following approved management plans-
- Threatened and Significant Protected Species Management Plan
 - Environmental Open Space Management Plan
 - Asset Protection Zone Management Plan
 - Agricultural Buffer Management Plan
-

- **Catchment Management Plan**

Effluent Irrigation Scheme Buffer

90. Effluent irrigation areas and irrigation infrastructure must be separated by appropriate buffer zones from neighbours, residential areas and sensitive environments to ensure the protection of the locality's amenity, ground and surface waters and other environmental and social values. The effluent irrigation areas and infrastructure buffers must be provided in accordance with the requirements of the *Environmental Guidelines: Use of Effluent by Irrigation* prepared by the Department of Environment and Conservation (NSW) 2004 (now the Department of Environment and Climate Change), the Australian *Guidelines for Water Recycling* by the Natural Resource Management Ministerial Council, Environment Protection and Heritage Council and the National Health and Medical Research Council and other relevant accepted standards.

Other approvals / Requirements

91. A permit under ss198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained prior to commencement of any such works.
92. No approval is granted for the removal of any Primary Koala food trees, being Forest Red Gum (*Eucalyptus tereticornis*), Tallowwood (*Eucalyptus microcorys*) and Small-fruited Grey Gum (*Eucalyptus propinqua*). The location of these trees are to be identified, marked and mapped on site prior to commencement of construction for each stage. These trees must be protected throughout the development site during construction works and operational phases of the development.
93. Water and sewer pipelines, dams, STP, water treatment facilities and effluent irrigation areas outside the Village Plan (Diagram 2) area must be located so to avoid removal of native vegetation to the greatest extent possible.
94. Prior to the granting of consent to any further stage relating to development of the sewerage and water supply infrastructure including gravity feed trenches between the STP and the irrigation areas as identified on the Concept Plan (Diagram 1) and any surface water impoundment (dam), an ecological survey of these areas must be carried out to determine the ecological significance of these areas and to ensure areas of ecological significance are not adversely affected.
95. Conduits and access pits for optic fibre cable are to be installed within the public road reserves.
96. The Developer must ensure that legal tenure and/or arrangements suitable to the Council are in place in the event that any services or Community Association Infrastructure are required to be located in or on any of the Public Roads dedicated to TSC.

Landscaping

97. A detailed landscape plan must be formulated for each Stage and must be submitted with the Development Application for each Stage and approved by Council or delegate prior to issue of consent for that stage. The plan must be prepared by a landscape architect or landscape consultant to a standard acceptable to Council or delegate. The plan must provide use of 100% native species and prohibit use of species that are known environmental weeds (including all vines and creepers) and must include the following documentation:
- a) A site plan (at 1:100 to 1:1000 scale) showing the existing features, including north point, access road and an outline of proposed buildings indicating doors and windows. Any trees to remain in the vicinity are to be located to scale and identified by botanical and common names.
 - b) Proposed and existing site services, including water, gas, electricity, sewer, stormwater, etc.
 - c) Easements on or adjacent to the site.
 - d) View lines to and from the development and details of pedestrian access and circulation areas within and around the development, including retaining walls, seating, fences, gates, decorative features etc.
 - e) Additional survey plan showing the location, canopy spread, trunk diameter, height and names of those existing tree/s and significant tree/s adjacent to the site likely to be affected by the development. The plan must also include the existing ground levels at the base of the trunk of the tree/s as well as at the drip lines of the tree/s.
 - f) Existing and proposed ground levels (shown as spot heights and/or contours over the site and direction and degree of slope) indicating the site boundaries, and the base of the trees proposed to be planted or that are to be retained (if applicable).
 - g) Sectional elevations through the site showing the existing and proposed ground lines, building elevations and proposed plantings.
 - h) Construction details of planter boxes (including width and depth), paving, edging, fencing, screening, panels and other hard landscape components. Deep root zones must be provided for large trees and paving is to be porous. Paving works within 2m of the trunk of the large trees must be constructed in such a way as to ensure the existing moisture infiltration and gaseous exchange to the tree root system is maintained. Where soil is compacted within two (2) metres of the trunk of large trees, site remediation by aeration (no deep ripping permitted) and mulching is to be undertaken to ensure the viability of the tree.
 - i) Planting details for the preparation and planting of tube and potted plants, super-advanced plants, bare-rooted stock and any other planting.



- j) A detailed plant schedule and plan at a scale of 1:100 to 1:1000 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site. The plan is to include a detailed plant schedule which must include;
- species listed by botanical and common names, with the majority of plants constituting local native species;
 - specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.
 - maintenance methods including the use of drip irrigation and mulching or groundcovers to reduce bare soils areas and including a maintenance schedule for a minimum period of five years after completion of landscaping on site.

Easements and Restrictions

98. In addition to the Easements and Restrictions which may be necessary or required elsewhere in these conditions of consent, and without limitation the creation of easements for services, access rights of carriageway and restrictions as to user will be necessary under Section 88B of the Conveyancing Act.
99. As a minimum the following easements for services, rights of carriageway and restrictions as to user under Section 88B of the Conveyancing Act are to be created to Council's satisfaction:
- (a) Easements for drainage over ALL public services and Infrastructure on private property. Burden: Various. Benefit: TSC.
 - (b) A Restriction as to user prohibiting the construction of slab on ground dwellings in those areas that exceed a slope of 20% or more as nominated on sketch 103A – "slope analysis" prepared by Cardno. Burden: Relevant Titles. Benefit: TSC.
 - (c) A Restriction as to user requiring access arrangements on the allotments nominated on sketches 135A, 136A, 137A, 138A, 141A, 142A, 143A, 144A, 146A, 147A, 148A, 149A, 150A, 152A and 153A to be in accordance with the access detail shown on sketches 100A and 101A prepared by Cardno. Burden: Relevant Titles. Benefit: [Clarify].
 - (d) A Restriction as to user requiring that the land designated "Tourism & Special Uses" in the south western corner of the development on Concept Plan must not contain any permanent or temporary accommodation. Land uses in this area must be flood compatible, and not create any significant adverse impacts on surrounding land or local flood behaviour. Burden: Relevant Titles. Benefit: TSC.
 - (e) Easement for fire egress. Burden: Proposed Lot 12. Benefit: Community Land



- (f) Easement for private services (water, sewage, power and telecommunication) under the roads. Burden: Community Land Benefit: Each service provider
- (g) Easements for access and construction, Burden: Proposed Lot 12 and Community Land. Benefit: Community Land and TSC
- (h) Easement for trickle feed reticulation system - for the treated water from the STP and water impoundment area. Burden: Proposed Lot 12. Benefit: Community Land and TSC.
- (i) Restriction as to user - land in water catchment area must remain in natural undeveloped state. Burden: Proposed Lot 12. Benefit: Community Land and TSC.
- (j) Restriction as to user regarding density of village use and a restriction to a maximum of 1000 persons being present at any time Burden: Community Land. Benefit: TSC.
- (k) Restriction as to user regarding no dogs, cats, rabbits, ferrets or hard hoofed animals. Burden: Community Land. Benefit: TSC
- (l) Easements for access to construct, operate and maintain Sewer Treatment Plant and Water Treatment Plant etc. including the erection and maintenance of all plant and equipment forming part of the Infrastructure Burden: Proposed Lot 12. Benefit: Community Land and TSC.
- (m) Easement for access and covenant to maintain asset protection zone. Burden: Proposed Lot 12. Benefit: Community Land and TSC.
- (n) Restriction as to user regarding environmental open space buffer - minimum of 50 metre buffer to be maintained between development and each high bank of the Tweed River. Burden: Community Land. Benefit: TSC
- (o) Easement for pipes to and from the Sewerage Treatment Plant and Water Supply Systems to the village Burden: Proposed Lot 12, Infrastructure Land and Community Land. Benefit: Community Land.
- (p) Easement for electricity to and from the Sewerage Treatment Plant and Water Supply Systems to the Community Land. Burden: Proposed Lot 12, Infrastructure Land and Community Land. Benefit: Community Land.
- (q) Easement for emergency egress from the development site. Burden: Proposed Lot 12 and Infrastructure Land. Benefit: Community Land
- (r) Right of carriageway - specifically the right to use and maintain all existing and future access roads. Burden: Proposed Lot 12. Benefit: Community Land.



- (s) Easement for storage of treated water - allowing the storage tank to remain on the land. Burden: Proposed Lot 12. Benefit: Community Land and TSC.
 - (t) Easement for pipes to the effluent irrigation areas - being the pipe network running from the compound to the 4 holding and irrigation areas. Burden: Proposed Lot 12. Benefit: Community Land and TSC.
 - (u) Right of access to and use make up water from dams - short term right for operational needs for so long as required for purposes of topping up treated water system so that it is operational. Burden: Proposed Lot 12. Benefit: Community Land.
 - (v) Right for fencing - in and around the water courses and Sewerage Treatment Plant and Water Treatment Plant compound and irrigation areas. Burden: Proposed Lot 12. Benefit: Community Land.
 - (w) Restriction as to user – establishing buffer zones around all effluent irrigation areas and irrigation infrastructure so that they are separated from neighbours, residential areas and sensitive environments. Burden: Proposed Lot 12 Benefit: TSC
 - (x) Restriction as to user around Protected Archaeological Areas as identified on the Village Plan and Aboriginal Heritage Display and an obligation to fence and protect the protected Archaeological Areas and exhibits Burden: Community Land Benefit: TSC
100. Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement must make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.
101. Any Section 88B Instrument creating Restrictions as to user, Rights of carriageway or Easements which benefit TSC must contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of TSC.
102. Community Association Infrastructure on the Community Land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

Community Management Statement

103. Without limitation and in addition to anything required to be in the CMS elsewhere in these conditions of consent, the CMS must provide for the matters set out in condition 104 at a minimum.
104. The following items must be included in the Community Management Statement (CMS) and may in part be also included in other conditions of this consent:

- (a) The use of recycled water a requirement for each individual occupancy to have a separate tank for water usage and the adoption by the Community Association for the usage and operation of the potable and non-potable water supply systems.
- (b) The fresh water supply for the Village is to be sourced from rainwater and a surface water impoundment area of not less than 10 hectares providing a minimum storage volume of 60 ML and subject to the controls and restrictions set out in these conditions of consent. The establishment and management of this catchment area is to be subject to a Catchment Management Plan which is to be adopted by the Community Association.
- (c) The Community Association must ensure disclosure of all known or potential levies at all times to all members of the Association and the CMS must indicate that all members of the Association must make full disclosure of all known and potentially advised levies to proposed purchasers of any property within the Village.
- (d) The Aboriginal Heritage Display contemplated by Conditions 77 and 78 shall be maintained and operated by the Community Association in consultation with the Tweed Byron Local Aboriginal Land Council at the expense of the Community Association.
- (e) The Community Association must acknowledge its responsibility to adopt and implement at its own expense and thereafter comply with and manage the following:
 - (i) Emergency Response Plan;
 - (ii) Catchment Management Plan;
 - (iii) Agricultural Buffer Management Plan;
 - (iv) Environmental Open Space Management Plan
 - (v) Asset Protection Zone Management Plan;
 - (vi) Threatened and Significant Protected Species Management Plan;
 - (vii) Effluent Irrigation Management Plan;
 - (viii) Aboriginal Cultural Heritage Assessment and Management Plan;
 - (ix) Traffic Control Plan;
 - (x) Landscape Plan;
 - (xi) Stormwater Management Plan;
 - (xii) Water Supply Management Plan

Public Authority By-Laws to be created

- 105. The CMS must provide for Public Authority By-Laws be created addressing the matters set out in condition 100 as a minimum.**

106. The following are the minimum required Public Authority By-laws to be drafted and adopted within the CMS.

- (a) Acknowledgment that the terms of the Community Management Statement are binding on all members of the Community Association and may not be varied or altered either by variation to their own terms of or by the entry into any contract or obligation without the prior consent of TSC.**
- (b) Acknowledgement by all members of the Community Association that the terms and conditions of all easements for services, rights of carriageway and restrictions as to user having any involvement with the Community Association Infrastructure and whether sited on the Community Land or elsewhere shall not be varied, altered or in any way amended either directly or by the entry into any contract or obligation having that same effect without the prior consent of TSC.**
- (c) Acknowledgement that the owners and occupiers of the village and the Community Association have no right or entitlement to access or use of any TSC water, sewerage or drainage services and that they are entirely self-sufficient in this respect.**
- (d) Acknowledgement that the owners and occupiers of all Village Lots and the Community Association that the Community Association must acknowledge its responsibility to adopt and implement at its own expense and thereafter comply with and manage the following:**
 - (i) Emergency Response Plan;**
 - (ii) Catchment Management Plan;**
 - (iii) Agricultural Buffer Management Plan;**
 - (iv) Environmental Open Space Management Plan;**
 - (v) Asset Protection Zone Management Plan;**
 - (vi) Threatened and Significant Protected Species Management Plan;**
 - (vii) Effluent Irrigation Management Plan;**
 - (viii) Aboriginal Cultural Heritage Assessment and Management Plan;**
 - (ix) Traffic Control Plan;**
 - (x) Landscape Plan;**
 - (xi) Stormwater Management Plan;**
 - (xii) Water Supply Management Plan**

PART B – STAGE 1 DEVELOPMENT APPROVAL**General**

107. Stage 1 development consisting of a six lot subdivision, carpark (69 cars and 3 bus bays), road bridge and public road works is to be undertaken in accordance with the following plans except where varied by the conditions of this consent:
- (a) Subdivision Drawing Number 16387 B Rev.C prepared by B&P Surveys dated 16-10-07.
 - (b) Road Works Stage 1 Layout Plan Sketch 101 prepared by Cardno and Sketch No.s.100A, 103A, 104A, 110A, 111A, 113A, 114A, 130A, 131A, 132A, 133A, 134A, 135A, 136A, 139A, 140A and 142A prepared by Cardno.
 - (c) Aboriginal Cultural Heritage Assessment and Management Plan January 2009 prepared by Mary Dallas Consulting Archaeologists, and conditions 68, 69 and 70 above.
108. An Aboriginal Cultural Education program must be developed and delivered as part of the induction of personnel and contractors involved in the construction activities on site. The program should be developed in collaboration with the Aboriginal community.
109. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is not authorised by this consent and requires a separate development application.
- [GEN0045]
110. The Stage 1 subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications.
- [GEN0125]
111. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property are to be protected and modified if necessary.
112. The deck level of the bridge over the Tweed River must be at or above the 100 year ARI flood level, or the level of Kyogle Road adjacent to the development, whichever is the lesser.
113. The Developer must obtain the written approval of Council for any proposed road/street names and these must be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.
- Application for road naming must be made on Council's Property Service Form and be accompanied by the prescribed fees as tabled in Council's current Revenue Policy - "Fees and Charges".
- The application must also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

Riparian Buffer Zone within Environmental Open Space

114. A Riparian Buffer Zone (RBZ) generally a minimum of 50 metres between any development and each high bank of the Tweed River must be provided to Council's satisfaction. Minor exceptions to the 50m RBZ requirement may be permitted for the main entry road and bridges into the development. The footprint of all proposed buildings must be outside of this 50-metre buffer. The 50-metre Riparian buffer will comprise a 30 metre core buffer of dense local native vegetation, rehabilitated or replanted as necessary, and ranging from the surveyed top of bank to a line 30 metres from the high bank perpendicular to the river; and a 20 metre outer buffer of planted native vegetation of lesser density which has some limited potential for compatible or existing land uses, such as parkland and other recreational uses. The Community Management Statement is to make appropriate provision for maintenance of the RBZ.

Management Plans

115. Stage 1 must be undertaken in accordance with the requirements of the following approved management plans-

- Threatened and Significant Protected Species Management Plan
- Environmental Open Space Management Plan
- Asset Protection Zone Management Plan
- Agricultural Buffer Management Plan

Other approvals

116. A permit under ss 198-202 of the *Fisheries Management Act* 1994 for dredge and reclamation activities must be obtained prior to commencement of any such works.

117. No approval is granted for the removal of any Primary Koala food trees, being Forest Red Gum (*Eucalyptus tereticornis*), Tallowwood (*Eucalyptus microcorys*) and Small-fruited Grey Gum (*Eucalyptus propinqua*). The location of these trees are to be identified, marked and mapped on site prior to commencement of construction. These trees must be protected throughout the development site during construction works and operational phases of the development.

Protected Archaeological Areas (NV1 and NV4)

118. The Protected Archaeological Areas as identified on the Village plan (Diagram 2) and Staging Plan (Diagram 3) are to be preserved with no work, building or sub-surface impacts to occur on these areas during construction or operational phases of the development and/or use of the site. In this regard further survey work must be undertaken to define the spatial extent of these areas to inform the location of fencing, prior to future works in these areas (NV1 and NV4) commencing.

119. During the construction of adjacent areas of the development site (including road and sewer works), the Protected Archaeological Areas must be fenced to a standard required, and for the duration determined by the Tweed Byron Local Aboriginal Land Council.

Prior to issue of construction certificate

120. The Construction Certificate will not be issued over any part of the site requiring a controlled Activity Approval until a copy of the approval has been provided to Council.
121. A survey and assessment for Platypus must be undertaken by a suitably qualified ecologist of the Tweed River aquatic habitat within the vicinity of the proposed bridge, carpark and footbridge prior to issue of the construction certificate. A copy of the survey and assessment must be provided to Council. Should Platypus (or other significant fauna or flora) be located, the Threatened and Significant Protected Species Management Plan must include measures to avoid or mitigate impacts arising from the development. Development is to be carried out in accordance with that plan component.

Agricultural Buffer

122. An agricultural buffer in accordance with Tweed Development Control Plan Section A5 Subdivision Manual must be provided between the Village site and adjoining lands. All buffers are to be located within either the Village site (currently Lot 121 DP134446) or Lot 4 DP 737440. An Agricultural Buffer Management Plan for the whole site must be prepared and to be submitted to Council for approval by the Council or delegate prior to the issue of a construction certificate for Stage 1 and is to include at a minimum composition, maintenance and management of the said buffer. The Agricultural Buffer Management Plan is to incorporate the principles set out in the NSW Department of Primary Industries, publication titled "Living and Working in Rural Areas - A handbook for managing land use conflict issues on the NSW North Coast" The Agricultural Buffer Management Plan is to be cognisant of bush fire management issues and is to be consistent with the specifications of the development's Asset Protection Zone Management Plan.

Asset Protection Zones

123. Asset protection zones must be provided in accordance with the Planning for Bushfire Protection Guidelines 2006 and Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual. An Asset Protection Zone Management Plan for the whole site must be prepared and is to be submitted to Council for approval by the Council or delegate, prior to the issue of a construction certificate for Stage 1, and is to include details concerning the locations, dimensions, forms, maintenance and management of the Asset Protection Zones. The Asset Protection Zones are to be in accordance with Planning for Bushfire Protection Guidelines 2006. The Asset Protection Zone Management Plan is to be cognisant of threatened species management issues and be consistent with the specifications of the approved Threatened and Significant Protected Species Management Plan. All asset protection zones are to be located within either the Village site (currently Lot 121 DP134446) or Lot 4 DP 737440.

Threatened and Significant Protected Species Management Plan

124. A Threatened and Significant Protected Species Management Plan (TSPSMP) for the whole site must be prepared and submitted to Council for approval prior to the issue of a construction certificate for Stage 1. The TSPSMP must consider both construction and operational phase avoidance and mitigation measures and must include as a minimum:

- (a) Measures to conserve Koalas (*Phascolarctus cinereus*) and their habitat including details of Koala usage of Lot 121 DP 134446 and Lot 4 DP 737440 and measures to be undertaken to avoid or mitigate impacts from known threats to Koalas arising from urban development being road strike, loss and degradation of habitat, dog attack and drowning. The Management Plan is to include a plan identifying the location of the primary koala food trees.**
- (b) Measures to conserve Green-leaved Rose Walnut (*Endiandra muelleri subsp. bracteata*) and their habitat, including measures to be undertaken to avoid or mitigate impacts from known threats to Green-leaved Rose Walnut arising from urban development being clearing and fragmentation of habitat for development and road-works, infestation of habitat by weeds, frequent fire and trampling by visitors. The Management Plan is to include a plan identifying the location of the Green-leaved Rose Walnut.**
- (c) Measures to conserve any further threatened species and their habitats that may be located during development of Lot 121 DP 134446 and Lot 4 DP 737440.**
- (d) Measures to conserve Platypus (*Ornithorhynchus anatinus*) and their habitat including measures to be undertaken to avoid or mitigate impacts from known threats to Platypus arising from urban development including loss or damage to river banks and burrows and pollution, algal growths and siltation of waterways.**

- (e) Measures to assess the possible occurrence of the Giant Barred Frog and their habitat including measures to be undertaken to avoid or mitigate impacts from known threats to the Giant Barred Frog arising from urban development including loss or damage to river banks and burrows and pollution, algal growths and siltation of waterways.

Environmental Open Space Management Plan

125. The Developer must lodge with the Council for approval prior to the issue of a construction certificate for stage 1 an Environmental Open Space Management Plan (EOSMP) for all areas of Environmental Open Space as indicated on the Village Plan. The EOSMP must not conflict with any provisions of the TSSMP, Asset Protection Zone Management Plan or Agricultural Buffer Management Plan and must separately address the treatment, function, maintenance and management of the following:

- a. the Tweed River Riparian Buffer Zone;
- b. the northern environmental open space containing the Green-leaved Rose Walnuts;
- c. Primary Koala Food Trees, and
- d. Fig trees and other significant native trees within Environmental Open Space. The EOSMP must provide for improved biodiversity outcomes and contain the following as a minimum:
 - aims and objectives;
 - sufficient background information and site assessment to justify the proposed works,
 - description of specific ecological restoration and management actions including the timeframe required to meet each particular outcome;
 - details of ongoing monitoring and reporting requirements including measurable outcomes;
 - contingency planning options in the case of system failure or natural events which hinder progression; and
 - means of ensuring rehabilitation for a minimum five-year period and ongoing management by the Community Association in perpetuity.

126. Prior to the approval of the construction certificate the Developer must submit to the Director Planning and Regulation for approval an hydraulic flood study for the proposed bridge to determine the likely impacts to the waterway caused by the bridge abutments and any cumulative flooding impacts to the surrounding locality.

127. Prior to the approval of the construction certificate the Developer must submit to the Director Planning and Regulation a detailed geotechnical report prepared by an appropriately qualified engineer for the proposed road bridge with recommendations to ensure design and construction complies with Council's specifications, policies and Australian Standards. Development is to be carried out in accordance with the recommendations of that report.
128. A detailed landscape plan must be formulated for each Stage and must be submitted with the Development Application for each Stage and approved by Council or delegate prior to issue of consent for that stage. The plan must be prepared by a landscape architect or landscape consultant to a standard acceptable to Council or delegate. The plan must provide 100% native species and prohibit use of species that are known environmental weeds (including all vines and creepers) and must include the following documentation:
- (a) A site plan (at 1:100 to 1:1000 scale) showing the existing features, including north point, access road and an outline of proposed buildings indicating doors and windows. Any trees to remain in the vicinity are to be located to scale and identified by botanical and common names.
 - (b) Proposed and existing site services, including water, gas, electricity, sewer, stormwater, etc.
 - (c) Easements on or adjacent to the site.
 - (d) View lines to and from the development and details of pedestrian access and circulation areas within and around the development, including retaining walls, seating, fences, gates, decorative features etc.
 - (e) Additional survey plan showing the location, canopy spread, trunk diameter, height and names of those existing tree/s and significant tree/s adjacent to the site likely to be affected by the development. The plan must also include the existing ground levels at the base of the trunk of the tree/s as well as at the drip lines of the tree/s.
 - (f) Existing and proposed ground levels (shown as spot heights and/or contours over the site and direction and degree of slope) indicating the site boundaries, and the base of the trees proposed to be planted or that are to be retained (if applicable).
 - (g) Sectional elevations through the site showing the existing and proposed ground lines, building elevations and proposed plantings.

- (h) **Construction details of planter boxes (including width and depth), paving, edging, fencing, screening, panels and other hard landscape components. Deep root zones must be provided for large trees and paving is to be porous. Paving works within 2m of the trunk of the large trees must be constructed in such a way as to ensure the existing moisture infiltration and gaseous exchange to the tree root system is maintained. Where soil is compacted within two (2) metres of the trunk of large trees, site remediation by aeration (no deep ripping permitted) and mulching is to be undertaken to ensure the viability of the tree.**
- (i) **Planting details for the preparation and planting of tube and potted plants, super-advanced plants, bare-rooted stock and any other planting.**
- (j) **A detailed plant schedule and plan at a scale of 1:100 to 1:1000 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site. The plan is to include a detailed plant schedule which must include;**
 - **species listed by botanical and common names, with the majority of plants constituting local native species;**
 - **specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.**
 - **maintenance methods including the use of drip irrigation and mulching or groundcovers to reduce bare soils areas and including a maintenance schedule for a minimum period of five years after completion of landscaping on site.**

Development is to be carried out in accordance with the approved landscape plan.

129. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) must be lodged with Council to the value of 1% of the cost of the public infrastructure for:

- a) **The making good of any damage to the property of the Council as a consequence of doing anything to which the consent relates;**
- b) **Completing any public work required in connection with the consent;**
- c) **Remedying any defects in public work that arise within 6 months after the work is completed.**

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

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



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

[PCC0285]

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

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

[PCC0485]

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

[PCC0865]

133. The Developer must submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications.

(A) URBAN ROAD

Construction of the roads shown on sketch 101A prepared by Cardno to an urban bitumen sealed road formation. These roads must be constructed to a public road standard and must be generally in accordance with preliminary sketches 104A, 110A, 111A, 113A, 114A, 115A, 130A, 131A, 132A, 133A, 134A, 135A, 136A, 139A, 140A and 142A except that;

- The footway/verge must be increased to a minimum width of 3.5m (graded at 2.5%) and the public road reserve shall be a minimum of 14.0m.
- Beyond the 2.5% footway the batter within the road reserve must be graded at a maximum of 25% (1 in 4) to the property boundary to ensure safe maintenance within the road reserve.
- The proposed carpark must be held in private ownership and not dedicated as public reserve. Council will not accept dedication of the proposed car park.

(B) INTERSECTIONS

Construction of an intersection at the intersection of Kyogle Road and the proposed access to the development is to be in accordance with AUSTRROADS Pt 5 "Intersections at Grade" providing the required sight distance. If satisfactory sight distance cannot be achieved a portion of the subject site (as required) will be dedicated as road reserve along the frontage to Kyogle Road to obtain the required SISD. Appropriate vegetation removal may also be required for which approval must be granted.

[PCC0875]

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

[PCC0935]

135. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications must be submitted to the Principal Certifying Authority for approval.

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

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

[PCC0985]

136. The Developer must provide sufficient water quality management infrastructure to ensure compliance with Council's requirements in this regard, as set out in specification D7 of Section A5 of the TDCP.
137. No existing water bodies on the site are to be used for water quality management, and analysis must demonstrate that runoff entering such bodies after treatment already satisfies the requisite standards.

138. A water quality monitoring program is to be undertaken weekly during any earthworks and construction activity for any runoff from exposed areas of the site, and is to continue until stabilisation of any exposed areas. Parameters to be measured include pH and suspended solids (mg/L), and criteria must accord with the following table:

Parameter	Requirement
pH	6.5 – 8.5
Suspended Solids	<50mg/L

Any runoff to the Tweed River or to existing waterbodies or watercourses and dams that breaches the above standards must be reported to Council and the report must include adaptive management measures proposed to rectify the breach. Water quality monitoring results must be available to Council on request.

139. Erosion and Sediment Control must be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control must be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

140. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road. Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee. Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

141. Notwithstanding the issue of this development consent, separate consent from Council under Section 68 of the *Local Government Act 1993*, must be obtained prior to any of the following works taking place:

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

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee. Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

Note: Where Council is requested to issue a Construction Certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under section 68 of the *Local Government Act* will then NOT be required.

Prior to commencement of work

142. Aboriginal Archaeological Site NV5 is to be clearly marked on the ground prior to commencement of any work and maintained throughout construction so that the road and associated construction activities do not impact on the site.

143. Prior to the commencement of any works a highly visible and durable traffic barrier must be erected parallel with the surveyed top of river bank and located at the furthest extent of the dripline of riparian vegetation for the full length of the development site. No machinery must enter beyond the traffic barrier and no stockpiling or storage of materials, plant or equipment must occur within this zone, or in any case within 10 metres of the creek top of bank. The traffic barrier is to remain at all times during earthworks and construction activities but may be removed between development stages.

144. A survey and assessment for Platypus must be undertaken by a suitably qualified ecologist of the Tweed River aquatic habitat within the vicinity of the proposed bridge, carpark and footbridge prior to commencement of works. A copy of the survey and assessment must be provided to Council. Should Platypus (or other significant fauna or flora) be located, a management plan must be formulated to the satisfaction of the Council or delegate to avoid or mitigate impacts arising from the development. Development is to be carried out in accordance with that plan.

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

[PCW0005]

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

(a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or

(b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.

(c) WorkCover Regulations 2000

[PCW0025]

147. If filling of land is approved for the Stage 1 consent then all imported fill material must be from an approved source. Prior to commencement of filling operations details of the source of fill nature of material, proposed use of material and confirmation further blending, crushing or processing is not to be undertaken must be submitted to the satisfaction of the Council or delegate.

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

[PCW0375]

148. Civil work in accordance with the development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC must possess accreditation in the following categories:

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

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

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and

- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

149. The Developer must provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$20 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

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

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

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

[PCW0985]

151. The proposed earthworks must be carried out in accordance with an approved construction certificate and generally in accordance with sketch 103A, 104A, the preliminary long sections shown on sketches 110A, 111A, 113A, 114A, 115A and the preliminary cross sections shown on sketches 130A, 131A, 132A, 133A, 134A, 135A, 136A, 139A, 140A and 141A.

[DURNS01]

During Construction

152. In the event that human remains are located during the project, a protocol to halt all works in the immediate area should be followed to prevent any further impacts to the find or finds. The local police and DECC are also to be notified. If the remains are found to be of Aboriginal origin and the police consider the site not an investigation site for criminal activities, DECC is to be contacted and notified of the situation. Works are not to resume in the designated area until approval in writing from the Police and DECC.

153. In the event that Aboriginal objects are located during the project, a protocol to ascertain the value of such finds, in consultation with the Aboriginal community representatives and a qualified archaeologist should be implemented and used to inform any management decision. DECC should be informed of any finds (including isolated artefacts) using the appropriate DECC site recording cards. Furthermore, any objects located should be registered on the Aboriginal Heritage Information Management System (AHIMS). AHIMS contact details: Phone: (02) 9585 6470, address: Level 6, 43 Bridge Street, Hurstville, NSW, 2220, e-mail: ahims@environment.nsw.gov.au.

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

155. A water quality monitoring program is to be undertaken weekly during any earthworks and construction activity for any runoff from exposed areas of the site, and is to continue until stabilisation of any exposed areas. Parameters to be measured include pH and suspended solids (mg/L), and criteria must accord with the following table:

Parameter	Requirement
pH	6.5 – 8.5
Suspended Solids	<50mg/L

Any runoff to the Tweed River or to existing dams, waterbodies and watercourses that breaches the above standards must be reported to Council and the report will include adaptive management measures proposed to rectify the breach. Water quality monitoring results must be available to Council on request.

[DUR0005]

156. Construction site work including the entering and leaving of vehicles is limited to the following hours:

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

157. All reasonable steps must be taken to muffle and acoustically baffle all plant and equipment. In the event that Council notifies the builder that it has received a reasonable complaint(s) from the neighbour(s), the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

- 158. Proposed earthworks must be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

The earthworks must be monitored by a registered geotechnical testing consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered geotechnical engineer certifying that the filling operations comply with AS3798 must be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

- 160. No soil, sand, gravel, clay or other material can be disposed of off the site without the prior written approval of Tweed Shire Council .**

[DUR0985]

- 161. Kyogle Road must be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.**

[DUR0995]

- 162. Where the construction work is on or adjacent to public roads, parks or drainage reserves the developer must provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The Builder must be adequately insured against Public Risk Liability to a value of at least \$20 million.**

[DUR1795]

- 163. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant must be submitted to Council for approval and must demonstrate:**

- (a) that the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2;**
- (b) that the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255;**
- (c) that site fill areas have been compacted to the specified standard; and**
- (d) that supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.**

[DUR1805]

- 164. During the relevant stages of road construction, reports must be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating; and**

- (a) that the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
- (b) that pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

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

[DUR1875]

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

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Steel reinforcement associated with bridge work
- (i) Final inspections - on maintenance
- (j) Off Maintenance inspection

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

Note: The EP&A Act, 1979 makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

167. A copy of the Development Consent and Construction Certificate approval including plans and specifications must be maintained on the site at all times during construction.

168. All stormwater gully lintels must have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Council's adopted Design and Construction Specification.

[DUR2355]

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

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

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

[DUR2375]

170. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The Developer must liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
171. Environmental safeguards (silt curtains, booms etc.) are to be utilised during construction / installation of the bridges or in-stream structures to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works until stabilisation of exposed areas.
172. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the Tweed River or existing dams on Lot 121 DP134446 unless surrounded by sediment control measures sufficient to prevent escape of stockpiled materials.
173. Permanent stormwater quality treatment must be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment must comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.

[PCC1105]

- (c) The stormwater and site works must incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.

Prior to issue of Subdivision Certificate

174. Council approved landscaping must be completed prior to the release of the subdivision certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate. Trees identified for retention in the development application plans must not be removed without separate Council approval.
175. Environmental Open Space is to be provided and maintained in accordance with the approved Environmental Open Space Management Plan. Implementation of the EOSMP must be commenced prior to the issue of a subdivision certificate for Stage 1.
176. Council approved landscaping within public roads must be completed prior to the release of the subdivision certificate for Stage 1. Landscaping must be maintained at all times to the satisfaction of the Council or delegate.
177. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like must be completed in accordance with those conditions or plans.

[PSC0005]

178. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

19.5 trips @ \$2304	\$44,928
S94 Plan No. 4	

Sector 13_4

Heavy Haulage Component

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

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

where:

\\$Con TRCP - Heavy heavy haulage contribution

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

- | | | |
|--|--|----------------|
| (b) Open Space (Structured): | | |
| 3 ET @ \$653 | | \$1,959 |
| S94 Plan No. 5 | | |
| (c) Open Space (Casual): | | |
| 3 ET @ \$570 | | \$1,710 |
| S94 Plan No. 5 | | |
| (d) Shire wide Library Facilities: | | |
| 3 ET @ \$688 | | \$2,064 |
| S94 Plan No.11 | | |
| (e) Eviron Cemetery/Crematorium Facilities: | | |
| 3 ET @ \$131 | | \$393 |
| S94 Plan No. 13 | | |
| (f) Emergency Facilities (Surf Lifesaving): | | |
| 3 ET @ \$200 | | \$600 |
| S94 Plan No. 16 | | |



- (g) Extensions to Council Administration Offices
& Technical Support Facilities:**
3 ET @ \$1996.80 \$5990.40
S94 Plan No. 18
- (h) Cycleways:**
3 ET @ \$352 \$1056
S94 Plan No. 22
- (i) Regional Open Space (Structured):**
3 ET @ \$2327 \$6,981
S94 Plan No. 26
- (j) Regional Open Space (Casual):**
3 ET @ \$855 \$2565
S94 Plan No. 26

[PSC0175]

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

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

[PSC0215]

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

[PSC0235]

- 181. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the Council or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.**

[PSC0725]

- 182. Prior to the issue of a Subdivision Certificate, Works as Executed Plans must be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.**

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

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

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

[PSC0735]

- 183.** A Subdivision Certificate will not be issued by the Council until such time as all relevant conditions of this Development Consent have been complied with.

[PSC0825]

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

- (a) Easements for drainage over ALL public services/infrastructure on private property.
- (b) A restriction as to user prohibiting the construction of slab on ground dwellings in those areas that exceed a slope of 20% or more as nominated on sketch 103A – “slope analysis” prepared by Cardno.
- (c) A restriction as to user requiring access arrangements on the allotments nominated on sketches 135A, 137A, 138A, 141A, 142A, 143A, 144A, 146A, 147A, 148A, 149,A 150A, 152A and 153A to be in accordance with the access detail shown on sketches 100A and 101A prepared by Cardno.

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

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

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

[PSC0835]

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

[PSC0845]

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

[PSC0855]

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

[PSC0865]

188. Prior to registration of the plan of subdivision, a Subdivision Certificate must be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

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

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

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developer's Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.



2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

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

[PSC0945]

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

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

All costs associated with the CCTV inspection and repairs must be borne by the Developers.

[PSC1065]

192. Prior to the release of the subdivision certificate the Developer must produce written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

193. All retaining walls in excess of 1metre in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of a Subdivision Certificate.

[PSC1165]

Electricity

194. Prior to the release of the subdivision certificate the Developer must provide to Council written evidence from the local electricity supply authority certifying that reticulation of underground electricity (residential and rural residential) has been completed and the reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights are to be capable of being energised following a formal request by Council.

Crown Roads

195. The eastern Crown public road through Lot 121 DP134446 is to be closed and a right of way registered in accordance with the Department of Lands letter dated 31 October 2008 prior to the issue of the subdivision certificate for stage 1.

PART C - INTEGRATED CONDITIONS FOR CONCEPT APPROVAL AND STAGE 1

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997 FOR CONCEPT APPROVAL AND STAGE 1

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

1. Water, electricity and gas are to comply with section 4.1.3 of Planning for Bush Fire Protection 2006.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

2. Access must comply with section 4.1.3(1) of Planning for Bush Fire Protection 2006
3. The emergency access/egress shall comply with section 4.1.3(3) of Planning for Bush Fire Protection 2006.

GENERAL TERMS OF APPROVAL – CONTROLLED ACTIVITY UNDER THE WATER MANAGEMENT ACT FOR CONCEPT APPROVAL AND STAGE 1 (FORMERLY A PERMIT UNDER PART 3A OF THE RIVERS AND FORESHORES IMPROVEMENT ACT 1948)

Plans, standards and guidelines

1. These General terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA06/1054 and provided by Council
 - (i) Site Plan, map and/or surveys
 - (ii) Structural design and specifications
 - (iii) A Vegetation Management Plan
 - (iv) Works Schedule
 - (v) Erosion and Sediment Control Plan
 - (vi) Soil and Water Management Plan
 - (vii) Rehabilitation Plan

- Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the Department of Water & Energy must be notified to determine if any variations to these GTA will be required.
2. Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the Department of Water & Energy. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.
 3. The consent holder must prepare or commission the preparation of:
 - (i) Rehabilitation Plan
 - (ii) Works Schedule
 - (iii) Erosion and Sediment Control Plan
 4. All plans must be prepared by a suitably qualified person and submitted to the Department of Water & Energy for the approval prior to any controlled activity commencing. The following plans must be prepared in accordance with Department of Water & Energy guidelines located at www.naturalresources.nsw.gov.au/water/controlled_activity.shtml.
 - (i) Vegetation Management Plans
 - (ii) Laying pipes and cables in watercourses
 - (iii) Riparian Corridors
 - (iv) In-stream works
 - (v) Outlet structures
 - (vi) Watercourse crossing plans
 5. The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the Department of Water & Energy.

Rehabilitation and maintenance

6. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Water & Energy.
7. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the Department of Water & Energy.

Reporting requirements

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

Security Deposits

9. N/A

Access-ways

10. The consent holder must design and construct all ramps, stairs access ways, cycle paths, pedestrian paths or other non-vehicular form of access way so that they do not result in erosion, obstruction of flow, destabilisation, or damage to the bed or banks of the river or waterfront plan, other than in accordance with a plan approved by the Department of Water & Energy.
11. The consent holder must not locate ramps, stairs, access ways, cycle paths, pedestrian paths or any other non –vehicular form of access way in a riparian corridor other than in accordance with a plan approved by the Department of Water & Energy.

Bridge, causeway, culverts, and crossing

12. The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the river or waterfront land, other than in accordance with a plan approved by the Department of Water & Energy.
13. the consent holder must ensure that any bridge, causeway, culvert or crossing does not obstruct water flow and direction, is the same width as the river or sufficiently wide to maintain water circulation, with no significant water level difference between either side of the structure other than in accordance with a plan approved by the Department of Water & Energy.

Culvert

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

Disposal

15. The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the Department of Water & Energy; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the Department of Water & Energy.
 16. The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the Department of Water & Energy.
-

Drainage and Stormwater

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

Erosion Control

18. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the Department of Water & Energy.
19. The consent holder must ensure that any excavation does not result in (i) diversion of any river (ii) bed or bank instability or (iii) damage to native vegetation within the area where a controlled activity has been authorised, other than in accordance with a plan approved by the Department of Water & Energy.

Excavation

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

Maintaining river

21. N/A

River bed and bank protection

22. N/A

23. The consent holder must establish a riparian corridor along the Tweed River and affected tributaries in accordance with a plan approved by the Department of Water & Energy.

Plans, standards and guidelines

24. N/A

25. N/A

26. N/A

27. N/A

PART D – DEFINITIONS

Terms used in this Consent have the following definitions:

Aboriginal Cultural Heritage and Assessment Management Plan – the Aboriginal Cultural Heritage and Assessment Management Plan prepared by Mary Dallas Archaeological Consultants dated March 2009 and any supplementary plans prepared for the management of any Aboriginal Cultural Heritage relating to the development as approved by Council.

Agricultural Buffer – Any Buffer to be provided between the Village site and/or Infrastructure Land and adjoining land zoned rural under the Tweed Local Environmental Plan

Agricultural Buffer Management Plan - Any management plan regarding the establishment of and ongoing management of any Agricultural Buffer required under these conditions of consent and approved by Council

Asset Protection Zone – Any zone to be provided in accordance with “Planning for Bushfire Protection Guidelines 2006” and these conditions of consent.

Asset Protection Zone Management Plan - Any management plan regarding the establishment of and ongoing management of all Asset Protection Zones required under these conditions of consent and approved by Council

Catchment Area – the area of land within the ownership of the Developer, maintained in a natural undeveloped state which is the source of water for the surface impoundment dam.

Catchment Management Plan – Any management plan regarding the establishment of and ongoing management of the Catchment Area and approved by Council

CLD Act - means Community Land Development Act 1989 and

Community Plan;

Community Association; and

Community Management Statement

have the same meaning ascribed by Section 3 of the CLD Act that has to be, or has been, created for the Village.

Community Management Statement is the management statement prepared in accordance with sections 5 and/or 9 and Schedule 3 of the *Community Land Development Act 1989* as approved by Council.

CMS – Community Management Statement.

Community Association Infrastructure – water supply infrastructure, waste water collection, conveyance and treatment infrastructure, effluent disposal infrastructure, recycled water supply infrastructure, stormwater infrastructure including treatment measures, environmental open space and asset protection zones, agricultural buffer and catchment area for water supply and Riparian Buffer Zone but does not include individual tanks and internal plumbing provided to each individual tenement.

Community Land – all land in the Village site.

Community Property - land, assets and infrastructure to be owned by the Community Association.

Concept Proposal- The concept is a plan for the construction of an entire new community or village that is to be generally developed in stages. The concept plan includes the provision of water and sewer services, electricity and communication services, roads, community facilities, areas of low and medium density housing, 1000m² of retail floor space, conference centre, health centre, open space and rehabilitation areas. The overall concept proposal is stated to have an indicative yield of 430 dwellings with an expected population of approximately 1000 persons. Water is to be supplied via tanks, dams, groundwater and recycled water. Effluent is to be treated via a sewerage treatment plant with a reuse scheme for non potable purposes and irrigation.

Council – Tweed Shire Council

Developer – Zimmer Land Pty Limited or any party acting upon this consent

Design Guidelines - Any Design Guidelines approved by Council in relation to the Village.

Environmental Open Space – is the corresponding area marked on the Village Plan diagram 2 which is to have a land use to preserve the significant environmental features of those areas on the site including native vegetation, natural watercourses and aboriginal archaeological areas.

Environmental Open Space Management Plan - Any management plan regarding the establishment of and ongoing management of the Environmental Open Space in the Village and approved by Council

Effluent Irrigation Scheme Buffer – any buffer separating Effluent irrigation areas and irrigation infrastructure from neighbours, residential areas and sensitive environments.

Infrastructure – Community Association Infrastructure except where otherwise specifically defined.

Infrastructure Land – any land or part thereof upon which Infrastructure is, or is to be, located. Including but not limited to current lots 121 in DP 134446, 3 in DP 771335 and 4 in DP737440, which is proposed lot 12 as part of the Stage 1 subdivision and any parcel of land upon which an Asset Protection Zone or Agricultural Buffer is required by these conditions of consent.

L/p/d - Litres per person per day

Mixed Village – is the corresponding area marked on the Village Plan diagram 2 which is to have a land use to provide the central focus of the development in the form of a Village Centre containing a Main Street and Town Square that provides for a variety of commercial, retail and residential uses including some tourism and community uses.

Open Space Areas – is the corresponding area marked on the Village Plan diagram 2 which is to have a land use to provide for the sports and market area and village green for active recreation and community activities and market garden.

Parking Areas – is the corresponding areas marked on the Village Plan diagram 2 which is to have land use to provided parking for people attending the Mixed Village.

Public Roads – are the lines illustrated in bold black on the Village Plan diagram 2 which form part of Stage 1.

Potable water – water that is intended to be or likely to be used for human consumption.

Precinct – an area marked on the Village Plan diagram 2 named to correspond with the intended land use(s) for that area.

Primary Koala food Trees- Forest Red Gum (*Eucalyptus tereticornis*), Tallowwood (*Eucalyptus microcorys*) and Small-fruited Grey Gum (*Eucalyptus propinqua*).

RFS – Rural Fire Service

Riparian Buffer Zone – a buffer generally a minimum of 50 metres from each high bank of the Tweed River

Stage 1 – is the first stage in the development of the Village for a six lot subdivision, construction of a public car park, road bridge and public road works to be carried out in accordance with Part B of this consent.

Stormwater Management Plan – Any management plan regarding the establishment of and ongoing management of Stormwater in the Village and approved by Council

STP - Sewerage Treatment Plant

Surface Impoundment Dam – is the 60ML Water Supply Dam marked on plan Figure 4 Proposed Water Supply Infrastructure for the collection of water from the Catchment Area for the purpose of augmenting the supply of potable water to the Village.

TDCP – Tweed Development Control Plan

The Tweed River Corridor – is the corresponding area marked on the Village Plan diagram 2 which is to have a land use to preserve the land along the Tweed river and includes a riparian buffer zone of 50m also marked on the Village Plan.

Threatened and Significant Protected Species Management Plan - Any management plan regarding the protection of any Threatened and Significant Protected Species approved by Council.

Tourism and Special Uses – is the corresponding area marked on the Village Plan diagram 2 which is to have land uses aimed at providing local employment and economic development to help establish the town as a visitor destination. These land uses are to be compatible with the tourism uses in the Mixed Village and limited to tourism and special uses of a rural or local nature with no accommodation.

TSC - Tweed Shire Council

TSC Sewerage - is any sewerage infrastructure under the ownership, control and operation of Tweed Shire Council.

TSC Water Supply – is any water supply infrastructure under the ownership, control and operation of Tweed Shire Council

TSPSMP – Threatened and Significant, Protected Species Management Plan approved by Council

Village – the development of a village within the land zoned 2(d) within part lots 121 in DP 134446 and 3 in DP 771335 and including the market garden area.

Village Site – the area of land within part lots 121 in DP 134446 and 3 in DP 771335 marked by the site Boundary on Diagram 1 Concept Plan.

Village Housing – is the corresponding area marked on the Village Plan Diagram 2 which is to have a land use for a variety of housing types including townhouses, villa homes and some residential flat buildings being up to 3 storeys in height.

Village Lots – is the corresponding area marked on the Village Plan Diagram 2 which is to have a land use for single detached dwelling houses on lots generally 600 m² but no smaller than 450 m².

Water Supply Management Plan - Any management plan regarding the establishment of and ongoing management of the water supply to the Village and approved by Council.

REPORT:

Applicant: Mr P MacGregor
Owner: Zimmer Land Pty Ltd, Kempcove Pty Ltd
Location: Lot 3 DP 771335, Lot 4 DP 737440, Lot 121 DP 134446, No. 2924 Kyogle Road, Kunghur and Crown Roads
Zoning: Part 2(d) Village and Part 1(a) Rural
Cost: \$2,050,000

BACKGROUND:**The Locality**

The site is located deep in the remote Tweed hinterland on the northern side of Kyogle Road 14 kilometres southwest from the village of Uki and 29 kilometres south west from the town of Murwillumbah. Uki has a population of 200 approximately and the village contains a hotel, primary school, basic shopping and community needs.

The surrounding land is of rural character featuring hobby farms, grazing land nestled in between National Park forest. An approved rural residential subdivision of Mebbin Springs consisting of seventy lots and a native tree plantation exists to the south. Mebbin Springs is and remains largely undeveloped as uptake of the development has been slow since 2005.

The site is located in between Mt Warning National Park and Nightcap National Park and is isolated from all services apart from a rural fire service shed located at Kunghur.

The Site

The site is located in the Tweed hinterland, in a valley between Mt Warning National Park and Nightcap National Park and adjacent to Mebbin National Park. The Tweed River, which is a main source of water supply for the Tweed Shire, runs through the site adjacent to the southern boundary of the site. The River corridor is heavily vegetated and its topography is steep.

The site is extremely diverse in terms of its topography with much of the site having steep side slopes of well over 16.67%, which contain a number of existing natural watercourses flowing into the Tweed River. The River corridor and natural gully areas of the site are heavily vegetated. Large fig trees are located on the high knoll in the centre of the site.

There is no town water or sewer infrastructure servicing the site. The closest town water and sewer supply is fourteen kilometres to the east at the village of Uki.

Zoning

The subject site was zoned from Rural to Village via an amendment to the Interim Development Order No.2 in 1986. The zoning has remained Village since this time through LEP 1987 and LEP 2000.

The wording of Tweed Local Environmental Plan No.35 as listed in the Government Gazette No.66 of 24 April 1986 says -

“Aims and objectives etc.

The aims and objectives of this plan are-

- (a) to enable the development of the land to which the plan applies for the purposes of an integrated, co-operative rural community featuring the strata subdivision of the land, a substantial common property holding to be managed for the benefit of the body corporate as a whole and a defined village centre providing community services and facilities;*
- (b) to allow the establishment on that land of complimentary tourist, holiday and educational facilities as components of the overall development; and*
- (c) to enable the more detailed development control provisions relating to matters of significance for local environmental planning affecting that land to be contained in a development control plan to be made by the council.*

Notwithstanding the provisions of clauses 11, 12, and 12a, a person may, with the consent of the council, subdivide land to which this clause applies under the Strata Titles Act 1973 and erect dwellings on allotments created by the subdivision provided that-

- (a) the land to be subdivided has a minimum area of 40 hectares;*
- (b) the number of allotments created by the subdivision and used for the purpose of the erection of dwelling-houses shall not exceed one per 5 hectares of the area of the land subject to the subdivision;*
- (c) the minimum area of any such allotment on which a dwelling-house is erected shall not be less than 1000 square metres;*
- (d) not less than 40 percent of the land subdivided is to be retained as common property as defined under the Strata Titles Act 1973; and*
- (e) vehicular access to each of the allotments from a public road is by means of the common property and each access corridor shall provide access to not more than 10 dwellings.”*

The above clause was not retained in the Shire Wide Tweed LEPs of 1987 or 2000. Accordingly the standard 2(d) Village zoning provisions apply.

The site has never been developed in accordance with the Village zoning and has only been used for rural purposes with rural improvements such as a dwelling, dams and access roads.

Application

The application was lodged in 2006. There have been multiple requests for additional information, outstanding details such as owners consent from the Department of Lands (Crown Lands) and amendments made by the applicant. The Application is taken to have been "made" on 1 March 2007.

Appeal

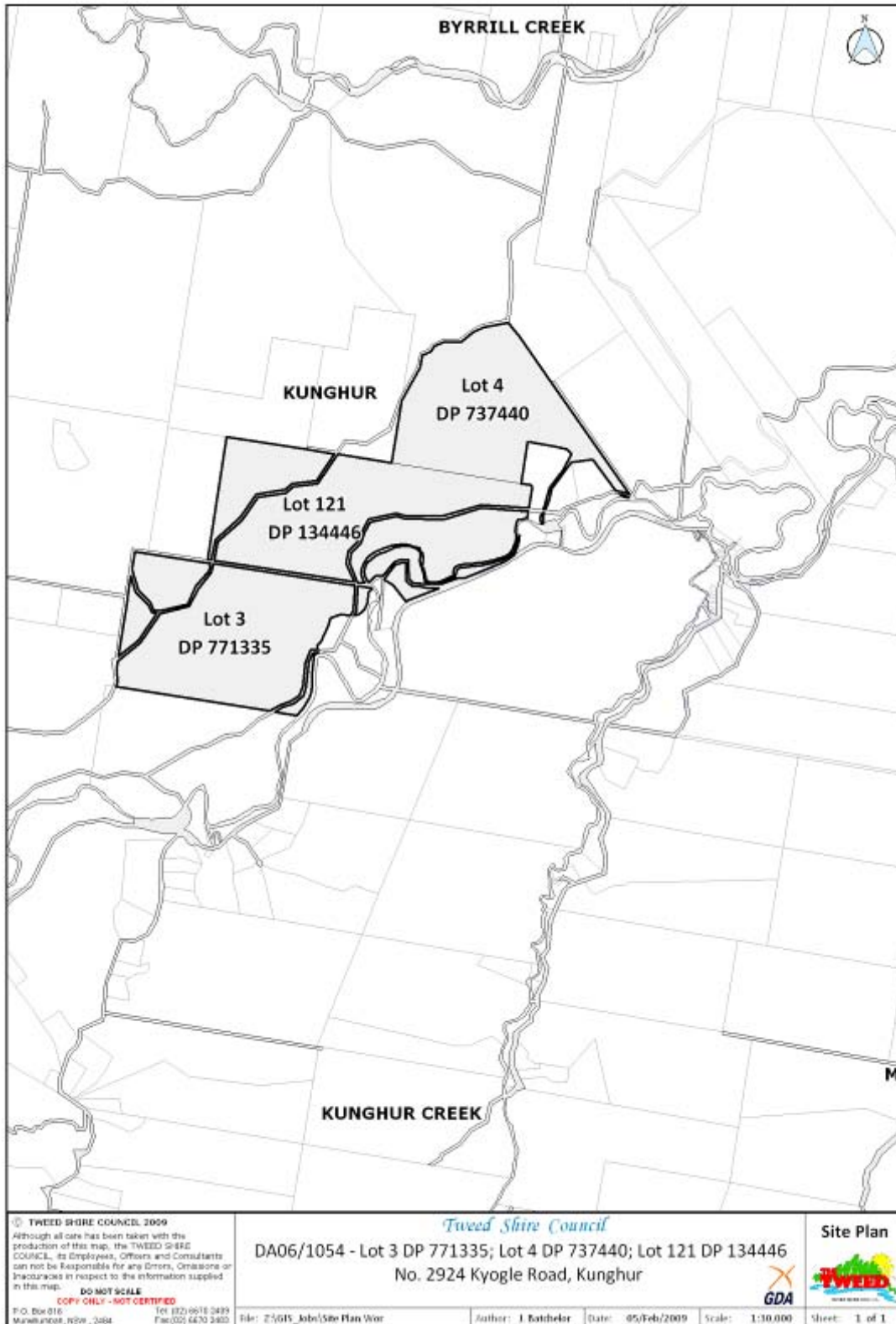
The proponents lodged a deemed refusal appeal with the NSW Land and Environment Court on 19 October 2007. The applicants sought with agreement from Council a S.34 mediation conference with the Court. This was held on 11 December 2008. The applicants were requested to amend the application and provide additional details by the Court. This information was required to be submitted to Council by 16 January 2009. A second mediation session was to be held on 11 February 2009 however the Commissioner could not attend. A "without prejudice" meeting proceeded without the Commissioner.

On 14 May 2009 the Court adjourned proceedings until 18 June 2009 to allow Council to determine the development application.

Exhibition

The application was exhibited for public comment twice on 4 October to 1 November 2006 and from 24 October to 21 November 2007. 350 and 150 submissions respectively were received during the exhibition period. The vast majority of the submissions were objections to the proposal.

SITE DIAGRAM:



DEVELOPMENT PLANS:



- LEGEND**
- Potential Irrigation Area
 - Dam
 - Sewer Line
 - Water and Sewage Treatment Plants and Wet Weather Storage Tanks
 - Storage for Treated Water
 - Rising Main to STP
 - Recycled Water Main to Irrigation Areas
 - Water Supply Dam
 - Tank main for water reticulation system
 - SITE BOUNDARY
 - VILLAGE LOTS
 - VILLAGE LOTS, REMAINING UNSUITABLE FOR BUILDING
 - GROUND CONSTRUCTION
 - VILLAGE HOMES
 - WIND VILLAGE
 - TOURISM AND SPECIAL USES
 - OPEN SPACES
 - Open and Level Area, Barren Outcrops, Island Gardens
 - ENVIRONMENTAL OPEN SPACE
 - REHABILITATION AREA
 - 10m LANDSCAPE BUFFER
 - LAND DEDICATED TO COUNCIL FOR SIGHT LINES
 - MARKING
 - PROTECTED ARCHAEOLOGICAL AREAS
 - ARCHAEOLOGICAL INVESTIGATION AREAS
 - 400 ADDITIONAL HERITAGE IMPACT POINTS (with companion ITEMS)
 - 50m RIVER BUFFER
 - RIVER CORRIDOR
 - WATER COURSE
 - FOOTPATH
 - FOOTPATH LINK
 - PUBLIC ROAD
 - PRIVATE ROAD
 - ALTERNATIVE ACCESS POINT

Scale 1:10,000 (A3)
DIAGRAM 1
CONCEPT PLAN
 Project No.: 2002023
 16/01/2009

Shaping Our Future
 City of Tweed
 2009
 This plan is a preliminary concept plan and is not intended to be used for any other purpose.
 The plan is subject to the approval of the Planning Committee.
 Date: 16 January 2009
 Peter Van Lierhout



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**

The subject land is zoned 2(d) Village and 1(a) Rural under the provisions of the Tweed Local Environmental Plan 2000. The concept plan components are permissible with consent in both zones and the stage 1 proposal is permissible with consent in the 2(d) Village zone. A small part of the Stage 1 access road is located in the 1(a) zone. Roads are permissible in the 1(a) zone. The land zoned 1(a) Rural contains environmental open space, roads, the market garden and sewerage and water infrastructure. These uses are permissible in the 1(a) Rural zone.

Tweed Local Environmental Plan 2000**Clause 4 - Aims of the Plan**

The relevant component of this clause relates to the vision in the Tweed Shire 2000+ Strategic Plan which 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 proposal is consistent with this clause as existing urban zoned land is being used for development combined with environmental protection and management.

Clause 5 - Ecologically Sustainable Development

The objective of the LEP is to promote development that is consistent with the four principles of ecological sustainable development. The four principles in the LEP are -

- (a) the precautionary principle—namely, 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.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options, and

- (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations, and
- (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration, and
- (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
 - (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, and
 - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and
 - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Comment

The proposed development is consistent with the above principles given environmental protection measures and enhancements are proposed and the lifecycle funding of infrastructure will be undertaken by the developer and then the occupants.

The Concept has significant sustainable elements including self funding water, sewer, stormwater, roads, open space management and riparian zone rehabilitation.

Protection of the environment has been a fundamental consideration of the assessment and this is reflected in the proposed conditions of consent and the requirement for management plans to be prepared for mitigation of impacts and ongoing protection of environmental resources.

Clause 8 – Consent considerations

Objectives of zone

2(d) Village

The objective of the zone is as follows-

“to provide for residential development and a full range of services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.”

The proposed concept is not just for residential development. The proposal includes a mixed village centre that includes retail/commercial uses. Tourist and special uses are also part of the concept along with open space for sport, recreation and markets. The mix of uses proposed support the Village concept and the objective of the 2(d) zone.

The proposal is not contrary to the objective of the zone.

Rural 1(a) zone objectives are as follows: -

Primary objectives

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *to protect rural character and amenity.*

Secondary objectives

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement*

The sewer and water infrastructure located in the 1(a) Rural land will not prevent the primary objective being achieved. The effluent is proposed to be used by land application which will facilitate agricultural use.

Aims and objective of the plan that are relevant to the development

See above regarding aims of the plan

Cumulative impact

The proposal will have both positive and negative cumulative impacts on the community, locality and catchment.

Overall the proposal will not have an unacceptable cumulative impact on the community, locality, catchment or the Tweed area as a whole provided the recommended conditions of approval are imposed and complied with.

The negative cumulative impacts range from the impact on the environment such as the Tweed River to reliance on private motor vehicles for transportation given the isolated location. Mitigation of these impacts include a 50 metre buffer along the Tweed River together rehabilitation of the riparian zone and provision of a community bus for transport.

It could be argued that the proposal would have less adverse cumulative impacts than a standard rural residential subdivision.

The proposal will provide an alternative form of residential living compared to standard subdivisions with a mix of residential styles and on site community infrastructure.

It could be argued that the adverse cumulative impact accrued by the relative isolation of the development outweighs the positive attributes of the proposal. However, it is considered that a legitimate attempt has been made to undertake a development that is based on sustainable principles and to incorporate measures to mitigate adverse impacts.

Clause 15 - Essential Services

Council is required to be satisfied that arrangements have been made for the provision of water, sewage and drainage. The arrangements are satisfactory. See section (b) for further comment regarding water and sewer.

A key aspect of the proposal is that the above infrastructure must be constructed, maintained, replaced and funded by the development. Council will not supply water, sewage or drainage services to the development. The development will be undertaken as a community title subdivision with management and funding responsibilities set out in the Community Management Statement which is required to be approved by Council.

Clause 16 - Height of Building

A three storey height limit applies to the site. The proponents have stated that three storeys won't be constructed for the peripheral units in the Village Housing precinct. A condition has been imposed limiting the Village Lots precinct to two storeys.

Three storey development across the entire site is not considered appropriate for the location. Three storeys in the central village area for design purposes is considered acceptable.

Clause 17 - Social Impact Assessment

Clause 17 requires consideration of the following-

(1) Objective

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

(2) Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.

(3) The socio-economic impact statement that the consent authority considers must do at least the following:

- (a) identify the likely future impacts of the development on the affected community,
- (b) analyse the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services, and the like,
- (c) determine if the impacts will cause a loss of amenity within the locality due to a net reduction in community services and facilities,
- (d) determine and assess possible measures for the management or mitigation of likely impacts.

Comment

Whilst significant social or economic impact is not clearly defined a socio economic assessment has been submitted by the applicant. The report focuses on the projected decline of the population in the Kyogle statistical area. The report indicates that population projections by the Department of Planning show a fall in residential population for the Kyogle area of 300 (3%) over the next ten years, with a continuing decline until the resident population has fallen by 9% (880) by 2031.

The report states that the Nightcap Village will redress the adverse demographic conditions by –

- Increasing the local resident population by a projected 1,000. (More than offsetting the population decline currently projected for the Kyogle Area)

- Attracting residents with greater purchasing power and greater disposable income, and young families with greater household expenditure and greater retail and personal services needs.
- Attracting self-employed business people and their employees with business and employee needs best met locally
- Providing recreational and visitor opportunities that will encourage both residents and visitors to spend more time, and money in the region.
- Local employment benefits will be at least 155 jobs (permanent, fulltime equivalent (fte) jobs, provided at Nightcap Village after its development)
- Regional employment benefits will be at least 230 fte jobs (comprising 155 fte jobs in the village and a flow on effects that create 80 additional local jobs)
- The development will not result in any significant impost on existing human services and facilities.
- There should be no noticeable adverse impact on the provision of retailing and personal services elsewhere, either locally or in the Region.

It is considered that the socio economic impact of the proposal will be mixed. There will be some positive benefits as outlined above and there will be some negative impacts including increased demand on services such as emergency services and community facilities. However it should be noted that the Village will be developed in stages over several years probably up to ten years at least providing time for services to adjust to population growth.

Clause 19 and 20 Subdivision

Stage 1 includes a 6 lot subdivision with three lots within the land zoned 1(a) Rural and 3 lots within the 2(d) village. Proposed lots 10, 11 and 12 are zoned Rural 1(a) and are 89.47ha, 121.5 ha and 122.7 ha which exceeds the minimum lot size of 40 ha for the 1(a) zone. Proposed lots 13,14, and 15 are located in the 2(d) village zone and are 9.1ha , 16.44 ha and 16.77 ha in area. These lots will be further subdivided via community title and subject to future development applications. Council's development standards such as lot sizes are required to be met with Community Title subdivision.

Clause 22 Development near designated roads

Kyogle Road is a designated road.

The objectives of the this clause are-

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

Council has to be satisfied of the following -

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

Comment

The ultimate development will increase traffic movements on Kyogle Road. Council's contribution plan for roads includes improvements to Kyogle Road. Each subdivision, multi dwelling, commercial/ retail development will be levied contributions for the upgrading of Kyogle Road. Accordingly, and subject to levying the contributions the proposal is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the road when the improvements have been constructed.

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

Comment

A new intersection is proposed with the site and Kyogle Road to Austroads Standards. This will also include dedication of land to meet sight distance requirements. Parking will be undertaken within the site.

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

Comment

The new intersection will be in accordance with Council's requirements.

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

Comment

The development within the land zoned 1(a) is the ancillary aspects of the Village and is not in proximity of Kyogle road for commercial advantage.

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

Comment

The residential precincts are setback from Kyogle road to mitigate noise impact.

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

Comment

The access and carpark will be the most visually prominent aspects from a road users point of view. A condition has been imposed requiring a landscaping plan to be submitted and approved for Stage1. Screening of the carpark area will be required as part of the plan.

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

Comment

In this instance alternate access is not practicable.

- (h) in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:
 - (i) would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and
 - (ii) would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and
 - (iii) would not compromise highway safety and efficiency, and
 - (iv) would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.

Comment

Not applicable

Clause 31 Development adjoining waterbodies

This clause is satisfied by the inclusion of a 50 metre buffer along the Tweed River and the requirement for a rehabilitation plan of the environmental open space areas.

Clause 34 Flooding

See Section (b) for flooding assessment.

Clause 35 - Acid Sulfate Soils

The site is not affected by acid sulfate soils.

Clause 39A bushfire

Council is required to 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.

In taking into account the matters required by the above, the consent authority must have regard to the provisions of the document entitled *Planning for Bushfire Protection*, prepared by Planning & 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.

Comment

The application was referred to the NSW Rural Fire Service under the integrated development provisions. The RFS has issued their terms and conditions which are attached to the proposed conditions.

The NSW Rural Fire Service was consulted regarding the impact of the proposal on the Service in the Kunghur area.

The RFS advised that the infrastructure requirements of the RFS are predicted annually in terms of the "standards of fire cover" required based on the current and predicted population. Urban areas are given ratings of village 1 or village 2 and requirements are subsequently indexed. Kunghur is classified as a Category 1 Village with an index of 6. The proposed development would not impact on the classification as Village 1 however the index would increase to 10.

To service a Category 1 village with an index of 10, the newly constructed post at Kunghur would require an additional Category 1 Tanker with 3,000 litre capacity and the estimated cost of such a tanker is \$225,000. It could take up to 18 months between ordering and receiving such a tanker. Various upgrades to the post would also be desirable, for example the dimensions of the door to the garage housing the tankers may need to be amended to cater for a Category 1 tanker, the current car park could be resurfaced to ensure the vehicles of staff and volunteers are not obstructing the roadway in the case of an emergency and the post could be equipped with breathing apparatus. The RFS advise that it would not be desirable to relocate the post to be within the proposed village given that its current location is strategic to service the general area.

Conditions have been imposed to reflect the above requirements.

Clause 44 Archaeological sites

Council is required to consider the following-

- (1) The consent authority may grant consent to the carrying out of development on an archaeological site that has Aboriginal heritage significance (such as a site that is the location of an Aboriginal place or a relic within the meaning of the *National Parks and Wildlife Act 1974*), or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance only if:

- (a) it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site prepared in accordance with any guidelines for the time being notified to it by the Director-General of National Parks and Wildlife, and
- (b) it has notified the Director-General of its intention to do so and taken into consideration any comments received from the Director-General within 28 days after the notice was sent, and
- (c) it is satisfied that any necessary consent or permission under the *National Parks and Wildlife Act has been granted.*

Comment

An archaeological report has been submitted which identifies several sites that require management. The development has been modified to cater for the sites. Additionally further investigation is required at locations across the site prior to future stages proceeding. No known sites are proposed to be disturbed during stage 1 works.

The archaeological survey resulted in the recording of five open campsites and two isolated stone artefacts within the study area.

The proposal includes setting up a display area on the site for the heritage items.

The recommendations in the archaeological report are as follows-

- i. Identified sites NV1 and NV4 and their associated areas of PAD as defined in **Figures 44-46** be preserved in relation to the proposed development and associated road and infrastructure. No subsurface impacts should occur in these areas.
- ii. Identified sites NV3/MS2 and NV IF2 and their associated areas of PAD, and NV PAD1 as defined in **Figures 44-46** should be the subject of Aboriginal archaeological test excavations to determine their extent and significance prior to any future DA's for the Nightcap Village site. The s87 investigations may also guide further Staging Plans and DA's depending on whether parts of the investigation areas require preservation and/or interpretation. These excavations must be undertaken by a suitably qualified archaeologist in consultation with the local Aboriginal community under a National Parks & Wildlife Act (1974) s.87 Aboriginal Heritage Impact Permit according to a suitable research design.

- iii. Identified sites NV2 and NV5 and isolated artifact find NV IF1 should be the subject of a National Parks and Wildlife Act (1974) S.90 Aboriginal Heritage Impact Permit will collection and interpretation of the artifacts in consultation with the Aboriginal community. S.90 AHIP need only be sought if there are proposed future impacts.
- iv. Further discussion should be undertaken with the local Aboriginal community in relation to the proposal for an onsite Aboriginal history and heritage interpretive display.
- v. Archaeological survey of the sewerage and water supply infrastructure should be undertaken prior to development. The components requiring survey are the Water supply dam site and gravity feeds between the STP and the irrigation areas.
- vi. A copy of the current report has been sent to representatives of:

Tweed Byron Local Aboriginal Land Council;
Tweed Aboriginal Consultative Committee;
Council's Cultural Heritage Officer; and
Department of Environment and Climate Change

The DECC has provided a submission in accordance with clause 44 (1) (b) of the Tweed LEP. The submission is reproduced below:-

"I refer to your letter dated 6 May 2009 relating to Council's intention to grant consent to a 6 lot subdivision, a Concept Plan and a Stage One Development Application over lands contained in Lot 3 DP771335, Lot 4 DP737440 and Lot 121 DP134446 at 2954 Kyogle Road, Kunghur, otherwise known as Nightcap Village.

The Department of Environment and Climate Change (DECC) notes that the Aboriginal cultural heritage component (included in Council's resolution and report) for the above and the supporting Aboriginal Cultural Heritage Assessment and Management Plan, dated March 2009 (the CHP) has been forwarded under Clause 44 of Council Local Environment Plan 2000 (LEP).

The DECC notes and generally supports the extensive draft consent conditions as proposed in Council's resolution in relation to cultural heritage.

The following additional comments are provided as requested under Clause 44.

1. It is noted that the Concept Plan and Stage 1 DA appear to relate solely to the proposed subdivision of Lot 121 into new Lots 13, 14 and 15 and that the Stage 1 works, including an access road, car park and bus bay, are restricted to Lot 15.
-

DECC advises that no cultural heritage information has been provided in relation to the future development of existing Lot 3 (new Lot 10), Lot 4 (new Lot 12) and the balance of Lot 121 (new Lot 11). Accordingly, the potential impact on cultural heritage arising from the proposed subdivision of these lots is insufficiently described. DECC will provide more detailed comment about these lots when or if future proposals containing adequate cultural heritage information are submitted to it under the Integrated Development Application (IDA) process and Council's revised standard LEP template. It is also noted that these lots are zoned Rural 1(a) which imposes a 40ha minimum limit on their size. However at this stage no further comment is possible in relation to these lots other than a general concern about the potential cumulative impact of such proposals and the following comments are therefore limited to the works proposed in the Stage 1 DA and the current concept plan.

2. Within new Lots 13, 14 and 15 (zoned 2(d) – Village), the Concept Plan and CHP identify two archaeological areas (NV1 and NV4) that are proposed to be fenced off and protected under proposed Consent Condition 65. Whilst this intent is supported, it is emphasised that the precise and final boundaries of these areas have not been defined on the ground by detailed archaeological test excavations. DECC recommends that further survey work to define the spatial extent of these sites is undertaken to inform the location of the fencing, prior to future works in these areas commencing.
3. Areas MS2, NV3, NVPAD1 and NVIF2 are identified as areas requiring further archaeological investigation under Consent Conditions 67-71 and as such will require an Aboriginal Heritage Impact Permit (AHIP) (Section 87/90) from DECC. The need for further investigation of these areas is supported, however, there is potential for the results to mandate changes to the final Concept Plan layout (and consequently the location of access roads proposed in stage 1) in the event that items of high cultural significance are discovered and salvage is deemed inappropriate. Conversely the results of these assessments may also reduce the extent of the Aboriginal cultural constraints across the site and thereby facilitate more detailed site planning in the future. To facilitate sound strategic planning across this site it is recommended that all archaeological excavations and assessments are completed prior to finalising the Concept Plan and commencing Stage 1.

4. DECC acknowledges that Stage 1, as currently described, does not appear to impact directly on any known Aboriginal sites of significance and that consequently approvals may not be required from the DECC. However, Council's attention is drawn to the location of site NV5 that appears to be close to the proposed access road. This site needs to be clearly identified on the ground to ensure the road and associated construction activities avoid it or alternatively, as suggested in Consent Condition 70, subjected to an AHIP (Section 90) application should the road impact upon it.
5. It is recommended that DECC's standard precautionary conditions (refer below) be inserted in the consent conditions to address the potential discovery of objects of Aboriginal cultural significance as Stage 1 progresses.
6. DECC notes that the Protected Archaeological Areas and the Aboriginal Heritage Display are intended to be designated community property (Consent Condition 2) however it is unclear from other consent conditions (for example, Condition 64 and 98e) whether management and financial responsibility for them is specifically that of the proposed Community Association. It is also unclear whether this will meet the approval of the local Aboriginal community or whether the latter will have formal representation on the Association. It is emphasised that the additional assessment work recommended in point 3 above could result in additions to the protected areas (in terms of number and extent) depending on the degree of significance attached to any finds. DECC therefore recommends that the draft conditions are amended to ensure that management responsibility for the protected areas and display is clearly allocated.
7. DECC is aware that the vast majority of submissions resulting from the public exhibition objected to the proposal (page 62 of Council report) and that certain Aboriginal stakeholders have voiced strong concern regarding the extent to which they were consulted during the cultural heritage assessment and subsequent preparation of the CHP. Although the archaeological consultant (Mary Dallas) appears to have followed the DECC guidelines for Aboriginal consultation, it must be noted that broad written support from the Aboriginal community for the proposal is absent.

We also note that the Tweed Local Aboriginal Lands Council, having been involved in previous assessments in the area, has lent its support for the CHP and its recommendations. However, it does not appear to convey support for the proposal as a whole. In response DECC notes and supports the emphasis throughout the proposed consent conditions to more closely involve the Aboriginal community, particularly with respect to the Aboriginal Heritage Display (Condition 72) and any amendments to the CHP (Condition 75).

8. It is understood that DAs for further stages will be submitted under the IDA process where impacts on cultural heritage are expected. The DECC will consider General Terms of Approval (GTAs) for these on a case by case basis and any approval for the Concept Plan issued by Council at this stage does not necessarily imply that further DECC approvals will be forthcoming under these GTAs.

Thank you for the opportunity to provide comment on this proposal please contact me on telephone 02 6659 8220 if you have any further enquiries."

Yours sincerely

BRETT NUDD

A/ Manager Planning and Aboriginal Heritage

Northern East Branch

Environmental Planning and Regulation Group

**RECOMMENDED STANDARD PRECAUTIONARY CONDITIONS
(POINT 5):**

- In the event that human remains are located during the project, a protocol to halt all works in the immediate area should be followed to prevent any further impacts to the find or finds. The local police and DECC are also to be notified. If the remains are found to be of Aboriginal origin and the police consider the site not an investigation site for criminal activities, DECC is to be contacted and notified of the situation. Works are not to resume in the designated area until approval in writing from the Police and DECC.
- In the event that Aboriginal objects are located during the project, a protocol to ascertain the value of such finds, in consultation with the Aboriginal community representatives and a qualified archaeologist should be implemented and used to inform any management decision. DECC should be informed of any finds (including isolated artefacts) using the appropriate DECC site recording cards. Furthermore, any objects located should be registered on the Aboriginal Heritage Information Management System (AHIMS). AHIMS contact details: Phone: (02) 9585 6470, address: Level 6, 43 Bridge Street, Hurstville, NSW, 2220, e-mail: ahims@environment.nsw.gov.au.
- An Aboriginal Cultural Education program should be developed and delivered as part of the induction of personnel and contractors involved in the construction activities on site. The program should be developed in collaboration with the Aboriginal community."

Comment on DECC Letter

1. Proposed Lots 10, 11 and 12 are 121.6 ,122.7 and 89.47 hectares in area and zoned 1(a) Rural. Further archaeological survey is required as part of any future application for the infrastructure proposed on Lot 12. The current proposal does not include further development of proposed lots 10 and 11. If further development is proposed of these lots any development application will need to consider archaeological impact.

2. It is proposed to include in Conditions 65 and 111 the following -

“In this regard further survey work must be undertaken to define the spatial extent of these areas to inform the location of fencing, prior to future works in these areas (NV1 and NV4) commencing.”

3. A new condition is proposed as follows-

“All archaeological excavations and assessments must be completed prior to commencing Stage 1 or granting consent to any future stage of the proposal..”

4. A new condition is proposed as follows-

“Aboriginal Archaeological Site NV5 is to be clearly marked on the ground prior to commencement of any work and maintained throughout construction so that the road and associated construction activities do not impact on the site.”

5. The conditions have been included in the recommendation.

6. A new condition is proposed as follows -

“The Protected Archaeological Areas as identified on the Village Plan (Diagram 2) and Staging Plan (Diagram 3) are to be managed in consultation with relevant Aboriginal stakeholders.”

Condition 73 is proposed to be amended as follows -

“The location, nature and management of the Aboriginal Heritage Display must be developed in consultation with the relevant Aboriginal stakeholders. In this regard consultation with relevant Aboriginal stakeholders must be undertaken regarding the history of the whole site as it relates to Aboriginal culture and heritage. Cultural and heritage issues are to be included in the Aboriginal Heritage Display where considered appropriate by the Aboriginal stakeholders.”

7. The letter contained in the Heritage Assessment and Management Plan from the Tweed Byron Aboriginal Land Council is supportive of the proposal.

8. Noted and agreed, this statement accords with the legislation.

Clause 52 zone map overlay

Part of the rural lots are within the Byrill Creek catchment area however no development is proposed within these areas.

North Coast Regional Environmental Plan 1988

Clause 12: Impact on agricultural activities

The proposal will not cause a loss of prime crop or pasture land. Buffers between the Village and the 1(a) Rural and are proposed.

Clause 15: Rivers, streams and wetlands

A 50m buffer is proposed to the Tweed River. The buffer area is subject to the preparation of a riparian management plan. The Department of Water and Energy have provided their terms and conditions for an approval under the Water Act/Rivers and Foreshores Improvement Act.

Clause 43: Residential development

Clause 43 requires the following considerations-

- (1) The council shall not grant consent to development for residential purposes unless:
 - (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,
 - (b) it is satisfied that the proposed road widths are not excessive for the function of the road,
 - (c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,
 - (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and
 - (e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

Comment

- (a) The constraints (eg. slope, archaeological artifacts) of the site including buffers and the minimum lot size for dwellings in the 2(d) zone control the density. This is combined with the provision of water and sewerage infrastructure which limits the density of development.
- (b) The public roads comply with Council's standards

- (c) N/A
- (d) Walkability within the village will be a feature given the proximity of dwellings to destination points. A condition requiring a community bus is recommended.
- (e) Conditions have been imposed regarding erosion and sedimentation.

Clause 66: Adequacy of community and welfare services

The site is isolated from the main centres that provide community and welfare Services. Whilst an additional 1000 persons is likely to impact on various services this population is likely to take at least ten years to be reached. In this regard all services will be affected by the population growth of the Shire over this timeframe.

See above for comments regarding socio economic impact.

Clause 75: Tourism development and Clause 76: Natural tourism areas

The concept plan includes some small scale tourism that will be subject to future development applications. The matters for consideration can be addressed in detail at the time depending on the nature of the tourist uses proposed.

Clause 81: Development adjacent to the ocean or a waterway

Clause 81 requires consideration of the following-

- (1) The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:
 - (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,
 - (b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and
 - (c) the development is consistent with the principles of any foreshore management plan applying to the area.
- (2) Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.

Comment

A 50m riparian buffer is proposed along the Tweed River, this is an environmental protection buffer and not providing for public recreation space. A 50 meter separation distance is considered appropriate to protect the amenity of the River. Whilst there is no foreshore management plan a riparian buffer management plan is required to be prepared.

Clause 82 Sporting Fields or specialised recreation facilities

The proposal includes an oval for recreation purposes. The oval will not be owned or operated by Council. The oval will be community land managed by the community association.

State Environmental Planning Policies

Infrastructure SEPP (formerly SEPP-11 Traffic Generating Developments))

The application was considered by the Regional Traffic Committee on 15 February 2007. The Committee provided advice which resulted in significant amendments being made to the proposal for access.

SEPP No. 44 - Koala Habitat Protection

The site is known to contain three Primary Koala food tree species (two of which are listed on Schedule 2 of SEPP 44) and to contain evidence of Koala usage including scats and scratch marks. Insufficient study has been conducted to date to determine whether the site supports a resident population of Koalas and thus could be classified as *core* Koala habitat under the SEPP, however, the densities of the three preferred tree species is unlikely to trigger further consideration under the SEPP. Despite this, the applicant has recognised that the site provides habitat value for Koalas and has agreed to produce and comply with a Koala Plan of Management for the site which addresses the major threats to Koalas. This aspect has been conditioned.

SEPP No. 55 - Remediation of Land

Contamination reports have been undertaken and the matters in the SEPP have been satisfied. The site is not contaminated.

SEPP (Rural Lands) 2008

The first stage subdivision involves creation of large lots either zoned rural or partially zoned rural. The proposal is not contrary to the provisions of the SEPP.

Far North Coast Regional Strategy

The land zoned village is nominated in the strategy as a Town and Village Growth Boundary.

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

Draft LEP number 21 for vegetation applies however the development site is not affected by the zoning proposals in the draft plan.

(a) (iii) Development Control Plan (DCP)Tweed Development Control PlanA1-Residential and Tourist Development Code

Whilst there is no proposal for construction of residential or tourist development at this stage a condition has been imposed required preparation of a design code for the uses within the Village. If the design code differs from Council's DCP then justification is required for the differences and no guarantee is provided that variations will be acceptable. The design guidelines are required by conditions.

A2-Site Access and Parking Code

A carpark is proposed as part of stage 1. The carpark will not be owned or maintained by Council but will be privately owned and eventually part of Community Association land.

A3-Development of Flood Liable Land

Habitable development is not permitted on flood prone land and further details regarding the bridge are required to be submitted as part of the conditions. See comments under section (b) below regarding flooding.

A5-Subdivision Manual

The application has been assessed against the provisions of the Manual. The proposal includes provisions to satisfy the Manual. Conditions have also been imposed to require compliance with the Manual. Section (b) below provides assessment of key issues and impacts.

A11-Public Notification of Development Proposals

The application was publicly advertised.

A13-Socio-Economic Impact Assessment

See above regarding socio economic impact

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

No relevant prescribed matters.

(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

Geotechnical / Earthworks

Geotechnical Information

The applicants have provided a Geotechnical Report for the development prepared by Australian Soil and Concrete Testing Pty Ltd.

The report has categorised the development site into three separate building areas. The area's being described as;

Area 1 => Located in the south-western portion of the site and on top of a south facing ridge. The building sites are cleared and grassed with the embankment slope along the ridgeline being 35%. The report advises that the ridge is stable and that building sites are a satisfactory distance from the embankment slope.

Area 2 => Located in the south-eastern portion of the site. It is grassed with scattered trees and has a south east facing slope of 20 to 25%. The report advises that there were no signs of slope instability.

Area 3 => This area is located in the northern sector of the development site. The area is grassed with scattered trees. The building envelopes are located on the ridgeline with slopes either side of the ridge ranging up to 20%.

The report has classified the areas as follows;

- Area 1 – Class M : Moderate Reactive**
- Area 2 – Class H : Highly Reactive**
- Area 3 – Class S : Slight Reactive**

The geotechnical report concludes by advising;

“There were no signs of slip or settlement at the three sites investigated and the proposed areas have been assessed as stable and will not be affected by landslip or subsidence when the proposed village is constructed.”

The results presented in the geotechnical report are consistent with site observations noted during a recent site inspection and it is considered that Council can rely on the findings within the body of the report.

In this regard the proposed building areas will be suitable for the construction of residential dwellings.

Landforming

The proposed earthworks across the site must comply with the Subdivision Manual A5, section A5.4.6 – Land forming. Table A5-3 Site regrading acceptance criteria and figure 4.2.2 are of particular relevance.

The applicants have estimated the following preliminary road construction earthworks quantities;

Total fill – 45,000m³ Total cut – 68,000m³ Spoil on site – 20,000m³

Given the size of the proposed development these earthworks are considered to be within an acceptable range.

A review of the proposed earthworks, road long sections and advice from the applicants, indicates that areas of the site requiring cuts or fill of greater than 5m will be less than 10% of the site and that earthworks will be less than 10,000m³ per ha.

Slope analysis

A revised slope analysis plan (sketch 103) and a revised cut and fill plan (sketch 104) has been provided. The slope analysis plan identifies allotment areas where the natural ground slope exceeds 20%. In these areas the applicant has recommended that only pole type homes or similar construction should be allowed. This recommendation is endorsed and should be embodied as a restriction to user in a Section 88b Instrument. A condition has been recommended.

They have also identified specific allotments where it will be difficult to achieve direct vehicle access to the allotments. To provide access to these allotments the applicant proposes to locate the driveway entrance point on the high side of the allotment and then traverse the driveway across the allotment frontage at a grade of 1 in 4 as per the detail provided on Sketch 101. The allotments with difficult access have been nominated on the cross section details provided in sketches 135, 137, 138, 141, 142, 143, 144, 146, 147, 148, 149, 150, 152 and 153.

This is not a desirable situation for a “Greenfield” subdivision however given the topography of the area there appears to be no other solution without undertaken significant bulk earthworks. The extent of the earthworks necessary would not comply with Council’s land forming policy. It is recommended that a restriction to user be imposed on the nominated allotments enforcing the access solution proposed by Cardno. A condition has been recommended.

A review of the long sections details show that cuts and fills are generally within acceptable tolerances. The only exception being along proposed road 9 were two cuts exceed 5.0m and 3.0m respectively. These cuts occur over relatively short lengths and are considered acceptable.

Roads

Road Network / Horizontal Alignment and Vertical Alignment

Conceptual horizontal and vertical road layout plans have been submitted by the applicants. These concept plans are generally consistent with Council standards and are considered satisfactory. Further discussion of this information is provided below.

Road typical cross sections

The applicant has provided preliminary drawings identifying typical road cross sections and a written explanation of the proposed road cross sections which are generally in accordance with Council's standards. These being;

- Neighbourhood connector street – 11m wide pavement within an 18m wide road reserve. This will connect from Kyogle Road to the central village connector.
- Central village connector street – 9m wide pavement within a 17m road reserve. Known as the east west connector street through the village centre.
- Access Street – 7.5m wide pavement within a 14.5m wide road reserve to connect from the central village connector street beyond the western boundary of the site.

Comment

Comprehensive preliminary road long sections, cross sections, intersection details, slope analysis information, cut and fill details and allotment access details for both the public road network (stage 1) and the private road system (future stages) have been submitted.

This information has helped to clarify the extent of cut and fill required for the road network, areas that are not suitable for slab on ground construction (pole homes only), details showing how satisfactory access can be achieved to all proposed allotments and preliminary road cross sections.

Sketch 103 prepared by Cardno identifies area's that are steeper than 20% and nominates that these areas are only suitable for pole home construction and not suitable for slab on ground. This proposal is endorsed and a suitable restriction will be imposed which will only allow pole houses or similar construction in these locations.

A review of the cross sections on sketches 130, 131, 132, 133, 134, 135, 136, 139 and 140 shows that cross fall profile over the footway area do not comply with Council's standard drawings. The profile submitted shows a walkway of approximately 3.0m in width with a cross fall of 5%. This is steeper than the 2.5% standard required by Council and is therefore unacceptable. Furthermore, the cross sections show the batters within the road reserve at slopes of 50% (1 in 2).

Batters with slopes steeper than 25% (1 in 4) cannot be safely mowed by a two wheel drive vehicle. Consequently, Council's Design Specifications require batters within public road reserves to comply with a maximum grade of 25%.

This issue can be resolved by an appropriate condition of consent.

Intersections

The applicants have retained the existing proposed intersection with Kyogle Road but have deleted the proposed eastern bridge across the Tweed River because of potential archaeological constraints and also due to the opinion of DWE that there were too many crossings of the Tweed River.

A condition of consent has been drafted addressing this issue.

Footpaths / Cycleway

The applicants advise that they intend to provide a significant network of pedestrian and bicycle pathways throughout the entire site. Furthermore, they advise that the network will provide easy pedestrian connections between all proposed sites, the village centre and all proposed car park facilities.

Traffic Generation

Comments from the Traffic and Transport and Development Engineers

Kyogle Road is classed as a distributor road in accordance with Councils Road Hierarchy and is also an RTA classified road, which means the RTA must give concurrence to any works within the Kyogle Road reserve.

The function of a distributor road is to carry significant volumes of traffic between centres with a priority for efficient through traffic movement.

This means that intersections should be minimised. I agree with the RTA that only one new intersection should be permitted to service the proposed development however consideration may be given to an additional left out only to facilitate public transport.

A roundabout cannot be supported as proposed because of the high-speed environment and the potential for crashes due to its unexpected presence. Whilst the Traffic Report proposes a speed limit reduction such reduction will not be approved by the RTA unless the reduction complies with the RTA Speed Zoning Policy and this has not been addressed in the Report other than to claim it is essential as the main road passes the proposed Village and Uki has a reduced speed limit. These are not likely to be acceptable reasons as the village allotments have no direct access to Kyogle Rd and Kyogle Rd does not bisect the village as it does in Uki. . If the applicant wishes to pursue such change then an assessment using the above Policy needs to be submitted.

Based on the above a revised intersection layout should be developed that complies with "Austroads Guide to Traffic Engineering Practice Part 5 Intersections" A revised intersection analysis is also required based on only one new intersection with Kyogle Road.

The proposal is expected to generate 4500 vehicles per day of which 70% will pass through Uki. This represents a four fold increase in traffic through the village of Uki. Unfortunately this impact was not addressed in the Traffic Report, yet it is a crucial issue and may generate the need for traffic calming devices within Uki Village. In addition, the Traffic Report does not address the adequacy of the Kyogle Road Pavement (standard and width) and alignment and its ability to absorb the substantial traffic generated by the development.

To address these problems Council undertook the preparation of a S94 plan in 2007 to fund future upgrading works necessary along Kyogle Road. The TRCP contribution plan will apply to any development consents associated with Nightcap Village.

Parking

The applicants propose to provide car parking as follows;

- 235 public car spaces
- 1 space on site for each residential allotment
- 1 space on site for each residential unit
- 1 space on site for each townhouse
- 50 guest spaces on site for the hotel
- 50 guest spaces on site for the convention centre
- 20 guest spaces on site for the backpacker

Stormwater Drainage

Stormwater Quality Management

The applicant has prepared a Stormwater Management Plan to assess and determine the impact that the proposed development will have on the Tweed River.

They have developed a “treatment train” encompassing water sensitive urban design principles to manage runoff quality from the development. The applicants advise as follows:

“All stages will include rainwater tanks for roof areas, buffer strips to treat lot drainage, infiltration trenches to deal with road runoff and proprietary gross pollutant traps to remove litter and debris. All runoff from events of up to the three-month return period will finally filter through bioretention basins before release to the watercourse.”

The applicant advises that MUSIC 3.01 has been used to model the treatment systems and the results demonstrates that the development can proceed without producing an increase in the total annual export of pollutants from the site.

In general, it is agreed that the modelling results show that the treatment train will achieve Council’s water quality objectives in accordance with the Development Design Specifications D7.

Construction Phase

Standard sedimentation and erosion control devices will be used during the construction phase of the development.

Operational Phase

The Stormwater Management Practices proposed for this development are:

- GPT’s on roadways and to intercept flows to bioretention basins
- Vegetated swales to collect runoff from roads
- Rain water tanks for collection and reuse
- Buffer strips to intercept impervious areas on residential lots
- Infiltration systems for the Village Green and Oval
- Bioretention basins for all stages
- Existing water bodies in stage 1

Flooding Issues

The Tweed River traverses the southern portion of the development site. The floodplain in this area is narrow and steep sided. The applicant has provided a flood study and modelling results (using HEC-RAS) to predict peak ARI 100 year flood levels for the Tweed River across the site.

The flood study shows that generally the residential areas of the village will be located on land elevated well above the ARI 100 year flood level for the Tweed River. The exception is the "Village Housing" zone in the south western corner of the site, where filling of the floodplain is proposed to facilitate residential development above the ARI 100 year flood level.

The floodplain mapping shows flood water from the main river channel extending back into minor tributaries within the site, some of which will affect the proposed development. This issue is discussed in more detail in the following stormwater section.

During a Tweed River flood, the development will be isolated from Kyogle Road. This is not considered a significant issue as the village maintains its internal connectivity and the community will still be able to access services on high ground. Kyogle Road is flood susceptible, and road access to Murwillumbah would not be possible in a large flood, even if egress from the development site were possible.

The applicant proposes two "Tourist and Special Uses" zones in the south western corner of the site, which would be isolated from the village by the river during large floods. According to the flood study, these areas would also be inundated during an ARI 100 year flood event. As such, these zones would not be suitable for any habitable purpose, and any commercial/industrial use would need to demonstrate compatibility with the flood risk, without impacting on other development.

The applicant was requested to amend the filling plan and remodel the proposed development, to minimise the potential impacts on flood levels and velocities. The applicant has deleted the eastern bridge crossing of the river, raised the level of the western bridge crossing (to match the level of Kyogle Road for local emergency access), and removed fill in the carpark (this area is now in cut). Limited filling of the village housing lots at the western extent of the site is still proposed.

Based on the amended modelling, the maximum flood level increase for the development is 10mm, due to the village housing fill. This is considered to be insignificant, and will not adversely impact on adjoining land or local flood behaviour.

Of greater concern for the overall validity of the flood modelling is the proposed 1110mm decrease in flood levels immediately upstream of the proposed bridge. The flood study fails to properly discuss the reason for such a significant reduction in flood level. Removal of the low level bridge, removal of fill in the floodplain, and local changes in flood velocities may be able to explain some of the change. It is also noted that the modelled cross section at the bridge, as shown in the flood study, does not correspond with engineering road long sections and fill plans provided elsewhere in the SEE, which indicate the construction of filled abutments in the floodplain. Such abutments have the potential to change the flood flow capacity of the river, therefore affecting flood levels and velocities at the bridge.

Overall the findings of the Flood Study are acceptable at this stage of the development. A more detailed bridge design shall be a requirement of the construction certificate application for the subdivision, to ensure the bridge abutments are designed to minimise adverse impacts on flood behaviour.

The applicants have advised that the proposed eastern bridge providing a second access point across the Tweed River is now deleted. The remaining proposed bridge (from Kyogle Road) which is located in the same position as the existing bridge is to be raised so that the deck level is no less than the pavement level of Kyogle Road immediately adjacent. The deletion of second bridge and the raising of the deck to the same level as Kyogle Road should ensure that the available water way for the Tweed River is not compromised and therefore impacts to surrounding flood levels should be minimal. A flood study modelling the impacts of the revised bridge proposal has been conditioned prior to the issue of the Construction Certificate for the works.

No geotechnical information was provided with the RFI. This information will be requested in a condition of consent prior to the issue of the Construction Certificate.

Stormwater Management

The undulating topography of the development site means that several natural watercourses traverse the site, servicing internal and external stormwater catchments. These watercourses ultimately discharge to the Tweed River.

The conceptual stormwater drainage system for the development utilises the main watercourse through the centre of the site to convey the majority of the urbanised catchment eastward to the Tweed River. Dams along this watercourse will be utilised as detention devices to mitigate post-development increases in stormwater, and bio-retention/wetlands would be constructed to treat runoff from each stormwater catchment prior to discharge to the river. In the urban areas, rainwater tanks would capture roof water, and swales, filter strips and GPTs would convey and treat road and allotment runoff prior to discharge to the wetlands.

A summary of stormwater detention calculations has been provided. They appear to only consider the ARI 100 year storm event, and the time of concentration storm duration. At detailed design stage the applicant will be required to provide calculations covering a range of storm durations and intensities to ensure no significant impact on runoff volumes to the river. This may lead to reconfiguration of some of these storages.

MUSIC modelling results have been provided to demonstrate the efficacy of the proposed water sensitive urban design drainage system and treatment train. Final sizing, type and location of these measures are subject to detailed design. Using Council parameters, modelling results show that the treatment train is capable of meeting Council's water quality objectives for suspended solids and phosphorus removal. Nitrogen loading is higher than the objective, but the modelling demonstrates that a significant reduction in pre-development nitrogen loads will be achieved. This is generally acceptable, in order for the applicant to proceed with detailed design. If further modelling does not achieve Council's objectives, some measures, such as the constructed wetlands, will need to be reconfigured to meet Council's deemed to comply standards.

The concept plan indicates drainage corridors / watercourses through the urban areas to cater for the external catchments, with final layout to be determined during subdivision design. Where these watercourses are also affected by the ARI 100 year flood in the Tweed River, as occurs in the eastern portion of the "Village Lots" zone, sufficient buffering must be allowed so that residential allotments remain above both the 1 in 100 year flood and storm levels.

Road crossings of stormwater and flood flow paths must be designed in later stages of the proposal to have minimal impact on upstream levels, while still providing connectivity throughout the subdivision during large events.

Services/Utilities

Water

A self sustaining water supply is an essential component of the application and the recommendation for conditional approval. The development will not at any stage have access to Council's water supply.

The key elements of the water supply are-

- 150 litres/person/day potable use
- 75 litres/person/day non potable
- Sources from on site household tanks and supplemented by dams and groundwater
- 60 ML dam is proposed to be constructed
- Tanks are to be supplemented by a trickle feed from the dams
- Recycled water for fire fighting and non potable use (toilets and irrigation) is to be stored in a 500KL tank

The concept plan areas for irrigation, storage of treated water and sewage treatment plant and rising main, wet weather storage tanks, high level storage tanks, water pipelines and woodlot water storage area. These areas are shown on land adjacent to the village area land. Water is proposed to be supplied via water tanks and supplemented by dams and ground water extraction. Water supply requirements for the proposed village are indicated as:

Total Water per equivalent person 225 L/day
Potable Water per equiv. person 150 L/day

The balance for toilet flushing and outdoor use is proposed to be provided using treated recycled water. The population for water supply purposes is indicated as 1200 ep. Due to the remoteness of the site, the proposed development is not serviced by Council's Water Supply and water cannot (and will not) be made available from this supply. Therefore the water supply to the proposed development must be self-sustaining in perpetuity.

The proposal by the applicants to provide a potable water supply by treating water stored on site in dams and the supplementary supply of domestic water from roof water tanks is achievable providing technical and long term management issues are resolved. Information submitted now includes the establishment of a surface water supply consisting of a minimum 3 ha catchment and 50ML dam to supplement water supply demand requirements. It is submitted that this supplementary supply will require the installation of a water treatment facility to settle (and coagulate) and filter stored surface water and be an on-demand trickle feed to households where a disinfection process will take place prior to use.

The water supply system design incorporates the applicant's calculations for an adequate supply of potable water having been based on 110L/person/day of water not 150L (it was previously agreed that the base water demand is 225L/person/day and would be made up of 150L from tank supply and 75L from recycled water for toilet flushing and external use) as previously agreed to. The applicant has stated that the reduction is based primarily on the information contained with AS1547.

AS/NZS 1547:2000 is an Australian Standard for the design of domestic on-site sewage management systems. The submitted demand calculations previously submitted and inferred to within this submission utilise typical WASTEWATER FLOW designs in Appendix 4.2D of the Standard. This is the wastewater discharge rate not the water supply demand rate as there is a portion of the water supply that would be removed from the water cycle due to consumption, cooking processes, evaporation, cleaning etc. The Standard is a generic instrument and as such should be considered in conjunction with local behaviour and environs.

Discussions with Council's Water Unit have concluded that a 150L/person/day of potable water is a minimum requirement. This estimation has been based on the existing small villages of Tyalgum and Uki where water supply demand rates are approximately 225L/p/d. These rates are below typical water demands for the urban areas of the Tweed being above 320L/p/d. These small rural village populations are less than 1000 persons each. In addition further consideration has been given to water demand rates experienced during a period where the wider Tweed community were on Level 5 water restrictions. During this period, in an environment of extensive advertising, water conservation education & incentives and implementation of penalty provisions, the demands had only fallen to around 225/p/day.

The demand of 150L/p/d was based upon historic consumption in Tweed Shire villages and is about 50L/p/d less than historic demands recorded throughout the whole water supply system.

The adoption of 110L/p/d is based upon the figures given in AS1547 On-site domestic waste water management. This document is for the case of on-site sewerage management where the individual property owner is responsible for the operation of their own system, generally on rural and rural residential properties. It provides guidance for both on-site roof water tank supplies and reticulated community or bore water supplies. As this development is of an urban nature rather than rural residential, it is considered that individual residents would be much less "water aware" than other users of on-site sewage treatment facilities.

It is therefore considered that 110L/p/d is not an acceptable potable water supply rate and that a minimum of 150L/p/d is required. This has been agreed to by the applicant and is an essential component of the recommendation for conditional approval.

The development also now proposes a surface water collection dam and water treatment plant to provide additional potable water as the most recent modelling has shown only a "70% – 80% efficiency" of supply using tanks alone.

It proposes that a "trickle feed reticulation system" will be provided to top up tanks during periods of extended dry weather.

Roof areas and Tank Sizing

A condition has been recommended nominating minimum tank capacity and minimum roof area for each different use within the Village.

Recycled Water

Conditions have been recommended specifying standards to be met for recycled water.

Supply of Water for Fire Fighting Purposes

The recommendation includes a condition to ensure an appropriate and adequate water supply infrastructure shall be provided for fire-fighting purposes.

Sewer

A self-sustaining sewerage/recycled water system is an essential component of the application and the recommendation for conditional approval.

The key elements of the sewerage system are-

- Maximum ultimate population density of 1,000 persons including employees and persons occupying tourist accommodation
- 1100 equivalent person capacity sewerage treatment plant
- Seven days breakdown capacity
- 20 ML treated effluent dam for wet weather storage fed to irrigation areas (20ha) and open space
- 500 KL recycled water tank fed to households for toilets, gardens and fire fighting.

Wastewater is proposed to be recycled to households for external and toilet use and for use on public open space and disposed of via land irrigation. The proposed development is not serviced by Council's Sewerage Systems and it is too remote to be able to be connected to it. Sewage loading anticipated for the proposed village is 180L/d per per equivalent person.

- The population for sewerage purposes is indicated as 1100 ep.
- Effluent disposal is proposed by a reuse scheme that supplies recycled water for:
 - (a) Toilet flushing and outdoor home uses.
 - (b) Irrigation of public open space and market garden.
 - (c) Irrigation on approximately 20 ha of rural areas.

The applicants propose the construction and operation of a packaged sewage treatment plant that includes biological nutrient removal, ultrafiltration and disinfection in the treatment train to produce recycled water of Grade A+ standard.

As with water reticulation, the provision of a private sewage treatment plant is achievable providing technical and long term management issues are resolved. Conditions have been imposed regarding these issues.

If the whole sewerage system and effluent disposal system is designed such that no overflow from the system whatsoever is possible, no licence under the Protection of the Environment Operations (POEO) Act is required. Having no licence will however mean that any overflow that did occur would be an illegal discharge and may have serious legal and financial ramifications for the Community Association. Designing the total system so that there is no discharge ever, is probably not a practical proposition. Council does require the system to be designed so that there will be a very low risk discharge of raw sewerage, treated or partially treated effluent to the Tweed River either from the entire sewerage system including the collection system, pump stations, pumping mains, treatment plant, storage facilities, irrigation and disposal systems.

There is no mention of licensing the various systems under the Water Industry Competition (WIC) Act. The applicant needs to confirm the need for WIC Act Licences with the Independent Pricing and Regulatory Tribunal (IPART). If no licence under that Act is obtained, Council requires that the design, operation and management of the sewage collection, conveyance, treatment, effluent storage and disposal systems provide certainty that there will be no uncontrolled discharges to the Tweed River, which is part of the catchment of the Tweed Shire's Water Supply.

Electricity

Country Energy has advised that the 11kV network in the vicinity of the above proposed development has capacity to supply the development. Appropriate conditions will address this issue.

Telecommunication

The applicants have notified Telstra of their intent to develop the subject property. No other details have been submitted. A condition of consent will address this issue.

The applicants have indicated they wish to install broadband communications. The application indicates the Village will contain *a range of quality live/work and business premises - especially suited to those engaged in creative, information and design based activities. Those producing high value products for regional, national and global markets.*

In this regard a condition has been imposed requiring the installation of optic fibre conduits.

Flora and Fauna

The site is located in a scenic and relatively remote area of the shire, surrounded by high conservation value areas and National Parks (some kilometres away). The site itself has conservation significance in parts and ecological values of the site have been well-described. Potential ecological impacts have been generally considered and responded to with statements advocating either avoidance of impact, mitigation, amelioration or compensation, however, these need to be conditioned to ensure the intended outcomes are achieved.

Particular issues in relation to the site are:

- The presence of threatened flora species – responded to with a proposed management plan and conservation zones. To be conditioned.
- The presence of threatened fauna species – in particular the Koala – responded to with a proposed Management Plan. To be conditioned.
- The location of the site on the upper headwaters of the Tweed River – above Council's water supply intake and ecologically and hydrogeologically sensitive – thus sensitive to any changes in water quality, velocity and quantity (use and disposal). The immediate riparian area has been considered through a proposed riparian revegetation strategy (to be conditioned), receiving waters water quality parameters (to be conditioned) and hydro-geological impacts (considered by Department of Water and Energy as General Terms of Approval).

Following the Section 34 conference held on site on December 18 2008, the applicant has agreed to prohibit cats and dogs within the development area. A condition is recommended in this regard. They have further amended the Concept Plan to remove any directions to Mebbin National Park through unformed roads. These issues are now satisfactorily addressed.

Prohibition of cats and dogs

A condition prohibiting cats and dogs is recommended including S.88B restrictions and Community Management Statement by-laws.

Riparian buffer and restoration:

The applicant has agreed to extend the riparian buffer to a width of 50m to be rehabilitated either side of river, measured from the top of Tweed River high bank. This amended area has been shown on the Concept Plan and is acceptable. A Conservation Plan is proposed for the riparian buffer and all other areas identified as Environmental Open Space.

Water quality

The applicant agreed to undertake water quality monitoring within Tweed River during construction operations. A draft condition has been provided to this effect.

The applicant has agreed to accept a condition to the effect that existing dams on the site be “off-line” from any stormwater treatment train.

Additional information required

An aquatic habitat/in-stream biota survey is required prior to commencement of works. If Platypus (or other significant fauna) are located, a management plan is required to avoid or mitigate impacts. A draft condition has been provided in this regard.

Bushfire - Asset Protection zones

Bushfire APZ's should be wholly within privately managed land with maintenance being the responsibility of applicant. In this case the responsibility would rest with the community association. A draft condition is provided.

Threatened Species Management Plan

A condition has been imposed requiring amendments to the plan regarding koalas.

Agricultural Buffers

The Village is surrounded by Rural 1(a) zoned land. Buffers are proposed between the Village and the rural land. The majority of the surrounding land is currently owned by the proponent however in the north eastern corner of the Village the site adjoins land owned by others. The proposal includes large lots in this area to have the house sites located away from the adjoining rural land.

Asset Protection Zones

The proposal includes bushfire asset protection zones which will be managed by the community association. Proposed conditions of consent require the provisions of APZ's and their ongoing management.

Visual

The development will result in significant change to the current outlook across the site. The site will be transformed from a rural setting to an urbanized developed site with infrastructure such as roads and carparks, residential and non residential buildings. These are all facets of a village and are consistent with the zoning of the land.

Various components of the proposal will be visible from surrounding locations. This will be mitigated by the topography of the site and vegetation. Complete screening of the development is not possible given access roads into the property and the undulating terrain that is characteristic of the locality.

The Tweed Shire Scenic Landscape 1995 evaluation prepared by Catherine Brouwer to inform the Tweed LEP 2000 rated the Nightcap Range district as having a high scenic quality with very high being the highest. The report provides for scenic management with opportunities listed as residential, nature and rural based recreation and tourism and small industries based on rural and forest assets. The parameters of development are set down as maintaining the natural creek corridor experience through limits on development extent and visibility. It is considered these objectives will be achieved by the 50 metre buffer along the River and existing and proposed vegetation screening.

(c) Suitability of the site for the development

The site contains characteristics such as slope, bushfire prone land, lack of infrastructure such as water and sewer, isolation, proximity to the Tweed River, rural/urban interface and aboriginal heritage which constrain development. The proposal includes measures to manage and mitigate the issues such as buffers, asset protection zones, provision of infrastructure, pole house construction and community title management and funding.

The site is far from being ideal given its relative isolation however an opportunity exists for a community to be developed over time that contains elements of self sustainability.

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

Integrated Referrals

The application is classified as integrated development as approvals are required from the NSW Rural Fire Service and the Department of Water and Energy. The agencies have provided their terms and conditions.

Kyogle Shire Council made a submission raising no concerns.

Public submissions

The application was exhibited for public comment twice on 4 October to 1 November 2006 and from 24 October to 21 November 2007. 364 and 77 Public submissions respectively were received during the exhibition period. The vast majority of the submissions were objections to the proposal.

The key themes of the submissions can be summarised as follows:

- overdevelopment of the site in this location
- water and sewer issues
- increased traffic
- environmental harm and
- unsustainability

A list of the matters raised in the submissions have been summarised below.

Many of the submissions are very critical of the proposal and feel that the proposal is inappropriate and will have a deleterious impact on the environment. These issues have been considered in depth by Council officers and assessment of the proposal since lodgement in 2006, reflecting many of these concerns has resulted in a number of amendments to the application, additional information provided and a suite of conditions formulated to regulate, protect manage and control the development. These conditions will apply to the development as a concept and also to Stage 1 of the development. However, further development applications will be required for future stages and will provide further opportunity to deal with issues which arise in those applications.

The issues raised are all valid concerns and comment regarding them has been provided throughout this report. Whilst the issues are relevant it is considered that the proposal balances the impacts with a genuine attempt to develop a sustainable Village.

It is submitted in the objections that the zoning is inappropriate for such an isolated site however opportunities to rezone the land were not taken as part of the comprehensive Shire wide local environmental plan process in 1987 and 2000.

It is considered that a development that manages its own infrastructure including water and sewerage and has facilities for residents that aren't required to be provided and funded publicly and proposes some employment opportunities is a better option than forty hectares of rural residential development that relies on site septic tanks with no community facilities.

The community that establishes as a result of the development is likely to be different to the community of existing rural villages and hinterland areas however the concept village will provide an identity for the occupants and a sense of place with a small central village hub, sports oval, community uses and a market area.

The matters raised in submissions are listed below. It should be noted that the majority of the issues were raised multiple times.

- Environmental & economic sustainability;
- Loss of native flora & fauna particularly Koalas, water supply
- Increased traffic
- Impact on the environment
- Preservation of the rural aspect of the area
- Bulk and scale
- Inadequate time to respond
- Amenity
- Population increase
- Impact on infrastructure

- No Environmental Impact Study
- Noise pollution
- Impact on infrastructure
- Stormwater pollution and run-off
- Sustainability
- Loss of regional character
- Density
- Loss of koala habitat
- Domestic animals
- Pollution
- Higher incidents of road accidents
- Impact on infrastructure particularly water and waste
- Loss of village atmosphere
- Increase in domestic animals that will kill natural habitat
- Inadequate representation of ratepayers by Council
- Location
- Density in a rural area
- Loss of village lifestyle
- Water sustainability
- Density
- Social Impact
- Loss of tourism
- Increase in feral animal populations
- Loss of rural heritage
- Increase cost to ratepayers for road upgrades
- Natural heritage
- Employment unsustainability
- Global warming
- Land clearing
- The Environment
- Visual amenity
- Cost to ratepayers of increased infrastructure
- Light pollution
- Overdevelopment
- Inadequate Council representation of the public
- Sustainability
- Aboriginal rights
- heritage
- loss of cultural heritage
- Air pollution
- Crime
- Ecological impact
- Spiritual impact
- Farming
- Geopathic stress
- Traffic/cost to ratepayers safety of increased traffic on Kyogle Road.
- Three storey unit developments in rural setting inappropriate.

- Loss of rural heritage
- Rubbish disposal
- Four hundred percent increase in population.
- Four and half thousand extra vehicle movements per
- Inappropriate concept in the setting.
- Inaccurate population assumptions, inaccurate calculations
- Economic impact on other towns.
- Community consultation

(e) Public interest

The key public interest issue relates to the development not relying on Council key infrastructure such as water and sewer services to exist. The proponents and ultimate owners are required to build, maintain, replace, and fund the infrastructure. The competing public interest issue arises with the requirement that the development does not burden the Tweed community by relying on public infrastructure and the responsibilities of Council being satisfied that items such as water and sewer are in place for public health and environmental protection purposes.

The applicants have demonstrated that water and sewer can be engineered to serve the site subject to the strict parameters identified in this assessment report and the proposed conditions of consent. Prospective owners of the Village will be made aware of their required long term ongoing financial commitment to funding the infrastructure.

OPTIONS:

1. Resolve to indicate an intention to approve the development in accordance with the recommendation.
2. Refuse the application for specified reasons.

It should be noted that a Class 1 appeal is currently on foot. The applicants may proceed with the Appeal if they are dissatisfied with the determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant proceeds with the Appeal, Council will incur further legal costs and consultants will need to be engaged to defend the Appeal if the application is refused.

POLICY IMPLICATIONS:

There are no policy implications arising out of the proposal.



CONCLUSION:

The application has been assessed against relevant legislation and on balance the application is recommended to be supported and the DECC notified in accordance with the Tweed LEP 2000.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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P7 [PR-PC] Environmental Assessment Major Project 07-0179, Mixed Use Development, Lots 184 – 187 and 191 – 194 in DP 259164 and Lots 20-23 DP 31208, Tweed Coast Road and Hastings Road, Cabarita

ORIGIN:

Development Assessment

FILE NO: DA2380/690 Pt5

SUMMARY OF REPORT:

The Department of Planning have invited Council to provide a submission on an Environmental Assessment (EA) for a mixed use development at Tweed Coast Road and Hastings Road, Cabarita. The purpose of this report is to seek endorsement from Council to forward a submission to the Department of Planning. The assessment of the EA indicates there are multiple issues which require further information to be provided and that further investigation is required by the Department of Planning.

The subject site is situated within the business centre of Cabarita adjoining commercial and residential development. The site fronts both Tweed Coast Road and Hasting Road.

The proposed development involves a four storey mixed use development comprising of:

- 40 residential units (16 x 2 bedroom units and 24 x 1 bedroom units)
- A supermarket (2375m²), retail shops (1060m²) and kiosk (90m²)
- Public forecourt
- Basement car parking

In terms of broader strategic planning, the subject proposal is consistent with Council's adopted Retail Policy (resolved at Council's meeting of 16 November 2005), and responds to the need for a new major supermarket facility in this part of the Tweed Coast. However, there are a number of concerns with the details of the current plans of this proposal for which Council officers have been seeking to resolve with the proponent.

One of the main concerns is the proposal is inconsistent with the Tweed Local Environmental Plan 2000 (TLEP), in that the service laneway (as identified within Clause 38 of the TLEP) is not satisfactorily incorporated into the proposal. The development's footprint essentially fragments the laneway restricting the intended servicing function. Subsequently vehicular access to surrounding allotments will inevitably be restricted to Hastings Road. Vehicular access to the site is proposed directly from Hastings Road. The Tweed Development Control Plan (DCP) does not permit this as access is required via the service laneway.

Several other issues require further information and consultation relating to the sewer relocation, car parking shortfall and on-site vehicular manoeuvrability, stormwater management, streetscape works and landscaping, number of storeys proposed and waste management.

It is recommended through this report that a submission detailing these considerations should be forwarded to the Department of Planning prior to any determination being made.

RECOMMENDATION:

That the matters discussed in this report relating to the Environmental Assessment of Major Project 07-0179 relating to Lots 184-187 and 191-194 in DP 259164 and Lots 20-23 DP 31208, Tweed Coast Road and Hastings Road, Cabarita be endorsed by Council and forwarded to the Department of Planning as a submission.

REPORT:

Location: Lots 184 – 187 and 191 – 194 in DP 259164 and Lots 20-23 DP 31208,
Tweed Coast Road and Hastings Road, Cabarita
Zoning: 3(b) General Business

BACKGROUND:

The subject site is situated within the business centre of Cabarita adjoining commercial and residential development. The site fronts both Tweed Coast Road and Hastings Road encompassing 12 allotments.

In terms of broader strategic planning, the subject proposal is consistent with Council's adopted Retail Policy (resolved at Council's meeting of 16 November 2005), and responds to the need for a new major supermarket facility in this part of the Tweed Coast. However, there are a number of concerns with the details of the current plans of this proposal for which Council officers have been seeking to resolve with the proponent.

The proposed development involves a four storey mixed use development comprising of:

- 40 residential units (16 x 2 bedroom units and 24 x 1 bedroom units)
- A supermarket (2375m²), retail shops (1060m²) and kiosk (90m²)
- Public forecourt
- Basement car parking for 204 vehicles

The proposal does not incorporate a service laneway as identified within Clause 38 of the Tweed Local Environmental Plan 2000. The laneway road corridor is identified to run parallel between Tweed Coast Road and Hastings Road starting at Rosewood Ave to the Council car park site in Hastings Road and is maintained to the development site with a new section of lane through the development site onto Hastings Road. The developments' footprint covers some of the area intended for the service lane, essentially fragmenting laneway access to the site's north and south.

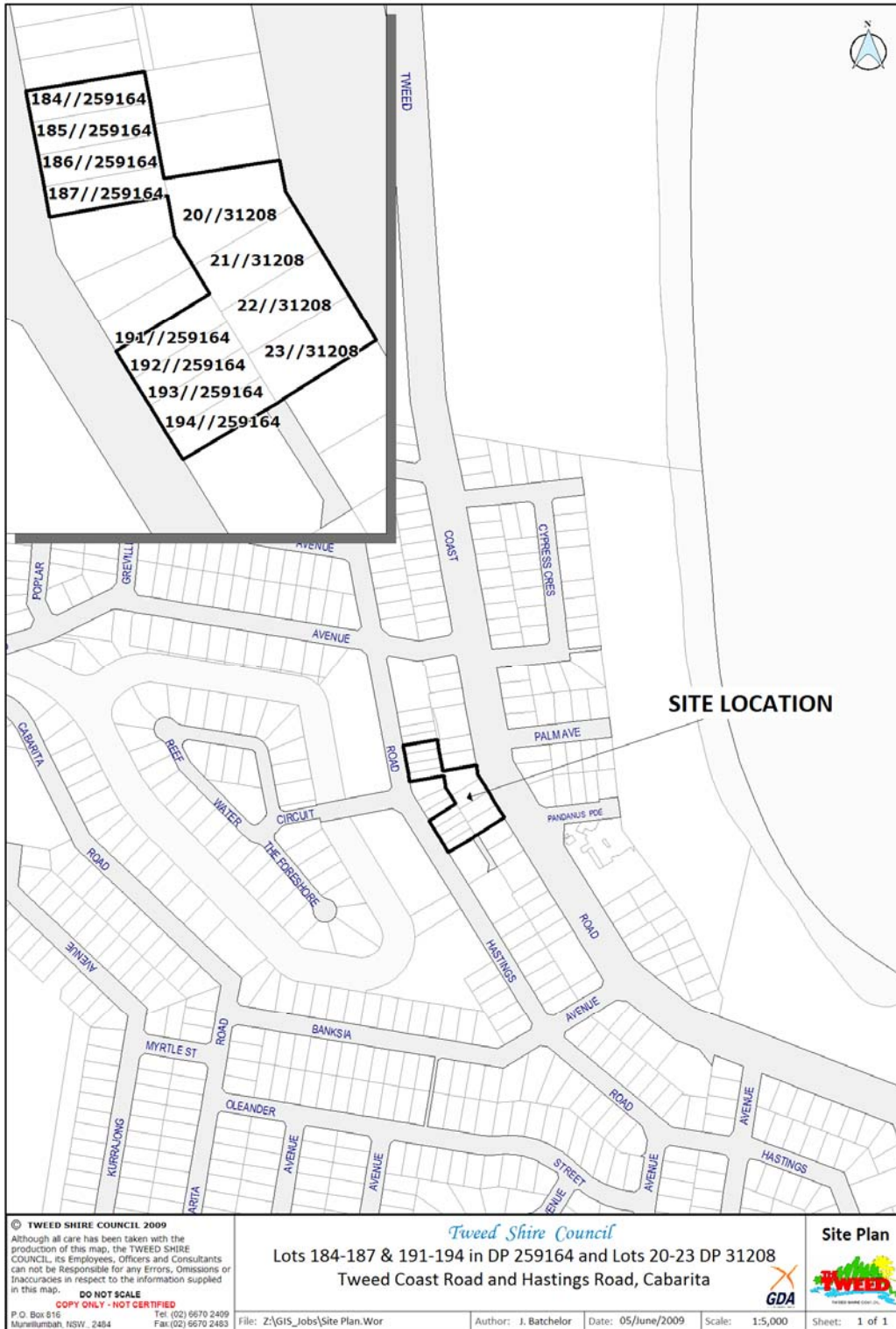
The development is likely to result in future inconsistency with the Tweed DCP for the three lots in between the subject site. Should the laneway not extend to serve these lots their vehicular access will inevitably be from Hastings Road which is not permitted as per Tweed DCP Section B19 - Bogangar/Cabarita Beach Locality Plan. The laneway may be relocated wholly within these sites as an alternative however the appropriate landowners must be consulted with prior to the Department adopting this option. It is noted the proposed development also seeks vehicular access directly from Hastings Road.

Council staff have met with the applicant on several occasions to discuss in particular the service laneway issue. This matter has also been discussed with the Department of Planning.

Issues relating to the proposal's sewer relocation, car parking shortfall and on-site vehicular manoeuvrability, stormwater management, streetscape works and waste management require further information to be submitted by the applicant.



SITE DIAGRAM:



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Tweed Shire Council
 Lots 184-187 & 191-194 in DP 259164 and Lots 20-23 DP 31208
 Tweed Coast Road and Hastings Road, Cabarita

Site Plan



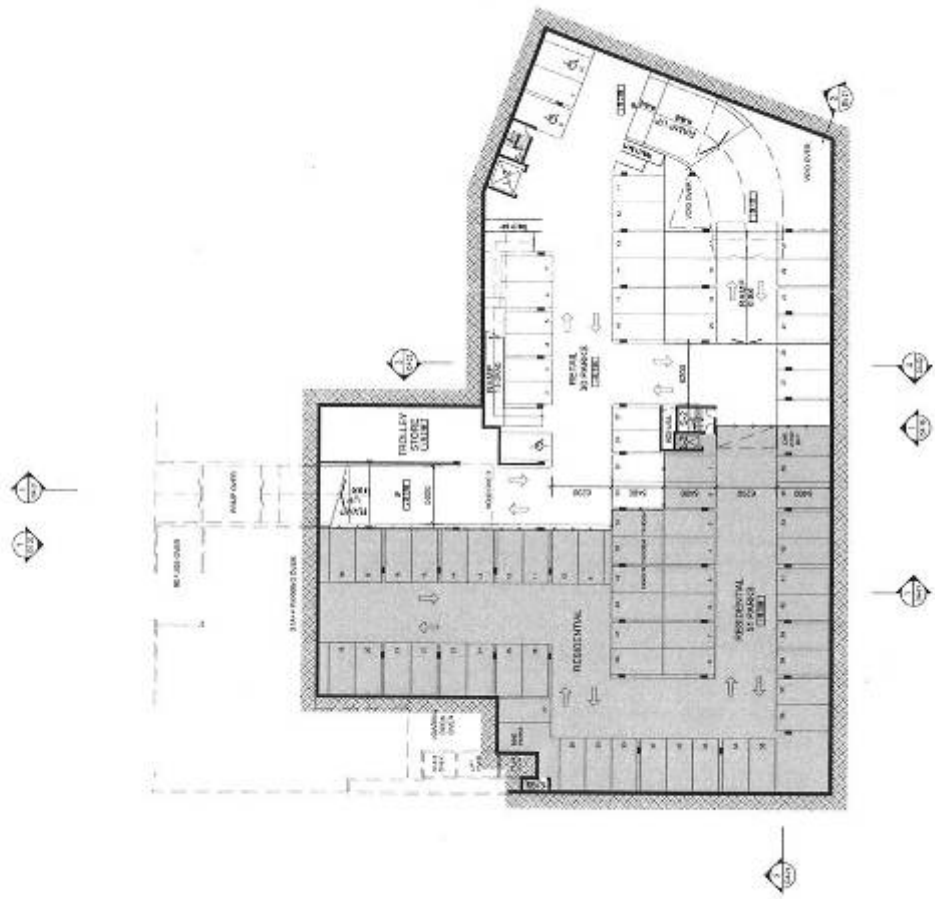
File: Z:\GIS_Jobs\Site Plan.Wor Author: J. Batchelor Date: 05/June/2009 Scale: 1:5,000 Sheet: 1 of 1




CABARITA DEVELOPMENT | Perspectives

24.02.09 | Dev. Application | DA-24 | A

STOCKWELL
DESIGN AND CONSTRUCTION
117-200/2001 | 117-200/2001 | 117-200/2001





 CABARITA DEVELOPMENT - Basement Lower Plan

 1:400 @ A3 28.12.09 Des. Approval (Date) A

STOCKWELL

 ARCHITECTS

 147 BAY ST.

 SYDNEY NSW 2000

 PH: (02) 9232 3333

 WWW.STOCKWELL.COM.AU



1. GLASS BALUSTRADE
2. WEATHERBOARD
3. JAMES HARDIE "LINEAR"
4. ALUM WINDOVS & LOUVRES - SILVER ANODISED FRAMES & CLEAR GLAZING
5. BASSWOOD & MCDONNELL COLOURED BATTENS
6. COLOUR BACK GLAZING
7. COING RENDER
8. COING RENDER
9. ZINC CLADDING
10. STAINLESS STEEL WINDOW SCREENS
11. VENTILATION "MYSAN" SCREEN - COORDINATE WITH "WHITE"
12. SH-CHIP FRONT WINDOWS - CLEAR COAT TIMBER FRAMES & CLEAR GLAZING
13. CERAMIC TILE (200x200) - BEIGE GLOSS FINISH
14. SHOPFRONT FEATURE FRAME - CORTEN RUSTIC PREWEATHERED STEEL SHEET
15. FLY SCREENS
16. FLY SCREENS
17. PERIMETER SCREENING - CULLIX POWDERCOAT "WHITE"
18. ALUMINIUM PERGOLA
19. ALUMINIUM AWNING - CULLIX POWDERCOAT "WHITE"
20. ALUMINIUM AWNING - METAL POWDERCOAT "WHITE"
21. COLOURBOND POWDERCOAT - "SLIP WET"

SCALE: 1:100

DATE: 15/06/09

PROJECT: CABARITA DEVELOPMENT

CLIENT: CABARITA DEVELOPMENT

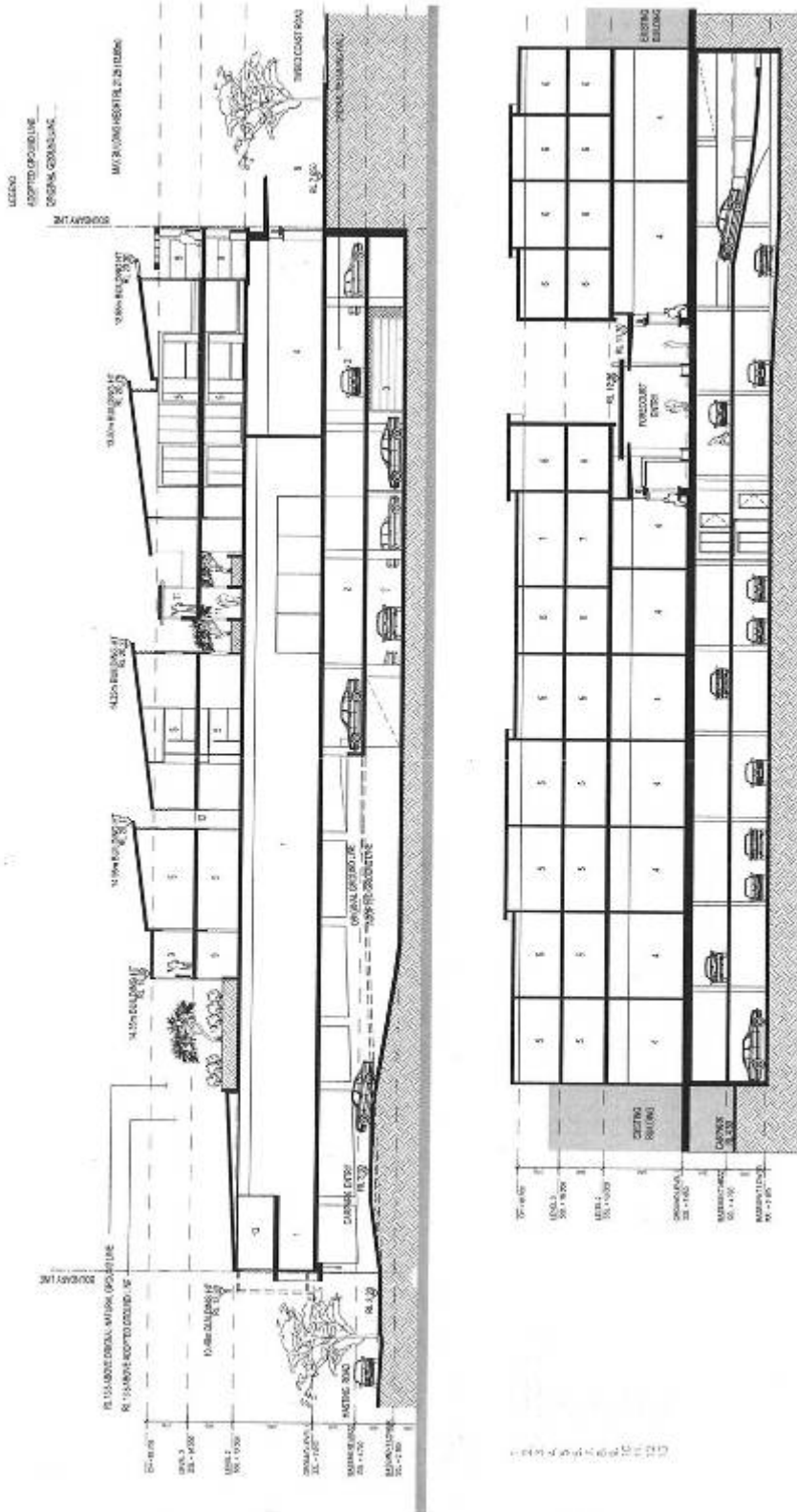
ARCHITECT: STOCKWELL ARCHITECTS

1/17/2009/09, 1/17/2009/09

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 ARCHITECTS
 1/17/2009/09, 1/17/2009/09

CABARITA DEVELOPMENT | Hasting Road Elevation

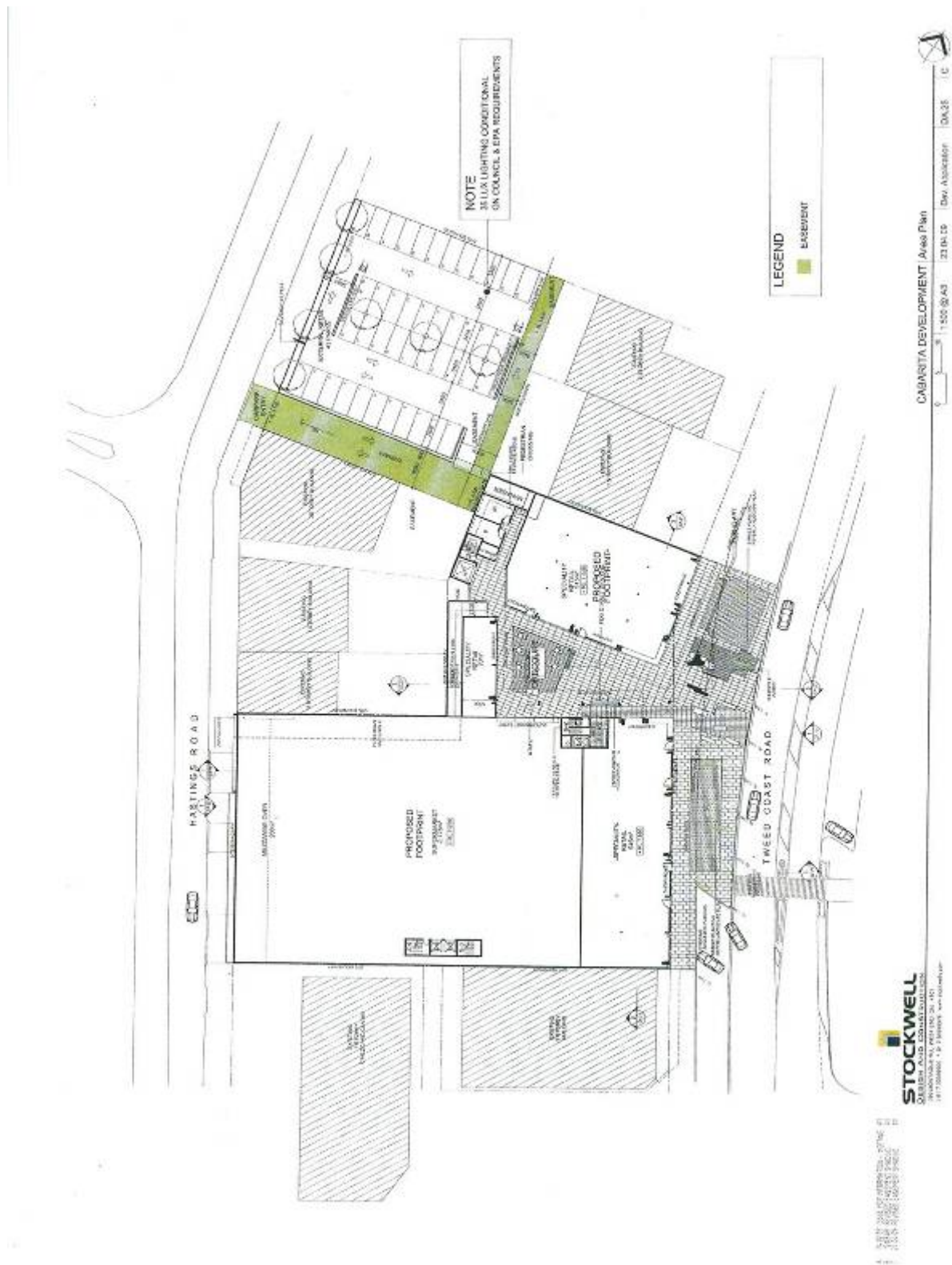
DATE: 15/06/09 | DRAWING: 04-20 | SCALE: 1:100



CABARRITA DEVELOPMENT Sections 8

11-250 & 231 (17-24-20) Dev. Application (CA-2) 13

STOCKWELL
 220 BROADWAY, AUCKLAND, NEW ZEALAND
 TEL: 09 308 6600 FAX: 09 308 6601
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LEGEND

	COASTAL PLANTING
	COASTAL NATIVE TREE
	COASTAL SHRUB
	COASTAL GRASS
	COASTAL PALM
	WATER PLANT
	HEDGE
	CLIPPING PLANT
	GROUNDCOVER
	MULCHING
	TURF
	ROAD DRAINS
	ROAD PAVEMENT



**JEREMY
FERRER
LANDSCAPE
ARCHITECT**

SCALE: 1:500 (1:1)
DATE: 2009.02.23
DRAWING: 2009.02.23
SHEET: 1/1

CABARITA DEVELOPMENT - Landscape Concept

The Department of Planning have invited Council to provide a submission regarding the EA. The following matters have been identified as being of importance to include in any submission to the Department.

Planning Comment:

Tweed Council's Adopted Retail Strategy Position

At its meeting of 16 November 2005, Council (The Administrators) adopted a policy position on a consultant's Draft Retail Strategy Report. The subject proposal is considered to be generally consistent with the following elements of this policy position:

1. *The character of existing towns and villages and the retail facilities they already have be protected.*

The development will result in a positive change of character within the central business district of Cabarita. The development will assist to reinforce this precinct as the central commercial precinct.

2. *Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.*

The proposal is not an expanse of the Village, and will not threaten or fracture other surrounding centres.

3. *Reinforce Tweed Heads south as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.*

The proposal is anticipated to comprise of a smaller style supermarket and several specialty shops on the ground floor. The proposal will not detract from or be a major competitor to Tweed Heads south shopping district.

4. *Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.*

The proposal enhances the coastal environment through the use of high quality design and finishes. The proposal will compliment the surrounding existing development. The proposal will contribute to an active town centre environment.

5. *Limit the scale of new large scale retail centres in the coastal region to a level which caters for the majority of chore type shopping needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre through discouraging vehicle use and encouraging walking and cycling.*

Whilst the proposal is not considered to large scale retail centre, it is anticipated to cater for the community's chore shopping needs. Due to its location the site is highly accessible, it is anticipated residents within the close proximity will walk or cycle to the development.

6. *Council does not support the establishment of another district retail shopping centre.*

The proposal does not comprise of a district retail shopping centre.

7. *The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.*

Section B19 - Bogangar/Cabarita Beach Locality Plan has since been incorporated into the Tweed DCP. The proposal is generally consistent with the requirements of this section. The proposal enhances the coastal environment through the use of high quality urban design. The development integrates commercial and residential development. The proposal will contribute to an active town centre environment.

Tweed Local Environmental Plan 2000

1. The proposal does not incorporate a satisfactory future road corridor as identified within Clause 38 of the Tweed LEP. The corridor is identified to run parallel between Tweed Coast Road and Hastings Road starting at Rosewood Ave and continuing to the Council car park site in Hastings Road.

The intention of the proposed laneway is to develop a service laneway providing access for car parking facilities and service vehicles to the rear of properties fronting Tweed Coast Road and Hastings Road.

The laneway provides a desirable planning outcome as it enables the servicing of developments out of the public view and enables pedestrian movements along the streets without interferences from vehicles.

Clause 38 of the TLEP 2000 requires consideration of the effect of development on the future alignment of the road corridor. The development will essentially fragment the laneway as its footprint is proposed to extend over the area intended for the laneway. The development will restrict the continuation of the laneway to the south of the site and restrict its operation to the north.

2. The development is proposed to be four storeys and the TLEP 2000 identifies the site as being a three storey limitation.

Tweed Development Control Plan

1. The proposed development is inconsistent with the Tweed DCP Section B19 - Bogangar/Cabarita Beach Locality Plan. Should the laneway not extend to serve No. 84, 86 and 88 Hastings Road, their direct vehicular access will inevitably be from Hastings Road which is not permitted as per the DCP. It is noted the proposed development's vehicular access is proposed directly from Hastings Road.
2. Section B19 of the Tweed DCP states '*Lots situated on the western side of Tweed Coast Road will be accessed via the Laneway situated between Tweed Coast Road and Hastings Road.*' Should access for the proposal be granted via Hastings Road as opposed to the laneway, it is considered imperative that the development's treatment along Hastings Road is to a pedestrian scale and attention is paid to minimising the vehicular-pedestrian conflict. In addition, a condition of consent should be included requiring Council approval of the final detailed screening treatment (including colour and material board) along Hastings Road prior to issue of a Construction Certificate.
3. An objective of Section B19 of the Tweed DCP states '*Strengthen the village centre through high quality urban design and streetscape improvements.*' It is noted that the application involves streetscape works however defers final design to a later stage, in consultation with Council. It is requested that a condition be imposed on any consent issued that a streetscape and landscaping plan be approved by Council prior to the issue of a Construction Certificate. This matter is discussed in further detail within the streetscape section of this report.
4. It is noted that the application does not address all relevant and applicable areas of Section B19 of the Tweed DCP. The applicant should be requested to provide a full assessment of the application against the Tweed DCP.

Design Considerations

1. The development could be improved with regards to State Environmental Planning Policy No. 65 Design Quality Guidelines. The number of units being serviced per lift could be reduced. The natural ventilation and sun exposure of the units could also be improved. The single aspect nature of the design contributes towards reduced natural ventilation and access to natural daylight for a number of units. It is desirable that the Department investigate further layout options to improve the amenity levels afforded to units throughout the development.
2. The provision of upper storey communal space/s, for example a roof terrace, communal courtyard areas and the like could be incorporated into the development's design.
3. The unit type mix accommodates only 1 and 2 bedroom units. It would be considered advantageous to include a small number of larger 3 bedroom family units. Opportunity exists for the expansion of unit terraces on Level 2 fronting Hastings Road to potentially achieve this objective. In addition, the inclusion of at least one unit which can be adapted for disabled access is also recommended.

4. The applicant is strongly encouraged to improve permeability and legibility of the site by creating improved through site link/s.

Engineering Comment:

(Please refer to Attachment 1 for supporting diagrams and maps that identify the main future laneway and car parking and access issues related to the current proposal).

Future Laneway

1. As previously discussed, the Tweed LEP 2000 identifies a service laneway road corridor parallel to the Tweed Coast Road and Hastings Road.

The laneway provides a desirable planning outcome as it allows the primary frontages of the properties to the Tweed Coast Road to be designed without driveway penetrations across the pedestrian footpaths at regular intervals which detracts from the amenity of the CBD and is a safety concern for pedestrians.

Portions of the proposed laneway are already dedicated in compliance with the TLEP 2000. The proposed mixed use development has been designed so that the car park and service vehicle access is from Hastings Road.

2. As discussed the proposal is likely to result in an inconsistency with Section B19 of the Tweed DCP. The Section states that properties fronting The Tweed Coast Road and Hastings Road will not have direct vehicular access to these properties which are planned to be serviced from the proposed central laneway shown in the TLEP 2000. Whilst this restriction is supported in terms of traffic and pedestrian management along The Tweed Coast Road and should be enforced, it is not considered essential for properties fronting Hastings Road. In this regard 'controlled' access to lots is not seen as a traffic problem provided the driveways are sufficiently spaced and not provided at every lot.
3. The implications of Council permitting a change from the TLEP 2000 that reduces the development potential on Lots 188, 189, 190 DP259164 should be further investigated or an agreement from the owners of these properties should be obtained. If this aspect can be resolved, and with some modification of the access easement proposed to accommodate truck turning paths, the northern section of the laneway as proposed may be acceptable.
4. The proposed discontinuation of the laneway to the southern Council car park site is more problematic. Council approved a mixed use building on SP 77616 (No 47 Tweed Coast Road) which has all its vehicular including service vehicle access from the lane. This was required on the basis that the laneway corridor would continue to be acquired. The proposed development cuts the proposed laneway at the common boundary of this existing development and the proposed development leaving the constructed section of the laneway to terminate with no turn area for service vehicles to utilise to exit the laneway.

The applicant was requested to provide a continuation of the laneway westward along the southern boundary of the subject site to Hastings Road to enable the laneway to continue to function or, to investigate the impact of the laneway in consultation with the owners of SP 77616 Tweed Coast Road as to how service trucks could utilise the basement car park to turn so they could exit via the laneway on a forward direction. The applicant advised a redesign is not possible, no advice regarding negotiations with the owners of SP 77616 has been received.

The applicant's suggested solution was for the trucks to reverse back to the Council car park site and use the Council land to turn to exit back onto Hastings Road. This is unacceptable for safety reasons as reversing trucks along a laneway whilst cars are accessing two private car parks and Councils car park. Furthermore it would restrict Councils development potential on the Council land by sacrificing public land for a turnaround area that is not required if the TLEP 2000 laneway was enforced. It should also be noted a design for the public Council car park has already been completed. This is seen as the most critical issue, which is not addressed within the EA.

The northern section of the proposed public laneway can remain functional should the proposal be constructed, subject to the owners of Lots 188, 189, 190 DP259164 providing written agreement to relocate the laneway on their properties or legal advice is obtained stating Council has no liability for impact of such relocation.

The issue with the southern section of the laneway, which is constructed, in regards to service vehicle access/egress to Lot 5 DP1102016 Tweed Coast Road could be resolved if the applicant obtains an agreement from the owner stating it is possible for the type and size of vehicle servicing Lot 5 DP1102016 to utilise the basement carpark area to make a three point turn to egress the site in a forward direction. The development potential of Lot 1 DP831592 Tweed Coast Road is also affected.

The applicant should seek agreement from the affected property owners as discussed above. Whilst the development appears to have some planning merit, it is recommended that the Department of Planning staff contact the affected property owners identified in this report seeking their written acceptance of the impacts on their properties.

Car Parking and Access

1. The proposed car park access to the proposed development off Hastings Road is considered acceptable provided the access to the loading bay is made to be inaccessible to semi trailer trucks, unless the loading bay is upgraded to cater for such vehicles. Semi trailers manoeuvring on the public road reversing onto the site is not acceptable. It is recommended that 'physical barrier' options such as balustrades and mature landscaping be constructed along this frontage within Hastings Road to ensure this cannot occur.
2. It is noted that the proposed access into the ground level car park and upper level car park of the development are located close to the existing intersection of Hastings Road and Reef Water Circuit.

The applicant is asked to demonstrate that the two proposed access points into the car park do not have any impact on the intersection of Hastings Road and Reef Water Circuit. Detail of any proposed traffic management due to the additional traffic and access points on Hastings Road is to be provided to Council.

3. The proposal provides on-site parking for 194 vehicles and 2 HRV spaces. The applicant is currently short 56 car parking spaces and 3 HRV spaces (this includes the 20% reduction for the commercial component as specified in section 2.4.1 of the DCP Section A2).

The shortfall in car parking numbers is considered significant and it is recommended the applicant provide the required car parking numbers to Council's standards. Further details regarding calculations can be forwarded to the Department under separate cover.

4. Due to insufficient car parking provided, the seven small car parking spaces within the retail parking area are not supported.
5. It is recommended that the 6 tandem parking spaces within the residential parking area are allocated to units in the strata plan to avoid future parking problems.
6. The applicant should demonstrate that the existing accesses to adjoining Lot 2 DP 772172 (2 storey brick dwelling) and Lot 1 DP 772172 (2 storey concrete rendered units) are unaffected or otherwise by the proposed development. It is noted that Lot 2 DP 772172 does not currently benefit from the existing 3m right of carriageway.

Manoeuvring Issues

1. The proposed development has the following problems with traffic manoeuvrability;
 - Turning templates show that vehicles turning into the ground level car park are turning into one way on coming traffic.
 - Turning templates show vehicles turning left from the ground level car park to the upper level basement car park are turning into on coming traffic from the access ramp. If the ground level car park is full, vehicles will make a left turn into the upper level basement car park for parking spaces.

An amended layout is required to provide a safe manoeuvrability in the car parks, with turning templates to demonstrate compliance.

Heavy Vehicle Loading Bay

- The 12.5m heavy vehicle shown on plan no. DA13 revision F prepared by Stockwell does not demonstrate adequately that the vehicle can manoeuvre on site and enter and leave the site in a forward direction.

The applicant is requested to clearly demonstrate with turning templates for a 12.5m heavy vehicle that the vehicle can adequately manoeuvre on site and enter and leave the site in a forward direction. The detail is to be provided at a maximum scale of 1:200.

Garbage Truck

- Turning templates for a garbage truck are to be provided to demonstrate that the vehicles enter and leave the site in a forward direction.

Heavy Vehicles

- Woolworth's supermarkets generally have a standard size delivery truck which services all stores and this is usually a semi trailer. It is noted that correspondence has been provided by Woolworths stating a smaller vehicle of 12.5m in length will service the development. It is noted in the correspondence from Woolworths that metropolitan stores have been mentioned only. Concern is raised that a semi trailer will still use Hastings Road for deliveries.

Pedestrians / Footpaths / Cycleway

1. A footpath is required along the frontage of the site on both Tweed Coast Road and Hastings Road.

Sewer Relocation

1. The proposed sewer relocation is problematic as the report makes the assertion that the sewer can be diverted along the wall of the basement to another sewer in Hastings Road. No sketch plans showing pipe grades or the route have been included in the EA. The report warns that there may be a clash with existing services. Within Hastings Road, there is a 450 mm diameter trunk water main, a 250 mm diameter distribution main and a 100 mm reticulation main, as well as a 375 mm diameter stormwater main. The matter of temporary servicing of the upstream properties during construction has also not been addressed.

The applicant is required to submit an application under Section 68 for sewerage works for the relocation of the sewer main and provide an appropriate easement to drain sewage within the building.

However, approval of the development should be dependent upon the applicant demonstrating in detail that the sewer can be satisfactorily relocated.

Flooding Issues

1. The applicant was required to amend the basement carparking to provide 500mm freeboard above design flood level (RL 3.4m AHD) for the inflow of water, as per DCP Section A3 - Development of Flood Liable Land.

The applicant has now graded the basement driveway to bund the lower level to RL 3.9m AHD, as required, having abandoned previous options for installing hydraulic flood protection devices, which are generally not acceptable.

Provided other openings are similarly protected, particularly the stairwell at the southern end of the ground floor, the development is considered to comply with the flooding DCP. Conditions of consent can be applied in this regard.

Section 4.8.4 of the EA provides a Flood Access and Evacuation Plan for the site. High land in Cabarita Beach reduces the need to evacuate, even in the probable maximum flood. It is noted that the plan directs residents to drive along Clothiers Creek Road to the Pacific Motorway when evacuating. The portion of Clothiers Creek Road adjacent to the Motorway is highly flood prone, and one of the first local roads to be closed in a flood event. As such, the plan should be amended to direct people wishing to access the Motorway to use Tweed Coast Road and try to rejoin the Motorway at Chinderah or Pottsville.

Stormwater Management

1. The applicant was previously requested to undertake a detailed engineering assessment of the capacity of the downstream drainage network to accept post-development flows from the development. If the public system was found to be insufficient, the developer must provide upgrades to the receiving system to cater for the additional demand, and/or provide an on site stormwater detention system (OSD) to limit site discharges to a maximum of 200L/s/ha for the Q100 storm. A Stormwater Impact Assessment has been provided in Appendix R of the EA.

There are a number of concerns raised regarding this impact assessment:

- a. Pre-development impervious areas appear to be over-estimated at 70%, which understates the impact of the development.
- b. Based on Council's GIS, the catchments to which the development will discharge are incorrect. The site is serviced by two separate piped systems in Hastings Rd. Lots 20-23 and Lots 184-187 discharge to the northern system, and Lots 191-194 discharge to the southern system. The Stormwater report assesses Lots 20-23 and 191-194 as a single catchment, and Lots 184-187 as another catchment as the basis for comparing pre and post development flows, which is incorrect.
- c. There are no supporting calculations for the assessment of existing capacity of the street drainage systems, and only one of the street drainage systems has been considered.
- d. No water sensitive urban design (WSUD) measures have been incorporated into the development to try and mitigate the impacts of the development.
- e. There is no consideration of the 450mm diameter public stormwater main that traverses the site through Lots 184-185.

- f. Engineering drawings were not submitted with the EA.

In lieu of an amended stormwater management plan, conditions of consent shall be recommended for the provision of on site detention of stormwater (OSD), to limit peak discharges to 200L/s/ha for the 100 year ARI intensity storm. If the Department of Planning request a revised SWMP, which is Council's preferred approach, it should be forwarded for Council officer's comments.

According to the report, stormwater treatment devices will be provided for basement and driveway catchments, as required by Council standards, with trade waste areas separate.

Erosion sediment controls rely on installation of barriers and other devices. Management of basement stormwater/ground water will be a central concern for the development.

Recreation Services and Community and Cultural Services Comment:

Streetscape

1. Tweed Shire Council is currently in the process of producing a 'Streetscape Masterplan' for the centre of Cabarita which incorporates the subject site. It is estimated the Streetscape Masterplan will be completed within six months including the exhibition period. The proposal and all streetscape works including street tree location and species type, alfresco dining, paving finishes, furniture suite and the like must comply with Tweed Shire Council proposed streetscape masterplan. It is noted this has been discussed with the applicant and Department of Planning.
 - There is to be no advertising signage on the footpath within the road reserve. Public art is acceptable provided consultation with Council occurs.
 - Underground power is encouraged as Council is proposing to install conduit underground for all future developers to utilise.
 - The existing Telstra phone box will need to be relocated to accommodate the development, final location will be determined within the masterplan.
 - Trees planted within the external car park are to be on a 1:6 ratio (1 tree:6 bays) to provide natural shade.
 - To discourage the use of double B trucks on-site it is recommended that centre median planting along Hasting Street in isolated areas is provided to prevent a reversing manoeuvre, but still allowing pedestrian access across the Street.
 - A pedestrian pathway exits along Hasting Street (on the Eastern side) this pathway must be shown on any plans submitted
 - Hastings Street is to have trees planted along the development length within the road reserve at approximately 8 metre centres.

Building Comment:

1. Council's Building Services Unit raised no objection regarding the proposal subject to conditions of consent (refer to attachment for draft conditions of consent).

Waste Management Comment:

1. Insufficient information is provided within the EA pertaining to waste management for the proposed development. Further information in the form of a waste management plan should be requested from the applicant. Further details may be provided to the Department upon request.

Environment and Health Service Comment:**Contamination**

1. The Applicant has submitted a *Limited Environmental Site Assessment, Service Station, 39-45 Tweed Coast Rd, CABARITA NSW*, dated March 2008 and provided comment as above. The Environment Health Unit has not undertaken an assessment to establish the adequacy of the report however:
 - Any assessment, remediation, validation and audit of a contaminated site shall be undertaken in accordance with the *Guidelines for Consultants Reporting on Contaminated Sites* (NSW EPA 1997) and relevant guidelines and standards.
 - It should be noted that dewatering will be required during construction and the quality of ground water discharged needs to be addressed.
 - A Site Audit Statement for the whole of the site, including both soil and groundwater assessments, is required to be submitted prior to the release of any construction certificate. The Statement shall demonstrate that the site has been remediated to a standard that is suitable for the proposed land use, and is not harmful to human health or the environment. The Statement shall be provided by a site auditor accredited under the provisions of the *Contaminated Land Management Act 1997* and be in accordance with the relevant Department of Environment and Climate Change guidelines.

The Draft Statement of Commitment referring to demolition of the existing structures onsite appear to be irrelevant as the application is not seeking approval for demolition works but is to be subject of a separate application.

Acid Sulfate Soils

1. The Applicant has submitted an *Acid Sulfate Soil Investigation (207-7864)* prepared by Soils Survey dated Jan 2008. The TSC Environment Health Unit has not undertaken an assessment to establish the adequacy of the report however submits:

- The report is based on the understanding that a multilevel building with single basement is proposed. Earthworks are understood to consist of excavations of up to 5.0m for the proposed carparks, tapering to no excavations on the western borders. This does not appear to reflect the proposed submission.
- The report states that field investigations were not carried out in accordance with the ASSMACC ASS Manual nor AS 1726-1993 Geotechnical Site Investigations.

Dewatering

The applicant has submitted an Acid Sulfate Soil Investigation Report and Council's Acid Sulfate Soil Planning maps indicate that the site is located in an area identified as Class 3. An Acid Sulfate Soils Management Plan and Dewatering Management Plan have been prepared in accordance with Council's requirements and the EPA guidelines. A copy of the management plans are attached for consideration.

Appendix M – Acid Sulfate Soils Report

This development proposal seeks approval under the Water Management Act 2000 to dewater the site during the construction phase of the development pursuant to Section 91(1) of the Act.

Comment

The Applicant has submitted an *Acid Sulfate Soil Investigation (207-7864)* prepared by Soils Survey dated Jan 2008. The Dewatering Management Plan is embedded within that report. The Plan is not in accordance with Council's requirements and therefore submits:

- No dewatering shall be permitted on-site without prior written approval from the General Manager, or his delegate, of Tweed Shire Council. Any submission for approval shall include a Dewatering Management Plan and accompanied by a copy of the licence issued by the Department of Water and Energy for such activity. The Dewatering Management Plan shall include but not be limited to:
 - (i) A site plan drawn to scale which indicates the extent of the excavation area and estimated zone of influence of the dewatering activity relative to any adjoining buildings together with an assessment of any impacts likely to occur to any adjoining buildings as a result of the dewatering activities.
 - (ii) The location to be indicated on the site plan of the area that will be utilised for the positioning of any treatment tank or sedimentation pond on the site including any reserve area to be used for such purpose in the event of the need for additional treatment facilities to be incorporated on the site.
 - (iii) Details of the proposed method of mechanical aeration to be used in the event that it is necessary to aerate the groundwater to achieve an acceptable Dissolved Oxygen level prior to the offsite discharge of groundwater and where this will be incorporated on the site.

- (iv) The provision of written advice from the operator of any on site groundwater treatment system stating that the system to be used will be able to treat the groundwater to the required treatment level prior to discharge. Note. Particular attention is to be given to achieving the required detention times prior to discharge of the groundwater. Advice that the system is simply capable of achieving the necessary treatment will not be acceptable

The applicant shall arrange for a site inspection to be carried out with Council's Authorised Officer and all representatives involved in the dewatering activity including consultants and personnel responsible under any Dewatering Management Plan approved by Council's General Manager or delegate. Such site inspection shall be arranged and carried out prior to the commencement of any offsite dewatering activity occurring.

Council's Authorised Officer shall be advised within 24 hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

Construction Noise/Dust Matters

Draft Statement of Commitments includes:

Construction of the Development

- Detailed construction management and geotechnical assessments will be undertaken within the detailed design phase, with all recommendations being adhered to within the construction process.
- Minimise noise by limiting work hours to the approved timeframe and in accordance with the Construction Management Plan.
- All acoustic and traffic management measures will be maintained at all times in accordance with the Construction Management Plan.
- Limit dust by covering exposed areas of soil with a building fabric or other material specified in accordance with the Environmental Action Plan. All construction works will be complimented by best practice site control (sediment and erosion control measures).
- Ensure that vibrations caused by drilling activity are monitored closely to ensure that they do not exceed the levels outlined in the Construction Management plans.
- Ensure that the site is safe. The principal contractor shall prepare a Health and Safety Plan for the site in accordance with the relevant Codes and Legislation.
- All adjoining owners will be notified of works commencing and advised of a contact person to liaise with during construction process.

- Limit impacts to the amenity of adjoining site by following a construction Management Plan. Ensure that adjoining properties are kept well informed with the construction program so that they are informed and any complaints can be addressed.

Comment

The Applicant has submitted a *Construction Noise Management Plan* prepared by Carter Rytenskild Group dated 20 Feb 2009. The Plan prepared does not consider the Draft Construction Noise Guidelines prepared by the Department of Environment and Climate Change which revises the existing guideline on which Council's current requirements are based. It is considered that once construction design details are finalised an amended Construction Noise Management Plan should be submitted for approval.

- The Construction Management Plan shall include but not be limited to the management of noise and dust generated on site and details of erosion and sediment control measures. The Plan shall require the approval of the General Manager, or his delegate, prior to issue of any construction certificate.

Operational Noise Amenity

Comment

The Applicant has submitted a *Preliminary Environmental Noise Impact Assessment* prepared by Carter Rytenskild Group dated 13 Dec 2007. The TSC Environment Health Unit has not undertaken an assessment to establish the adequacy of the report as it is considered that it is not the appointed assessment authority however submits:

Evidence exists that unacceptable noise nuisance is experienced by surrounding residents of shopping precincts from mechanical plant and loading areas. Adequate detail should be provided and assessed by Tweed Shire Council at design stage and prior to the release of any construction certificate.

Operational hours to be stipulated within any consent issued.

Food Premises Construction and Footpath Dining

The applicant has submitted that opportunity exists to configure a specialty retail precinct incorporating food/beverage outlets facing Tweed Coast Road, taking advantage of after hours trading and al fresco dining within the footpath reserve. Tweed Shire Council has advised of their support for this use. A separate application will be submitted to Council once tenants have been secured.

The proposal also seeks consent specifically for a supermarket and a Kiosk area, while the remaining tenancies are to be used for specialty retail stores. Development consent will be sought in the future for the fit-out of these retail units.

Comment

No detail provided. Food premises construction shall comply with the Food Act, relevant Code and Australian Standard.

- Any premises used for the storage, preparation or sale of food are to comply with the Food Act 2003, FSANZ Food Safety Standards, AS 4674-2004 Design, Construction and Fit-out of Food Premises.
- The details of any kitchen exhaust system are to be provided and approved prior to the release of the construction certificate, if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle filters. The system shall comply with AS1668.2 Ventilation Requirements.
- The use of the footpath for footpath trading is not permitted without an appropriate Lease Agreement being entered into with Tweed Shire Council. No lease agreement shall be entered into unless the proposed use complies with Council's Footpath Trading Policy.

Lighting

The applicant proposes secure parking within the basement area and the provision of appropriate lighting facilities relative to same.

The applicant proposes after hours lighting to public spaces and accessibility to management.

Comment

- Light spill should not create a nuisance for surrounding residents and therefore design detail should be required to be submitted and approved prior to release of any construction certificate issued.

Conditions of Consent

Should the Department resolve the above issues and prepare to grant consent for the development, Council officers may draft appropriate conditions of consent including those relating to contribution charges.

RECOMMENDATION

That the Department of Planning:

1. Notes all issues raised within this report; and
2. Liaises with the owners of Lots 188, 189 and 190 DP259164 Hastings Road and Lot 1 DP831592 Tweed Coast Road, explaining the impact of the proposal on their properties and seeking written agreement; and

3. Contact the owners of SP 77616 detailing the impact of the proposal and seeks the owners written agreement that their property can be adequately serviced without the laneway continuation.

OPTIONS:

1. Council resolve to adopt the matters raised within this report and forward to the Department of Planning as a submission; or
2. Council resolve not to provide a submission to the Department; or
3. Council resolve to provide an alternate submission to the Department.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The issues raised within this report identify several key areas of inconsistency with the TLEP and the DCP. Further information is required from the applicant to address these issues and those other matters identified within this report. Consultation with affected land owners should be undertaken by the Department of Planning. The issues identified in this report should be forwarded to the Department of Planning for its consideration.

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. Figures 1 to 5 – A series of maps and diagrams relating to the future laneway and car parking access issues relating to the subject proposal (ECM 2068925)
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P8 [PR-PC] Planning Reform Unit Work Program

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt10

SUMMARY OF REPORT:

This report seeks Council's endorsement of the Planning Reforms work program 2009/2012 relating to the preparation of its strategic planning framework and project delivery.

Council resolved at its meeting of 21 April 2009 to defer the adoption of the works program pending a Councillor's workshop, which was held on 19 May. The service delivery strategies, comprising amendments to the Fees and Charges for rezoning applications and DCPs, were adopted and incorporated into the 2009/2012 Management Plan.

Given the importance of having an effective strategic planning framework and the significance of the development pressures upon the Tweed Shire Council to release further land it is essential that the Council endorses the work program 2009/2012 priorities, and enables Council Officers to continue to direct the necessary efforts into building that framework over the next 3 years.

RECOMMENDATION:

That Council endorses the Planning Reforms - Work Program 2009/2012 identified as Tables 2-4 in the deferred 21 April Planning Report as updated by the Schedule of rezoning requests provided in Attachment 1 to this report.

REPORT:**Background**

On 21 April 2009 Council received a report on the Planning Reform Units (PRU) work program. The report detailed a proposed three year work program, addressed potential short-term impacts arising from the adoption the program particularly as they relate to private originating land rezoning applications, and provided three service delivery strategies for minimising the short and longer term impact on the processing of applications and Council's strategic planning resources. That report is provided as Attachment 2 to this report.

Council resolved to adopt the three service delivery strategies. The proposed amendment to the fees and charges were publicly exhibit as part of the 2009/2012 Management Plan which was adopted by Council on 28 May 2009. The three service delivery strategies can be summarised as:

Strategy 1 *Enable the Council/Applicant to elect to appoint an external consultancy to undertake the rezoning application/DCP, under the management of Planning Reforms, at the cost of the applicant.*

Strategy 2 *Reduce the number of Draft LEP Amendments by combining applications (except large applications) into a single amendment to be commenced once each year.*

Strategy 3 *Increase the Fees and Charges schedule to capture full cost recovery for the Council's resourcing cost associated with rezoning applications and new DCPs/amendments originating externally.*

However, Council resolved to defer endorsement of the Planning Reforms - Work Program 2009/2012 identified as Tables 2-4 in that report, to allow a workshop to be scheduled prior to reporting back to the next meeting.

A Councillors workshop was held on 19 May 2009 and provided a detailed overview of the PRU's reporting to-date on the need for adopting a work program. The workshop also provided the opportunity to further reinforce the importance of continuing the Council's commitment to establishing a comprehensive planning framework, and to illustrate how the strategic planning work to-date achieves the adopted policy directions under Council's strategic vision policy; *Tweed Futures 4/24*, and the NSW Government's direction on responsible and sustainable growth management.

There were several key issues arising at the workshop that may be summarised as:

1. The impact on rezoning applications and how this might be managed,
2. Understanding the role of a consultant in the assessment of rezoning applications,
3. Resourcing impacts on Council outside of the Planning Reforms Unit,
4. The need for a works program.

Each of these points is addressed below with Points 2 and 3 being dealt with together.

The impact on rezoning applications and how this might be managed

The three service delivery strategies detailed above are designed to minimise the short-term impact on the processing of rezoning applications and to improve efficiencies in the longer term.

The impact on the assessment of rezoning applications was also raised by Councillor Polglase by way of Notice of Motion at the Council meeting of 21 April 2009, where it was resolved:

RESOLVED that: *the Director Planning and Regulation brings forward a report on the number of applicants that have applied for spot rezoning and plans to deal with the applications.*

Note: Some of the applications have been in Council for a long time and some action needs to take place.

A response to this issue is provided in the 'work program' report also of 21 April.

To summarise the detailed discussion in the earlier report, as attached, Council is in receipt of twelve requests for spot rezoning each containing very limited detail, one reasonably detailed request relating to Seaside City, and one formal rezoning application made by Metricon seeking an extension to the Barnby Street residential development. There are also other rezoning applications identified within the schedules of the proposed 2009/2012 works program and these are currently resourced.

The rezoning request schedule attached to the 21 April report has been further up-dated with two additional rezoning requests, comprising land adjacent to the Chinderah BP Service Station located adjacent to the Pacific Highway and Chinderah Industrial Park and a property located at 185 Palmers Road, Uki, and is provided as Attachment 1 to this report. Both schedules highlight the action and response required in each case and this was to be communicated to each proponent following adoption of the work program. Until there is a clear resolution on the work program these requests will need to be held in abeyance and their future will remain uncertain, alternatively, the adoption of the works program will enable a process and timing schedule to be mapped out and provided to each proponent to provide them greater certainty on when their proposal can be processed and what additional information and fees will likely be required.

In the case of Metricon's application at Barnby Street it is expected that it would fit into the 2010/2011 work program as one of the two 'major' Draft LEPs as detailed.

In addition to the rezoning applications referred to above and detailed in the deferred planning report of 21 April the Planning Reforms Unit recently carried out an audit of outstanding current draft LEPs and identified an additional thirteen. These additional draft LEP amendments were allocated to the Development Assessment Unit (DAU) in 2006 and due to their low priority status relative to development application (DA) assessment which is a high priority and core function of the DAU progress on their implementation have generally been deferred. In some cases the draft LEPs have been superseded by the draft LEP 2008. A complete status of all the draft LEPs is being investigated and will be further reported to Council for actioning.

Understanding the role of a consultant in the assessment of rezoning applications and resourcing impacts on Council outside of the Planning Reforms Unit

Engaging consultancies to carry out specific aspects of strategic planning work is not new however their role in the processing of rezoning applications has largely been confined to the preparation of the Local Environmental Studies. In the 21 April planning report a service delivery strategy was proposed that would expand on this current practice by enabling an appointed consultant to assist in the broader processing of rezoning applications. This strategy (Strategy 1 detailed above) is aimed at permitting the Council to continue with its work program priorities for a strategic framework without deferring the assessment and processing of rezoning applications that are of public or regional significance.

The workshop sought to highlight that the practice of contracting out certain processing functions would not by itself create opportunities to significantly increase the volume of applications processed or investigated. This is so for two main reasons. Firstly, every consultancy requires a high level of project management and each rezoning will require a significant amount of administrative support. Secondly, the Planning Reforms Unit does not work in isolation on rezoning applications as there are many other disciplines and stakeholders that are required to provide input and assistance. This is particularly the case with larger and complex rezoning applications which require considerable engineering and technical resources to assess and provide assistance in matters including; sewer, water, roads, traffic, flora, fauna, acoustics and the like.

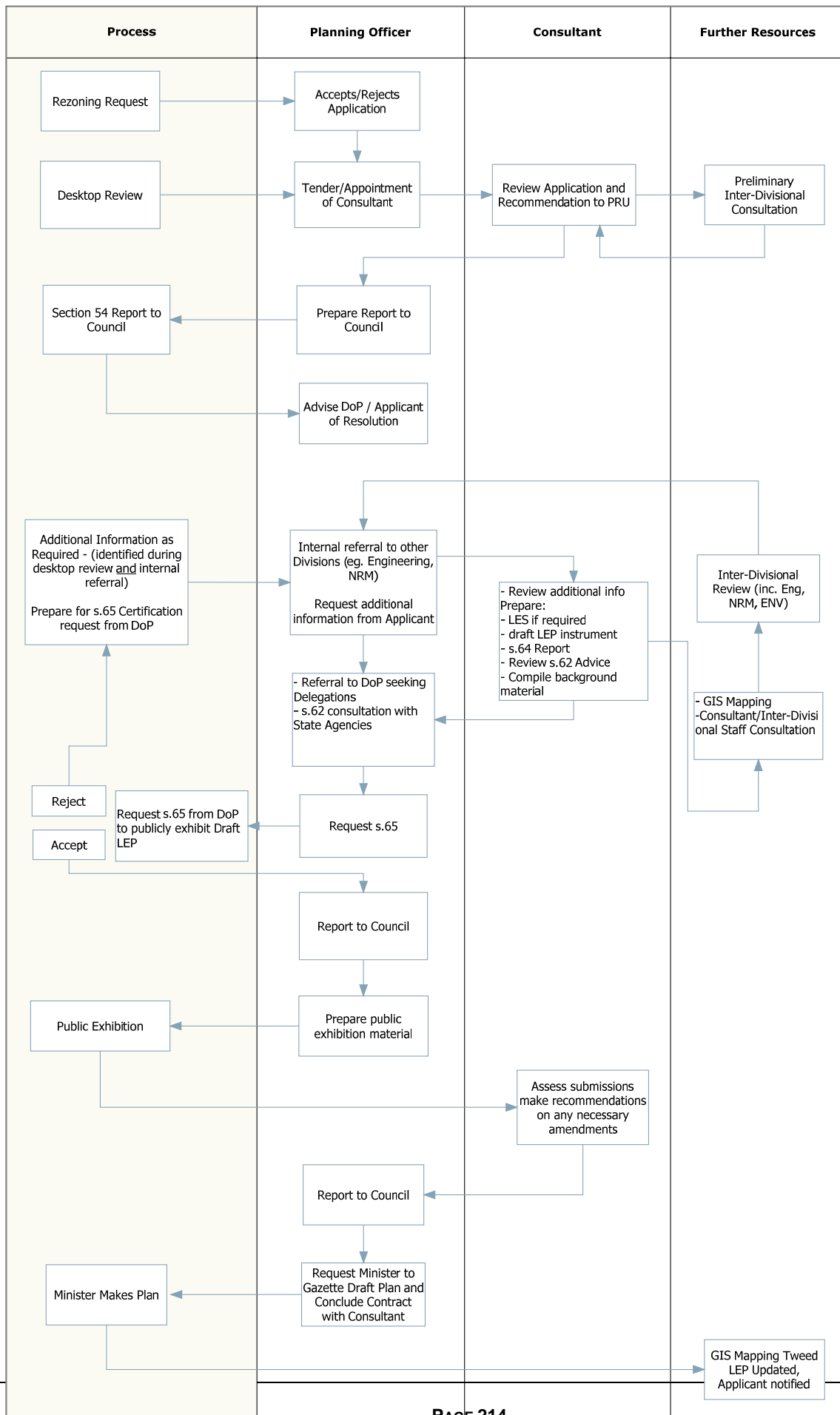
The resource impact of large rezoning applications on the Organisation as a whole is therefore often very significant, and whilst planning assessment elements can be contracted out other assessable elements of the application process cannot.

To assist Councillors with their understanding of how a consultancy would fit into Council's rezoning application assessment process an illustrative diagram has been prepared and is located on the following page.

There are three key points to note about the information in the diagram. Firstly, the diagram is not exhaustive and is intended to provide a 'snap-shot' of the process. It would be useful to read this diagram in concert with the rezoning application process diagram provided in the 21 April planning report.

Secondly, the diagram could be interpreted as underestimating the extent and importance of work undertaken by the consultant comparative to the planning officer, however, it should be noted that the three key areas identified for the consulting role are arguably the most critical, detailed and timing intensive aspects of the rezoning application assessment and review process. It is the project management and reporting on the consultant's recommendations that would be the most critical and time consuming of the planning officers role.

Thirdly, as discussed above, there are other Divisions within the Organisation that are directly involved in the processing of rezoning applications. This would typically consist of preliminary consultations prior to Council resolving to prepare a draft LEP followed with an extensive review, site inspections, consultations, and reporting once the decision to prepare an LEP has been made. Whilst the diagram highlights the main areas where other resources are drawn upon it should not be read as the only times that this may occur, this would depend on the nature and complexity of the application.



The need for a works program

As highlighted in detail in the 21 April planning report there is significant pressure on Council to respond to an increasing number of requests for major development proposals and greenfield land release, particularly along the coast and coastal hinterland. At the same time there is increasing demand and expectation from the Tweed's community and the NSW Department of Planning for Council to provide a clear and comprehensive plan for the future sustainable growth management of the Tweed Shire.

Council embarked on preparing a new strategic planning framework with the overarching strategic policies; Tweed 2000+ and Tweed Futures 4/24. In order to continue with the prioritisation of key strategies and local community based planning it is essential that the Planning Reforms Unit resources are clearly mapped out and accounted for. This will provide greater certainty in forecasting the delivery of key projects, for securing funding, evaluating staffing needs, for allocating resources to improve public consultation and awareness programs, and for providing a fair and equitable allocation of resources to projects and applications arising from the private sector. It may also provide greater certainty for the development industry when planning the timing of their projects as resource allocation arrangements for major projects could be planned for in advance.

CONCLUSION:

Tweed Council is in a fortunate position in that work on its strategic framework is well underway and it is essential that the commitment to the Planning Reforms work program 2009/2012 be maintained. Whilst the adoption of the program may have some short term effect on the processing of private originating rezoning applications several strategies were proposed and adopted in the 21 April Council Meeting that would assist in minimising the impact.

At present there is a significant number of written requests for rezoning and an equal number of private landowners and developers investigating large scale development proposals on their land. In addition there is already a significant volume of projects in the system. It is impractical and inefficient to continue attempting to balance the Council's Planning Reforms resource ability to manage such a large and diverse body of work in an uncoordinated and ad hoc manner, which would likely continue to build premature expectations about the timing and progressing of certain proposals.

The adoption of the work program is seen as essential if the Council's Planning Reforms Unit is going to effectively manage, balance and prioritise project delivery to match the needs and expectations of the Tweed Community and meet the requirements of the NSW Department of Planning's planning reforms.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Forward budget estimates may arise from Council's endorsement of the Planning Reforms work program as key strategic projects are taken up.

POLICY IMPLICATIONS:

This report seeks a clear direction and prioritisation of Council's strategic planning program.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Schedule of Rezoning Requests (up-dated) (ECM 2067625)
 2. 21 April 2009 Planning Report – Planning Reforms Work Program 2009/2012 (ECM 2067620)
-

P9 [PR-PC] Pottsville Employment Lands - Rezoning Application**ORIGIN:****Planning Reforms****FILE NO:** GT1/LEP/2000/85 Pt1 (related file: GT1/LEP/2006 Pt8)**SUMMARY OF REPORT:**

This report is intended to provide Councillors with an up-date on the progress of Draft LEP 85 – Pottsville Employment Land.

Council resolved on 13 June 2006 to prepare a draft LEP over certain land at Pottsville for employment purposes and to engage an independent consultant to undertake the preparation of a local environmental study and draft Plan. Negotiation with the landowners on the funding of the consultant was to occur prior to any appointment. Council is a part landowner of the site.

A rezoning application was received on 24 September 2008 from Heritage Pacific Pty Ltd seeking the rezoning of the land from Rural 1(a) to 4(a) Industrial under the Tweed LEP 2000. The Application comprised a proposal to rezone land in accordance with the Council's resolution (Stage 1) and to also rezone a larger area (Stage 2) extending north toward the Reserve Creek Road and Pacific Highway intersection (refer Figure 2). The area nominated as Stage 1 is identified in the Far North Coast Regional Strategy (FNCRS) and the Tweed Urban and Employment Land Strategy (TUELS) 2009 as potential employment land. The proposed Stage 2 land is not identified in the FNCRS and cannot be advanced until such time that the FNCRS, which is scheduled to be reviewed in 2011, is amended to include the Stage 2 land, which will require an expansion of the present local growth management boundary.

The proponents were advised prior to, and at the period immediately after the lodgement of the rezoning application, that due to the ongoing priority commitments of finalising the Draft LEP 2008 Stage 1 and related strategies, there was insufficient resources in Council's Planning Reform Unit to advance the rezoning proposal. There was also uncertainty created by the proponent's initial insistence that they wanted to advance the smaller Stage 1 proposal, as well as, the larger Stage 2 rezoning and redevelopment proposal.

Following a presentation to the Council's Workshop in February 2009, and subsequent endorsement by Council of the TUELS in March, the proponents clarified that they only wished to proceed initially with the Stage 1 proposal. This was viewed as a more realistic proposition and Council staff has since been working with the proponents to resolve a number of major infrastructure issues, and to establish an appropriate process and level of technical investigations to support the advancement of the Stage 1 rezoning application.



RECOMMENDATION:

That the Pottsville Employment Lands - Rezoning Application report be received and noted.

REPORT:**Background**

Council resolved on 13 June 2006 to prepare a draft LEP over certain land at Pottsville for industrial purposes, the resolution states:

“RECOMMENDED that Council:

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

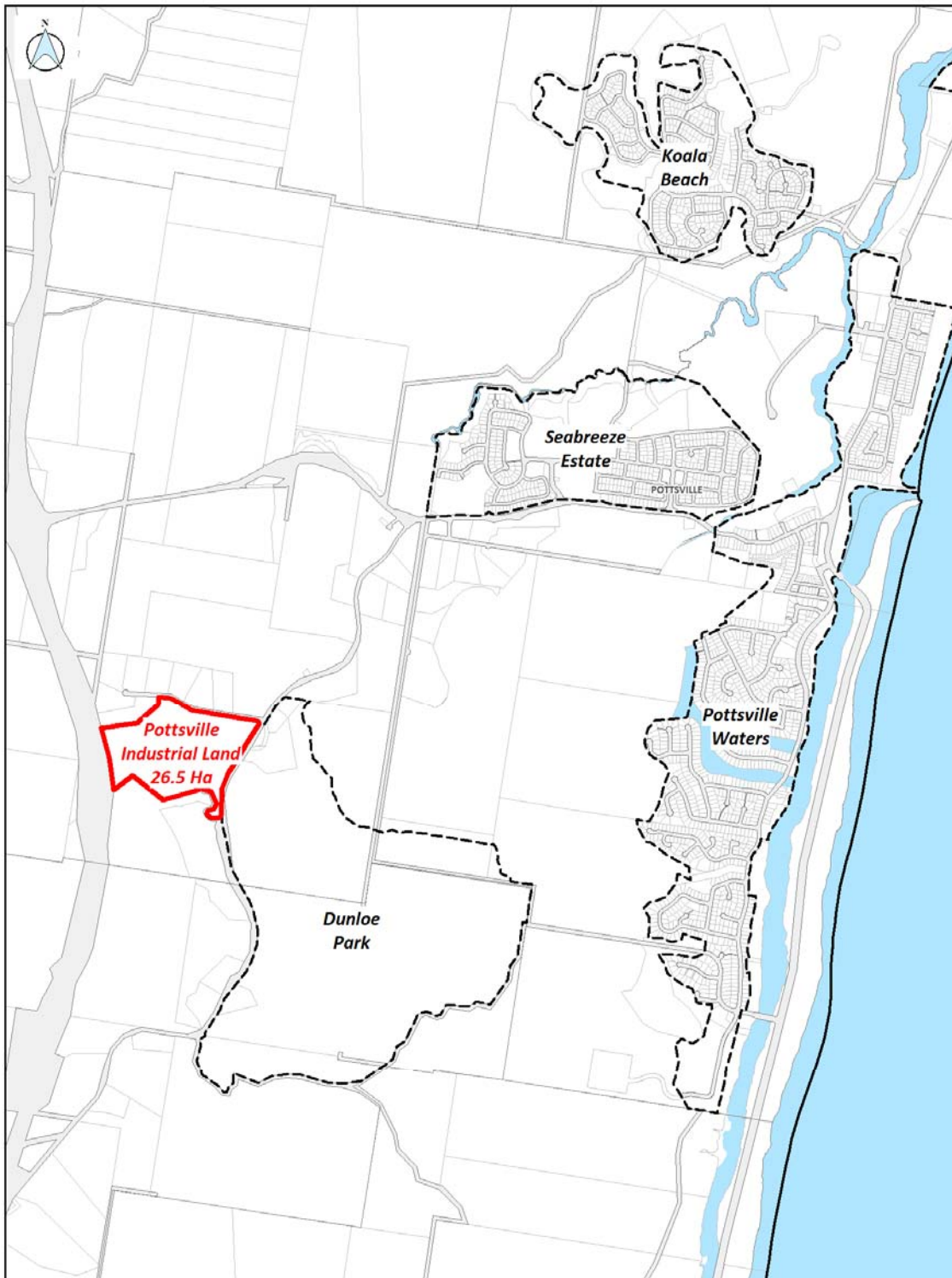
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Following a presentation to the Council's Workshop in February 2009, and subsequent endorsement by Council of the TUELS in March, the proponents clarified that they only wished to proceed initially with the Stage 1 proposal.



The site is heavily constrained by matters including land-formation (requires extensive earthworks and retaining), vegetation, natural watercourse, proximity to existing residential dwellings (Kudgerie Ave), adjacent to Pacific Highway, and there is no capacity in Council's sewer network to accommodate the future development of the site requiring instead either an on-site system or new sewer treatment plant. This latter option is still being investigated by the proponent in consultation with other adjoining and nearby land-owners.

Figure 1 – Locality Plan



<p>© TWEED SHIRE COUNCIL 2009 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah NSW 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> POTTSVILLE INDUSTRIAL LAND Locality Plan</p>	<p>Planning Reforms Unit   Sheet: 1 of 1</p>
<p>File: Z:\GIS_Jobs\Site Plan.Wor Author: J. Batchelor Date: 04/June/2009 Scale: 1:125,000</p>		

Chronology of Events

- 21 June 2006 Council notified the Department of Planning (DOP) under s 54 of the Act of the resolution to rezone certain land.
- 16 July 2007 Director General of the DOP requested that the proposal to rezone the land not proceed at that time and that discussions occur between Council and the Department, and following closer assessment of the then Draft Far North Coast Regional Strategy, among other relevant policies and guidelines.
- 21 July 2006 Letter to Brown & Haan Surveyors requesting that they arrange for their client to discuss future cost sharing arrangements for an Environmental Study.
- 28 July 2008 Meeting with Planit Consulting re the submission of a rezoning application and process for expediting the rezoning of the land.
- 24 Sept 2008 A rezoning application was received from Heritage Pacific Pty Ltd seeking the rezoning of the land from Rural 1(a) to 4(a) Industrial under the Tweed LEP 2000. Heritage Pacific and their planning consultant were advised prior to and post the submission of the application that the application could not be resourced at that time, that it would likely be early 2009 and may require Council contracting a consultant at their cost. The latter is consistent with the Council's 2006 resolution.
- 1 Dec 2008 Meeting with Heritage Pacific and Council Engineers to discuss sewer servicing issues.
- 5 Mar 2009 Further Meeting with Heritage Pacific and Council Engineers to discuss sewer servicing issues.
- 26 Mar 2009 Meeting with Planit Consulting, Heritage Pacific, the Mayor and Director of Planning and Regulation re progressing the rezoning application.
- 8 May 2009 On-site meeting between Council staff and Heritage Pacific.
- 14 May 2009 An amended sewer engineering report submitted.
- 18 May 2009 Meeting with Planit Consulting and Heritage Pacific re progress of rezoning application, request for proponent to address Council resolutions.
- 22 May 2009 State Agency consultation under s 62 commenced.
- 28 May 2009 Email correspondence with DOP in relation to the need to prepare an LES following earlier discussions of 22 May 2009.
- 3 June 2009 Formal request for the need for an LES sent to DOP.
-

16 June 2009 A further meeting between Council staff and Heritage Pacific is scheduled to follow up on the progress of the rezoning application.

Where to from here?

A fundamental element of Stage 1 of the rezoning process is establishing whether a Local Environmental Study (LES) is required and confirmation of this is being sought from the Department of Planning (DOP). Should the DOP not require an LES then a report to Council and subsequent resolution will be required to overcome the earlier 2006 resolution which was made on the basis of there being a need for an LES.

The earlier resolution also required that an independent planning consultant undertake the preparation of the Draft Plan. Given that Council is a part land-owner it would be entirely appropriate for this resolution to stand. The proponent has been advised and negotiation and confirmation as to cost sharing needs to be finalised prior to any appointment being made.

Council's Corporate Compliance Officer has been requested to prepare a probity plan to assist in this process.

In the meantime, Council's Engineering and Operations and Natural Resources Units are progressing their assessment of the application material.

Following confirmation of the need to prepare an LES, the finalisation of the probity plan and further negotiations between Council Officers and the proponent on cost sharing and the like, a further report will be provided to Council and may require an additional resolution to progress the application further.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Forward budget estimates may arise from Council's commitment as landowner to this rezoning application as shared cost funding of an independent planning consultant arise.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P10 [EO-PC] Section 94 Contributions Plan No. 23 Offsite Parking**ORIGIN:****Planning & Infrastructure****FILE NO: GT1/S94/23****SUMMARY OF REPORT:**

It is proposed to amend *Section 94 Contributions Plan No. 23 Offsite Parking* to update the contribution rates for parking spaces that cannot be provided on the development site. A developer within the commercial areas designated in the plan may be given the option in a development consent to pay a contribution to Council towards the construction of carparking instead of providing all of the parking spaces required by Development Control Plan Section A2 – Carparking Code onsite. The new rates reflect changes in construction and land costs. This amendment also includes the necessary clauses to enable future indexation of this plan in line with the IPD and TSC Land Indices.

The amendment results in the following changes to the rate per unsupplied carparking space:-

Area	Version 1.4 Rate	Version 2 Rate
Tweed Heads	17,490	\$25,740
Murwillumbah	12,747	\$16,665
Kingscliff	20,000	\$28,974
Bogangar	13,619	\$28,974
Pottsville	14,834	\$20,691
Fingal Head	3,366	\$3,036



RECOMMENDATION:

That:-

- 1. Council adopts Draft S94 Plan No 23 – Offsite Parking Version 2 as a basis for exhibition and community discussion/consultation.**
- 2. Draft plan Version 2 be exhibited as required by the Environmental Planning and Assessment Regulations to repeal and replace Version 9.**

REPORT:**1. Background****1.1 Purpose of Section 94 Contributions Plan No. 23 – Offsite Parking (CP23)**

Development Control Plan Section A2 – Site Access and Parking Code (DCPA2) designates the number of parking spaces that must be provided for various classes of development. Where the site is unable to accommodate the designated number of parking spaces, Council may issue a development consent requiring section 94 contributions for the unsupplied spaces.

Section 94 Contributions Plan No.23 – Offsite Parking (CP23):

- enables Council to collect contributions (for the unsupplied car parking spaces) from developers as a condition of consent
- enables these contributions to be used to finance public car parking in lieu of provision of car parking on the development site and
- designates contribution rates.

1.2. Car Parking Contribution Rates

CP23 came into effect on 18 November 1999, and the most recent amended version, Version 1.4, incorporating adjustments for the increase in land acquisition costs, was adopted by Council in July 2005.

For the purposes of calculating contribution rate:

- land acquisition costs for each CBD area was derived from analysis of the rateable land value of suitable land in the specific CBD area; and
- Construction costs for carparking have been obtained from the following sources:
 - Multilevel carparking - tendered construction cost of the Murwillumbah multilevel carpark commenced mid 2007;
 - Ground level and basement carparking - current construction costs (Brisbane) from "The Building Economist March 2009".

2. Amendment to CP23

It is proposed to amend CP23 to reflect current rates for construction and land costs. Applying these increases to the calculation formulae contained in the Plan results in the following amended rates:



Area	Version 1.4 Rate	Version 2 Rate
Tweed Heads	17,490	\$25,740
Murwillumbah	12,747	\$16,665
Kingscliff	20,000	\$28,974
Bogangar	13,619	\$28,974
Pottsville	14,834	\$20,691
Fingal Head	3,366	\$3,036

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Increase in contribution rates is required to enable Council to finance its obligations to supply public parking in cases where development projects are unable to provide sufficient parking on their own sites.

POLICY IMPLICATIONS:

This report proposes an amendment to Council's Car Parking Contribution S94 Plan (CP23).

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 Section 94 Plan No. 23 – Offsite Parking. (ECM 2066445).
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P11 [EO-PC] Adoption of Amended Section 94 Plan No 1 - Banora Point West/Tweed Heads South Open Space Contribution (Version 10)

ORIGIN:

Planning & Infrastructure

SUMMARY OF REPORT:

Council at its meeting held 17 March 2009 resolved to exhibit Draft S94 Plan No 1 – Banora Point West/Tweed Heads South (Version 10). The Draft Plan was exhibited for 28 days from 1 April 2009 to 1 May 2009 in accordance with Regulation 28 of the Environmental Planning and Assessment Regulations 2000 via Council’s Tweed Link and website exhibition page. No submissions were received and the Draft Plan is now recommended for approval.

Version 10 includes no changes to the structure of the plan or to the works program. This version amends the rates in line with current occupancy rate standards and indexes the contributions in line with increases in the ABS IPD index since the plan was last amended in June 2006, being 18.95% (non-land component), and Tweed Shire Council Land Index being 9.52% (land component).

Indexation of the contribution rates as outlined above results in the following contributions rates:

	Per Person		Per Lot		Per Medium Density Unit	
	Version 9	Version 10	Version 9	Version 10	Version 9	Version 10
Structured Open Space	\$936	\$1,093	\$2,433	\$2,623	\$1,591	\$2,131
Casual Open space where developer dedicates and embellishes passive open space	\$196.92	\$234	\$512	\$562	\$388.80	\$456
Total levy were developer does not dedicate or embellish passive open space	\$604.23	\$953	\$1,571	\$2,288	\$1,192	\$1,858

RECOMMENDATION:

That Council

- 1. Approves Draft Section 94 Plan No 1 – Banora Point West/Tweed Heads South (Version 10) to repeal and replace the existing version in accordance with Clause 31 of the Environmental Planning & Assessment Regulations 2000;**



2. **Gives Public Notice in the Tweed Link of Council's decision specifying that the amended Version 10 of the Plan (CP 1) comes into effect on the date of the notice.**

REPORT:

Background

S94 Plan No 1 – Banora Point West/Tweed Heads South has been in existence since June 1993 for the purpose of collecting S94 contributions for the provision of local open space in the Banora Point West/Tweed Heads South area. The subject area is defined by Tweed Shire Council Development Control Plan Section B3 (originally known as Development Control Plan No 3 or DCP 3). The current version of the plan (Version 9) was adopted in March 2006.

Version 10 includes no changes to the structure of the plan or to the works program. This amendment:-

- increases the contribution rate per person in line with increases in the ABS IPD index since the plan was last amended in June 2006 being 18.95% (non-land component), and Tweed Shire Council Land Index being 9.52% (land component);
- calculates the per lot and per medium density unit rate in accordance with currently accepted occupancy estimates, being 2.4 persons per lot or dwelling, and 1.95 persons per medium density unit;
- includes definitions and detail to allow for future indexation in line with the IPD and Tweed Shire Land Index (see section 1.7.1); and
- adds a summary schedule for ease of reference.

Indexation of the contribution rates as outlined above results in the following contributions rates:

	Per Person		Per Lot		Per Medium Density Unit	
	<i>Version 9</i>	Version 10	<i>Version 9</i>	Version 10	<i>Version 9</i>	Version 10
Structured Open Space	\$936	\$1,093	\$2,433	\$2,623	\$1,591	\$2,131
Casual Open space where developer dedicates and embellishes passive open space	\$196.92	\$234	\$512	\$562	\$388.80	\$456
Total levy were developer does not dedicate or embellish passive open space	\$604.23	\$953	\$1,571	\$2,288	\$1,192	\$1,858

Exhibition and Submissions

Council at its meeting held 17 March 2009 resolved to exhibit Draft S94 Plan No 1 – Banora Point West/Tweed Heads South (Version 10). The Draft Plan was exhibited for 28 days from 1 April 2009 to 1 May 2009 in accordance with Regulation 28 of the Environmental Planning and Assessment Regulations 2000 via Council's Tweed Link and website exhibition page. No submissions were received and the Draft Plan is now recommended for approval.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The adoption of Draft *Section 94 Plan No 1 – Banora Point West/Tweed Heads South Version 10* will enable Council to collect developer contributions indexed to current costs for the provision and/or embellishment of local open space in the DCP Section B3 area.

If the Draft Plan is not adopted, part of the cost of these works would require financing from the general fund and from existing ratepayers who are not contributing to the demand for open space in the designated area.

POLICY IMPLICATIONS:

Contributions are required so that Council is able to acquire and/or embellish land to meet the adopted standards for casual and structured open space in Council's adopted Open Space Infrastructure Policy 2002 for increases in population as a result of development in the DCP Section B3 area.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Section 94 Plan No 1 – Banora Point West/Tweed Heads South (Version 10) (ECM 2064423)
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