



# **AGENDA**

## **PLANNING COMMITTEE MEETING**

**Tuesday 17 February 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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**ITEMS FOR CONSIDERATION OF THE COMMITTEE:**

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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] Development Application DA08/0841 for a Dwelling & Swimming Pool at Lot 3 DP 253861 No. 49 Elanora Avenue, Pottsville**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/0841 Pt1**

**SUMMARY OF REPORT:**

An application has been received to construct a two (2) storey dwelling with an in-ground swimming pool on the subject property. The property is situated on the eastern side of Elanora Avenue Pottsville and backs on to the coastal foreshore of Pottsville Beach.

An objection under SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space. This non-compliance has necessitated a report to Council.

The application was notified to adjoining property owners and one submission was received from the owner of No. 51 Elanora Avenue objecting to the proposal. The objectors' main concerns with the proposal were the bulk and scale of the dwelling, the impact on views, and its non compliance with the Requirements of Tweed DCP 2008 Section A1. The issues raised in the objection have been addressed within the body of this report.

On the balance of the assessment of the relevant planning matters, the context of other developments in the surrounding locality and taking into account that this DA was lodged prior to 30 June 2008, it is considered that the proposed development is suitable for approval, subject to conditions.

**RECOMMENDATION:**

**That: -**

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA08/0841 for a dwelling & swimming pool at Lot 3 DP 253861, No. 49 Elanora Avenue, Pottsville be approved subject to the following conditions:**

**GENERAL**

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

[GEN0015]

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

[GEN0115]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0285]

4. A construction certificate application for works that involve any of the following:-
  - connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

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

[PCC1145]

**PRIOR TO COMMENCEMENT OF WORK**

5. The erection of a building in accordance with a development consent must not be commenced until:
  - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and

- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-building, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

6. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

7. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

8. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

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

[PCW1005]

10. 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]

11. Residential building work:

(a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

- \* in the name and licence number of the principal contractor, and
- \* the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- \* the name of the owner-builder, and
- \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

(b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

#### DURING CONSTRUCTION

12. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

13. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

14. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

15. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

16. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the

requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

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

[DUR2185]

18. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

19. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

20. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

21. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

22. 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]

23. 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

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

[DUR0205]

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

[DUR0245]

- 25. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:**

- (a) internal drainage, prior to slab preparation;**
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;**
- (c) external drainage prior to backfilling.**
- (d) completion of work and prior to occupation of the building.**

[DUR2485]

- 26. Plumbing**

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.**
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.**

[DUR2495]

- 27. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**

[DUR1945]

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

[DUR2515]

- 29. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

- 30. The finished floor level of the building should finish not less than 225mm above finished ground level.**

[DUR0445]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**

- \* **50°C in all other classes of buildings.**

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

[DUR2555]

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

[DUR1875]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

- 33. **A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

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

**The street number is to be on a white reflective background professional painted in black numbers 100mm high.**

**On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.**

**For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.**

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

[POC0265]

- 35. **Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.**

[POC0435]

#### **USE**

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

[USE1305]

**37. Swimming Pools (Building)**

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

- 38. The ground floor lounge and rumpus room is not to be used or adapted for separate residential habitation or occupation.**

[USE0465]

- 39. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.**

[USE0175]

- 40. The building is to be used for single dwelling purposes only.**

[USE0505]

- 41. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.**

[USE1245]

**REPORT:**

**Applicant:** Mr I Callinan  
**Owner:** Mr IDF Callinan  
**Location:** Lot 3 DP 253861 No. 49 Elanora Avenue, Pottsville  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$450,000

**BACKGROUND:**

The property is zoned 2(a) low density residential under Tweed Local Environmental Plan 2000 and is located on the eastern side of Elanora Avenue, Pottsville. The property is currently vacant and is bounded by residential zoned land to the north (currently undeveloped) and south (a two storey dwelling house) and to the east a coastal reserve (waterfront open space).

An application has been received to construct a new two (2) storey dwelling with an in-ground swimming pool on the subject property. The property is situated on the eastern side of Elanora Avenue Pottsville and backs on to the coastal foreshore of Pottsville Beach.

An objection under SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space. This non-compliance has necessitated a report to Council.

Adjoining property owners were notified of the subject proposal and one submission was received from the owner of No. 51 Elanora Avenue objecting to the proposal. The issues raised in the objection have been addressed within the body of this report.

In terms of the assessment of this application it should be noted that Council has previously resolved the following in respect of the imposition of the controls of Tweed Development Control Plan Section A1:

*"The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30<sup>th</sup> June 2008 and this decision be notified in the Tweed Link".*

In this instance the proposed development application was lodged with Council on 26 June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

Notwithstanding the above resolution, Council officers have required amended plans to address where possible the main A1 controls. In response to this request the applicant submitted amended plans which provided a more articulated roof form, and a lowering of the overall building height by 300mm.

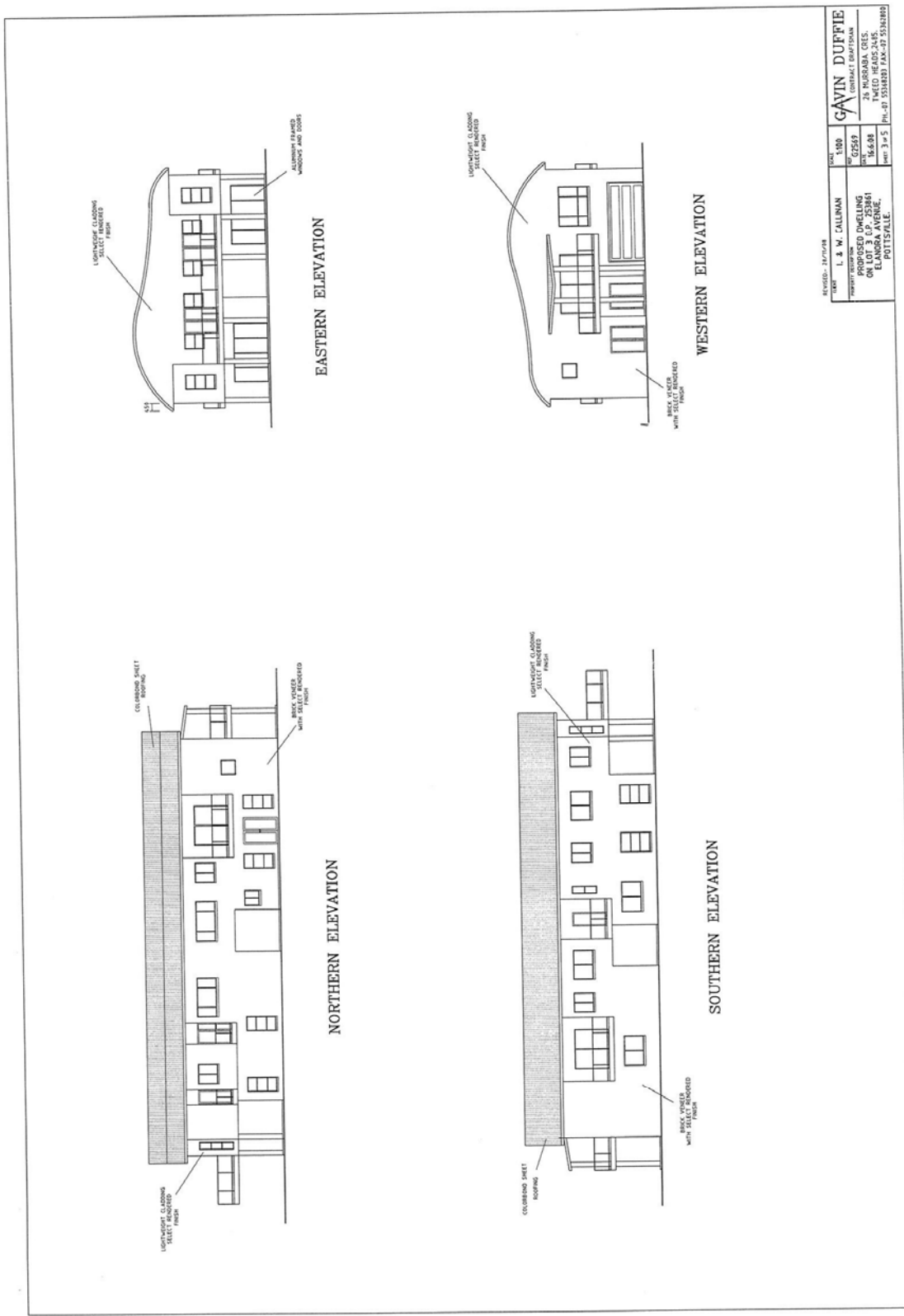
**SITE DIAGRAM:**



Lot 3  
DP 253861

<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. <b>DO NOT SCALE</b> COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel (02) 6670 2409 Fax (02) 6670 2493</p>	<p><i>Tweed Shire Council</i> <b>Lot 3 DP 253861</b> <b>No. 49 Elanora Avenue, Pottsville</b></p>	<p><b>Site Plan</b> </p>
<p>File: Z:\GIS_Jobs\Site Plan.Wor      Author: J. Batchelor      Date: 09/Feb/2009      Scale: 1:5,000      Sheet: 1 of 1</p>		

DEVELOPMENT PLANS:



**EASTERN ELEVATION**

- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH
- ALUMINIUM FRAMED WINDOWS AND DOORS

**WESTERN ELEVATION**

- BRICK VENEER WITH SELECT FINISHED FINISH
- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH

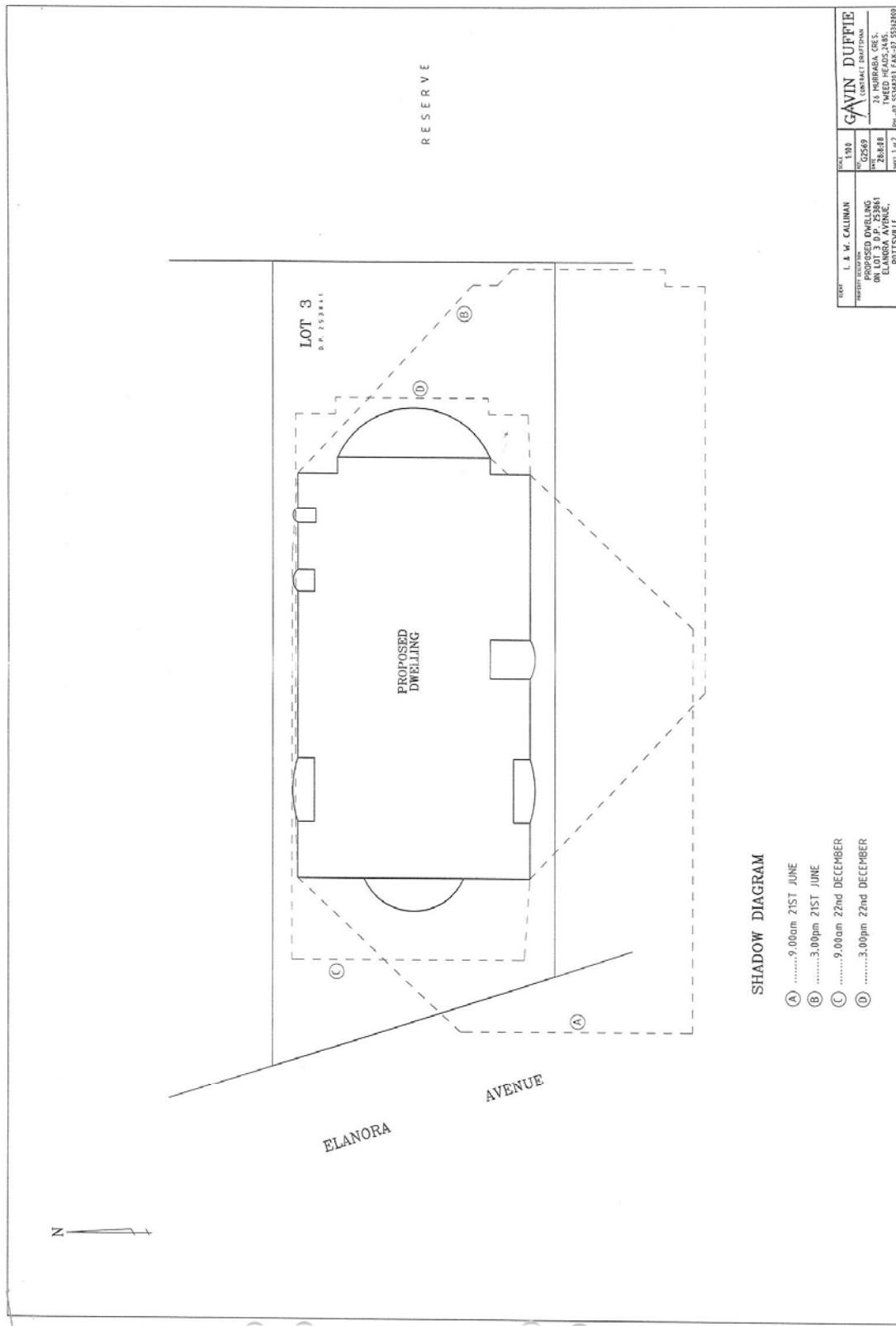
**NORTHERN ELEVATION**

- CONCRETE ROOFING
- BRICK VENEER WITH SELECT FINISHED FINISH
- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH

**SOUTHERN ELEVATION**

- CONCRETE ROOFING
- BRICK VENEER WITH SELECT FINISHED FINISH
- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH

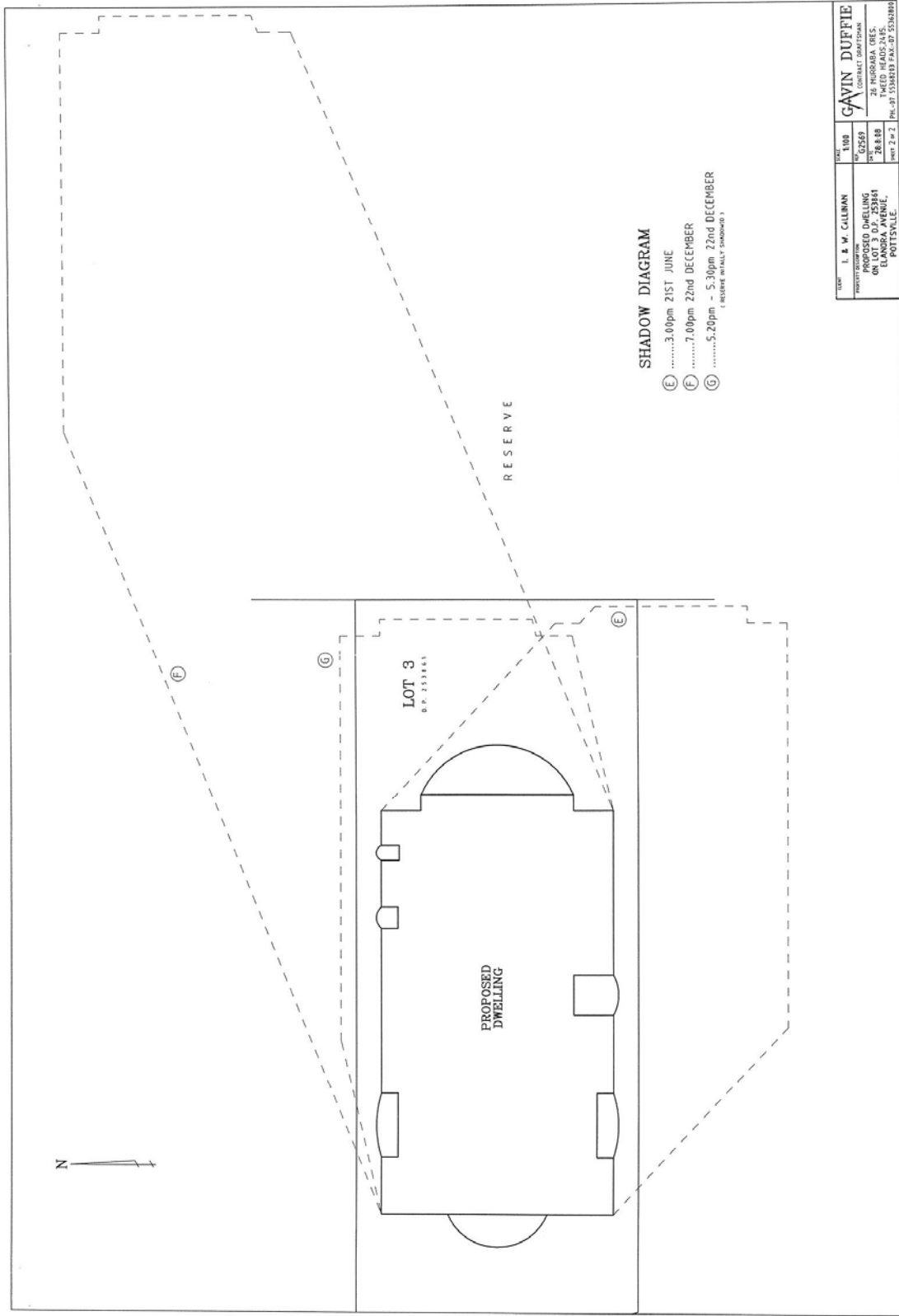
REVISIONS - DATE/USER	DATE	BY	SCALE	SHEET NO.
		L. & W. LALLMAN	1:100	1100
PROJECT INFORMATION				
PROJECT NO. G559				
DRAWN BY M. LAMB				
CHECKED BY G. DUFFIE				
PROJECT ADDRESS 26 MURRARA CRES. TWEED HEADS QLD. 24608				
LOT NO. 3 OF 123861 ELANDRA AVENUE, POTTSVILLE.				
SHEET 3 OF 5 (INC. OF 123861 104-17 234286)				



**SHADOW DIAGRAM**

- (A) .....9:00am 21st JUNE
- (B) .....3:00pm 21st JUNE
- (C) .....9:00am 22nd DECEMBER
- (D) .....3:00pm 22nd DECEMBER

DATE	19th	19th
PREPARED BY	L. & W. CALLINAN	GAVIN DUFFIE
PROJECT NO.	00569	CONTRACT REFERENCE
DATE	28.8.08	28 MARRABA CRE.
PROJECT NAME	PROPOSED DWELLING ON LOT 3 D.P. 532864	TWEED HEADS A.B.S.
	ELANORA AVENUE, POTTSVILLE.	TWEED SHIRE COUNCIL
		Ph: 07 5538283 Fax: 07 5531800



DATE	11/01/09	BY	GAVIN DUFFIE
PROJECT	L. & W. GILLMAN	CONTRACT	DRAFTSMAN
DESCRIPTION	PROPOSED DWELLING ON LOT 3 D.P. 231841	DATE	28/08/08
CLIENT	ELANDRA AVENUE, POTTSVILLE	ADDRESS	28 MURRABA CRES. TWEED HEADS QLD 2470
		PHONE	07 238141
		FAX	07 238148
		EMAIL	gavin.duffie@twec.qld.gov.au



**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 subject site is zoned 2(a) Low Density Residential. The primary objective of the zone relates to the provision for and maintenance of low density residential development with a predominantly detached housing character and amenity. The secondary objectives relate to the option of housing diversity and for non-residential development. The proposed development is consistent with the primary objective of the zone.

**Clause 15 - Essential Services**

All essential services are available within the area.

**Clause 16 - Height of Building**

The proposed height of the development (8.3) complies with the 2 storey control under the TLEP 2000 and 9m maximum height limitation affecting the subject site under Section A1 of Tweed DCP.

**Clause 17 - Social Impact Assessment**

A social impact assessment is not required given the minor nature of the proposal

**Clause 35 - Acid Sulfate Soils**

The site is a mixture of acid soil classes, with class 3 soils located 1 metre below ground level and class 4 soils located 2 metres below ground level, the dwelling is proposed at the front of the site be over the class 3 soils and the pool over at the rear of the property over the class 4 soils. It is not anticipated that the construction of the dwelling and pool will impact on the acid sulfate soils in the area.

**Other Specific Clauses**

None apparent

**North Coast Regional Environmental Plan 1988****Clause 32B: Coastal Lands**

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

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

The proposal will not impede public access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the 6(a) waterfront open space to the east of the site being overshadowed before 3pm midwinter (standard time) and 7pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

#### Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is not inconsistent with the Coastline Management Manual.

#### **State Environmental Planning Policies**

##### SEPP No. 1 - Development Standards

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 6(a) public open space and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 objection and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *"Existing buildings in Elanora Avenue result in overshadowing of the foreshore area prior to the relevant times in both mid winter and mid summer.*
- *Existing trees on the foreshore dunal areas result in significant overshadowing of the foreshore reserve and beach prior to the relevant times.*
- *The immediate foreshore areas to be overshadowed are not useable passive open space area and do not contain any public amenities or facilitates at which members of the community would be expected to congregate. The overshadowing will therefore not alienate the physical use of the area.*
- *The shadows do not extend to the beach area during winter."*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7.00 pm midsummer to be unreasonable.

The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The actual beach is over 150 metres from the rear of the property.

Council has granted many other approvals for dwellings along the Tweed Coast with similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

#### SEPP No 71 – Coastal Protection

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

#### SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a BASIX certificate for the proposal which is consistent with the required energy target.

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

None apparent

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

##### Tweed Development Control Plan

##### A1-Residential and Tourist Development Code

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

*"The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30<sup>th</sup> June 2008 and the this decision be notified in the tweed link."*

In this instance the proposed development application was lodged with Council on the 26<sup>th</sup> June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

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

It should be noted the most recent amended plans and supporting information were received by Council on the 18<sup>th</sup> December 2008 and these plans were the result of information requested during the assessment of the application.

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

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools

#### Public Domain Amenity

##### **Streetscape**

The proposed development is consistent with the desired future residential character of the area whilst generally being sympathetic to the surrounding developments.

The dwelling is clearly visible from Elanora Avenue and the dwelling is setback 6m from the street which is consistent with surrounding developments.

The building is a large rectangular shaped dwelling centrally located within the property and complies with the setback and height requirements outlined in A1.

##### **Public Views and Vistas**

The proposal will not result in an unreasonable view loss of the beach and foreshore vegetation given the 2 storey limitation as specified in the Tweed Local Environmental Plan 2000 and the 9 metres height in A1.

The proposed dwelling provides view corridors for dwellings located on the western side of Elanora Avenue, between dwellings and side boundary setbacks.

The one objection received was from the property on the northern side (No. 51 Elanora Avenue) in relation to the loss of a potential south eastern view to the coast and Byron Bay. This property is currently undeveloped, but the owners have indicated their intentions to develop in the future.

It is considered that this objection is unsubstantiated as the proposed dwelling is sited approximately 8 metres from the rear boundary of No. 51 Elanora Avenue which still allows for the owners substantial eastern coastal foreshore views should they wish to develop in the future.

### Site Configuration

#### **Deep soil zones (DSZs)**

While deep soil zones were not required prior to the introduction of A1 the submitted plans show two suitable areas for deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling adjacent to the rear eastern property boundary.

The deep soil zone in the front yard of the property extends across the entire length of the site, and excludes the concrete driveway and entrance path. The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a width of approximately 5.5 metres which is consistent with the design control requirements.

#### **Impermeable Site Area**

The area of the site is 775.3m<sup>2</sup> subsequently the maximum impermeable site area permitted at the completion of the development will be 60%. From the plans submitted the development will create an impermeable area of approximately 52% and will comply with the design control. This will enable ample water to infiltrate area on the site.

#### **External Living Areas**

The dwelling makes provision for external living areas in the form of balconies and a patio area adjacent to the pool providing adequate solar access to the dwelling and private open space.

#### **Landscaping**

A landscaping plan has not been submitted with the application. Prior to the introduction of A1 landscaping plans were not required unless significant cut and fill was proposed on a site.

#### **Topography, Cut and Fill**

The property is generally a flat site with an approximate 3% fall towards the front of the property

### Setbacks

The proposal is consistent with the set back controls having 6 metres front boundary setback, 1.5 metres from northern side boundary, 1.5 metres from

the southern side boundary and approximately 8 metres from the rear property boundary.

### Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Two off street car parking spaces are provided behind Council's building and vehicle access to these spaces is considered adequate.

### Height

#### **Building Height**

The maximum height of the dwelling is 8.3 metres which is consistent the maximum design control of 9 metres. As previously pointed out, the overall height of the proposed building was reduced by 300mm following request for amended plans by Council officers.

#### **Ceiling Height**

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 2.7m at ground floor level and 3 metres at the first floor level

### Building Amenity

#### **Sunlight Access**

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of small balconies orientated north and balconies at the eastern and westerns of the dwelling to access coastal and hinterland views.

The proposed dwelling being a large rectangular shape will overshadow the adjoining southern side of the property. The shadow diagrams submitted with the application show the extent of overshadowing. The shadow diagrams indicate that significant over shadowing will occur to different portions of Southern side property during the winter months as the sun moves through the sky.

The objection of A1 is to ensure for neighbouring properties,

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

The height and boundary set backs for the proposed dwelling are consistent with the requirements of A1 so therefore the extent of overshadowing could be reasonably expected as the proposed development is generally in keeping with the height and scale of existing dwellings in the area.

The owner of property to the south (No. 47 Elanora Avenue) was notified of the subject proposal, and raised no objection.

### **Visual Privacy**

The two storey dwelling has several windows, sliding doors and associated balconies on both sides which overlook the adjoining properties to the north and south. The windows and sliding doors provide ventilation and solar access to adjacent rooms and the balconies have been provided to provide architectural interest to the design of the dwelling.

The windows have a sill height of approximately 900mm and consistent with the requirements of A1.

The small first floor balconies on either side of the dwelling are adjacent to mainly bedroom areas, which presents less privacy concerns than balconies off main living areas, which are located at the front and rear of the dwelling.

While the location of the first floor balconies and sliding door are not compliant with the 4 metres set back required in A1 they are consistent with what was generally approved before the commencement of A1.

### **Acoustic Privacy**

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

### **View Sharing**

This matter has been discussed previously in this report.

### **Natural Ventilation**

The design of the dwelling provides for adequate natural ventilation.

### **Building Orientation**

The dwelling has been sited on the property to optimize coastal views and solar access as well as providing an acceptable street presentation

## **Fences and Walls; Front, Side and Rear**

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

## **Roof**

The design of the roof is consistent with the design requirements. A condition regarding the implementation of non-reflective roof materials has been recommended in the conditions. The applicant has advised that the roof was designed to echo the sweep of a wave, in keeping with the coastal locality.

## Building Performance

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

## Swimming Pools

The proposed swimming pool is set back behind Council's Building line and greater than 1.5 from either side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

## Floor Space Ratio (FSR)

Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.55:1 for the dwelling. The proposed FSR for the dwelling is 74:1 which is above this requirement however this was acceptable before the introduction of A1.

## A2-Site Access and Parking Code

Vehicle access and car parking on the site is in keeping with the requirements of A2.

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

#### Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within the policy

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

#### Context and Setting

The property is a vacant site in an established subdivision which has been specifically created for residential development. The proposed development is

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of a design in keeping with the architectural style and residential character of the area.

#### Access, Transport and Traffic

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

#### Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is only covered with grass.

### **(c) Suitability of the site for the development**

#### Surrounding Landuses/Development

The site is currently vacant. It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is in keeping with the existing residential character of the area.

#### Site Orientation

The building has been centrally located on the property, with compliant minimum side and rear boundary setbacks. The dwelling is set back 6 metres from the front property boundary and therefore complies with the set back requirements of A1. The living areas of the dwelling have been mainly orientated to the east and north to optimize ocean views and breezes and solar access to the north.

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

One submission was received from the owner of No. 51 Elanora Avenue, objecting to the proposed development.

The main concerns raised included:-

Non compliance with the requirements of Tweed DCP A1

- Council officers have attempted to encourage the applicant to confirm where possible to the requirements of A1, despite Council's previous resolution that they need not comply with A1. It is considered that the amendments made by the applicant in response to Council's request have achieved a final design more compliant with A1.

Loss of views to south and south-east

- The issue of view loss has been previously addressed in the report.

Design merit

- The objector was concerned about the design of the building, being *"extremely bulky with clumsy rooflines and non-articulated elevations."*

While the dwelling is a large home and appears to lack some articulation, the applicant has utilized the set back and height requirements, which were applicable prior to the adoption A1 design guidelines to their advantage in the dwellings design.

The proposed dwelling is not inconsistent with previously approved dwellings in the area, the applicant in their submission which is attached to this report, has provided photographs of existing dwellings in the area to support their proposal.

**(e) Public interest**

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

**OPTIONS:**

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

On the balance of the assessment of the relevant planning matters, and taking into account that this DA was lodged prior to 30 June 2008, it is considered that the proposed development is suitable for approval, subject to conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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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**P2 [PR-PC] Development Application DA08/0753 for a Dwelling, Swimming Pool & Front Fence at Lot 351 DP 1087716, No. 19 Cylinders Drive, Kingscliff**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/0753 Pt1**

**SUMMARY OF REPORT:**

An application has been received to construct a two (2) storey dwelling with a basement car park and in-ground swimming pool on the subject property. The property is situated on the eastern side of Cylinders Drive, Kingscliff and backs on to the coastal foreshore of South Kingscliff Beach.

The applicant has lodged a SEPP No. 1 variation as the proposed development will result in overshadowing of the foreshore.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 variations greater than 10% to be determined by full Council. Given that the Department of Planning has advised Council Officers to be conservative with the application of the 10% rule, the difficulties of calculating 10% of the shadow development standard (as it is time based), it has been decided to report this application to Council.

No submissions have been received in relation to the proposal. It is considered that the subject application is suitable for approval.

**RECOMMENDATION:**

**That:**

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. That Development Application DA08/0753 for a dwelling, swimming pool & front fence at Lot 351 DP 1087716, No. 19 Cylinders Drive, Kingscliff be approved subject to the following conditions: -**

**GENERAL**

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

[GEN0015]

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

[GEN0115]

3. A Construction Certificate approval is to be obtained for all proposed pre-cast concrete panel fencing of any height and masonry fencing in excess of 1.2 metres in height, prior to any construction of the fence being commenced.

Site specific design details or approved generic details prepared by a practicing structural engineer are required to be submitted and approved as part of the Construction Certificate application.

Such structural engineers design details are to confirm that the fence proposal has been designed to take account of all site issues including the site's soil and load bearing characteristics, wind and other applied loadings, long term durability of all components particularly in relation to corrosion and compliance with Tweed Shire Council's policies for "Sewers - Building in Proximity" and provision of appropriate pedestrian sight clearances to footpaths in accordance with Australian Standard AS2890 "Parking Facilities".

[GEN0145]

4. New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 2. New construction of the western façade shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 1.
5. Screen-less door systems, including glazing and supporting framework shall be designed and constructed to withstand 19kW/m<sup>2</sup> of radiant heat flux to prevent the entry of embers into the building. Draught excluders, seals and door furniture shall be manufactured from materials having a flammability index no greater than 5 (with the exception of intumescent seals which are permissible) and ensure that there are no gaps >2.0mm in diameter when the door is closed.
6. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.
7. No brushwood (or the like) or treated pine timber fencing shall be used.
8. At the commencement of building works the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and appendix 5 of *Planning for Bush Fire Protection*

2006 and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.

9. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
10. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.

[GENNS01]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0285]

#### **12. Stormwater**

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
  - \* As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximize life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body

corporate (to ensure continued collective responsibility for site drainage).

- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to allow for construction and operation vehicular loading.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

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

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

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

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

[PCC1145]

#### **PRIOR TO COMMENCEMENT OF WORK**

14. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and



- (c) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

15. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

16. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - \* in the name and licence number of the principal contractor, and
    - \* the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - \* the name of the owner-builder, and
    - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

17. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

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

[PCW0255]

19. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:

- (a) The person must, at the person's own expense:
  - (i) preserve and protect the building from damage; and
  - (ii) if necessary, underpin and support the building in an approved manner.

- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

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

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

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

[PCW0985]

#### DURING CONSTRUCTION

21. 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]

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

[DUR0245]

23. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

24. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

25. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the

notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

26. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

27. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

28. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

29. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

30. 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]

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

[DUR1875]

32. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

33. **Swimming Pools (Building)**

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

34. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

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

[DUR2185]

36. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

37. **Plumbing**

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR2515]

39. **Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- \* 50<sup>0</sup>C in all other classes of buildings.**

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

[DUR2555]

41. **No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.**

[DUR2705]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

42. **Prior to issue of any occupation certificate, all work associated with the section 138 driveway approval for vehicle access to the property is to be completed to the satisfaction of Council's Director of Engineering Services.**

[POC0005]

43. **A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

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

**The street number is to be on a white reflective background professional painted in black numbers 100mm high.**

**On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.**

**For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.**

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

[POC0265]

45. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

## USE

46. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

[USE0505]

48. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

### 49. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

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

[USE1305]



**REPORT:**

**Applicant:** Curry Kenny Developments Pty Ltd  
**Owner:** South Kingscliff Developments Pty Ltd  
**Location:** Lot 351 DP 1087716, No. 19 Cylinders Drive, Kingscliff  
**Zoning:** 2(f) Tourism  
**Cost:** \$2,000,000

**BACKGROUND:**

The property is zoned 2(f) tourism under Tweed Local Environmental Plan 2000 and is located on the eastern side of Cylinders Drive, Kingscliff. The property is bounded by residential land to the north and south and to the east a coastal reserve (waterfront open space).

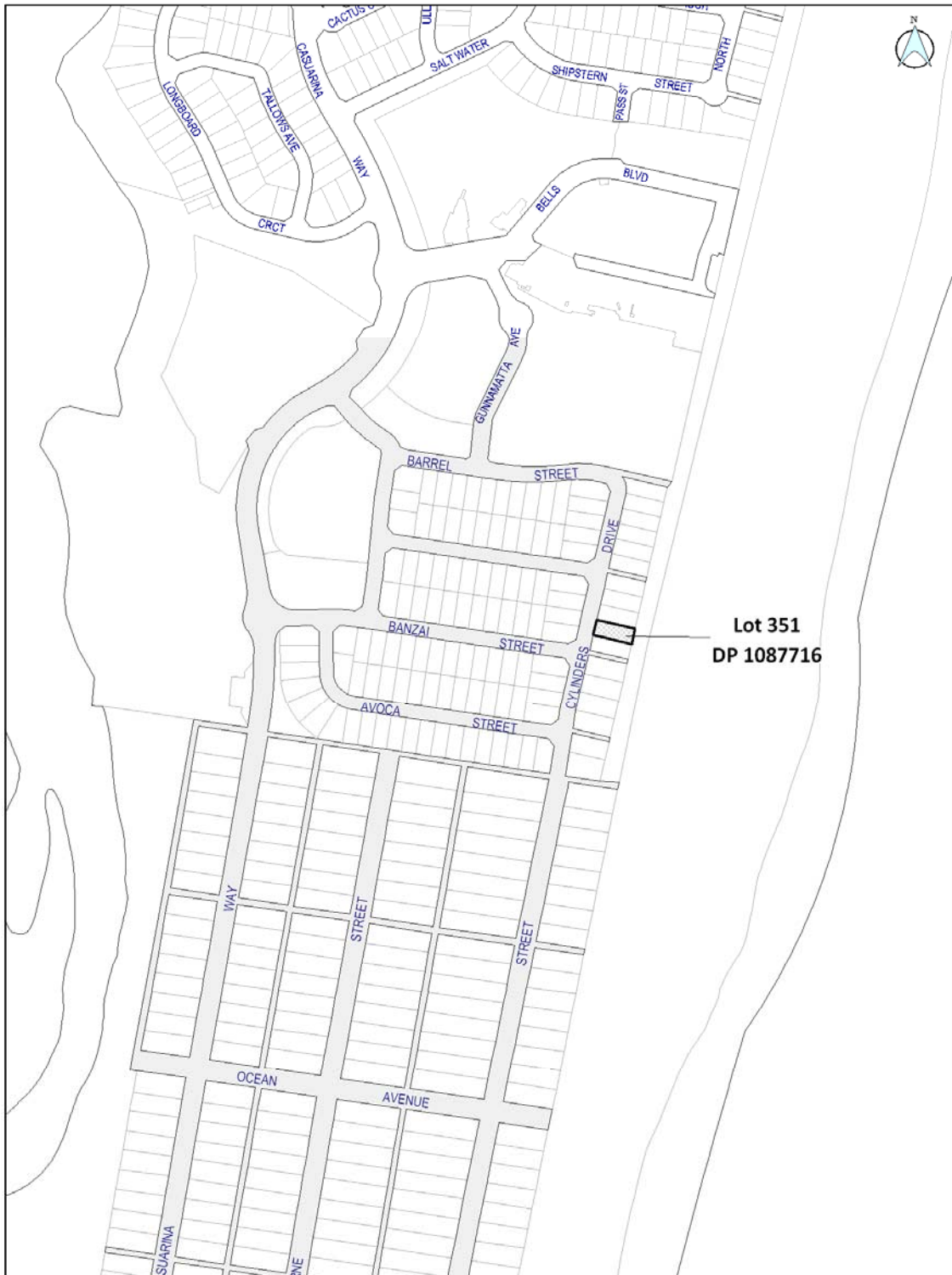
An application has been received to construct a two (2) storey dwelling with a basement car park and in ground swimming pool on the subject property. The property is situated on the eastern side of Cylinders Drive Kingscliff and backs on to the coastal foreshore of South Kingscliff Beach

A SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

The application was notified to adjoining property owners and no submissions have been received to date.



**SITE DIAGRAM:**



Lot 351  
DP 1087716

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*Tweed Shire Council*

Lot 351 DP 1087716  
No. 19 Cylinders Drive, Kingscliff

Site Plan



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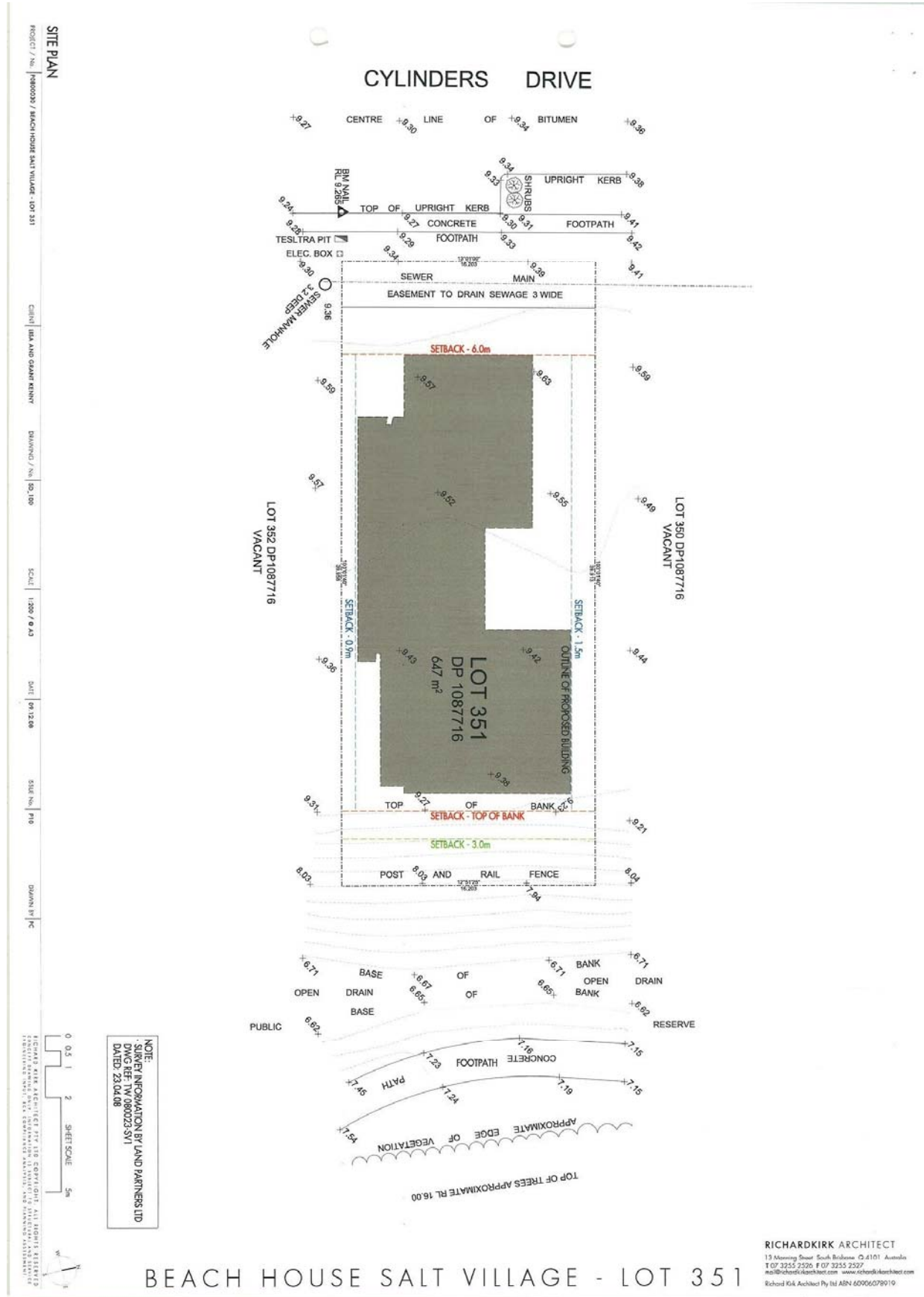
Author: J. Batchelor

Date: 05/Feb/2009

Scale: 1:5,000

Sheet: 1 of 1

DEVELOPMENT PLANS:



BEACH HOUSE SALT VILLAGE - LOT 351

**EXTERNAL WORKS + LANDSCAPE PLAN**

PROJECT / No | 1000000 / BEACH HOUSE SALT VILLAGE - LOT 351

CLIENT | LISA AND GARY MANN

DRAWING / No | 20.110

SCALE | 1:200 / @ A3

DATE | 09/12/08

DSF No | P10

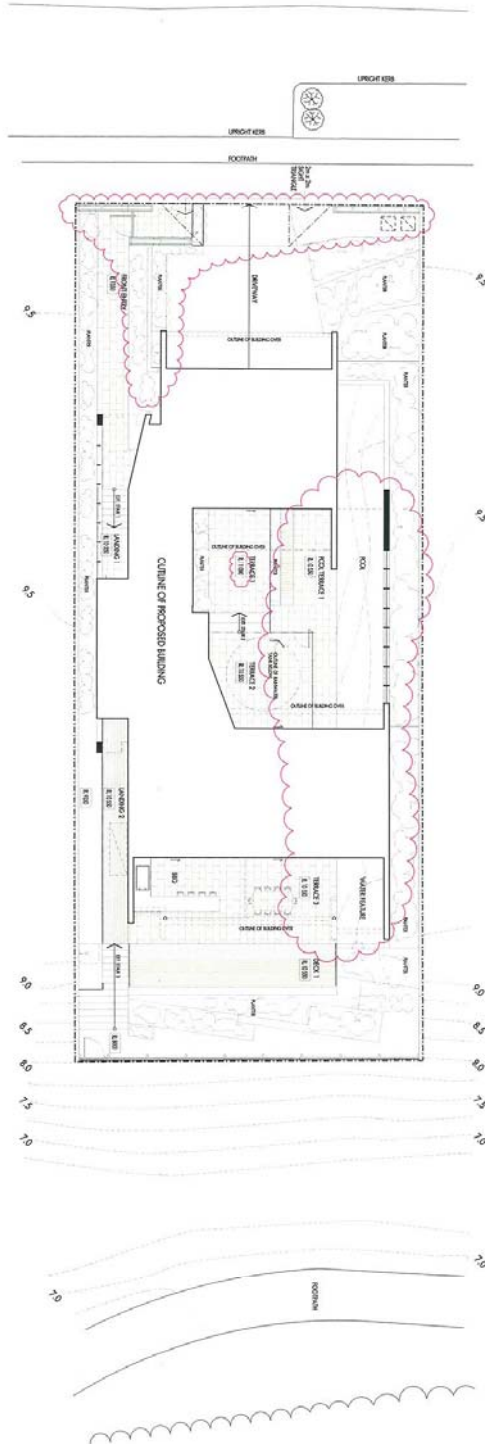
DRAWN BY | JC

BUILDING STATISTICS	
SITE AREA	647m <sup>2</sup>
BUILDING SITE COVER	44.5% (288m <sup>2</sup> )
LEVEL 1 INT. AREA	92m <sup>2</sup>
LEVEL 2 INT. AREA	159m <sup>2</sup>
LEVEL 3 INT. AREA	141m <sup>2</sup>

0 0.5 1 2 SHEET SCALE: 5m



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BEACH HOUSE SALT VILLAGE - LOT 351

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 T 07 3255 2526 F 07 3255 2327  
 email: rick@richardkirkarchitect.com www.richardkirkarchitect.com  
 Richard Kirk Architect Pty Ltd ABN 60006078010

### WEST ELEVATIONS

PROJECT / No: 10000000 / BEACH HOUSE SALT VILLAGE - LOT 351

CITY/COUNCIL: LGA AND QUANT RENNIV

DRAWING / No: 200300

SCALE: 1/100 @ A3

DATE: 09/12/08

SHEET No: 010

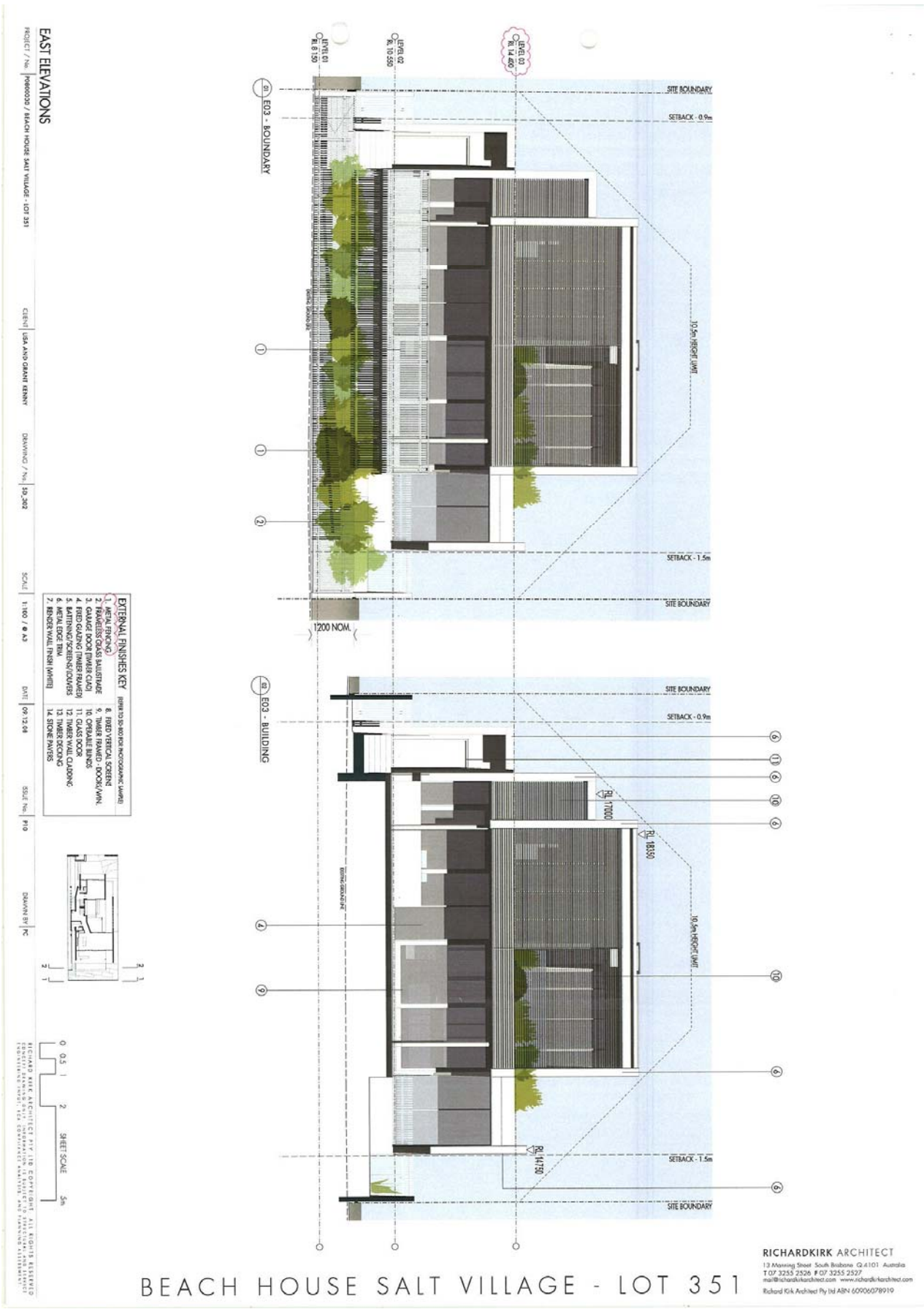
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BEACH HOUSE SALT VILLAGE - LOT 351

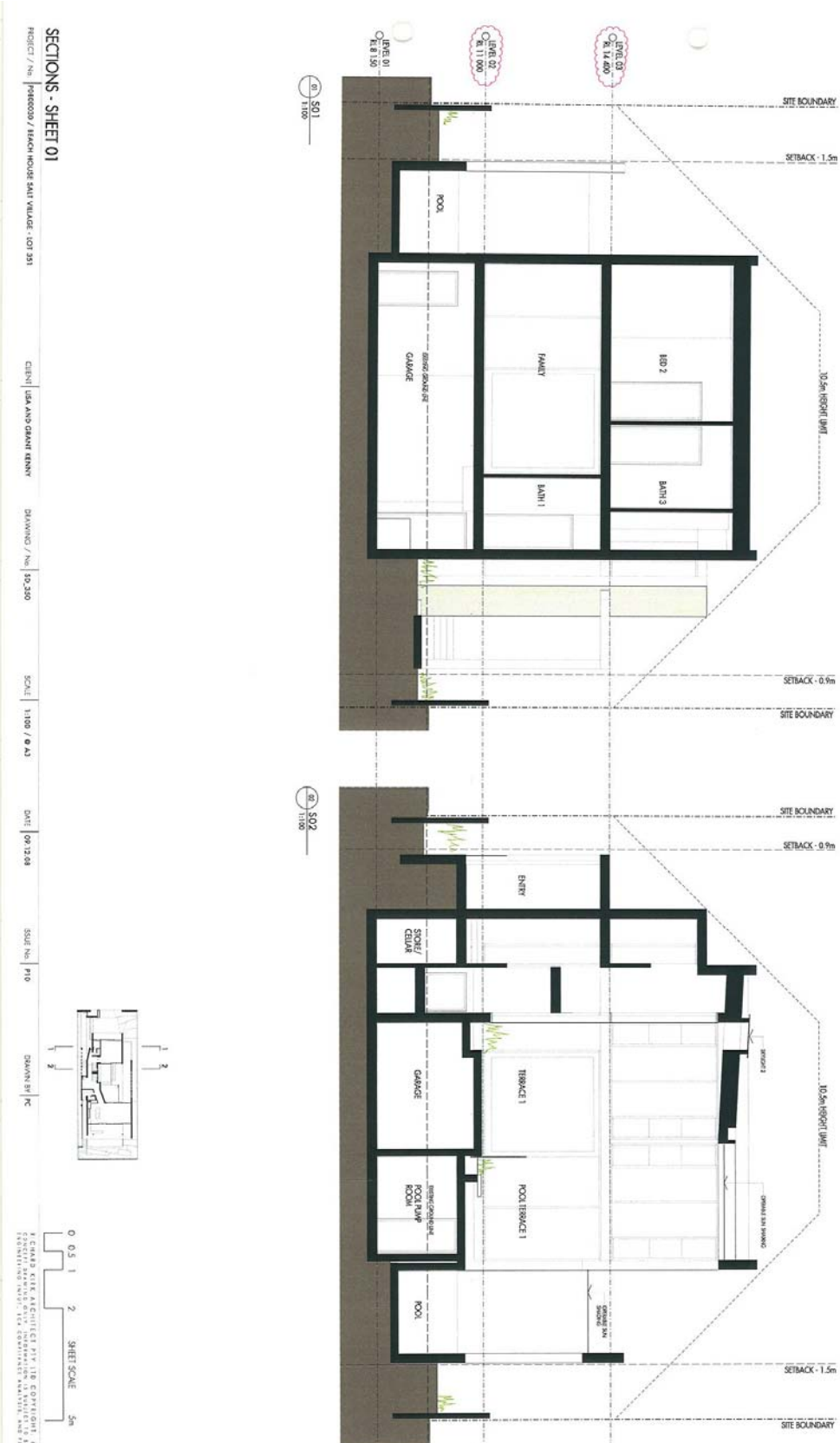












**SECTIONS - SHEET 01**

PROJECT / No: PO00000 / BEACH HOUSE SALT VILLAGE - LOT 351

CLIENT: LBA AND GRANT KIRBY

DRAWING / No: 100-200

SCALE: 1:100 / A3

DATE: 09/12/08

SHEET No: P10

DRAWN BY: PC

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0 0.5 1 2 SHEET SCALE 5m

BEACH HOUSE SALT VILLAGE - LOT 351

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 mail@richardkirkarchitect.com www.richardkirkarchitect.com  
 Richard Kirk Architect Pty Ltd ABN 60996078919

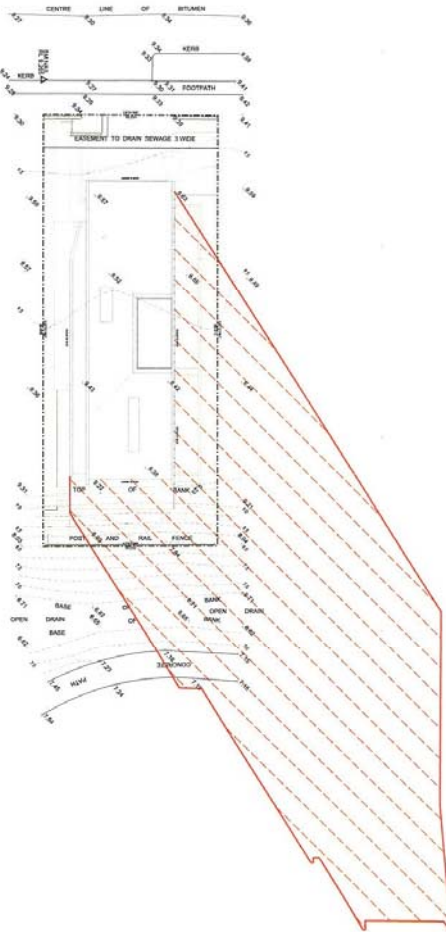


PROJECT / No. 19880008 / BEACH HOUSE SALT VILLAGE - LOT 351  
 CLIENT IDA AND GRANT KIRK  
 DRAWING / No. PD\_200

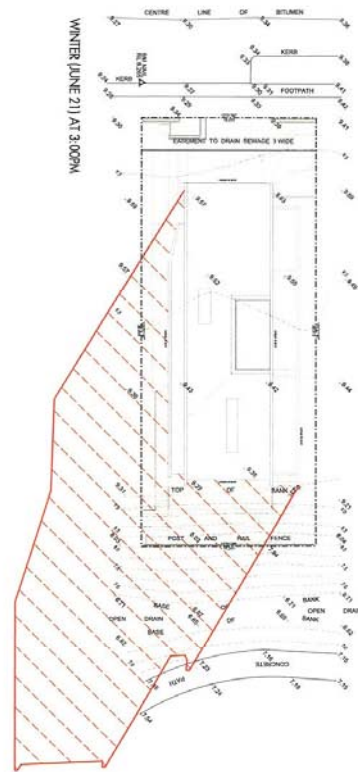
SCALE 1:400 / A4  
 DATE 09/12/08  
 SHEET No. 110  
 DRAWN BY JC

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 mol@richardkirkarchitect.com www.richardkirkarchitect.com  
 Richard Kirk Architect Pty Ltd ABN 6090667891/9

SUMMER (DEC 21) AT 6:30PM (DAYLIGHT SAVING)



WINTER (JUNE 21) AT 3:00PM



BEACH HOUSE SALT VILLAGE - LOT 351

**SHADOW DIAGRAMS - BUILDING IMPACT**

PROJECT / No: 188000 / BEACH HOUSE SALT VILLAGE - LOT 351

CLIENT: USA AND GRANT TRUSTY

DRAWING / No: 501\_201

SCALE: 1:400 / A3

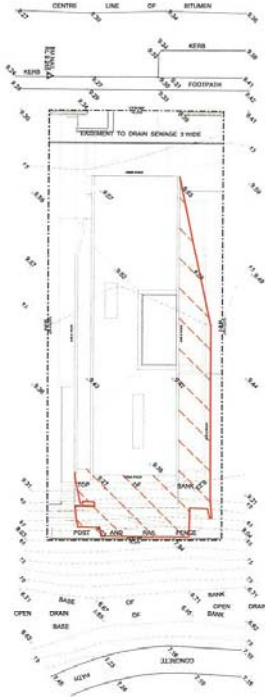
DATE: 09/12/08

ISSUE No: 010

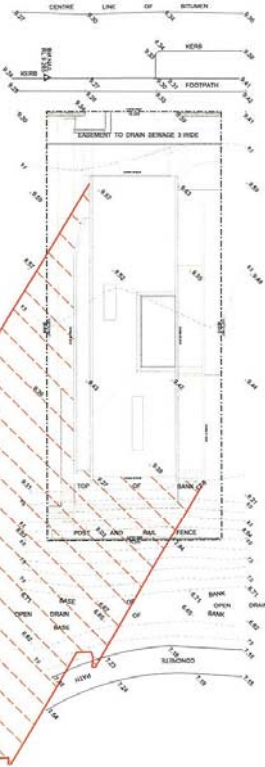
DRAWN BY: JC

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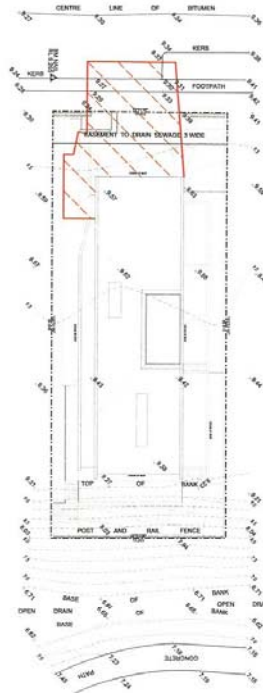
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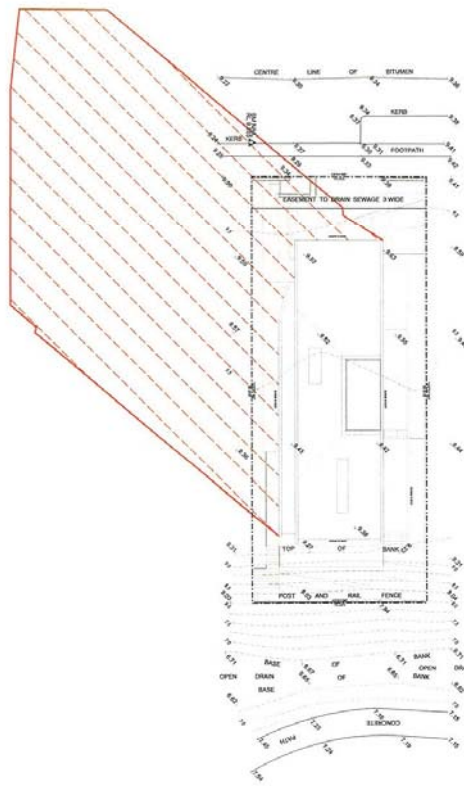
WINTER (JUNE 21) AT 3:00PM



SUMMER (JANUARY 21) AT 9:00AM (DAYLIGHT SAVING)



WINTER (JUNE 21) AT 9:00AM



BEACH HOUSE SALT VILLAGE - LOT 351

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

The subject site is zoned 2(f) Tourism. The primary objective of the zone relates to the provision of integrated tourist development and uses associated with, ancillary to or supportive of the tourist development.

The secondary objectives relate to the provision of high quality residential development being integral and supportive of the primary intent of this zone. The proposed development is consistent with the secondary objective of the zone,

**Clause 15 - Essential Services**

All essential services are available within the area

**Clause 16 - Height of Building**

The proposed height of the development (9m) complies with the 2 storey and 9m maximum height limitation affecting the subject site.

**Clause 17 - Social Impact Assessment**

A social impact assessment is not required given the minor nature of the proposal

**Clause 35 - Acid Sulfate Soils**

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2 metres below surface level. As approximately 2 metres of fill was placed on the site at subdivision stage, the depth of Acid soils would be approximately 4 metres below current surface level. It is not anticipated that the development will impact on the acid soils in the area.

**Other Specific Clauses****Clause 36 - Coastal Erosion Hazard Outside Zone 7(f)**

The proposal is consistent with the considerations of this clause. The proposed development will not affect the beach or dune system and landscape or scenic quality of the locality, other than in relation to shadowing which is discussed in detail later in this report.

Council's mapping records indicate the subject site is clear of the 100 year hazard line.

#### Clause 39A – Bushfire Protection

Council's records indicate the site is bushfire prone. The proposal is consistent with the considerations of this clause. The NSW Rural Fire Service reviewed the proposal and raised no concern with regards to Planning for Bush Fire Protection 2006 subject to conditions of consent

#### North Coast Regional Environmental Plan 1988

##### Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

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

The proposal will not impede public access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the waterfront open space to the east of the site being overshadowed before 3pm midwinter (standard time) and 7pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

##### Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is not inconsistent with the Coastline Management Manual.

#### State Environmental Planning Policies

##### SEPP No. 1 - Development Standards

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) environmental protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *At 6.30pm mid-summer, shadows cast by the proposed building, which encroaches onto the foreshore reserve( cycle way), are*

*relatively narrow and therefore affects only a small portion of the reserve.( see shadow diagram attached).*

- *At 3.00pm midwinter shadows cast by the proposed building generally do not extend beyond the cycle way/walkway.*
- *At the stated times, the shadows cast by the proposed building would not extend to any beach areas and therefore will not impact on sunbathers and surfers.*
- *The building design effectively minimises as much as possible the extent of shadow on the foreshore reserve.*
- *The area shaded at the statutory times comprises a storm water swale, a bicycle path and managed lawns that would be in full sun until late afternoon.*
- *The shadow does not impact on any areas used by the public for formal recreational activities.*
- *The shadow does not impact on the more intensely used foreshore area adjacent to “Central Park”*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 6.30 pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The beach is over 100 metres from the rear of the property

Council has granted many other approvals for dwellings along the Tweed Coast, particularly in the Salt subdivision that have similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

#### SEPP No 71 – Coastal Protection

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public’s enjoyment and access to the foreshore.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a BASIX certificate for the proposal which is consistent with the required energy target.

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

None apparent

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

- The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30<sup>th</sup> June 2008 and the this decision be notified in the tweed link.

In this instance the proposed development was lodged with Council on the 26<sup>th</sup> June 2008 and in line with the above resolution need not comply with the design requirements of A1. Notwithstanding the above the applicant has attempted to comply with the requirements of A1 to utilise the increased height limit of 9 metres permitted in A1. It should also be noted the most recent amended plans were received by Council on 10 December 2008 and these plans were the result of information requested during the assessment of the application.

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

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools

Public Domain Amenity

**Streetscape**

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments. The dwelling is clearly visible from Cylinders Drive and the dwelling is setback 6m from the street which is consistent with the surrounding developments.



## **Public Views and Vistas**

The proposal will not result in an unreasonable view loss of the beach and foreshore given the 3 storey limitation as specified in the Tweed Local Environmental Plan 2000 and the 9 metres height in A1. The proposed dwelling provides view corridors for dwellings located on the western side of Cylinders Drive, between dwellings and side boundary set backs.

## Site Configuration

### **Deep soil zones (DSZs)**

The property contains two areas of deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling adjacent to the eastern property boundary.

The deep soil zone in the front yard of the property extends across the entire length of the site, and excludes the concrete driveway and entrance path, which is consistent with the design control requirements.

The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a width of 3 metres while this is less than the required 5.5 metres it is consistent with the 3 metres setback requirement outlined in the 88b instrument for the subdivision and is therefore considered acceptable.

### **Impermeable Site Area**

The area of the site is 647m<sup>2</sup> subsequently the maximum impermeable site area permitted at the completion of the development will be 65%. From the landscaping plans submitted the development will create an impermeable area of approximately 64% and will comply with the design control.

### **External Living Areas**

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

### **Landscaping**

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is generally consistent with this design control.

## **Topography, Cut and Fill**

The site is basically flat with minimal cut of fill proposed other than the excavation for the basement car park.

### Setbacks

The proposal is consistent with the set back controls, 6 metres front boundary setback, 1.5 metres northern side boundary, 0.9 metres from the southern side boundary.

The set back from the rear boundary is 2 metres which is consistent the prescribed set back requirement in the 88b instrument for the subdivision.

### Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Three off street car parking spaces are provided behind Council's building line beneath the dwelling and vehicle access to these spaces is considered adequate.

### Height

#### **Building Height**

The maximum height of the dwelling is 9 metres which is consistent the maximum design control of 9 metres.

#### **Ceiling Height**

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 3.3m which satisfies the requirements of the DCP.

### Building Amenity

#### **Sunlight Access**

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated north adjacent to the pool area and eastern rear boundary.

The proposed dwelling will overshadow the adjoining southern side of the property however the extent of overshadowing could be reasonably expected for the area, as the proposed development is in keeping with the bulk and scale of existing dwellings in the area.



### **Visual Privacy**

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

### **Acoustic Privacy**

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

### **View Sharing**

This matter has been discussed previously in this report.

### **Natural Ventilation**

The design of the dwelling provides for adequate natural ventilation.

### **Building Orientation**

The dwelling has been sited on the property to optimize solar access and coastal views as well as providing an acceptable street presentation

### **Fences and Walls; Front, Side and Rear**

The proposal incorporates a 1.8m high slatted front fence. The design and use of materials is consistent with the design of the dwellings.

The side fences as evident on the architectural plans detail comprises a 1.8m high concrete panelled fence which is consistent with the design control. While the front fence is higher than the 1.5 metres nominated in A1, the height and style is consistent with front fences previously approved in the area prior to the requirements of A1.

Landscaping is proposed behind the slatted front fence to assist in reducing the impact of the fence on the streetscape.

### **Roof**

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

### Building Performance

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

### Swimming Pools

The proposed swimming pool is set back behind Council's Building line and 1.5 from the eastern side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

### Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.55:1 for the dwelling. The proposed dwelling is consistent with this design control having an FSR of approximately 0.55:1.

### A2-Site Access and Parking Code

The development will comply with the requirements of section A2 in relation to vehicle access and parking.

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

### Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within the policy.

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

### Context and Setting

The property is in a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

### Access, Transport and Traffic

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

### Flora and Fauna

Minimal impact is envisaged, the site has been cleared during the creation of the subdivision.

**(c) Suitability of the site for the development**

Surrounding Land uses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The design of the dwelling is in keeping with the residential character of the area

Topography

The property is generally a flat site with an approximate 1% fall towards the front of the property

Site Orientation

The building has been centrally located on the property, with compliant minimum side and rear boundary setbacks. The dwelling is set back 6 metres from the front property boundary and therefore complies with the requirements of A1. The living areas of the dwelling have been mainly orientated to the east and north to optimize ocean views and solar access to the north.

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

The proposal was notified to the adjoining property owners for 14 days from the 10 July to 24 July 2008. To date no submissions have been received.

**(e) Public interest**

The proposed development is considered to be in the public's interest.

**OPTIONS:**

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to the locality.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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.

---

**P3 [PR-PC] Development Application DA08/1007 for a Dwelling & Swimming Pool at Lot 282 DP 1120559, No. 13 Woodfull Crescent, Pottsville**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/1007 Pt1**

**SUMMARY OF REPORT:**

This Development Application is being reported to Council due to the Department of Planning's circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 variations greater than 10% to be determined by full Council.

As the Department of Planning have advised Council Officers to be conservative in their application of the 10% rule and the fact it is extremely difficult to calculate 10% of a building storey limitation, it has been resolved to report this application to full Council.

The applicant seeks development consent for a dwelling with an attached garage and a swimming pool as well as earthworks and landscaping involved in the construction of the dwelling.

The applicant has lodged an objection under SEPP 1 to a development control contained within Council's Local Environmental Plan 2000.

The objection is in regard to the proposed dwelling component having a three storey portion which is not consistent with the provisions of Clause 16 of the Tweed LEP 2000.

In accordance with Development Control Plan A11 – Public Notification of Development Proposals – the Development Application was notified for a period of 14 (fourteen) days from 19 January 2009 to 03 February 2009. No submissions were received by Council within this timeframe.

**RECOMMENDATION:**

**That: -**

- A. State Environmental Planning Policy No. 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA08/1007 for a dwelling and swimming pool at Lot 282 DP 1120559 No. 13 Woodfull Crescent, Pottsville be approved subject to the following conditions:**

**GENERAL**

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

[GEN0015]

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

[GEN0115]

3. 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]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0285]

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

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

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

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

[PCC1145]

**PRIOR TO COMMENCEMENT OF WORK**

6. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and
-

ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

7. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

8. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

9. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal

certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - \* in the name and licence number of the principal contractor, and
  - \* the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - \* the name of the owner-builder, and
  - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

- 10. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
  - (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

- 11. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.



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

[PCW0255]

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

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

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

[PCW0985]

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

[PCW1005]

#### **DURING CONSTRUCTION**

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

[DUR0005]

15. 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]

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

[DUR0245]

17. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

18. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

19. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

20. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

21. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

22. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

23. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

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

- Noise, water or air pollution

- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

25. 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]

26. The habitable floor area of the building is to be at a level not less than RL 3.3 m AHD.

[DUR1435]

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

[DUR1875]

28. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

29. 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 an Occupation/Subdivision Certificate.

[DUR1955]

30. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

31. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

32. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
- [DUR2185]
33. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building.
- [DUR2485]
34. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
  - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.
- [DUR2495]
35. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
- [DUR2535]
36. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR2545]
37. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.
- [DUR2555]
38. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.
- [DUR2705]
-

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

39. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

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

The street number is to be on a white reflective background professional painted in black numbers 100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

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

[POC0265]

41. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

42. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

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

[POC1055]

**USE**

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

[USE0125]

45. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this

requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

[USE0505]

47. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

48. Swimming Pools (Building)

(a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).

(b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).

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

[USE1295]

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

[USE1305]

**REPORT:**

**Applicant:** Anstey Designer Homes  
**Owner:** Mr DM Anderson and Mrs KE Anderson  
**Location:** Lot 282 DP 1120559 No. 13 Woodfull Crescent, Pottsville  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$500,000

**BACKGROUND:**

The subject site is 1349m<sup>2</sup> and is elevated above surrounding blocks. The subject site has been cleared of significant vegetation apart from several established native trees (Iron Bark Eucalypts) located on the site.

Council's records indicate the site was created on 23 November 2007 as part of the "Black Rock" Estate at Pottsville.

The site has a street frontage of four (4) metres to Woodfull Crescent as it is a battleaxe block. The site widens to 27.845m in width and 50.345m in depth for the main body of the site. A sewer main enters the northern corner of the rear section of the site and would be clear of the proposed development.

The subject site is zoned 2(a) Low Density Residential and is located within a designated 2 storey area as per Clause 16 of the Tweed LEP 2000. The properties immediately adjoining to the north, east and west are not currently developed, however the greater surrounding area contains a mixture of single dwelling houses and duplexes.

The site also adjoins 7(d) Environmental Protection (Habitat) zone under the Tweed LEP 2000.

The applicant seeks consent for a dwelling with an attached garage and swimming pool which is located at the rear of the site, as well as related earthworks and landscaping.

An objection under SEPP No. 1 to a Development Control in Tweed LEP 2000 has been received by Council in regard to Clause 16 of the Tweed LEP 2000, as the proposed building contains a small section which is three stories in height.

The site is a battleaxe block which backs on to a nature reserve and koala habitat at the rear of the property.

Notification was required as per the provisions of DCP Section A11 (Public Notification of Development Proposals) and no submissions have been received to date.



**SITE DIAGRAM:**



**Lot 282  
DP 1120559**

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P.O. Box 816  
Murwillumbah, NSW, 2484  
Tel: (02) 6670 2409  
Fax: (02) 6670 2483

*Tweed Shire Council*  
**Lot 282 DP 1120559**  
**No. 13 Woodfull Crescent, Pottsville**

**Site Plan**



File: Z:\GIS\_Jobs\Site Plan.Wor

Author: J. Batchelor

Date: 19/Jan/2009

Scale: 1:5,000

Sheet: 1 of 1







ansteyhomes.com.au - Ph: 0256 609333 - LIC No: 35721C

**EXTERIOR FINISHES**

- Roof Sheets COLORBOND
- Colorbond Quad
- Guttering PVC 90mm, paint
- Downpipes Almn powder coat
- Windows Almn powder coat
- Patio Doors Almn powder coat
- Bi Fold Doors Almn powder coat
- reveals 100mm
- Ext Doors Select (see schedules)
- Garage Door Panel Lift
- V/Dah Posts 112 x 112 lam H2, painted finish
- Handrails lam, painted finish @ 1000mm min ht

**LEGEND**

- FC Fibrous sheet timber cover strap.
- BV Brick veneer
- RB bagged painted finish.
- RB Brick Veneer
- RB Render finish
- WB Primeline Weatherboard painted finish
- LWB Linea Weatherboard painted finish
- RWT Rainwater Tank
- SL Sky Light

**AMENDED DA DATA**

Proposed Residence for

**DARREN & KERRIE ANDERSON**

Lot No: 282 DP No: 1120559

**WOODFULL CRESCENT  
BLACK ROCK ESTATE  
POTTSVILLE**

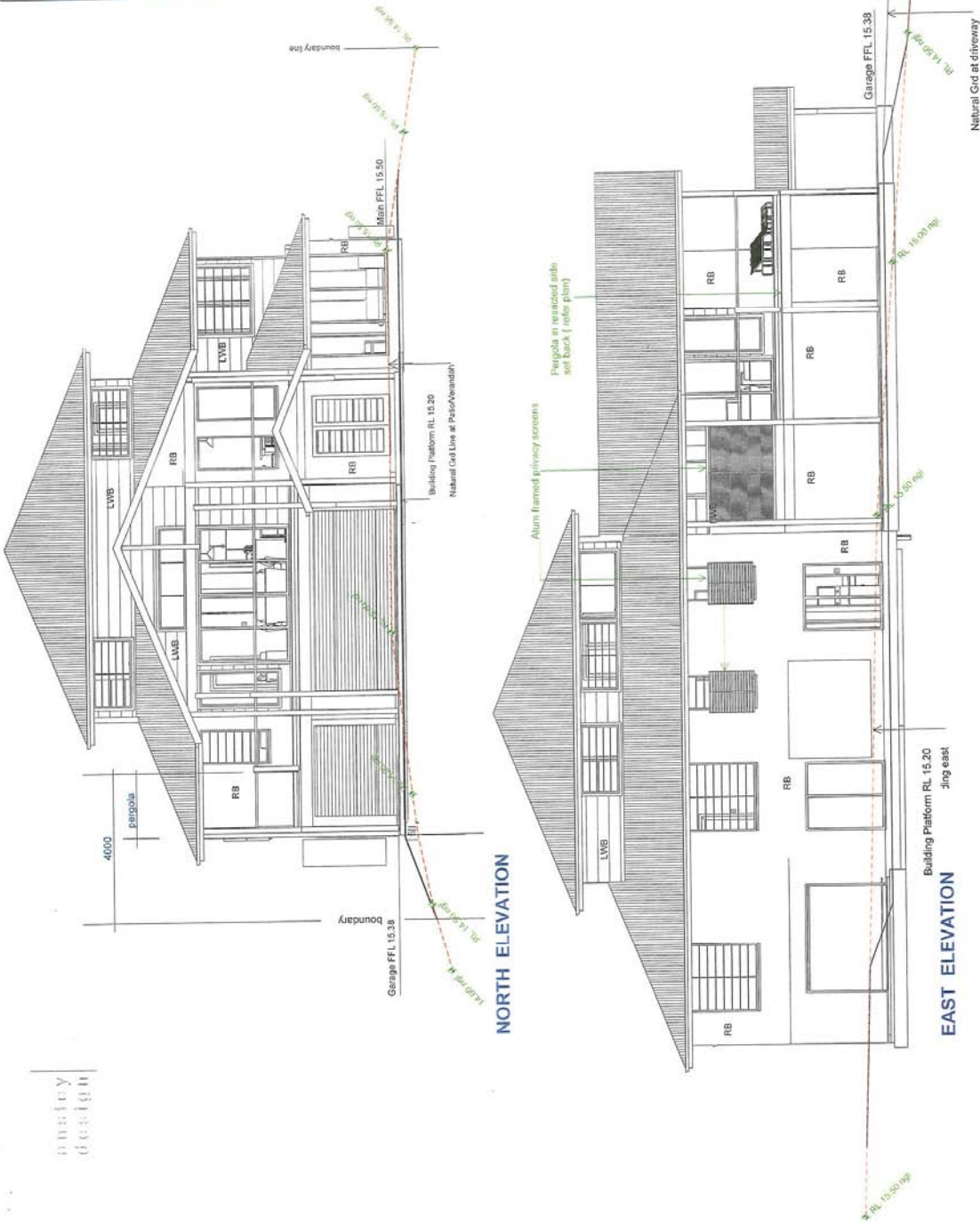
**ELEVATIONS**

DATE 15 / 10 / 08 SCALE 1 : 100

**2008 01 - 02a**

DESIGNED IN ACCORDANCE WITH THE BCA 2005

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ansteyhomes.com Ph: 0256 603335 - ED No: 19221C

**BASIX REQUIREMENTS**

- PLANTS** Indigenous Plants  
see Landscape plan
- FIXTURES** AAAA rated throughout
- WTR TANK** 3000 litre rainbank min  
..... m2 roof connected  
connect to water tank
- TOILETS** Well Ventilated space
- TAP Ext x1** Outdoor Clothesline
- FRIDGE** Comfort Tone
- WASHING**
- GLAZING**
- INSULATION**  
Wall: RhinoWrap LBD  
R1.1  
Roof: Perma-stop 55mm sisal  
faced thermal blanket  
with plasterboard ceilings  
R2.94
- AIRCON** Single Phase Split  
System EER 3.5
- location:** .....  
where indicated
- FANS** Gas cooktop,  
Electric Oven + MW.
- COOKING** see Electrical Plan
- LIGHTING**

**AMENDED DA DATA**

Proposed Residence for

**DARREN & KERRIE  
ANDERSON**

Lot No: 282 DP No: 1120559

**WOODFULL CRESCENT  
BLACK ROCK ESTATE  
POTTSVILLE**

**PERSPECTIVES**

DATE 15 / 10 / 08 SCALE

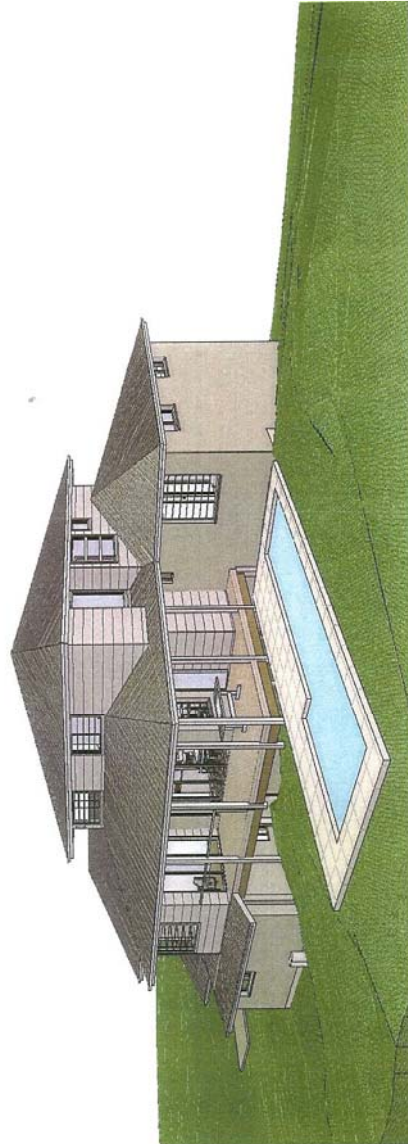
**2008 01 - 01P**

DESIGNED IN ACCORDANCE WITH THE BCA 2006

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**NORTH EAST VIEW**



**NORTH WEST VIEW**



**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, Clause 5 - Ecologically Sustainable Development and Clause 8 - Zone objectives**

The subject site is zoned 2(a) Low Density Residential. The primary objective of the zone relates to the provision for and maintenance of low density residential development with a predominantly detached housing character and amenity. The secondary objectives relate to the option of housing diversity and for non-residential development.

The proposed development is consistent with the primary and secondary objectives of the zone as it represents a residential dwelling.

**Clause 15 - Essential Services**

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

**Clause 16 - Height of Building**

The proposed development consists of a dwelling with an attached garage and swimming pool. As identified previously the subject site has a maximum two storey height limitation under Clause 16.

The dwelling house contains a section which is three storeys in height and therefore not consistent with the provisions of clause 16. In response to this the applicant has lodged an objection under SEPP No. 1 to the development control.

**Clause 17 - Social Impact Assessment**

Normal domestic impacts anticipated from the proposed development. These impacts are not anticipated to have any significant impact to the existing amenity of the area or the existing streetscape.

**Clause 35 - Acid Sulphate Soils (ASS)**

The site is in a class 5 ASS area. As the proposed development will not extend below 1m AHD, acid sulphate material will not be an issue in relation to this development.

## Other Specific Clauses

### Clause 34 – Flooding

The site is identified as being in a flood prone area. The proposal will not increase the effect of flooding on the community and is considered to be consistent with the aims of the policy.

### Clause 39A – Bushfire Protection

The site is identified as being in a bushfire prone area. After an assessment of the site and surrounding area whilst accompanied by NSW Rural fire service officer it has been established that the site can be identified as having a high potential risk of bushfire as per the provisions of Planning for Bushfires 2006. Therefore any consent will be conditioned to require the building achieve 'Level 2 Construction' as per Australian Standard 3959-1999 'Construction in bushfire prone areas'.

It was also noted at the time of inspection that the property to the rear of the subject site has a fire track which is maintained by Council which assist in the reduction of any potential bushfire risk.

## **North Coast Regional Environmental Plan 1988**

### Clause 29A: Natural areas and water catchment

No significant impact anticipated

### Clause 32B: Coastal Lands

Clause 32B applies to this proposed development. The proposal is generally consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

### Clause 43: Residential development

Generally consistent with the objectives of the Clause.

## **State Environmental Planning Policies**

### SEPP No. 1 - Development Standards

As stated previously, the applicant objects under SEPP No. 1 to the Design Control for building height identified in Clause 16 of the Tweed LEP 2000.

The proposed dwelling is, technically, considered to be three storey as the internal layout of the dwelling creates a small section of the dwelling which by definition is deemed to be three storey.

In their submission the applicant states that:

*“With respect to the 3 storey component, the site topography presents difficulties in the design response to the site in regards to the irregular cross fall.*

*A portion of the building exceeds the three storey height limit. The variation is restricted to the laundry and storage areas within the 3rd storey zone as illustrated within Plan 2008 01-01s. In support of the proposed variation, we highlight the following point for Council's consideration.*

- *The design is site specific, and meets the objectives for, and relationship to, its surrounds. With the building centred on the block, the built form is located within the overall height limit at all points. The building sits comfortably within the proposed cut, which is also compliant with Council's DCP Section A1.*
- *Floor access to the front [lower] and rear [higher] is balanced and well positioned, for ease of access through the building and to lessen the site coverage.*
- *The ground floor perimeter is mostly at natural levels or cut in, with an gentle driveway at natural levels*
- *The building is stepped with the site and is pyramidal in form, ensuring that the form does not dominate either the site or its neighbours. To this end, the development is compliant with respect to solar access to adjoining properties and does not present an adverse overshadowing impact.*
- *At any point on the buildings perimeter the building is two storeys (the uppermost level is a smaller 'Hat', softening the buildings form, and offset toward the rear). This proposed design response preserves the reduced bulk of the dwelling when compared to a design which proposes a 2.7m high ceiling height above the first floor roofline.*
- *For the most part the sub floor areas comply as 'non storey' (<1500mm) but due to the irregularities of the contours of the site (the natural shape is not uniform) an area which would otherwise comply with the definition for exclusion 'as access path to basement areas' has been partly taken up by the location of the laundry and to increase storage space in the workshop.*

*Reference to the above has been demonstrated on Plan 2008 01-01s [plans] and sections 2008 01 3a, & 3b*

- *Both of the above referenced areas are not visible from the public domain or neighbouring properties given they are located totally within the body of the dwelling and as such do not adversely impact the streetscape that would otherwise occur from a typical three storey structure*
- *The building has a height of 8.85m at roof apex at a point on ground directly below, (RL 16.9 shown on drawing 01s) and thereby complies with the height limit. This height is demonstrated on elevation 2b and section 3b with reference to RL 16.9”*

### **Assessment of the SEPP No. 1 Objection**

The applicants submission indicates that the three storey component of the dwelling will be located internally and at no point does the building perimeter exceed two storeys.

Council’s attention is drawn to the definition of a storey under Tweed LEP 2000 which defines that a storey means:

- (a) the space between two floors, or*
- (b) the space between a floor and any ceiling or roof immediately above it, or*
- (c) foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top of the floor immediately above them exceeds 1.5 metres in height.*

Accordingly it should be noted that there is only an area of approximately 11m<sup>2</sup> in the downstairs area would constitute a third storey by that definition. Additionally this area is just an expansion of storage area and a laundry, which have been located so as to efficiently use the space present under the upper storeys created by the unique topography of the land.

Were the identified third storey area to be deleted the proposed building would be fully compliant with the requirements of Clause 16 of the Tweed LEP with no change to any of the outside facades of the dwelling. This would tend to suggest that the additional downstairs area, which creates the three storey section, has no significant impact on the external impact of the dwelling.

The adjoining nature reserve to the rear of the property, as well as the large open vegetated space in front of the dwelling will act to reduce any visual impact from the dwelling.

It should also be noted that the applicant has sought to best use the natural contours of the land in the design of the dwelling. The proposed location of



the dwelling is to be on top of a small hill on the site which has lead to a difficult topography for building design.

The proposed dwelling is generally compliant with Council's design requirements and is anticipated to be a positive addition to the streetscape. The proposed dwelling is considered to be a suitable development and warrants favourable consideration.

It is recommended that Council assume the Director's concurrence in this instance.

#### SEPP No 71 – Coastal Protection

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

Despite this, the items contained in Clause 8 of the policy remain a relevant matter for consideration. These items relate to the potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, existing wildlife corridors, the suitability of the site for the development and measures to reduce other adverse environmental impacts.

Having regard to the nature of the proposal; its distance from any waterway or foreshore; and the existence of developments similar in intensity and scale on nearby and adjoining parcels, The proposed development is consistent with the matters for consideration under Clause 8 and is a suitable development for the site.

#### SEPP (Building Sustainability Index: BASIX) 2004

The proposed development is a residential dwelling with an attached garage and swimming pool. Under the requirements of the SEPP and the Environmental Planning and Assessment Regulation 2000 a BASIX certificate is required for this development.

The Applicant has provided a valid BASIX certificate for this proposed development in accordance with the legislation. Additionally the submitted plans have been notated to include a BASIX schedule of commitments and the require features have been included in the plans. It is considered that the requirements of the SEPP have been satisfied

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

There are no Draft Environmental Planning Instruments on exhibition that are a relevant matter for consideration in the assessment of this application.



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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

**Public Domain Amenity**

Streetscape

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

Being an axe-handle block the requirements for being visible from the street are obviously moot.

Public Views and Vistas

The proposal will not result in an unreasonable view loss for the surrounding sites as the predominant views from the surrounding area are in a north-easterly direction away from the proposed dwelling.

**Site Configuration**

Deep soil zones (DSZs)

The property contains two areas of deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling.

The deep soil zone in the front yard of the property extends across the entire length of the site, and excludes the concrete driveway and entrance path, which is consistent with the design control requirements. Given the proposed dwelling's large setback from the front boundary of the property the front DSZ is extremely large with a setback of approximately 15m.

The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a width of 5.6m, which is less than the distance required in the design controls which specifies 8m.

This is due to the location of the proposed dwelling on the site affecting the space available for a rear deep soil zone. In accordance with the provisions for varying a mandatory control, as outlined in section A1, the applicant has submitted an application to vary the control.

The applicant puts forward that the relaxation should be allowed due to the following reasons:

- The property backs on to a nature reserve, so the vegetation corridor sought after in the objectives for the control is already present and therefore some flexibility may be warranted;

- That the rear DSZ has been “reconfigured to a longer width rather than depth to achieve adequate area, an incorporate existing iron bark eucalypts, as indicated on revised landscape plan [2008 01 01 e]”;
- In addition to the rear DSZ the applicant has provided a front DSZ which has been enlarged to incorporate a much greater area than required, which will be vegetated substantially.

The current design of the proposed dwelling still allows for an area at the rear of the building which will create a flora and fauna corridor whilst maintaining and promoting existing mature tree growth and newly established vegetation.

Also the proposed design will allow significant area for stormwater and surface water to be retained and permeate on site. These are both consistent with the objectives of Design Control 2 of Section A1 of the DCP.

It is considered that due to the site conditions the topography of the land and the general design of the dwelling that the variation to the rear deep soil zone requirement is a satisfactory outcome which satisfies the objectives of the controls and is anticipated that it will not create a negative impact on the streetscape.

#### Impermeable Site Area

The area of the site is 1348.90m<sup>2</sup> subsequently the maximum impermeable site area permitted at the completion of the development will be 60%. From the landscaping plans submitted the development will create an impermeable area of 545.3m<sup>2</sup>, which is approximately 40% of the total site area and will therefore comply with the design control.

#### External Living Areas

The dwelling makes provision for external living areas in the form of verandahs and decks to the front and rear of the building. The rear verandah and landscaped area adjacent to the pool provides adequate solar access to the dwelling and private open space.

The verandah and deck to the front of the house have been screened for privacy where required by the Design Controls relevant to section A1 of the DCP.

#### Landscaping

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is generally consistent with this design control.

#### Topography, Cut and Fill

The site is sloped up away from the front boundary of the property and basic cut for the building platform has been proposed. This is generally in keeping with the natural landform and the design achieves the objectives of the Design Control.

#### **Setbacks**

The proposal is consistent with the set back controls have a 15m front boundary setback, 5m setback from the north-western side boundary, 3.4m setback from the north-eastern side boundary, a 5.6m setback from the rear boundary. These are consistent the prescribed set back requirements.

#### Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. At least four off street car parking spaces are provided behind Council's building line. These have been located beneath the front deck and within the garage attached to the dwelling. Vehicle access to these spaces is considered adequate and satisfy Council's access requirements.

#### **Height**

##### Building Height

The maximum height of the dwelling is 8.8m which is consistent the maximum design control of 9m.

##### Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show the ceiling height of the dwelling as being consistent with this provision and the deemed to satisfy provisions of the Building Code of Australia.

#### **Building Amenity**

##### Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of landscaped areas adjacent to the pool area and western rear boundary.

The proposed dwelling will overshadow the adjoining southern side of the property at 3.00pm on the winter solstice however the extent of overshadowing could be reasonably expected for the area, as the proposed

development is in keeping with the bulk and scale of anticipated dwellings in the area.

#### Visual Privacy

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

#### Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating that any noise emitted from an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

#### View Sharing

This matter has been discussed previously in this report.

#### Natural Ventilation

The design of the dwelling provides for adequate natural ventilation.

#### Building Orientation

The dwelling has been sited on the property to optimize solar access and coastal views as well as providing an acceptable street presentation

#### Fences and Walls: Front, Side and Rear

The proposal incorporates a 1.6m high colourbond fence at either side of the rear of the property. The design and use of materials is consistent with the design of the dwellings.

It is assumed that future fencing will be proposed when adjoining properties are developed.

#### Roof

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

#### **Building Performance**

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

### **Swimming Pools**

A swimming pool has been proposed and will be set back behind Council's Building line and 1.5 from the eastern side property boundary. This is consistent with the design control objectives for swimming pools in the DCP.

### **Floor Space Ratio (FSR)**

The maximum FSR applicable for this proposal is 0.65:1 for the dwelling. The proposed dwelling is consistent with this design control having an FSR of approximately 0.30:1.

### A2-Site Access and Parking Code

The subject land allows for vehicular parking for 2 cars in the attached garage, as well as additional spaces within the existing driveway in a stacked arrangement for visitor use. Given the nature of the development and the size of the subject parcel, the proposal is considered to satisfy the provisions of DCP section A2.

### A3-Development of Flood Liable Land

The site is nominated as being flood prone. The proposed dwelling is to be constructed at a height above the 1 in 100 year flood level and above the required minimum floor level for development in this area. Therefore the proposal is consistent with the requirements of section A3 of the DCP.

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

### Clause 92(a) Government Coastal Policy

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

### Clause 92(b) Applications for demolition

No demolition is proposed as part of the development.

### Clause 93 Fire Safety Considerations

None required.

### Clause 94 Buildings to be upgraded

None required.

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

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### Context and Setting

The design, scale and appearance of the building is reasonable and generally consistent with the establishing and desired built form and character of the estate and also promotes a positive contribution to the streetscape.

### Access, Transport and Traffic

Proposed vehicular access arrangements satisfactory and would be separately approved. Pedestrian sight lines each side of the driveway at the front boundary are satisfactory.

### Flora and Fauna

No significant impacts anticipated as a result of the development.

## **(c) Suitability of the site for the development**

### Surrounding Land uses/Development

The site is located in a residential area and is considered to be suitable for the proposed development. Furthermore the proposal is considered to be consistent with the type of development intended for the site.

### Topography and Site Orientation

It is considered that the site is suitable for the proposed development. The land was specifically created for residential purposes and its use is consistent with the locality.

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

As the site is located in a bushfire prone area, the development was notified to the RFS for comments. The RFS recommended that certain measures be taken to protect the dwelling in the event of bushfire attack.

## **(e) Public interest**

The proposed development is considered to be consistent with the surrounding uses and has been designed to be compatible with the existing development, hence the proposal is considered not to be contrary to the wider public's interests.

Subject to the proposed conditions of consent, the proposal generally complies with all applicable provisions and is considered to be in accordance with the public interest, with no significant impacts anticipated for the future of adjoining landowners.

**OPTIONS:**

1. Approve the development application with conditions
2. Refuse the development application stating reasons

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the right to appeal in the Land and Environment Court should he/she be dissatisfied with the determination.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The subject land is generally considered to be suitable for the proposed development. The proposed development is considered to be generally consistent with the applicable planning instruments and Development Control Plans

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. **Confidential Attachment** - Plans (ECM 1966560)
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**P4 [PR-PC] Development Application DA08/0857 for a Dwelling, Swimming Pool & Front Fence with Fence Height Variation at Lot 356 DP 1087716, No. 29 Cylinders Drive, Kingscliff**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/0857 Pt1**

**SUMMARY OF REPORT:**

An application has been received to construct a two (2) storey dwelling with a basement car park, an in-ground swimming pool and fencing at the subject property. The property is situated on the eastern side of Cylinders Drive Kingscliff and backs onto the coastal foreshore of South Kingscliff Beach. The property has approximately 1 metre fall towards the rear of the property.

The applicant has lodged an objection under SEPP No. 1 as the proposed development will result in overshadowing of the foreshore.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 variations greater than 10% to be determined by full Council. Given that the Department of Planning has advised Council Officers to be conservative with the application of the 10% rule, the difficulties in calculating 10% of the shadow development standard (as it is time based), it is considered prudent to report this application to Council.

No submissions have been received in relation to the proposal. It is considered that the subject application is suitable for approval, subject to conditions of consent.

**RECOMMENDATION:**

**That: -**

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA08/0857 for a dwelling, swimming pool & fencing at Lot 356 DP 1087716, No. 29 Cylinders Drive, Kingscliff be approved subject to the following conditions: -**

**GENERAL**

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.  
[GEN0015]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
3. New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 2. New construction of the western façade shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 1.
4. Screen-less door systems, including glazing and supporting framework shall be designed and constructed to withstand 19kW/m<sup>2</sup> of radiant heat flux to prevent the entry of embers into the building. Draught excluders, seals and door furniture shall be manufactured from materials having a flammability index no greater than 5 (with the exception of intumescent seals which are permissible) and ensure that there are no gaps >2.0mm in diameter when the door is closed.
5. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.
6. No brushwood (or the like) or treated pine timber fencing shall be used.
7. At the commencement of building works the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.
8. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
9. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.

[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

11. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

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

[PCC1145]

#### **PRIOR TO COMMENCEMENT OF WORK**

12. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
- (ii) notified the principal certifying authority of any such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

13. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

14. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - \* in the name and licence number of the principal contractor, and
    - \* the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - \* the name of the owner-builder, and
    - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

15. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

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

[PCW0255]

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

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

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

[PCW0985]

18. All roof waters are to be disposed of through properly jointed pipes to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2.

[PCW1005]

#### **DURING CONSTRUCTION**

19. 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]

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

[DUR0245]

21. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

22. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

23. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

24. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

25. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

26. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

27. 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]

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

[DUR1875]

**29. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**

[DUR1945]

**30. Swimming Pools (Building)**

**(a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))**

**(b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.**

**(c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**

**(d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.**

[DUR2075]

**31. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.**

[DUR2085]

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

[DUR2185]

**33. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:**

**(a) internal drainage, prior to slab preparation;**

**(b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;**

**(c) external drainage prior to backfilling.**

**(d) completion of work and prior to occupation of the building.**

[DUR2485]

**34. Plumbing**

**(a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.**

---



**(b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.**

[DUR2495]

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

[DUR2515]

**36. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- \* 50<sup>0</sup>C in all other classes of buildings.**

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

[DUR2555]

**38. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.**

[DUR2705]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**39. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

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

**The street number is to be on a white reflective background professional painted in black numbers 100mm high.**

**On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.**

**For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.**

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

[POC0265]

41. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

42. Complete all road works associated with the Sect 138 application to the satisfaction of the Director of Councils Engineering and Operations Division.

[POCNS01]

#### USE

43. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

[USE0505]

**REPORT:**

**Applicant:** Curry Kenny Developments Pty Ltd  
**Owner:** South Kingscliff Developments Pty Ltd  
**Location:** Lot 356 DP 1087716, No. 29 Cylinders Drive Kingscliff  
**Zoning:** 2(f) Tourism  
**Cost:** \$2,000,000

**BACKGROUND:**

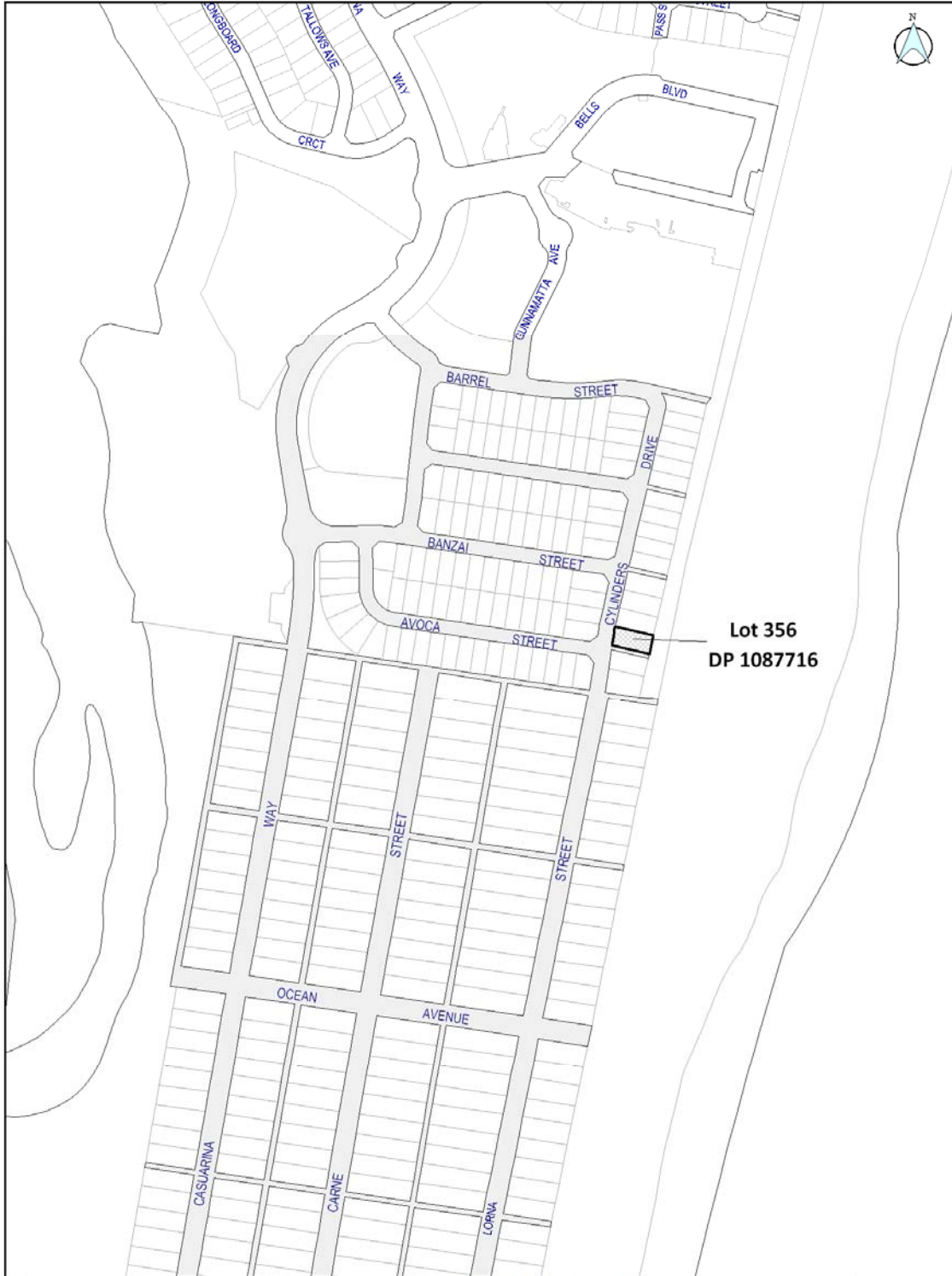
The property is zoned 2(f) Tourism under Tweed Local Environmental Plan 2000 and is located on the eastern side of Cylinders Drive, Kingscliff. The property is bounded by residential land to the north and a concrete pathway to the south. The property is bounded by a coastal reserve (waterfront open space) to the east.

An application has been received to construct a two (2) storey dwelling with a basement car park, an inground swimming pool and fencing at the subject property.

An objection under SEPP No. 1 has been submitted to seek a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

The application was notified to adjoining property owners and this did not result in the receipt of any submission.

**SITE DIAGRAM:**



**Lot 356  
DP 1087716**

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<p>File: Z:\GIS_Jobs\Site Plan.Wor</p>		<p>Author: J. Batchelor</p>
<p>Date: 09/Feb/2009</p>		<p>Scale: 1:5,000</p>
<p>Sheet: 1 of 1</p>		







LEVEL 02  
RL 11.250

LEVEL 02  
RL 11.250

EXTERNAL FINISHES KEY (Refer to S-300 for photographic boards)

1. METAL FINISH	8. FRIED VERTICAL SCENES
2. THINSLIP GLASS BALUSTRADE	9. TIMBER FRAME - DOOR/SWIV
3. GARAGE DOOR (TIMBER CLAD)	10. CHEVRE FINISH
4. FRIED GALVANG (TIMBER FRAME)	11. GLASS BOOK
5. BATTERING/ROCKERS/ROVERS	12. TIMBER WALL CLADDING
6. BATTERING/ROCKERS/ROVERS	13. STONE FINISH
7. BATTERING/ROCKERS/ROVERS	

DETAIL A - FENCE DETAIL

0 0.5 1 2 SHEET SCALE 5m

PROJECT / No | 14000031 / BEACH HOUSE, SALT VILLAGE - LOT 356

CLIENT | 154 A&G QUANT DESIGN

DRAWING / No | 50\_300

SCALE | 1:100 / A3

DATE | 19/12/08

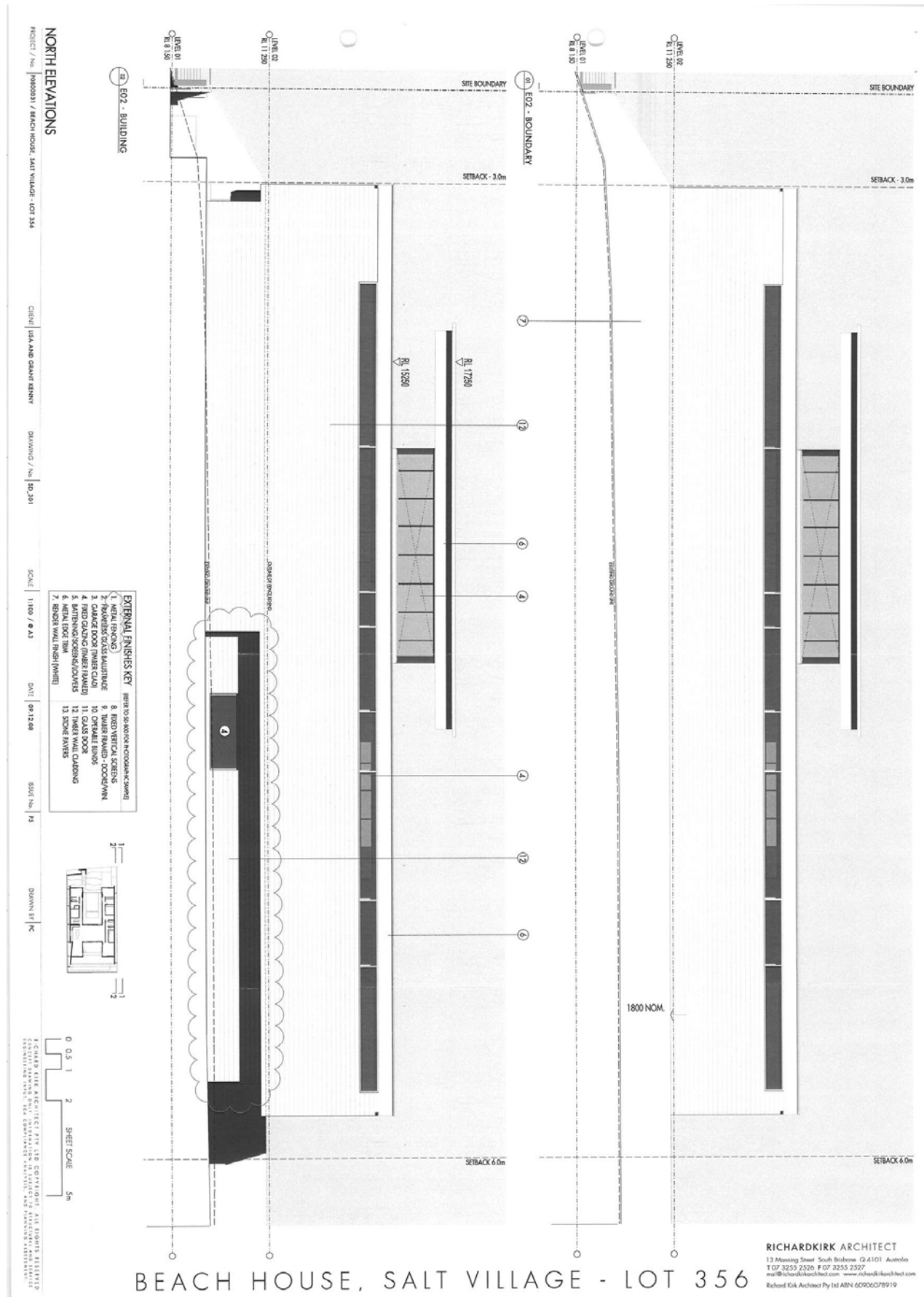
ISSUE No | 15

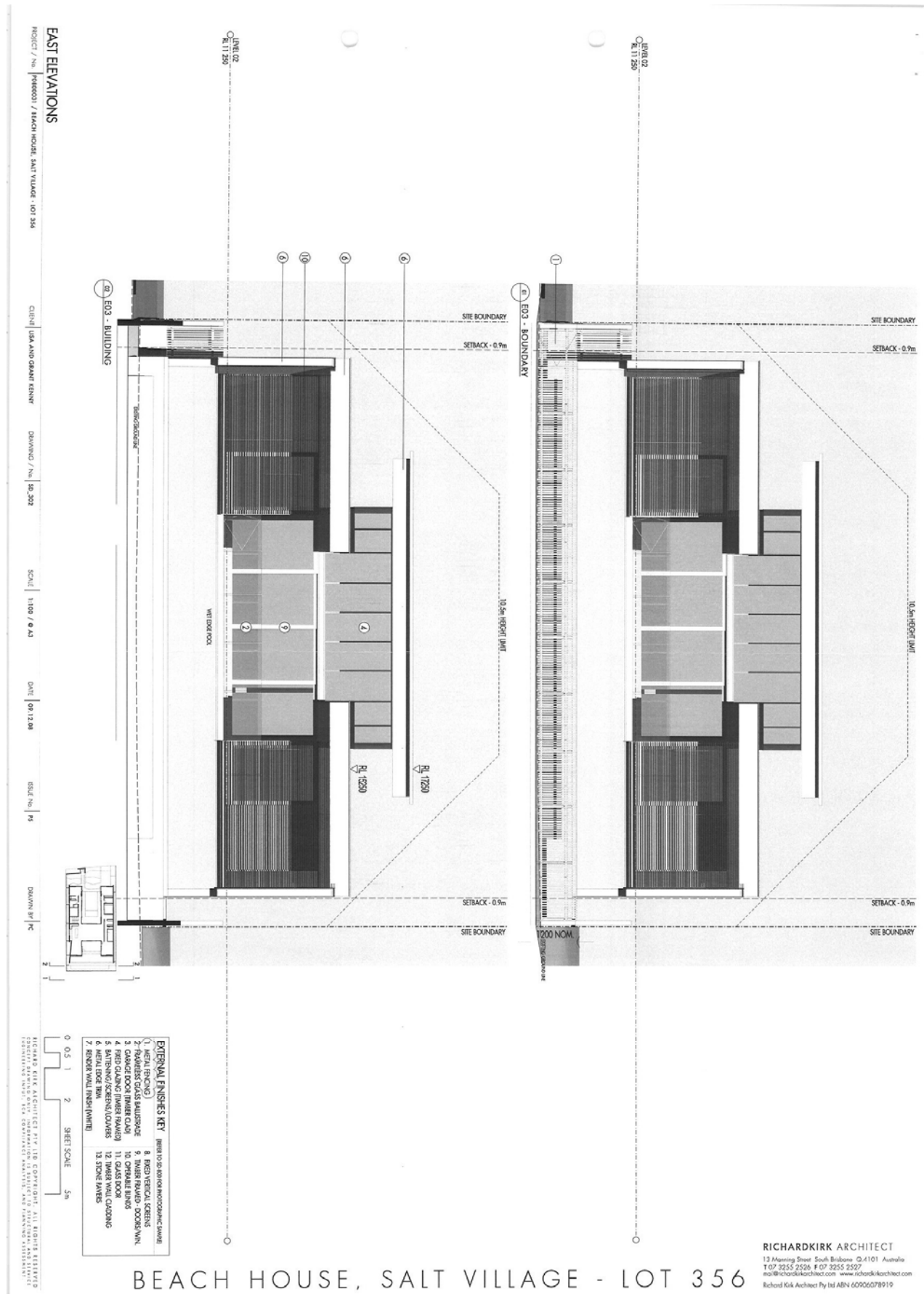
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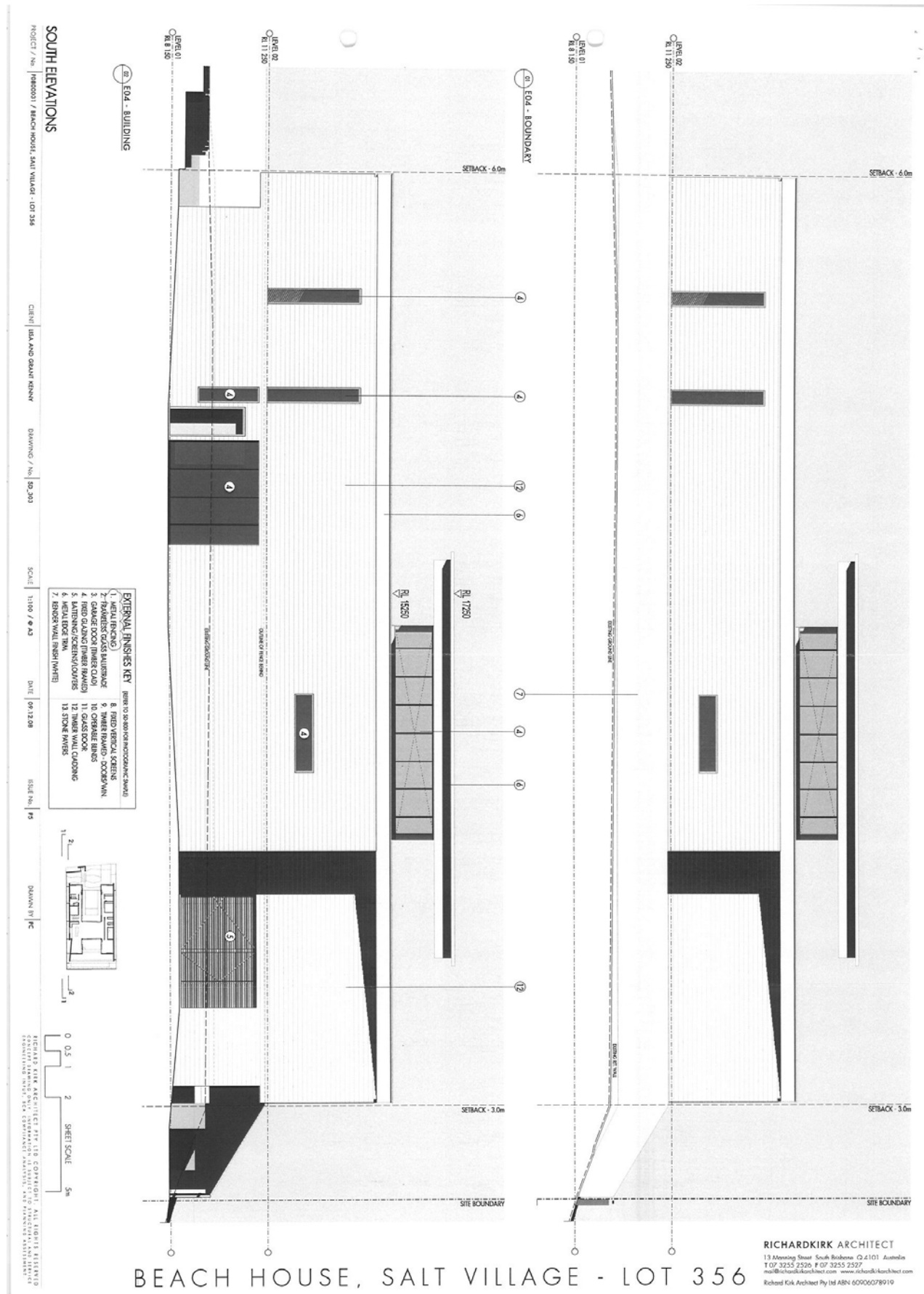
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BEACH HOUSE, SALT VILLAGE - LOT 356







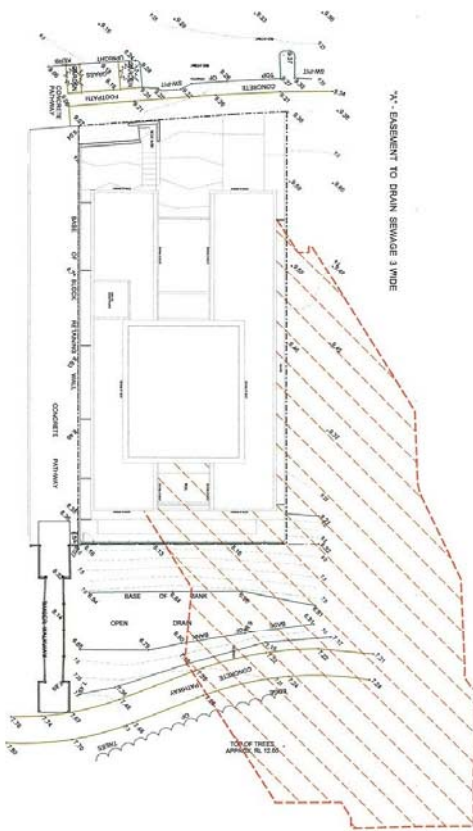




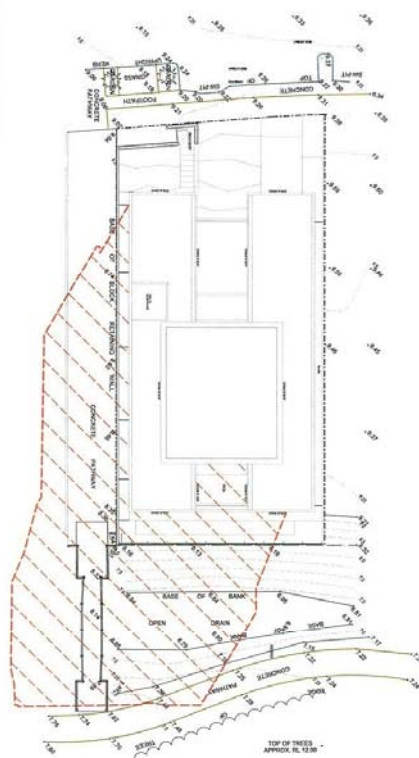
PROJECT / No: 1000003 / BEACH HOUSE, SALT VILLAGE - LOT 356  
 CLIENT: USA AND GRANT TRUST  
 DRAWING / No: 100/200

SHADOW DIAGRAMS: NORTH COAST REGIONAL ENVIRONMENTAL PLAN  
 SCALE: 1:400 @ A3  
 DATE: 09/12/08  
 ISSUE No: 15  
 DRAWN BY: PC

SUMMER (DEC 21) AT 6:30PM (DAYLIGHT SAVING)



WINTER (JUNE 21) AT 3:00PM



RED HATCHED AREA  
 (APPROXIMATE ONLY)



BEACH HOUSE, SALT VILLAGE - LOT 356

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

The subject site is zoned 2(f) Tourism. The primary objective of the zone relates to the provision of integrated tourist development and uses associated with, ancillary to or supportive of the tourist development.

The secondary objectives relate to the provision of high quality residential development being integral and supportive of the primary intent of this zone. The proposed development is consistent with the secondary objective of the zone.

**Clause 5 - Ecologically Sustainable Development**

The proposal is consistent with the objectives of this clause.

**Clause 15 - Essential Services**

All the necessary essential services have been provided to the site as part of the original sub-division.

**Clause 16 - Height of Building**

The proposed overall height of the 7.94 metres is less than the 9 metres permissible under Section A1 of the Tweed DCP and complies with the two storey requirement as detailed in Clause 53B of the Tweed LEP 2000.

**Clause 17 - Social Impact Assessment**

A social impact assessment is not required given the minor nature of the proposal

**Clause 35 - Acid Sulfate Soils**

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2 metres below surface level. As approximately 2 metres of fill was placed on the site at subdivision stage, the depth of Acid soils would be approximately 4 metres below current surface level. It is not anticipated that the development will impact on the acid soils in the area.

## **North Coast Regional Environmental Plan 1988**

### **Clause 32B: Coastal Lands**

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

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

The proposal will not impede public access to the foreshore and a concrete public access pathway is positioned on the southern side of the site.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the waterfront open space to the east of the site being overshadowed before 3pm midwinter (standard time) and 7pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

### **Clause 33: Coastal hazard areas**

The development will have minimal impact on coastal processes. The proposal is consistent with the Coastline Management Manual.

## **State Environmental Planning Policies**

### **SEPP No. 1 - Development Standards**

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) environmental protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *At 6.30pm mid-summer, shadows cast by the proposed building, which encroaches onto the foreshore reserve( cycle way), are relatively narrow and therefore affects only a small portion of the reserve.( see shadow diagram attached).*
- *At 3.00pm midwinter shadows cast by the proposed building generally do not extend beyond the cycle way/walkway.*
- *At the stated times, the shadows cast by the proposed building would not extend to any beach areas and therefore will not impact on sunbathers and surfers.*

- *The building design effectively minimises as much as possible the extent of shadow on the foreshore reserve.*
- *The area shaded at the statutory times comprises a storm water swale, a bicycle path and managed lawns that would be in full sun until late afternoon.*
- *The shadow does not impact on any areas used by the public for formal recreational activities.*
- *The shadow does not impact on the more intensely used foreshore area adjacent to "Central Park"*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 6.30 pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The beach is over 100 metres from the rear of the property.

Council has granted many other approvals for dwellings along the Tweed Coast, particularly in the Salt sub-division that have similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

#### SEPP No 71 – Coastal Protection

The development is consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

#### SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX certificate for the proposal and this certificate is consistent with the energy efficiency target.



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

There are not any Draft Environmental Planning Instruments applicable to the site.

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

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

- *The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30<sup>th</sup> June 2008 and the this decision be notified in the Tweed link.*

In this instance the proposed development was lodged with Council on the 30<sup>th</sup> June 2008 and in recognition of the above resolution need not comply with the design requirements of A1. Notwithstanding the above the applicant has attempted to comply with the requirements of Section A1 of the Tweed Development Control Plan. It should also be noted that the most recently amended plans were received by Council on 15 December 2008 and these plans are the result of Councils' information requests.

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

**External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools**Public Domain Amenity**Streetscape**

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

The dwelling will be clearly visible from Cylinders Drive and the dwelling will be setback 6m from the street. This is consistent with other dwellings within the area.

**Public Views and Vistas**

The proposal will not result in an unreasonable view loss of the beach and foreshore given the sympathetic overall height of the proposal. The proposed

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dwelling provides for view corridors for dwellings located on the western side of Cylinders Drive between the dwelling and the side boundary set backs. It should also be noted that a 4.5 metres wide pathway is positioned directly adjacent to the southern side of the site.

### **Impermeable Site Area**

The area of the site is 765m<sup>2</sup>, subsequently the maximum impermeable site area permitted at the completion of the development must be not greater than be 60%. The development will create an impermeable area of approximately 54% of the site and will comply with the design control.

### **External Living Areas**

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

### **Landscaping**

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is consistent with this design control.

### **Topography, Cut and Fill**

The site falls approximately 1 metre towards the rear of the site. The proposal involves the excavation of a basement carpark. This 1.35 metre excavation will not adversely impact on the amenity of the area due to its location.

### **Setbacks**

The proposal will have a front setback of 6 metres and will have 1.5 and .9m setback to the northern side boundary and .9m from the southern side boundary.

The set back from the rear boundary is 3 metres which is consistent the prescribed set back requirement in the 88b instrument for the subdivision.

### **Car Parking and Access**

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Four off street car parking spaces are proposed behind Council's building line beneath the dwelling and vehicle access to these spaces is considered adequate.

### **Sunlight Access**

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated north adjacent to the pool area and eastern rear boundary.

### **Visual Privacy**

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

### **Acoustic Privacy**

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

### **Natural Ventilation**

The design of the dwelling provides for adequate natural cross flow ventilation by the use of a large breeze path that is orientated in an east – west direction.

### **Building Orientation**

The dwelling has been sited on the property to optimize solar access and coastal views as well as providing an acceptable street presentation

### **Fences and Walls; Front, Side and Rear**

The proposal incorporates a 1.8 m high metal slatted front fence. The design and materials proposed to be used is consistent with the design theme of the dwelling. The majority of the front fence will be setback 1.5 metres from the front boundary.

The side fences as evident on the architectural plans detail a 1.8m high concrete panelled fence which is consistent with the design control.

While the front fence is higher than the 1.5 metres nominated in A1, the height and style is consistent with front fences previously approved in the area.

Feature landscaping is proposed within the centre of the front yard.

### **Roof**

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

### Building Performance

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

### Swimming Pools

The proposed swimming pool is set back behind Council's Building line and 1.5 from the eastern side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

### Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.65:1. The proposed dwelling is consistent with this design control having an FSR of approximately 0.54:1.

### A11-Public Notification of Development Proposals

The proposal was notified to the adjacent property owners and this notification process did not result in the receipt of any submission.

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

### Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within the policy.

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

### Context and Setting

The property is in a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

### Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged, the site has been cleared during the creation of the subdivision.

**(c) Suitability of the site for the development**

Surrounding Landuses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The design of the dwelling is in keeping with the residential character of the area

Site Orientation

The building has been centrally located on the property and has been orientated to take advantage of the ocean views to the east. The living areas of the dwelling have been centrally positioned within the dwelling to minimize potential overlooking onto adjacent properties.

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

The notification process did not result in the receipt of any submission.

**(e) Public interest**

The proposal will not prejudice the public interest.

**OPTIONS:**

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they will have the right to appeal the decision to the Land and environment Court.

**POLICY IMPLICATIONS:**

The proposal will not set a precedent in relation to Council policy.

**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to the locality.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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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**P5 [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 that there have been no Variations to Development Standards under State Environmental Planning Policy No 1 - Development Standards approved under Delegated Authority during the period since 20 January 2009.**

**REPORT:**

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

In accordance with that Planning Circular, no Development Applications have been determined.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**P6 [PR-PC] Development Application DA08/0387 for Additions to Amenities and New Awning and Farm Shed at Lot 6 DP 596699, Lot 11 & 12 DP 1086837 Duranbah Road, Duranbah - Unauthorised Works**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/0387 Pt1**

**SUMMARY OF REPORT:**

Council received an application for the construction of a fruit processing and packaging shed, new amenities building and awning to the existing tourist fruit shop. Un-authorized construction work commenced on the fruit processing shed namely the footings and all steel frame work apart from walls and roof prior to Council determining the application (without Development Consent) and without a Construction Certificate.

Council issued a cease work letter to which the applicant complied. The applicant requested what would be required for the application to proceed and enable re-commencement of construction. Council requested an Engineer's Certification for the building works undertaken and lodgement of a Building Certificate for the subject building work.

The applicant satisfactorily provided the requested information, with Council issuing a Building Certificate and Development Consent on 27 and 30 January 2009.

**RECOMMENDATION:**

**That Council issues a Penalty Infringement Notice (PIN) for an amount of \$600.00 for the unauthorised building works of a fruit processing and packaging shed, additions to amenities, new awning and farm shed at Lot 6 DP 596699, Lot 11 & 12 DP 1086837 Duranbah Road, Duranbah.**

**REPORT:**

**Applicant:** Group 4 Architects

**Owner:** Miss JL Brinsmead and Mr RD Brinsmead

**Location:** Lot 6 DP 596699, Lots 11 and 12 DP 1086837 Duranbah Road, Duranbah

**Zoning:** 1(b1) Agricultural Protection

**Cost:** \$573,625

**BACKGROUND:**

The subject development application was lodged with Council on 15 April 2008. The application proposed the following;

Located on Lot 6 DP 596699 is the following:-

1. Additions to the existing amenities building to create new amenities to the staff (male and female amenities) 9.4 metres x 3.4 metres.
2. New awning to existing fruit market shop which also connects to the existing souvenirs and kiosk building. The awning structure is 15.5 metres x 6 metres. The rain water caught by the awning is discharged into the existing stormwater system.

Located on Lot 11 DP 1086837 is the following:-

1. The construction of a farm shed 15 metres x 45.66 metres 7 metres high with a 6 x 15 counter levered awning and nine (9) car spaces. The shed contains a mezzanine level measuring 4.5 metres x 15 metres which contains a lunch room bunk room and office. The ground floor level of the shed contains amenities, cool rooms, Papaya ripening room, processing room, freezer, leaf and fruit drying room and processing area, fruit wash down areas.

On 16 December 2008, Council's development assessment planner photographed unauthorised building works relating to the processing shed. Council issued a letter to the owner and the applicant on 17 December 2008, advising all works in relation to the application cease immediately and to show cause as to why Council should not instigate legal proceedings.

On 29 December 2008, Council received correspondence from the owner dated 24 December 2008 in response to Council's letter of 16 December 2008. The owners' letter in part questioned what needed to happen for construction to re-commence.

On 6 January 2009, Council issued a letter to the owner advising what Council required for the assessment of the application and development to proceed.

The applicant was requested to provide;

- Engineer's certification of the all of the building works undertaken.
- Lodgement of a Building Certificate for the subject building work.

On 14 January 2009, Council received correspondence from the owner dated 13 January 2009 in response to Council letter dated 6 January 2009. The information was assessed and considered to satisfy Council's request.

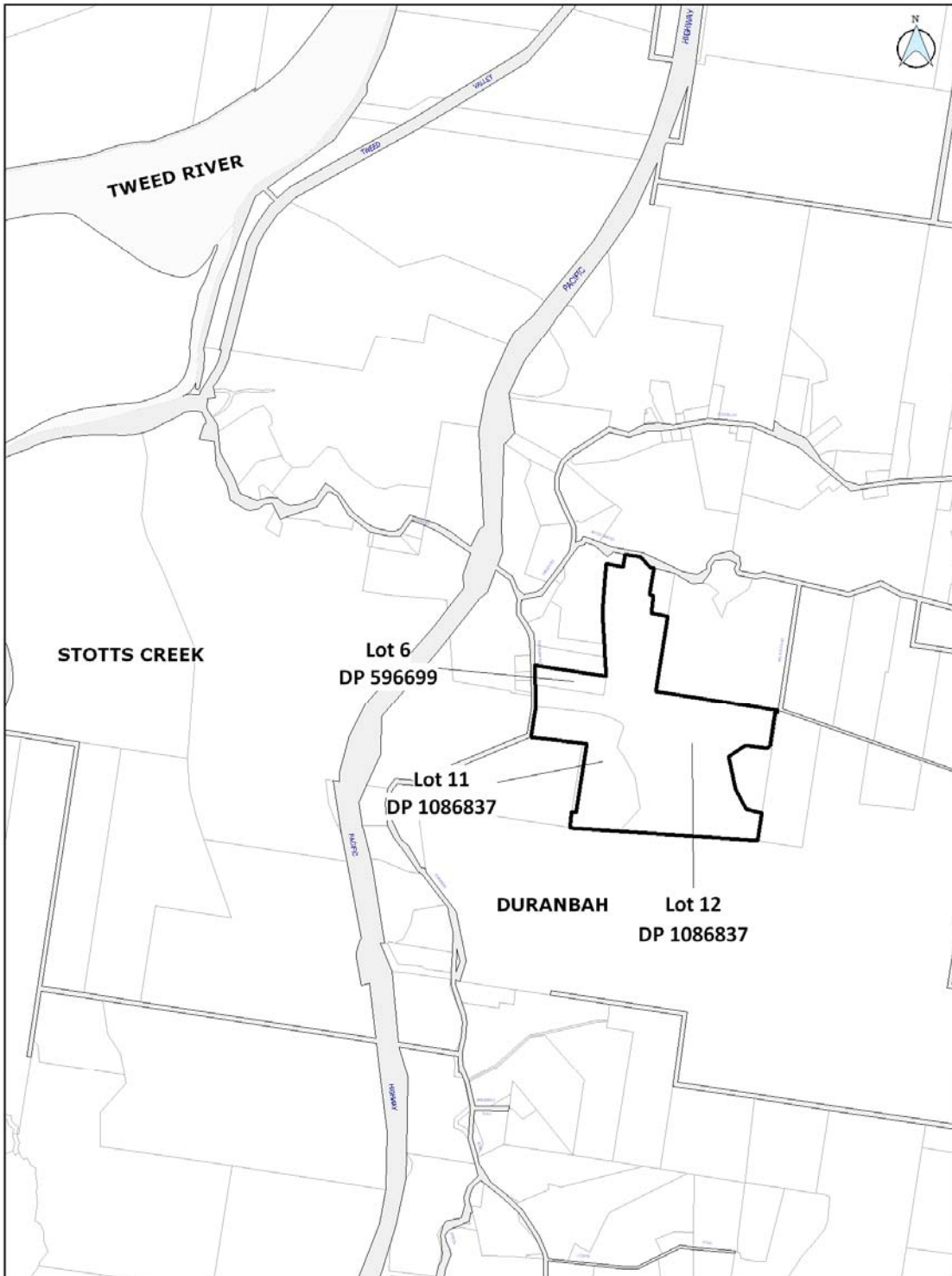
On 27 and 30 January 2009, Council issued a building certificate and development consent.


Below is a time line of correspondence and events.

- 24 April 2008, application lodged with Council.
- 29 April 2008, further information request for additional plans.
- Wednesday 14 May 2008 to Wednesday 28 May 2008, application advertised for a period of 14 days.
- 11 June 2008, further information request (land contamination report, OSSMF report).
- 19 June 2008, information received – not satisfactory.
- 19 June 2008, information received (in relation to 11 June 2008).
- 11 July 2008, information received – relating to contaminated lands report.
- 14 July 2008, further information request – environmental health issues (OSSMF – on-site sewer management facility, contaminated land investigation).
- 18 July 2008, information received – not satisfactory (OSSMF outstanding).
- 28 July 2008, further information request - environmental health issues (OSSMF and water supply management plan).
- 18 August 2008, information received – relating to OSSMF for the amenities building only does not include farm shed.
- 22 August 2008, information received – relating to OSSMF for the proposed shed.
- 19 September 2008, information received – relating to water supply management plan.
- 15 October 2008, further information request to modify the water management plan
- 22 October 2008, information received regarding the modified water supply management plan.
- 27 October 2008, Council's EHO's complete assessment and sign off on report and conditions.
- 16 December 2008, site inspection reveals unauthorised building works (construction of shed).
- 17 December 2008, letter sent to owners and applicant directing all construction work to cease immediately.
- 24 December letter received from owners in response to Council's letter (17 December 2008).
- 6 January 2009, letter to owners advising what Council requires for the applicant to proceed.

- 13 January 2009, information received from owners in response to Council's letter dated 6 January 2009.
- 30 January 2009, consent granted.

**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.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P. O. Box 016          Murwillumbah, NSW, 2484          Tel: (02) 6670 2409          Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i></p> <p><b>Lot 6 DP 596699, Lots 11 and 12 DP 1086837</b></p> <p><b>Duranbah Road, Duranbah</b></p>	<p><b>Site Plan</b></p> 		
<p>File: Z:\GIS_Jobs\Site Plan Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 05/Feb/2009</p>	<p>Scale: 1:20,000</p>	<p>Sheet: 1 of 1</p>



**OPTIONS:**

1. Issue a Penalty Infringement Notice (PIN) for the unauthorised building works.
2. Engage Council's solicitors to commence appropriate action through the Local Court.
3. Engage Council's solicitors to commence appropriate action pursuant to s21 of the Land and Environment Court Act 1979, Class 5 - environmental planning and protection summary enforcement.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Legal cost incurred from legal representation.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Due to the unauthorised construction works of the fruit processing shed and the subsequent approval it is recommended that the owners be issued with a Penalty Infringement Notice.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**P7 [PR-PC] Part V Application - PTV08/0001 for an Upgrade of the Banora Point Water Reclamation Plant & the Demolition & Reconstruction of the Tweed Heads West Water Reclamation Plant at Lot 482 DP 591546; Lot 2 DP 591548; Lot 1 DP 1011625, Parkes Drive, Tw**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF2150/610 Pt2**

**SUMMARY OF REPORT:**

Council at its meeting held 27 January 2009 resolved:

*"...that this item be deferred to the meeting of 17 February 2009 to allow for a workshop with Councillors and Council officers."*

Council commissioned an Environmental Impact Statement (EIS) be carried out to assess the impact of upgrading the Banora Point Waste Water Treatment Plant (WWTP – formerly known as Water Reclamation Plant (WRP)) at Banora Point and decommissioning, demolishing and rebuilding a new WWTP at West Tweed Heads to service the current population growth in Tweed Heads and the surrounding area. The impacts of the proposal are within acceptable limits and ameliorative measures proposed should result in a cumulative benefit.

The application is considered under Part V of the NSW Environmental Planning and Assessment Act and not Part 4 as the works do not require development consent from Council under the provisions of the State Environmental Planning Policy (Infrastructure). As such, the environmental impacts of the proposal are required to be considered via an Environmental Impact Statement. Council as the determining authority is required to decide to proceed or not with the project.

The application has been submitted to Council for determination given the proposed value of the works is \$30 million.

**RECOMMENDATION:**

**That Part V application - PTV08/0001 for an upgrade of the Banora Point Waste Water Treatment Plant at Lot 482 DP 591546 & Lot 2 DP 591548, Enterprise Avenue Tweed Heads South & the demolition and reconstruction of the Tweed Heads West Waste Water Treatment Plant at Lot 1 DP 1011625, Parkes Drive, Tweed Heads West be approved subject to the following conditions: -**

1. The development shall be completed in accordance with the *Banora Point and Tweed Heads West WRP Reclaimed Water Management Strategy Environmental Impact Statement* prepared by GHD and dated August 2005, except where varied by the conditions of this consent.  
[GEN0005]
  2. Prior to commencement of work, separate construction approvals shall be obtained for the works proposed by this approval at the Banora Point site and the Tweed Heads West site .  
[GEN0185]
  3. Within 12 months of the date of this approval, Council's Sewer Fund will allocate funds sufficient to commence a program of works towards Terranora and Cobaki catchment rehabilitation, including riparian buffer and stormwater works, as detailed in the EIS.  
[GENNS01]
  4. No excavation or works shall be undertaken within the area marked as "Grit Burial Waste" on Figure 6.2 *Existing Layout Site Map of Banora Point WRP* of the Environmental Impact Statement until such time as a Site Contamination Assessment has been undertaken by a suitably qualified person and a Remediation Strategy, if appropriate, has been formulated and approved by the Director of Planning & Regulation.  
[GENNS02]
  5. Environmental Management Plans are to be prepared for the construction and operational phases of the development. In this regard the Environmental Management Plans are to be prepared in accordance with the Environmental Impact Statement and are to detail the proposed mitigation measures, modelling and monitoring programs.  
[GENNS03]
  6. Council shall continue to investigate options for effluent reuse and shall implement identified viable options.  
[GENNS04]
  7. Where practical, all critical facilities or equipment susceptible to water damage should be located at or above RL 3.1m AHD to provide 0.5m freeboard, as required for habitable development in the area.  
[GENNS05]
  8. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.  
[PCC0865]
  9. Prior to the issue of Construction Approval the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.
    - (a) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
-

- earthworks
- roadworks/furnishings
- stormwater drainage
- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

10. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

11. Permanent stormwater quality treatment shall be provided to treat runoff from new carparking, driveway and similar hardstand areas exposed to gross pollutants, sediments and nutrients in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
  - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
  - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. 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.
  - (d) Specific Requirements to be detailed within the Construction certificate application include:
-

- (i) **Shake down area along the haul route immediately before the intersection with the road reserve.**

[PCC1105]

12. **Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".**

[PCC1155]

13. **Non-structural (effluent and sludge storage ponds) and structural infrastructure shall be constructed so as to prevent groundwater inflows to those structures or discharges/infiltration to groundwater.**

[PCCNS01]

14. **All imported fill material shall be from an approved source and free of contaminants.**

[PCW0375]

15. **Prior to the excavation of soils on the site an Acid Sulfate Soils and/or Dewatering Management Plan, if applicable, shall be submitted to the Director Planning & Regulation for approval.**

[PCWNS01]

16. **Prior to the commencement of work, detailed site investigation shall be carried to determine whether acid sulfate soils are present on the site and whether groundwater will be intercepted as a result of the proposed redevelopment.**

[PCWNS02]

17. **A detailed environmental management plan shall be submitted to and approved by Council prior to the commencement of any decommissioning works on the existing Tweed Heads West Waste Water treatment Plant. All works shall comply with the approved plan.**

[PCWNS03]

18. **Should any decontamination or remediation works be necessary on the existing Tweed Heads West Waste Water Treatment Plant site, then those works shall not be commenced without the separate prior approval of Council.**

[PCWNS04]

19. **Irrigation of effluent shall not occur without the prior written approval of Council.**

[PCWNS05]

20. **During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.**

[DUR0015]

21. **The roof cladding is to be of a non-reflective nature. Colorbond shades classed as "very light" by the BCA are not approved.**

[DUR0245]

22. Operation times and noise attenuation shall be undertaken in accordance with Section 10.4.6 of the Environmental Impact Statement submitted with the application.

[DURNS02]

23. Odour from the Plant shall not be permitted to impact the amenity of any premises. Should odour from the plant unreasonably impact the amenity of any premises then a odour report shall be prepared and submitted for the consideration of the Director Planning & Regulation. Where directed in writing by the Director, amelioration measures identified in the odour report shall be implemented as directed in writing.

[DURNS03]

24. The Plant shall be operated in accordance with the license or operational requirements of the NSW Department of Environment and Climate Change

[POCNS01]

25. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.

[PTV0030]

26. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.

[PTV0050]

27. 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.

[PTV0060]

**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Lot 482 DP 591546; Lot 2 DP 591548; Lot 1 DP 1011625, Parkes Drive, Tweed Heads West  
**Zoning:** 5(a) Depot and Sewage Treatment & 5(a) Sewage Treatment  
**Cost:** \$30,000,000

**BACKGROUND:**

Council is proposing to upgrade two of its existing Waste Water Treatment Plants (WWTP's) at Banora Point and Tweed Heads West. The Banora Point plant is designed to serve the catchments of central and south Tweed Heads, Banora Point, Bilambil Heights, Terranora, Piggabeen and Cobaki localities. Tweed Heads West WWTP serves the area north of Terranora Creek. Both plants discharge effluent into Terranora Creek downstream of the Dry Dock on the ebb tides.

The Tweed Heads West WWTP was constructed in the 1960's and has expanded over the years to a capacity of 10,000 equivalent persons (EP). This WWTP has failed to meet required effluent quality guidelines for discharge to receiving waters. Council resolved on 2 March 2005 that works and approvals required to enable raw sewerage to be diverted on a temporary basis to the Banora Point plant for treatment be commenced.

The Banora Point WWTP has been in operation since 1978 and has a capacity of 50,000 EP, with a present loading at capacity. This WWTP is meeting effluent guidelines in all respects apart from phosphorus levels. The Department of Environment and Climate Change has indicated that Council must resolve certain water quality issues before increases in the current discharge licences will be considered.

In 2004, Council engaged Consultants GHD to prepare an Environmental Impact Statement (EIS) for the upgrade of the Banora Point Water Reclamation Plant (now referred to as waste water treatment plant (WWTP)) and the demolition and reconstruction of the Tweed Heads West WWTP.

A number of options with regard to effluent disposal were considered over a number of years and are discussed within the EIS. Council selected the preferred option, option 6, from a series of nine options following a series of community consultation engagements.

**Scope of Works**

The scope and description of the major components of option 6 follows:

- Upgrade Banora Point WWTP to 75,000 EP and enhancement of Banora Point and Tweed Heads West WWTP's effluent quality to reuse standard for domestic non-potable reuse;
- Implement an Effluent Reuse Strategy including the encouragement of beneficial reuse for domestic non-potable uses in new developments;



- Implement the Integrated Water Cycle Management Plan;
- Capital investment in a Terranora and Cobaki catchment rehabilitation program; and
- Discharge of excess water to Terranora Creek on the ebb tide.

### Banora Point WRP

Works to 75,000 EP would consist of the following works:

- Construction and installation of a chemical dosing system for Phosphorous reduction;
- Construction of a Cloth Fabric filtration system including re-lift pumping station;
- Construction of additional blowers;
- Installation of additional mechanical inlet screening capacity;
- Modifications to process controls to improve nitrogen removal;
- Modification to flow controls including construction of a flow and load attenuation tank;
- Modification of electrical/SCADA.

### Tweed Heads West WWTP

To achieve effluent quality to reuse standard the old process plant is proposed to be demolished and a new plant rebuilt on the existing site. Construction is likely to involve the following:

- Demolition of the old trickling filter plant;
- Construction of an inlet works including a screen, grit removal system, flow reception pit, storm bypass system and flow divider;
- Construction of a stormflow lagoon and storm bypass line;
- Construction of a storm return pumping station;
- Construction of an aerobic digester;
- Construction of sludge thickening / dewatering facility;
- Construction of a biological reactor tank,
- Construction of clarifiers;
- Construction of a disinfection system;
- Construction of a blower house / switch control room / amenities;
- Construction of a chemical storage and dosing system;
- Provision of ancillary services including potable water, road works, drainage, lighting, fencing and site landscaping; and
- Various pump stations, pits and pipeline systems for the conveyance of sewage, effluent, sludge and supernatant.

### **Need for the development**

The upgrade of the two WWTP's is required for the following reasons-

1. To improve effluent quality in order to meet the Department of Environment and Climate Change (DECC) effluent quality criteria, and hence comply with the conditions of the DECC Environmental Protection Licence.
2. To provide sewerage services for the predicted increases in population in the WWTP catchment area.
3. To meet community expectations.

The new plant is vital to meet the demands of the existing and expected population growth. Without an increase in the capacity of the sewerage treatment plants, development in the Cobaki, Terranora and Bilambil areas would not be able to proceed.

The proposed plant is a critical component of the strategic planning for the catchment.

### **Impacts**

Consultants GHD were commissioned to prepare the Environmental Impact Statement and a subsequent report on the representations received during the exhibition of the document. The EIS has identified the following issues as key impacts of the proposal-

- Receiving waters, including water quality, aquatic ecology and downstream water use requirements.
- Groundwater and floodwaters management.
- Incident management, particularly effluent overflows.
- Noise, particularly during construction.
- Odour, from both general WWTP operation and biosolids handling and management.
- Flora (including weeds) and fauna management.
- Heritage, both Aboriginal and European.
- Visual amenity.

The issues have been assessed in detail in the EIS and a summary of the assessment is provided in Section 3 of the consultant's Representations Report that is attached to this report. The EIS proposes mitigation measures to manage the impacts. In brief, effluent quality will be improved, while quantity will increase.

It is considered that the impacts can be managed so that they are within acceptable limits. The impacts of the plant will not be at a level that cannot be controlled or managed satisfactorily.

Council has committed to undertake a Terranora and Cobaki catchment rehabilitation program as part of offsetting the impacts of increasing the volume of discharges into Terranora Creek. This action is based on the understanding that the majority of nutrient contributions into the Terranora system are sourced from stormwater run off. The proposed Terranora and Cobaki catchment rehabilitation program will consist of:

1. A rural area riparian buffer strip establishment, stock management and stream bank stabilisation project.

2. An urban area stormwater enhancement project. The urban component of the project will involve retrofitting Stormwater Quality Improvement Devices (SQIDS) into existing residential and commercial areas, and consideration of sewerage connection to areas that remain on septic systems.

It is proposed to formulate environmental management plans (EMP) for the upgrading, construction and operation of the WWTP's. The plans will include details of monitoring and modelling for water quality, discharge dilution, aquatic ecology etc. Other matters to be addressed in management plans are acid sulfate soils, dewatering and contamination assessment and remediation if required, construction traffic and erosion control and landscaping.

It is considered that development of EMP's for the plants are an appropriate way to manage the operations of Banora Point WWTP and any new plant at Tweed Heads West.

Appropriate conditions are proposed to reflect the requirements of the EIS and Council commitments to amelioration.

### **Statutory Context**

Public utilities such as sewerage treatment plants do not require development consent from Council under Part Four of the Act. These types of developments fall under the provisions of Part Five of the Environmental Planning and Assessment Act due to the provisions of Part 106 (1)(a) of State Environmental Planning Policy (infrastructure) 2007. The provisions enable Council to be the proponent for public utilities and also the approval body.

Council is required to send the attached Consultants report to Department of Planning and the Department of Environment and Climate Change (DECC) prior to determining the proposal. This has been undertaken and no further submission was received from Department of Planning, whilst issues raised by DECC have been satisfactorily addressed. Council may therefore now make a decision on the proposal.

In accordance with the section 243 of the Environmental Planning and Assessment Regulation, Council is required to prepare a report on the proposal, mitigation measures and give full particulars of the decision. The report is also required to be made public.

The majority of this requirement has been complied with in the attached report from the Consultants and in this report. The Regulations will be complied with by making Council's decision and both reports available to the public.

### **General Matters**

Whilst effluent reuse does not form part of the EIS, the Engineering and Operations Division has prepared an Effluent Reuse Strategy. Further assessment and approvals will be required prior to commencing the reuse of effluent.

Further assessment and approvals will also be required for remediation of the existing Tweed Heads West site should site contamination investigations reveal issue of concern. Construction approvals will be required prior to any construction works.

### **Public Submissions**

One submission from an environmental organization was received during the recent exhibition for approval purposes. Further issues were raised by DECC via referral. These issues have been responded to by the Council Water and Sewer Engineers who have generally agreed to meet DECC requirements.

Previous exhibition was undertaken from September 12 to October 21 2005 to accord with the EP&A Regulation 2000. During this period two submissions were received, one from a Government Authority and one from an environmental organization. Issues raised, and the assessment of these issues, are provided in the attached Consultants report. The recent submission from the environmental organization repeated the issues raised in the previous submission and thus the assessment previously provided applies to the current submission.

**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.  <b>DO NOT SCALE</b>          COPY ONLY - NOT CERTIFIED          P.O. Box 816 Tel: (02) 6670 2409          Murwillumbah, NSW, 2484 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i></p> <p>Lot 1 DP 1011625, Parkes Drive, Tweed Heads West          Lot 482 DP 591546 &amp; Lot 2 DP 591548, Enterprise Avenue,          Tweed Heads South</p>	<p><b>Site Plan</b></p>		
<p>File: Z:\GIS_Jobs\Site Plan.Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 19/Jan/2009</p>	<p>Scale: 1:15,000</p>	<p>Sheet: 1 of 1</p>



**OPTIONS:**

1. Approve and proceed with the activity.
2. Approve and proceed with the activity subject to conditions.
3. Don't approve and don't proceed with the activity.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

See Statutory Context section above.

Approval of this activity commits Council's Sewer Fund to capital investment in the local stormwater catchments and rural catchment riparian zones. Currently 3% of the total revenue generated from water and sewer charges is set aside for use on such projects, presently \$180,000 per year, thus a clear funding source is available.

**POLICY IMPLICATIONS:**

Provision of a new WWTP has significant strategic planning implications for the Tweed Heads, Terranora, Cobaki and Bilambil areas. If WWTP capacity is not increased, development will be prevented from occurring.

If effluent quality is not improved, DECC licence criteria will not be met.

**CONCLUSION:**

The Banora Point and West Tweed WWTP sites are considered suitable for the upgrade of the treatment plant. The upgrade will result in improved effluent quality and is required to meet population growth, DECC effluent discharge criteria and community expectations.

Amelioration measures aimed at improving catchment health will ensure any impacts from an increased volume of discharge are offset satisfactorily.

**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](http://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. Banora Point and Tweed Heads West WRPs Reclaimed Water Management Strategy EIS Representation Report. (ECM 1976859)
-

**P8 [PR-PC] Development Application DA08/0931 for Boat Tours on Tweed River at Tumbulgum, Tweed Heads South and Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/0931 Pt1**

**SUMMARY OF REPORT:**

This matter was referred to the Council meeting of 16 December 2008 where it was resolved as follows that the application be:-

- "1. Re-advertised on 14 January 2009 for the community to comment on the revised attributes of the application*
- 2. Deferred for consideration to the next meeting of the planning committee to be held on 27 January 2009".*

Due to the fact that the application could not be re-advertised until the first Tweed Link publication in January, submissions were accepted from the date after the Council meeting up until and including the formalised advertising period from 21 January 2009 to 5 February 2009.

This addendum report aims to summarise the issues raised in the submissions during the re-advertised period and to reconsider the application in light of the issues raised.

The information advertised included the original development application and Statement of Environmental Effects and a response to a further information request from Council further clarifying the nature of the tour as a "sightseeing tour" and providing information regarding the proposed speed and details of the boat and the proposed use of the public jetties. This further information was advertised in conjunction with the original development application and Statement of Environmental Effects.

During the re-advertising of the application Council received a total of 73 submissions against the application and 4 submissions for the application at the time of writing this report. The main issues raised with the application are environmental impact, cumulative impact, incompatibility with other uses of the river, speeding, safety, noise pollution, wake produced and impact on river erosion, concern with monitoring and compliance with consent.

In a review of the submissions received during the re-advertising period the majority of the concerns are raised due to the type of boat to be utilised during the tour. It has been confirmed by NSW Maritime and Council's Coordinator of Natural Resources that they have no concerns with the proposal as it is not considered to create more wake than



other boat users on the River. Therefore, the application is assessed on the description of a "sightseeing tour boat" and is an alternative tour to the jet boat thrill rides that they have approval for in the Ocean. Therefore it is considered that the recommendation for approval as proposed in the original report remains.

The only alteration to the original recommended conditions is an addition to Condition 2 that now requires the operator to maintain a log book recording journey activity. Therefore the proposal is recommended for approval, subject to conditions of consent.

#### **RECOMMENDATION:**

**That Development Application DA08/0931 for boat tours on Tweed River at Tumbulgum, Tweed Heads South and Murwillumbah be approved subject to the following conditions: -**

#### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Figure 1 Locality Plan prepared by Darryl Anderson Consulting submitted on 7 August 2008, except where varied by the conditions of this consent.**

[GEN0005]

- 2. The proposed development is to be restricted from 9:00am to 6:00 pm seven days per week for a trial period of six (6) months from the date of commencement of the tour operation. The applicant should notify Tweed Shire Council by notice in writing of the date of commencing the boat tours.**

**In this regard the tour boat operators are to submit a boating log by the end of each month reporting on the number of tours conducted on the Tweed River documenting the date and time of departure and arrival at Foysters Jetty and duration of the tour, including the number of passengers, weather conditions and the route of the tour.**

**Any request to vary this condition to a permanent arrangement will require a Section 96 application to be lodged at least two (2) months prior to the expiry of the six (6) month trial period. If after the trial period no application has been received, the consent would have lapsed.**

[GENNS01]

- 3. Comply with all NSW Maritime signage and boating regulations.**

[GENNS02]

- 4. Prior to extended trips to Murwillumbah liaison with the Murwillumbah Rowing Club is to be undertaken to avoid entering the waters between Condong and Murwillumbah when an exclusive licence is over the river for rowing events.**

[GENNS03]

- 5. Section 94 Contributions**

**Payment of the following contributions pursuant to Section 94 of the Act**

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and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, all Section 94 Contributions should be paid prior to operation.

**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:  
2 Trips @ \$639 \$1,278  
S94 Plan No. 4  
Sector1\_4

[PCC0215]

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

[USE0125]

7. Boat tours are to be undertaken at a speed consistent with cruising speeds and within the requirements of NSW Maritime Authority and the Tweed Estuary Boating Plan 2006-2010 (NSW Maritime).

[USENS01]

8. No freestyling (irregular driving) or power turning within the Tweed River and tributaries.

[USENS02]

9. Reduce wash created from the boat in accordance with best boating practices.

[USENS02]

10. The use to be conducted so as to not cause nuisance or interference to other water based and land based activities.

[USENS03]

11. The boat is to be fitted with a water box muffler and the exhaust is to be discharged below the water line prior to the use for the proposed development.

[USENS04]

12. The boat is not to be left unattended at the public jetties during the tour, the boat is to anchor clear of the jetty when passengers have disembarked.

[USENS05]

13. This consent is for the operation of one boat only.

**REPORT:**

**Applicant:** Pena Jet Boat Rides Pty Ltd  
**Owner:** Tweed Shire Council  
**Location:** Tweed River at Tumbulgum, Tweed Heads South and Murwillumbah  
**Zoning:** Unzoned Land  
**Cost:** Nil

**BACKGROUND:**

The application was referred to Council meeting 16 December 2008 where it was resolved by Council that the application should be re-advertised to 14 January 2009 for the community to comment on the revised attributes of the application and deferred for consideration to the next meeting of the Planning Committee to be held on 27 January 2009. Council resolution was made without knowledge of Tweed Link dates and therefore the application was not able to be advertised until the next Tweed Link newspaper. Therefore, Council has accepted submissions from 17 December 2008 through to 5 February 2009. The formalised re-advertising period was from Wednesday 21 January 2009 to Thursday 5 February 2009.

As provided in the original report, the application is for boat tours on the Tweed River. The primary route proposed is to operate between Tweed Heads and Tumbulgum where it will be optional for guests to have lunch at Tumbulgum. The boat will utilise the public jetty at Tumbulgum for this purpose. An extended route is proposed from Foyster's jetty to the Cobaki Broadwater and the Terranora Broadwater. A further extended tour is proposed from Foyster Jetty through Tumbulgum and then further on to Murwillumbah.

The proposed development is for a "sightseeing tour on the Tweed River" which is an alternative tour to the approval the applicant has under DA07/0974 for jet boat rides in the Ocean.

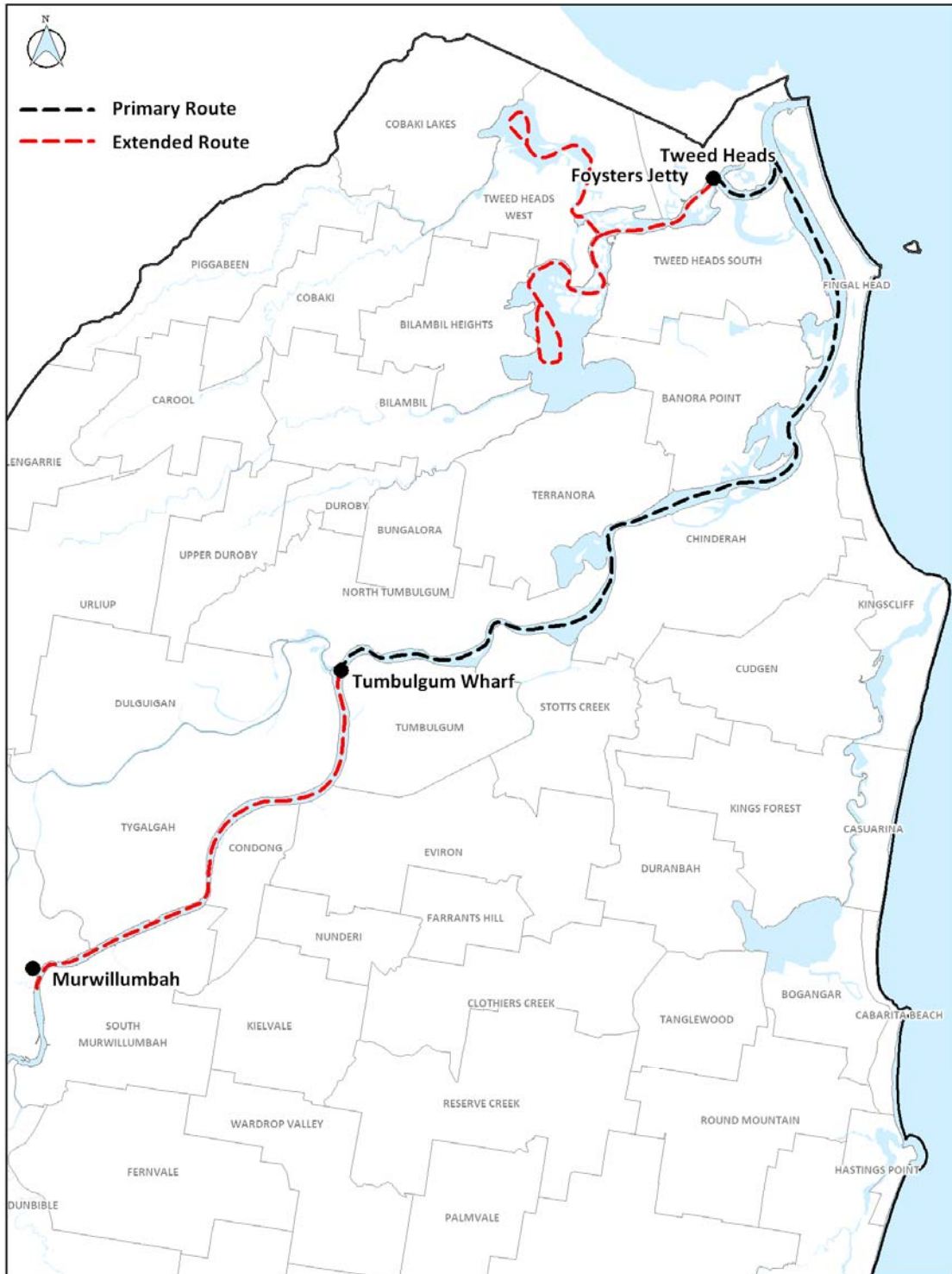
The proposal operation hours are on demand between 9:00am and 7:00 pm seven days per week. The proposal tour bookings and transport arrangements are similar to that approved under DA07/0974. The booking will be taken by the sales office (Shop 2 in the Harbour Tower, Tweed Heads).


The nature of the boat tour was clarified in further information letter from the applicant dated 28 October 2008. The letter stated that the proposed operation is a sight seeing tour to be undertaken on the Tweed River, primarily between Tweed Heads and Tumbulgum. No "irregular driving" or "thrill riding" is proposed as part of the sightseeing tour". The proposed tour is to provide a detailed commentary of the sites and local history along the Tweed.

The proposed speed of the boat during the tour is proposed at 8 to 10 knots at points of interest along the river and 35 knots (up to 65 kph) elsewhere. The proposed boat used for the tour is 9m in length, with a beam of 3 metres. The seating capacity will be up to 12 passengers and 2 crew members. The boat will be powered by twin Yenmar diesel engines and propelled by twin jet propulsion units.

Passengers will be transported to Foyster's jetty from the sales office or their place of accommodation in a minivan. The proposed boat tours will utilise the Foyster's jetty for departure and arrival of passengers on the boat. The applicant has an existing licence for the use of this jetty under DA07/0974. Further the proposed tours have outlined the use of the Tumbulgum jetty and the Murwillumbah jetty. The Tumbulgum and Murwillumbah jettys are proposed to be used for short periods of time for the loading and unloading of passengers. The boat will be attended at all times and it is proposed it will either return to collect another group from Tweed Heads or will anchor clear of the jetty while waiting for passengers to return.

**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2008          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.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P. O. Box 016          Murwillumbah, NSW, 2484          Tel: (02) 6670 2409          Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i></p> <p><b>Proposed Boat Tours on the Tweed River</b></p>	<p><b>Site Plan</b></p>  		
<p>File: Z:\GIS_Jobs\Site Plan Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 03/Dec/2008</p>	<p>Scale: 1:100,000</p>	<p>Sheet: 1 of 1</p>

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

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

It was recommended at Council's meeting of 16 December 2008:

1. *Re-advertised to 14 January 2009 for the community to comment on the revised attributes of the application*
2. *Deferred for consideration to the next meeting of the planning committee to be held on 27 January 2009"*

Due to the uncertainty regarding the advertising dates, submissions were accepted from 17 December and including the formal advertising period from the 21 January 2009 to 5 February 2009. At the date of this report on 5 February 2008, 73 submissions against and 4 submissions in support of the application were received during the time period from 17 December 2008 to 5 February 2009.

<b>Objection Reason</b>	<b>Comment</b>
Riverbank Erosion	Further to the consideration of this issue in the original report, Council's Co-ordinator of Natural Resources provided that the proposed development to operate at its planning speed will produce less wake than other large boats currently operating on the river. Therefore, the proposed development is not considered to impact on riverbank erosion.
Impact on economic prosperity on Tweed Shire	The proposed development is not considered to have a significant impact on other business uses of the river as it is for one boat sightseeing tour that will be dependent upon bookings for the tour to operate.  Therefore, the proposed development is not considered to have a detrimental economic impact on the Tweed River.
Concern with speed proposed and speeding	The proposed development stated the speed for the tour to be 8-10 knots at points of interest and 50 – 65 kph (35 knots) while travelling between points of interests.  When the boat travels at planing



Objection Reason	Comment
	<p>speed between sites of interest this reduced the wake produced by the boat. However, to ensure that the boat does not travel at excessive speeds a condition is placed on the approval for the tour to operate at cruising speeds. Therefore the speed of the proposed boat tour is considered to be in keeping with other boats on the river.</p>
<p>Safety</p>	<p>As mentioned in the previous report, the application is for sightseeing on the river not for thrill jet boat rides. Therefore, the proposed development is considered compatible with other uses of the river and therefore will not impact on the public safety.</p>
<p>Environmental Impacts –impact on marine wildlife and migratory bird species</p>	<p>The original report assessed generally the environmental impact of the proposal. However, the following specific issues of the impact of the proposed development on marine wildlife, such as dolphins and on bird and migratory bird species have been raised by numerous objectors.</p> <p>The proposed “boat tour” is a sightseeing boat that will not be considered to have a significant impact on the marine wildlife beyond the existing boat users of the river. The proposed boat is not a thrill ride in the river and will be subjected to the same maritime regulations as other boat users on the river. The boat will be a sight seeing tour that will travel at approximately 35 knots and at slower speeds of 8-10 knots at points of interests, or where signage requires set speeds. Therefore, the proposed development is not considered to impact on marine wildlife or migratory species.</p>
<p>River part of World Heritage Area</p>	<p>The Tweed River is not listed as part of the World Heritage Area and therefore this was not issue addressed as part of this application.</p>

Objection Reason	Comment
<p>Management Plans (Cobaki &amp; Terranora) encourage low key activities</p>	<p>Further to the consideration of this issue in the original report, the Cobaki Broadwater Management Plan 1998 encourages low key recreational boating. Therefore the proposed development is considered consistent with this objective as it is a sightseeing tour.</p> <p>The Terranora Broadwater Management Plan 1994 objectives of the plan is to encourage low key boating. The proposed development is considered consistent with this objective as it is a sightseeing tour.</p>
<p>Commercialisation of the River</p>	<p>A number of submissions raised concerns of the type of activities resulting in an increase in commercialisation of the river.</p> <p>The proposed development is for one boat to be utilised as a sightseeing tour along the Tweed River, it is not considered that the proposed development will dominant the use of the river.</p>
<p>Incompatible with Tweed tourism marketing of the Tweed “Green Cauldron”</p>	<p>The “Green Cauldron” is one of the marketing strategies employed by the Tweed Tourism. However, there is no Tourism Plan for the Tweed produced by the Tweed Shire Council or Tweed Tourism. Further the Tweed has been advertised as valley of contrasts and on the Tweed Tourism home page advertises the Tweed as</p> <p style="text-align: center;"><i>“region of contrasts and contradictions that offers a truly memorable holiday experience.”</i></p> <p>Further this application was supported in a submission from Tweed Tourism body.</p>

<b>Objection Reason</b>	<b>Comment</b>
Set Precedent	Further to this issue addressed in the original report. Every application is assessed on its merits and an assessment is carried out to determine the proposed impact of the development and whether the site is suitable for the proposed development.
Visual impact affect aesthetics and intimidating appearance	The proposed development, while a jet boat is only one boat that will conduct boat tours on the Tweed River when it receives bookings. Therefore it is not a permanent structure, but a watercraft similar to other boats that utilise the river. Therefore, the proposed development is not considered to have a visual impact on the locality.
Increase in undesirable characters	The type of people that will be attracted to the proposed tours is not a matter for consideration under s79C Heads of Consideration. The proposed development is for
Lack of policing resources	This issue was addressed in the previous report. This is not an issue for consideration under the development application. However, a six month trial period will provide applicant opportunity to demonstrate compliance with conditions of consent.
Increase businesses on waterway	The subject development is for one boat tour operation and is not considered to cause a significant increase to business operations on the Tweed River.
Question validity of application	<p>A number of submissions questioned the accuracy of the application, in particular question the use of different speed measurements.</p> <p>The proposed development proposes an alternative tour, in regards to the proposed speeds of 50 – 65 kph (up to 35 knots). The slower speeds at points of interest are for 8-10 knots or where signage has set speed limits.</p>

Objection Reason	Comment
	<p>Submissions question the nature of the tour as for “jet boating and speeding on the river”. However, an assessment of the application can only be carried out based on the submitted information and not based on suspicion of other potential activities. Further the applicant has a separate approval for jet boating in the ocean and has not applied for that activity in the Tweed River.</p>
<p>Existing scenic tours available no additional tours required</p>	<p>In accordance with the Tweed 4/24 Strategic Plan 2004-2024 it is recognised that Council will be supporting tourism bodies to promote tourism development. Further the strategic plan recognises the challenge is to:</p> <p style="text-align: center;"><i>“capitalising on the recreation and tourism potential of the shire’s landscape and heritage in ways that maintain and enhance its character”.</i></p> <p>The proposed development is considered in keeping with the strategic plan by providing further tourism opportunities for boat tour along the tweed.</p> <p>Further submissions have been received that support the idea that the river is under utilised which is discussed below.</p>
<p>Inappropriate site</p>	<p>The Tweed River is considered suitable location for boat tours. The proposed development does not propose any thrill rides on the Tweed River and is therefore considered compatible with other uses of the river.</p>

<b>Objection Reason</b>	<b>Comment</b>
Impact on natural based tourism	The proposed development for one boat tour is a sightseeing tour and therefore is considered to have minimal impact on natural based tourism. The proposed tour is considered to be in keeping with other motor boats that utilise the river.
Ban the proposed development upstream from Tweed River Motel	As addressed in the previous report, the proposed development has stated that the application has a primary tour route to take place between Tweed Heads and Tumbulgum, trips that go to Murwillumbah are considered extended tours.  Further a condition is recommended to liaise with Murwillumbah rowing club prior to conducting the extended tours.
Ban 2 stroke outboard motor in near future	The proposed development uses diesel engines and therefore this comment is not relevant to the proposed development.
Survey illegal construction on foreshore	This issue is not a matter to be carried out during the assessment of this application.
Amenity	The proposed development is not for a thrill jet boat rides on the river, but the proposal is for a boat sightseeing tour in a jet boat and therefore is not considered to have a significant impact on the amenity in the locality.
Hours too long concern over operation on public holidays	The proposed development was for seven days a week 9:00 am to 7:00pm. While the proposal has requested 7 days a week the boat will only conduct the tour when they receive passengers. Public holidays are considered an acceptable time for a boat tour.
Does not satisfy Precautionary principle	The original report has assessed the application in accordance with clause 5 Tweed Local Environmental Plan which includes an assessment of the precautionary principle.  The application is for one boat tour that will travel along the river and

Objection Reason	Comment
	slow down at points of interest, therefore it is considered in keeping with other power boats that currently utilise the river, and therefore, is considered to satisfy the precautionary principle.
SEPP 71 measures to protect cultural places, values customs, beliefs and traditional knowledge of aboriginals.	The original report addressed SEPP 71 Clause 8 (l). As stated in the original report It is considered that the proposed development will not impact on cultural places. Further the proposed development is not considered to interfere with values, customs and beliefs, as the proposal is for a boat tour. It is not considered that the proposed development will impact on existing aboriginal tour of the river as the proposed development will be a sightseeing tour that is compatible with other uses of the river.
Social impact	The proposed development is considered to have minimal social impact on the locality, as it is one boat tour in a jet boat. The proposed development is considered in keeping with other motorised boats that utilise the river. The proposed boat tour is considered in keeping with the use, noise and visual impact of other boats utilising the river.
Impact on recreational fishing	As addressed in the previous report, the application is for sightseeing on the river not for thrill jet boat rides. Therefore it is considered to be compatible with other uses along the river, by being similar to other recreational boats and would not interfere with commercial fishing practices.
Question validity of application and whether proposing commuter travel	The application is for a boat tour for one boat that will take passenger's from Foyster's jetty along the River and then back to Foyster's jetty. The application is not for commuter transport and therefore has not been assessed as such an application.

<b>Objection Reason</b>	<b>Comment</b>
Noise pollution	<p>This issue was addressed in the previous report and the applicant provided the following information in this regard:</p> <p style="padding-left: 40px;">“the boat is powered by diesel engines which are fitted with a “water box” exhaust system and discharge the exhaust water below”.</p> <p>The applicant stated that this would reduce the engine noise of the boat.</p> <p>Further the application as mentioned in the earlier report was referred to NSW Maritime who provided the following information.</p> <p>In regards to noise issue of boat, this is regulated by NSW Maritime Authority who had no concerns for the application and stated that the waterbox muffler is considered sufficient for the proposed development.</p>
Global warming	<p>The development application such as the proposed development cannot be assessed as significantly affecting global warming above and beyond commuter cars, land clearing and other boats utilising waterways.</p> <p>Therefore, the proposed development is not considered to have a significant effect on global warming above current acceptable boating practices.</p>
Incompatible with passive uses	<p>Further this issue was addressed in the original report. As mentioned, the application is for sightseeing on the river not for thrill jet boat rides. Therefore, the speed and nature of the proposed tours is not considered to impact on other passive, low key uses on the river. A sightseeing tour is considered compatible with other variety of uses of the river.</p> <p>As this is a concern that has been</p>



Objection Reason	Comment
	<p>raised by various submissions to Council the proposed condition for a trial period should provide the applicant and the community the opportunity to see how the proposed development can be compatible with other uses of the river.</p>
<p>Request Community consultation after trial</p>	<p>The previous report recommended a trial period of six (6) months, after that time period the applicant is required to lodge an additional application which would be advertised for public comment.</p>
<p>Cumulative impact attract other similar development</p>	<p>Each development application is assessed on its merits, which includes an assessment of the cumulative impacts of the development. The proposed development has been assessed in the original report in accordance with clause 8(c) of Tweed Local Environmental Plan.</p> <p>Any new applications will be assessed on its merits and in accordance with clause 8(c).</p>
<p>Concern applicant will operate outside of approval</p>	<p>The original recommendation remains for conditional approval. The six months trial and other conditions are required to be adhered to. Concern that the applicant will not follow their consent is not grounds for refusal. Given, the public nature of the operation Council and NSW Maritime will be able to be informed and monitor compliance with the conditions of consent.</p>
<p>Increase in pollution affect on threatened species</p>	<p>The proposed development is for one boat tour that utilises twin yanmar engines that the applicant provided that the “engines comply with the American 2010 EPA standard – which are well beyond the requirements of the Australian emissions standards”.</p> <p>Therefore, the proposed engine of the boats comply with current recommended guidelines and</p>

Objection Reason	Comment
	<p>therefore are not considered to impact on threatened species. The proposed boat is considered to be an acceptable standard.</p> <p>Therefore the boat is unlikely to cause any pollution greater than the existing boats utilising the river.</p>
River Underutilised	<p>Comments were made that the Tweed River is currently under utilised for tourist visiting the Tweed and therefore the proposed development will provide an opportunity for visitors to experience the Tweed River.</p> <p>The proposed tour is considered in keeping with the low key uses of the river and therefore is considered an acceptable tour on the river.</p>
Request Tweed River waterway study / study and related environmental management plan	<p>As mentioned in the previous report there has been a study and research conducted on the Tweed River, produced by NSW Maritime Tweed Estuary Boating Plan 2006 – 2010. This report identified specific issues for specific localities and included public consultation about uses of the river.</p>
Against local community interest	<p>It is acknowledged that there has been a significant degree of community opposition to the proposal, however, the majority of objections are against “jet boats” in general and not against a sightseeing boat tour, which the application is for.</p> <p>In accordance with the Tweed Estuary Boating Plan 2006-2010 no jet boats or power boats have been banned in the main stretch of the river. This plan was created after extensive community consultation that received over 250 letters and two petitions (with total 100 signatures). Therefore the plan resulted in balancing uses of the river.</p>

Objection Reason	Comment
	As discussed below, the proposed application is not considered contrary to public interest.
Liability if accident occurs	It is the applicant's responsibility to operate in accordance with the conditions of consent and the NSW Maritime regulations. It is not a matter for Council to consider further in regards to the development application.
Safety	<p>The proposed boat tour as mentioned previously is for one boat sightseeing tour that will not be carrying out jet boating thrill rides in the river.</p> <p>Therefore, the boat will be required to operate within NSW Maritime signage and restrictions.</p>
Significant wake produced	<p>Wake produced from boats mostly occur from sitting position to high acceleration. Submissions that refer to the applicant web site where advertising is for the existing approval for jet boating in the ocean. This application is for a boat tour of different intention of providing sightseeing along the tweed.</p> <p>The original report addressed this issues and further condition was recommended by NSW Maritime to reduce wash created by the boat. Further information was provided by NSW Maritime that significant wash is created more at slower speeds. Boat that operate at planning speeds produce less wash.</p>
Application should be reviewed in accordance with Tweed Estuary Boating Plan 2006-2010	The previous report addressed the Tweed Estuary Boating Plan 2006 - 2010 and the proposed development was recommended for approval with a condition that the development be undertaken in accordance with the Tweed Estuary Boating Plan 2006-2010.

<b>Objection Reason</b>	<b>Comment</b>
Request for a Tweed River boating plan	As mentioned above there is an existing Tweed River Boating Plan produced by NSW Maritime that was addressed in the previous report.
Impact on seagrasses	Further to addressing this issue in the original report, the proposed development is not for “thrill rides” therefore the development is considered to have minimal impact on seagrass beds. A further condition would be placed on the approval to comply with the Tweed Estuary Boating Plan.
Need for a holistic conservation based tourism industry for Tweed River.	It is recognised that there is a need for a Tweed Tourism Plan, however, the Tweed Estuary Boating Plan is a comprehensive plan for managing uses of the river.
The advertising description of the proposed development	The advertising material that the applicant has produced for the proposed development and for its other approval in the ocean is not a planning matter for consideration under the Environmental Planning and Assessment Act.
Impact on protected area	The proposed development would need to comply with NSW Maritime regulations and signage and therefore will be required to adhere to speed zones in particular sensitive areas.
Type of boat utilised	Submissions raised questions as to why a ‘speed’ boat will be utilised for a boat tour. The applicant has an existing approval under DA 07/0974 for jet boating in the ocean. The proposed development is for an alternative tour to the thrill ride and is to provide a boat tour along the Tweed to view points of interest along the river.
Concern how operation will comply with NSW Maritime regulations of 30 metres from any person or anything in the water when travelling at 10 knots or more.	Further to the discussion on this issue in the original report, the applicant would need to comply with NSW Maritime signs and regulation and a recommended condition is proposed for the consent.

<b>Objection Reason</b>	<b>Comment</b>
Impact on Fingal locality	As discussed in the original report, the proposed development is not for thrill rides, the proposed route of the tours does not stop at Fingal and therefore the boat will be travelling past the locality on the water. As there are no “thrill rides” proposed in the river, the impact will be considered to minimal and in keeping with other recreational boats along the Tweed River.
Recommend speed limit imposed on the river, suggested in keeping with other tour boats 8-10 knots	The application has provided that at points of interest they would travel at 8-10 knots, however, between points of interest they propose to travel at approximately 35 knots. As reviewed by NSW Maritime and Co-ordinator of Natural Resources a boat will produce less wash and therefore less impact on erosion when a boat is planning. However, a condition is placed on the approval for the boat to operate at cruising speed.
Council should lobby state government to increase Maritime resources on Tweed River	The request for increased maritime resources is beyond the scope of the assessment for this development application.
Cook Island restrictions	Cook Island is not included in this assessment, as this application does not include the ocean in the proposed route.
Loss of reputation for “Tweed Naturally”	As mentioned above the proposed development is in keeping with the Tweed Strategic Plan and is supported by Tweed Tourism as utilising the Tweed River and providing a diverse recreational tour for visitors and residence.  Therefore, the proposed development is not considered to impact on the Tweed image and cause a loss of reputation on Tweed naturally.

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<b>Objection Reason</b>	<b>Comment</b>
Request Ban jet boats	The request to ban jet skis and boats on the river, is not a matter that can be addressed by way of this development application. Further restriction of boating activities is the jurisdiction of the NSW Maritime and not a matter for Council to regulate.

**(e) Public interest**

While there have been numerous submissions submitted against the proposed development, the majority issues raised are concerned with jet boating activities and the use of jet boat. Therefore the issues raised such as environmental impact and noise and amenity impact are considered to be minimal from the proposed "sightseeing boat tour".

The proposal is a small tourism operation for visitors and residents of the Tweed to experience the river and the proposed development is not considered to have more significant impacts than existing recreational boat users of the river.

Therefore the proposed development is considered to be in keeping with the Tweed Strategic plan and in keeping with Tweed Tourism body and therefore is not considered contrary to public interest.

**OPTIONS:**

1. Approve the application in accordance with the recommendation in the original report and the proposed conditions of consent
2. Refuse the application

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be unsatisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

The proposed development has been assessed on its merits and does not generate a policy implication for Council.

**CONCLUSION:**

The proposed development has been re-advertised to allow the community to view the additional information and provide further submissions. On review of the additional issues raised and a revisit of ongoing issues, the proposed development is considered to have minimal impact on the environment, amenity and is considered compatible with other uses of the river. The recommended conditions of consent address potential

concerns in regards to compliance with regulations, speeding, irregular driving and possible conflict with other uses in the upper river.

Further as mentioned in the previous report the proposed development is considered to comply with Tweed Local Environmental Plan, Tweed Development Control Plan and the various Tweed River Management Plans. Therefore provided the recommended conditions are included on the consent the application is recommended for approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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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**P9 [PR-PC] Kings Forest Concept Plan - Residential Community Development - Council Submission to the Department of Planning**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/51 Pt5**

**SUMMARY OF REPORT:**

The purpose of this report is to seek Council's endorsement of the proposed submission to the Department of Planning on the Major Project Application (Concept Plan) for the Kings Forest Residential Community Development (MP06\_0318).

**RECOMMENDATION:**

**That Council endorses the attached draft submission on the Kings Forest Concept Plan Residential Community Development and be submitted to the Department of Planning.**

**REPORT:****Applicant:** Leda Manorstead Pty Ltd**Owner:** Leda Manorstead Pty Ltd**Location:** Lot 76, 272, 323 and 326 DP 755701; Lot 6 DP 875446; Lot 2 DP 819015; Lot 40 DP7482; Lot 38A & 38B DP 13727; Lot 1 DP 129737; Lot 1 DP 781633; Lot 7 DP 875447; Duranbah Road, Kings Forest; Lot 1 DP706497 Melaleuca Road, Kings Forest; Lot 37A DP 13727 Cudgen Road, Cudgen**Zoning:** 2(c) Urban Expansion, 5(a) Special Use, 7(a) Environmental Protection (Wetlands & Littoral Rainforest) and 7(l) Environmental Protection (Habitat)**Cost:** N/A (concept plan only)**BACKGROUND:**

Kings Forest was first identified as an urban release area in the early 1980s and was considered to have potential for 15,000 people. The site was rezoned for urban development in 1988 pursuant to Amendment 3 of the then Tweed Local Environmental Plan 1987.

In June 1992, Tweed Shire Council approved a Development Application for a 273 lot rural residential subdivision of the site and an 18-hole golf course. The development approval was never acted upon.

In 1998, Council resolved to prepare a new draft LEP for Kings Forest and in 1999 a Local Environmental Study (LES) was commissioned, and a draft LEP, draft DCP and draft Section 94 Contributions Plan were prepared. The LES and draft LEP (Tweed LEP 2000 Amendment No. 20) were subsequently publicly exhibited in March/April 2001.

The LES and LEP process were discontinued in June 2001 pending investigation and review by the Department of Local Government. This investigation (the Bulford Inquiry) was completed in March 2003. The Bulford Inquiry recommended that Council continue with the exhibition of the LES and draft LEP.

In 2003 LEDA Properties Pty Ltd acquired Project 28 Pty Ltd (then named Narui Gold Coast Pty Ltd), the company which owns the Kings Forest Property.

In March 2006, the Minister for Planning advised Project 28 Pty Ltd that he would use his discretionary powers under Part 3A of the EP&A Act to consider the inclusion of the Kings Forest site as a State Significant Site under State Environmental Planning Policy Major Project 2005 (the Major Projects SEPP).

A State Significant Site Study was accordingly prepared by Planning Workshop Australia (PWA) and publicly exhibited in April and May 2006. In November 2006, the Kings Forest site was designated as a State Significant Site as an amendment to the Major Projects SEPP.

Following the State Significant Site declaration and the inclusion of the Kings Forest in Schedule 3 of the Major Projects SEPP, LEDA requested the Minister to authorise lodgement of a Concept Plan for the urban and recreational development of the site.

On the 9 January 2007, the Minister authorised a Concept Plan for the Kings Forest site and the Director-General's Environmental Assessment Requirements (DGRs) were issued in August 2007. A copy of the DGR's are annexed to this report.

The listing in the SEPP contains the following controls:

***"Part 6 Kings Forest site***

**5 Zone 2 (c)**

*(1) Subdivision*

*Subdivision of land within Zone 2 (c) is permitted with consent regardless of the size of each allotment to be created by the subdivision.*

*(2) Dwelling houses*

*Development for the purposes of a dwelling house is permitted with consent on land within Zone 2 (c) regardless of the size of the allotment on which the house is to be located.*

**6 Zones 7 (a) and 7 (l)**

***(1) Subdivision that is permitted***

*Subdivision of land within Zone 7 (a) or 7 (l) is permitted with consent if the subdivision is for one or more of the following purposes:*

- (a) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,*
- (b) a minor realignment of boundaries to reflect the zone boundaries, being a realignment that does not involve the creation of a greater number of lots.*

***(2) Other subdivision***

*Subdivision of land within Zone 7 (a) or 7 (l) for any other purpose is prohibited.*

***(3) Temporary development***

*The consent authority must not consent to development on land within Zone 7 (a) or 7 (l) for which consent may be granted under [Tweed Local Environmental Plan 2000](#) only because the development is carried out for not more than 14 days, whether consecutive or not, in any one year.*

**(4) Dwelling houses**

*Development for the purposes of a dwelling house is prohibited on land within Zone 7 (I).*

**(5) Earthworks**

*Development for the purposes of earthworks is permitted with consent on land within Zone 7 (I), but only if the applicant for consent has demonstrated to the consent authority's satisfaction that:*

- (a) the development is necessary for any one of the following reasons:
  - (i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
  - (ii) it meets an identified urgent community need,*
  - (iii) it comprises a major employment generator, and**
- (b) there is no other appropriate site on which the development is permitted with consent (other than as advertised development) in reasonable proximity, and*
- (c) the development is generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
- (d) the development is consistent with the aims of [Tweed Local Environmental Plan 2000](#) (to the extent that those aims are consistent with this Policy) and at least one of the objectives of Zone 7 (I).*

**7 Ecological buffers**

- (1) Consent must not be granted to development on land within an ecological buffer unless the consent authority is satisfied, after considering a detailed environmental assessment, that:
  - (a) the development complies with the objectives for ecological buffers and other provisions of this clause, and*
  - (b) there is no practicable alternative to siting the development within the buffer.**
- (2) The objectives for ecological buffers are:
  - (a) to protect wetlands or areas of particular habitat significance, and**

- (b) *to restrict development so that, as far as practicable, it does not occur within ecological buffers, and*
  - (c) *to help ensure that development is designed, sited and managed so as to minimise its impact on the ecological and hydrological functions of ecological buffers, and*
  - (d) *to encourage the restoration and maintenance of native vegetation and the ecological processes of land within and adjacent to wetlands or areas of particular habitat significance.*
- (3) *Development on land within an ecological buffer is to:*
  - (a) *incorporate effective measures to manage wetlands or areas of particular habitat significance, and*
  - (b) *be designed and sited to maintain connectivity of vegetation and minimise vegetation clearing, soil disturbance and alterations to the rate, volume or quality of surface and ground-water flows, and*
  - (c) *retain and maintain all existing native vegetation outside the area immediately required for the development, and*
  - (d) *incorporate measures to regenerate native vegetation for all disturbed areas within the buffer, and*
  - (e) *incorporate appropriate stormwater and erosion control measures to protect the buffer from surface water run-off or other disturbance.*
- (4) *When considering whether or not there is a practicable alternative to siting development inside an ecological buffer, the consent authority must consider:*
  - (a) *the design, type and site cover of the proposed development, and*
  - (b) *the physical characteristics of the land on which the development is proposed to be carried out, and*
  - (c) *the suitability of the land for the proposed development.*
- (5) *Before deciding whether or not to grant consent to development on land within an ecological buffer, the consent authority must consult the Department.*

## **8 Agricultural buffers**

*Consent must not be granted to development on land within an agricultural buffer unless the consent authority:*

- (a) *has considered the potential impact of the proposed development on agricultural activities on land adjoining the buffer and of those agricultural activities on future occupiers of land within the buffer, and*
- (b) *has consulted the Department of Primary Industries.*

## **9 Complying development**

*For the purposes of determining whether development within the Kings Forest site is complying development, the provisions in Tweed Development Control Plan No 40 (as adopted by Tweed Shire Council on 6 October 2004) relating to single dwelling houses, or to development ancillary to single dwelling houses, are taken not to apply to the Kings Forest site.*

## **10 Relationship with other environmental planning instruments**

*The only environmental planning instruments that apply, according to their terms, to or in respect of development within the Kings Forest site are as follows:*

- (a) *in the case of development that is a project to which Part 3A of the Act applies—this Policy and all other State environmental planning policies otherwise applicable to the land, except [State Environmental Planning Policy No 1—Development Standards](#),*
- (b) *in the case of all other development—all environmental planning instruments otherwise applicable to the land, except [State Environmental Planning Policy No 1—Development Standards](#), but only to the extent that those instruments are not inconsistent with this Policy.”*

The following zoning map applies to the Kings Forest site.

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

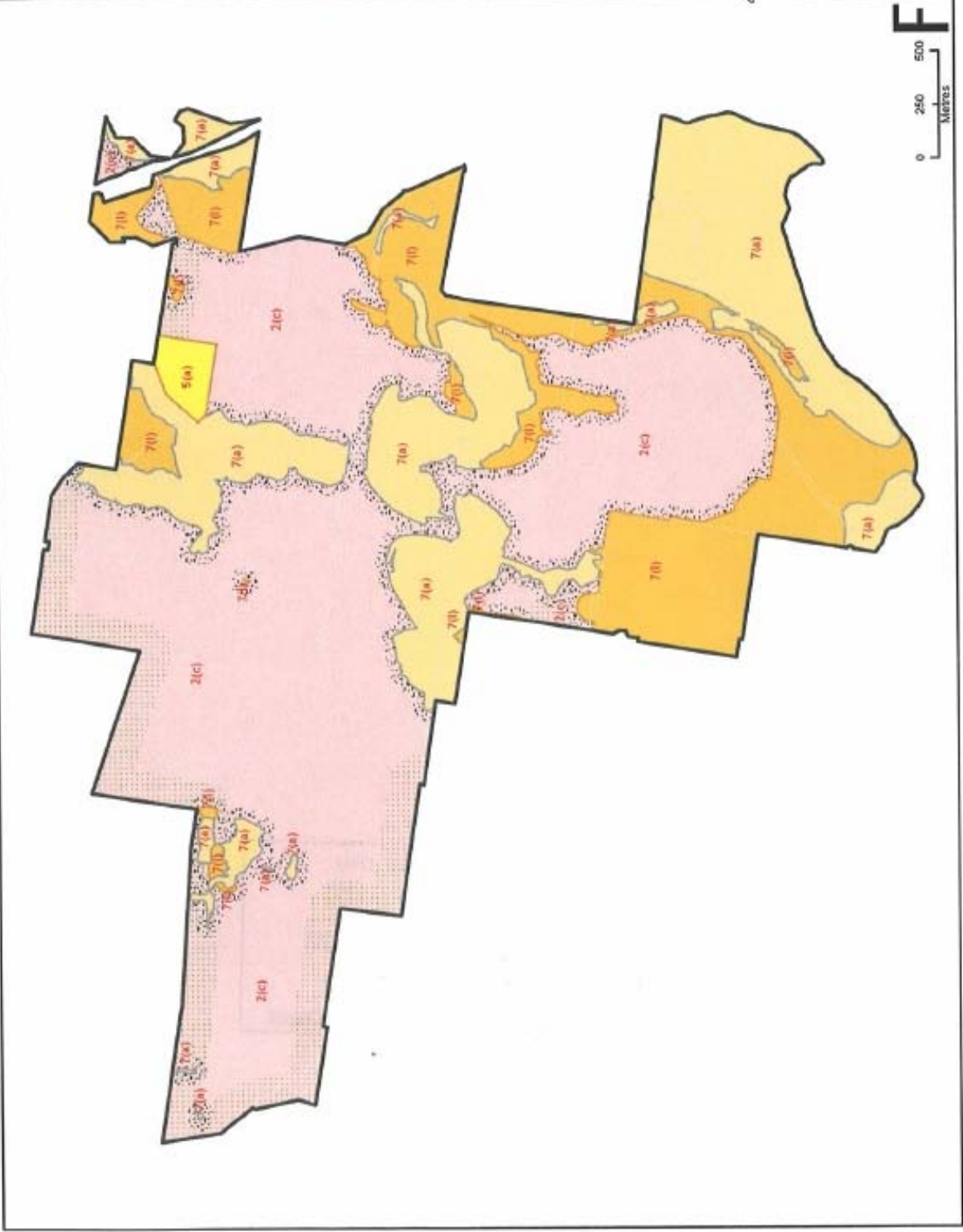
Environmental Planning and Assessment Act 1979  
 State Environmental Planning Policy (Major Projects) Amendment No. 10

- Site Boundary
  - Parcel Boundary
  - Ecological Buffer - 50m
  - Agricultural Buffer - 150m
- Zone**
- 2(c) - Residential Urban Expansion
  - 5(a) - Special Uses
  - 7(a) - Environmental Protection (Wetlands & Other Waterways)
  - 7(b) - Environmental Protection (Rural)

*[Signature]*  
 Minister for Planning  
 Date: 30/10/06



State Environmental Planning Policy (Major Projects) 2005 (Amendment No. 10)  
 - Zoning Map





## THE SITE

The site is known as Kings Forest and comprises of 11 allotments. It has a total area of 880ha.

The site is bounded by agricultural and rural uses to the north, west and south-west and by Cudgen Lake (Cudgen Nature Reserve) and Cudgen Creek to the south and east. The coastal suburb of Casuarina is directly to the east of the site and there is a small area of residential development along Tweed Coast Road to the north of the site near Depot Road. Adjacent to the site is the former Depot Road Tip. The former Cudgen Quarry adjoins the southern boundary near Blacks Creek. Land to the north, north-west, west and south-west boundaries is predominately used for agriculture including grazing, small crop production, timber production.

The site is accessible from Tweed Coast Road (via Depot Road) and Duranbah Road, Duranbah.

The site is on a gently undulating coastal floodplain. The majority of the site (and surrounding lands) is at a relatively low elevation, with approximately 94% below 10m AHD and the remainder generally less than 20m AHD. Approximately 25% of the coastal plain within the site is permanent wetland.

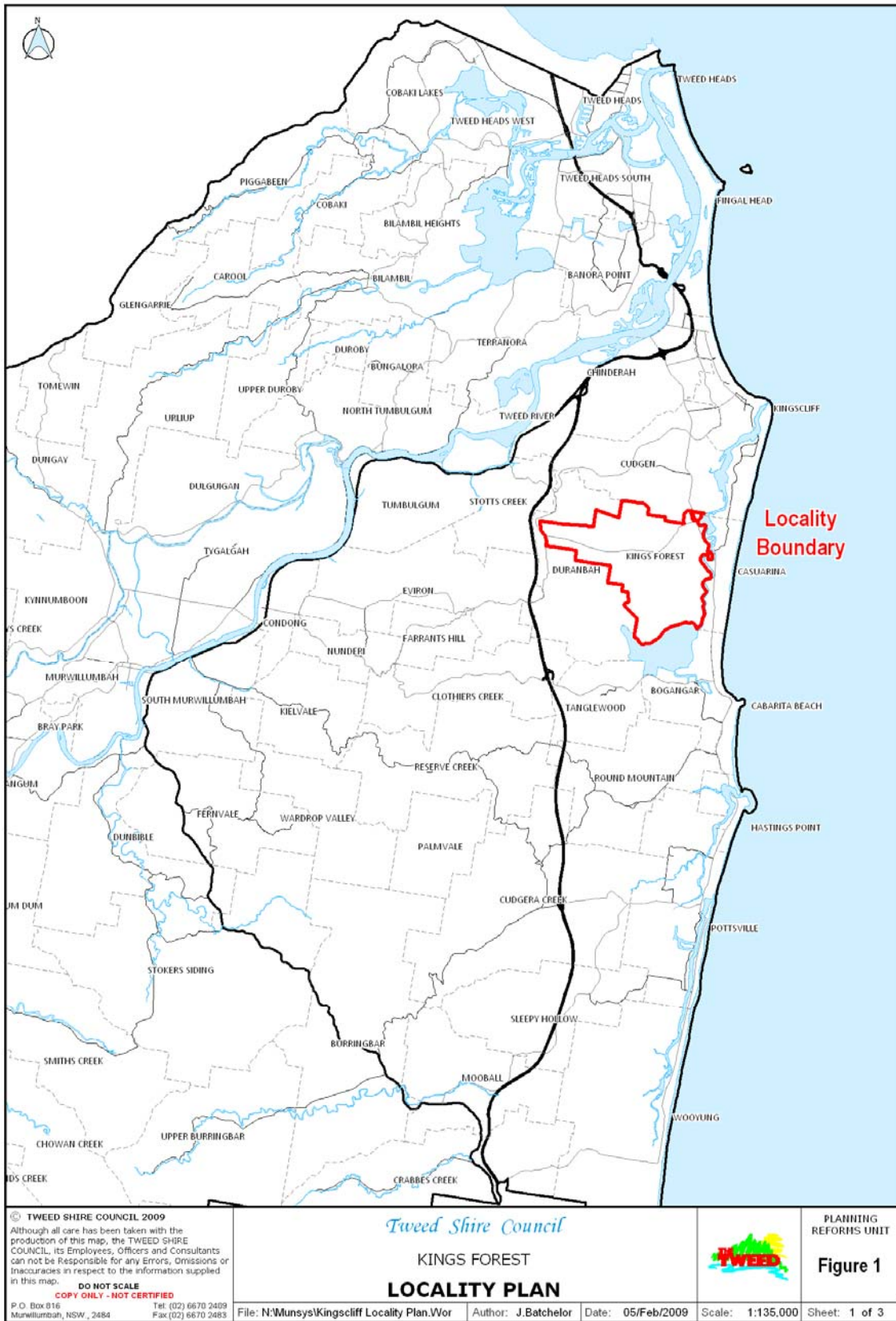
The site has historically been used for sand mining, turf production, dairy farming, small cropping and grazing, for sugar cane production, and as a pine plantation. Most of the site is benefited by existing use rights for cattle grazing and / or silviculture, which also allows associated routine agricultural activities. In addition, parts of the Cudgen Paddock are used for the grazing of cattle under an approval from Tweed Shire Council.

### Site Constraints

The site is subject to the following constraints:

- Part of the site is sensitive coastal location and part coastal location under SEPP 71 (primarily within release "Area A");
- SEPP 14 – Wetlands occurs over part of the site;
- Koala habitat is identified on the site (SEPP 44 is applicable);
- On-site and adjoining wetland areas are possible breeding areas for mosquitoes and midges;
- Tree Protection Order 1990 apply to the entire site;
- Acid Sulfate Soils class 2 to 3 are applicable over most of the site;
- Small parts of the land are flood prone;
- The site is identified as bushfire prone;
- The site has been identified to accommodate future road corridors
- An old cattle dip is located on the site (Duranbah);
- The site is contained in Council's Aboriginal Cultural Heritage landscape mapping; and Aboriginal relics and artefacts are known to be located on isolated spots throughout the site; and
- Previous land uses undertaken on-site may have resulted in contaminated land (SEPP 55 remediation of land is applicable).

# LOCALITY PLAN





# AERIAL PHOTOGRAPH



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 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants cannot be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map.  
 DO NOT SCALE  
 P.O. Box 816  
 Murrumbidgee, NSW, 2484  
 Tel: 02 6670 2400  
 Fax: 02 6670 2483

Tweed Shire Council  
 KINGS FOREST  
**AERIAL PHOTO - TAKEN MAY 2007**  
 File: N:\Munys\Tweed Heads Locality Plan\Wor

Author: J.Batchelor Date: 05/Feb/2009 Scale: 1:20,000 Sheet: 2 of 3



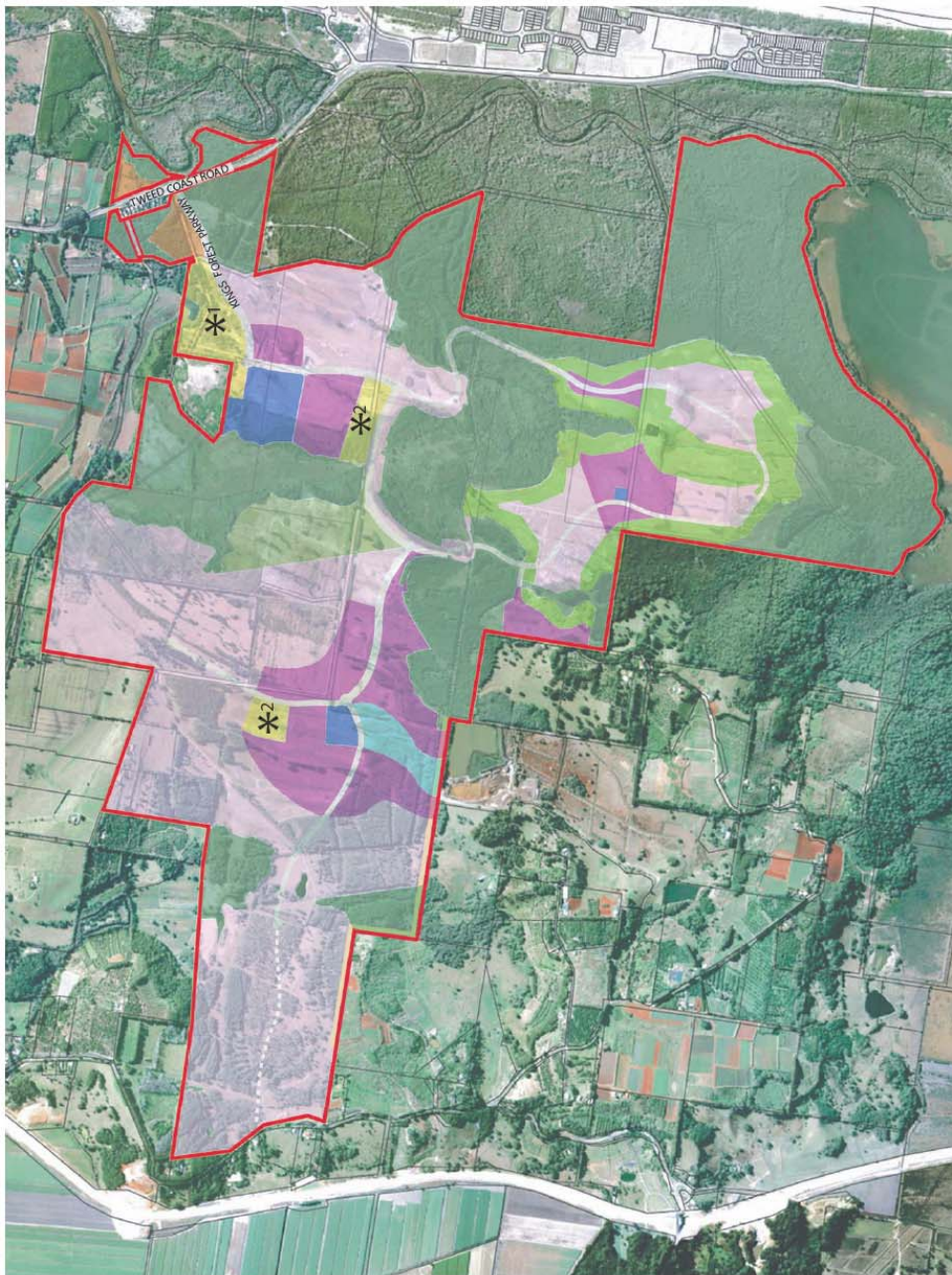
PLANNING REFORMS UNIT  
**Figure 2**



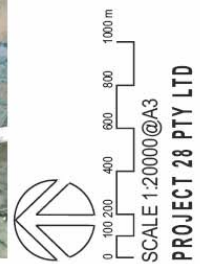
# PROPOSED CONCEPT PLAN

- TOWN CENTRE / NEIGHBOURHOOD CENTRE
- MEDIUM DENSITY RESIDENTIAL
- LOW DENSITY RESIDENTIAL
- COMMUNITY FACILITIES / EDUCATION
- EMPLOYMENT LAND
- GOLF COURSE
- PUBLIC OPEN SPACE (ACTIVE)
- ENVIRONMENTAL PROTECTION AREA
- LAKE
- \*1 INDICATIVE PRIVATE SCHOOL SITE
- \*2 INDICATIVE STATE SCHOOL SITE

**MPS**  
Architects  
1300 368800  
NOVEMBER 2008  
MPS 2142\_2K-1024  
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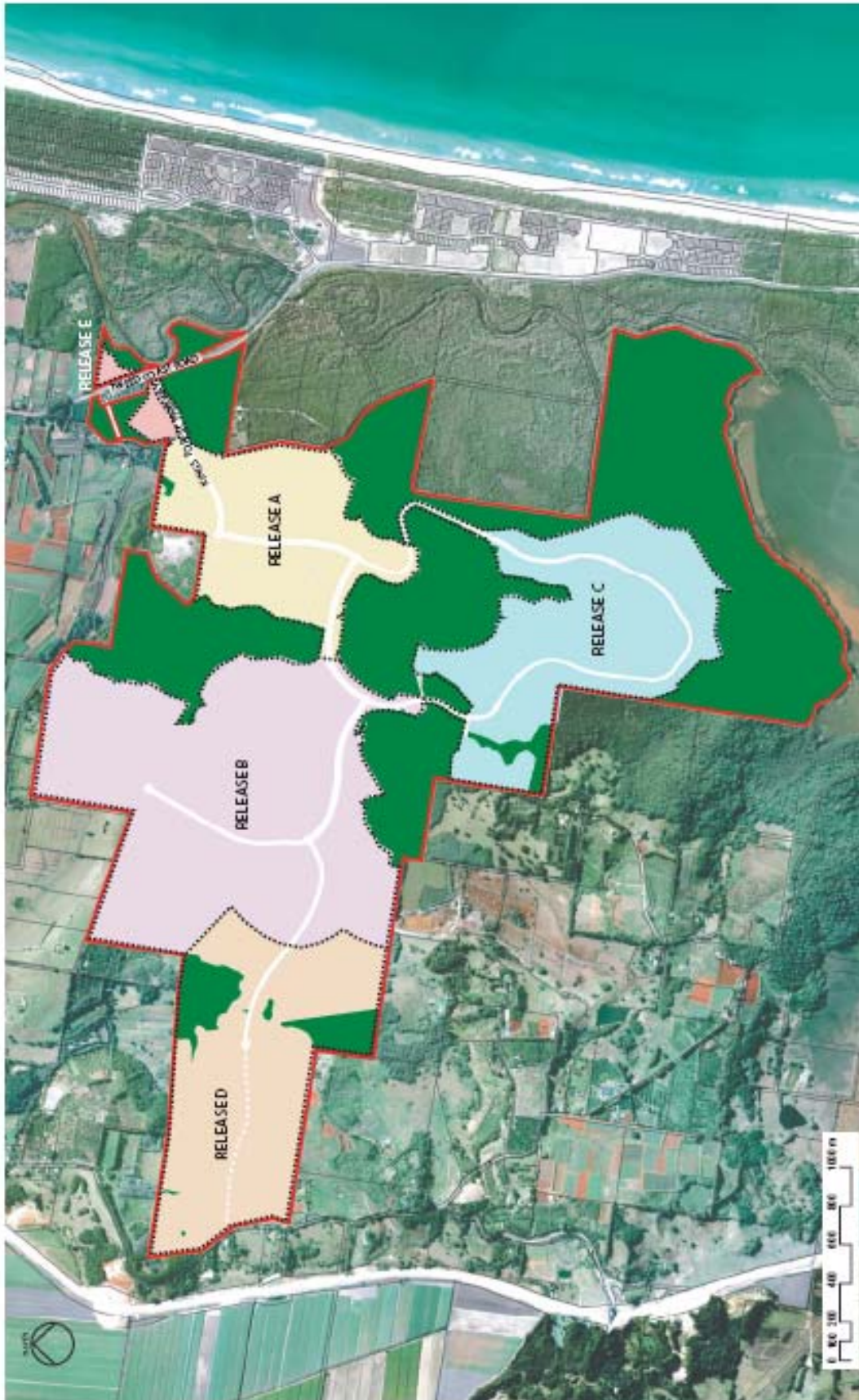


## CONCEPT PLAN KINGS FOREST



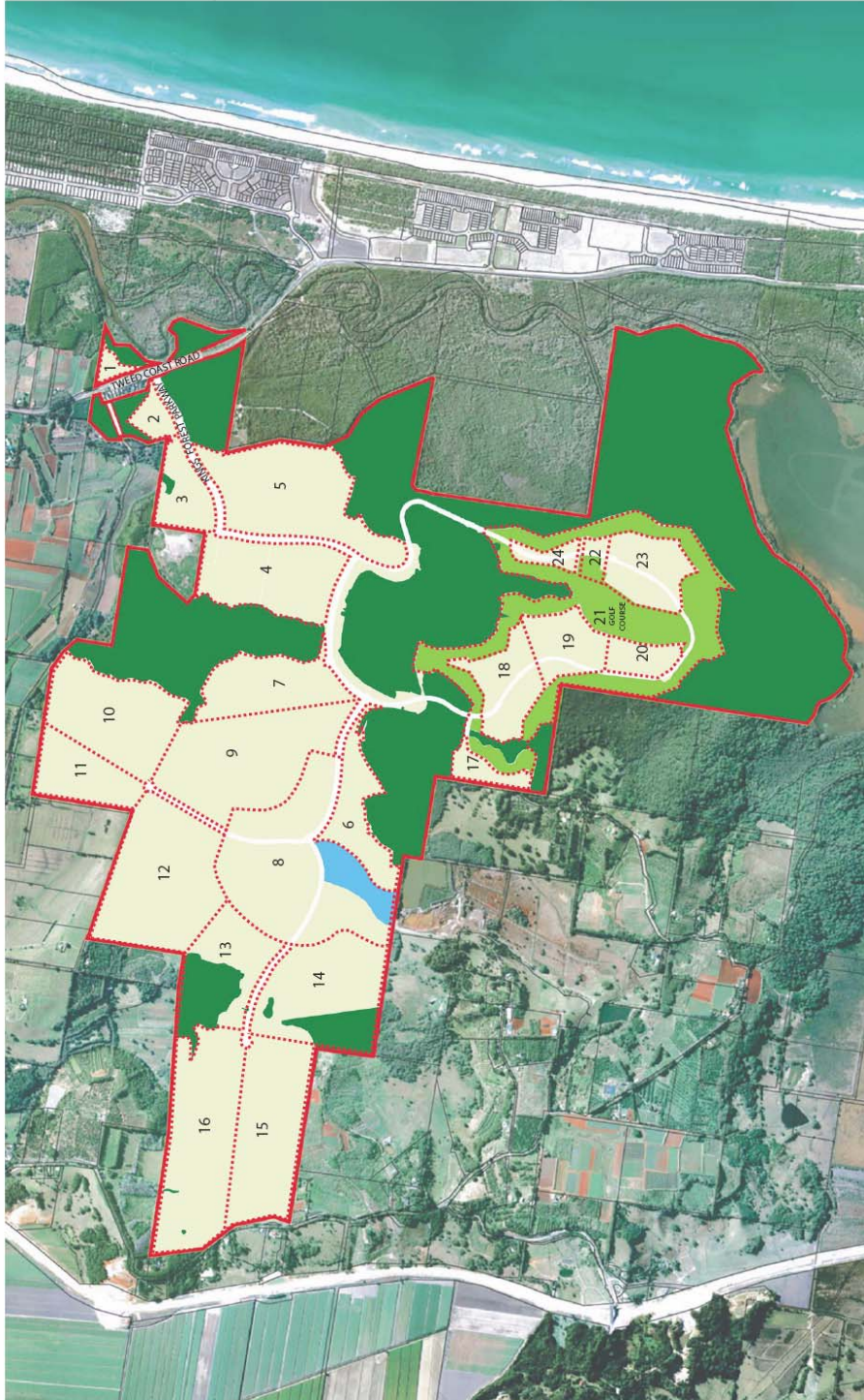


## PROPOSED RELEASE AREAS






PROPOSED PRECINCT AREAS



**MPS**  
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**PRECINCT PLAN**  
KINGS FOREST

  
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PROJECT 28 PTY LTD

## Process

In November 2006, the Kings Forest site was designated as a State Significant Site as an amendment to the Major Projects SEPP.

Following the State Significant Site declaration and the inclusion of Kings Forest in Schedule 3 of the Major Projects SEPP, the applicant requested the Minister to authorise lodgement of a Concept Plan for the urban and recreational development of the site.

On the 9 January 2007, the Minister authorised a Concept Plan for the Kings Forest site and the Director-General's Environmental Assessment Requirements (DGRs) were issued in August 2007.

The Department of Planning accepted the Environmental Assessment (EA) prepared for the Concept Plan and placed the EAR on exhibition from 17 December 2008 until 19 February 2009. Council has been invited to provide comments in the form of a submission to the Department of Planning during the exhibition period.

The purpose of this report is to seek Council endorsement of the Draft Submission attached.

The Concept Plan allows only for approval of the concept and additional development applications will be required to undertake the subdivision.

## Future Applications for Development Approval

The applicant has provided that

*The following works in Release Areas A, C and E are proposed to be the subject of a future Part 3A Project Application for the approval of the Minister for Planning:*

- *subdivision to create new lots/land parcels for future development in Precinct 5 of Release Area A;*
- *construction of the entrance road to the site and associated works for the intersection with Tweed Coast Road, as well as a new connecting road to the Tweed Council waste tip and Precinct 5;*
- *subdivision and associated infrastructure works for the first stage of urban development in Release Areas A and E;*
- *bulk earthworks and planting for the future golf course in Release Area C; and*
- *a service station and fast food outlet on part of the developable land east of Tweed Coast Road – Release Area E.*

*Subsequent subdivision and other development in Release Area A and the other release areas are proposed to be the subject of future development applications for the consent of Tweed Shire Council under Part 4 of the EP&A Act.*

*The detailed design and construction of some forms of lower density housing are proposed to be subject to complying development certification and exempt development provisions under Part 4 of the EP&A Act.*



## Development

The EAR identifies the proposal is comprised of the following components:

- Approximately 396.4 hectares (gross) of residential development for 4500 dwellings consisting of;
  - a. 2700 low density dwellings; and
  - b. 1800 medium density dwellings, including 300 in the Town Centre.
- Approximately 13 hectares for the Town Centre (10.3 hectares) and neighbourhood centre (2.7 hectares) for future retail and commercial uses;
- 19 hectares for community and education facilities;
- 7 hectares as employment land;
- a 57 hectare golf course;
- 28.3 hectares of active and passive open space in the form of playing fields,
- neighbourhood parks and other areas for passive recreation; and
- 9 hectare extension to the former Turner's Quarry lake.

The proposal will also have

- a mix of lot sizes ranging from 125m<sup>2</sup> to 1,200m<sup>2</sup>;
- Community and education precincts including two schools over 7ha of land.
- Open space, lakes and environmental protection areas covering 267ha of land.
- Access network of roads, public transport routes, pedestrian / cyclepaths;
- Landscaping and vegetation management.
- Water management.
- Utility services infrastructure.

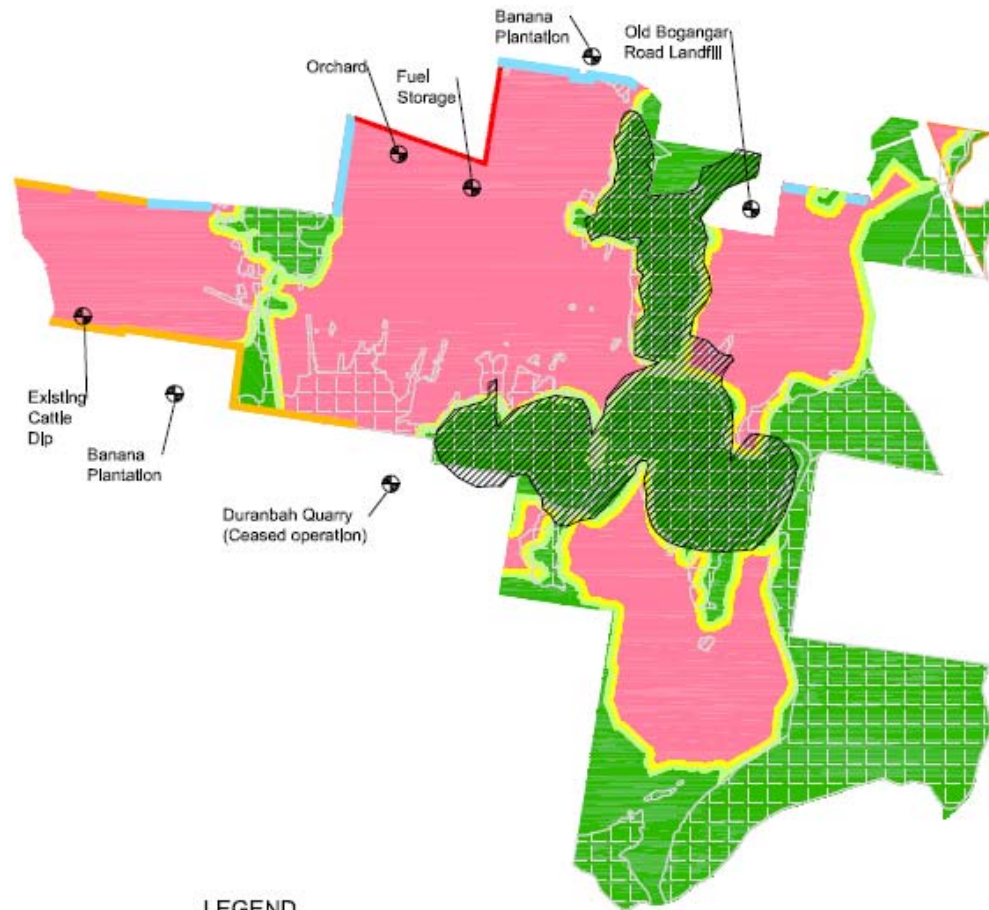
The proposal will result in an estimated population of 11,250 after 15 years.

The Concept Plan includes a Precinct Development Matrix (refer below) which outlines "Domains", preferred development in each Domain, residential density in each domain and urban design principles for each domain.



The Concept Plan also includes a Constraints Analysis, Road Network Plan, and Water & Sewer Infrastructure Plans as shown below.

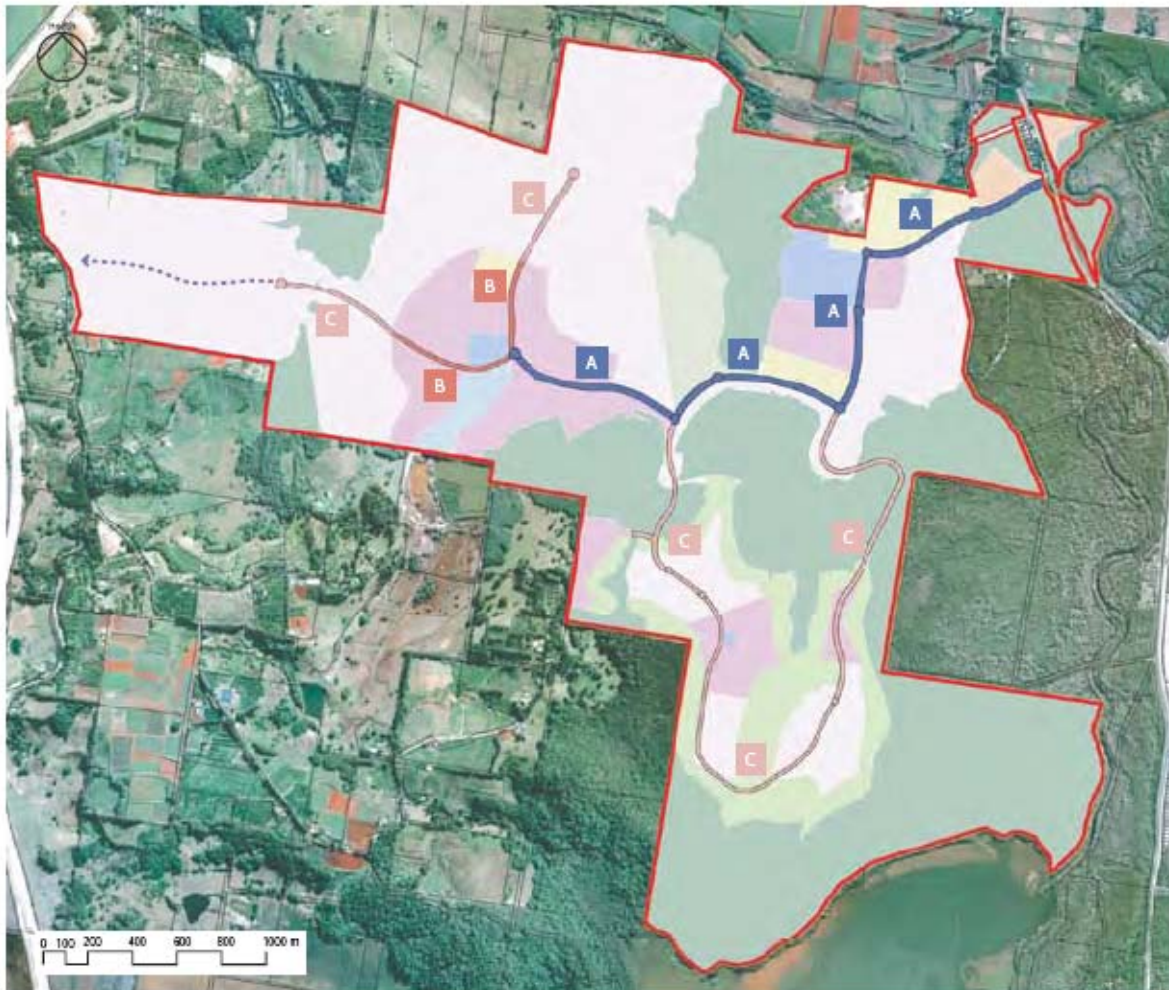
### CONSTRAINTS ANALYSIS



#### LEGEND

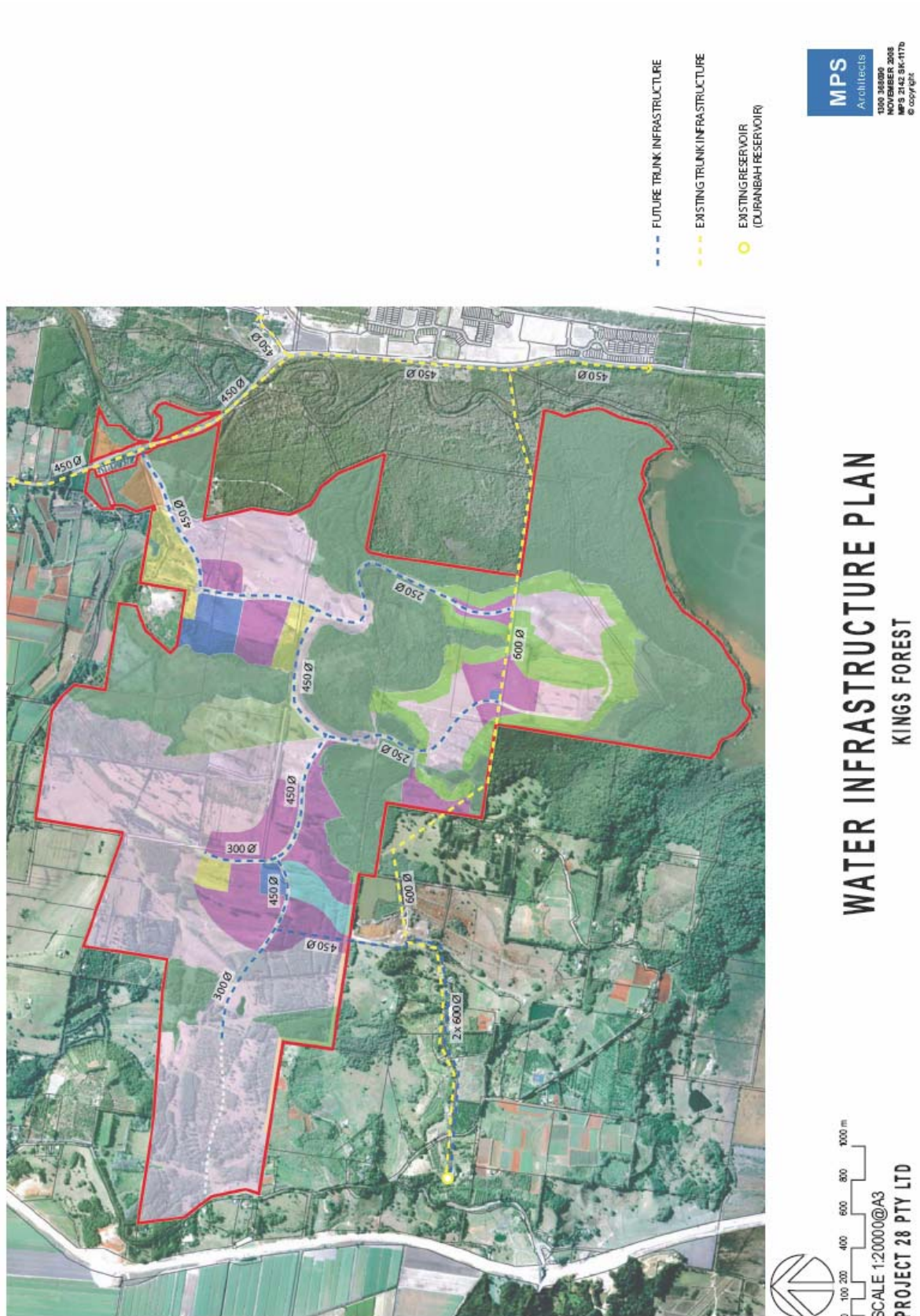


# ROAD NETWORK PLAN





# WATER INFRASTRUCTURE PLAN



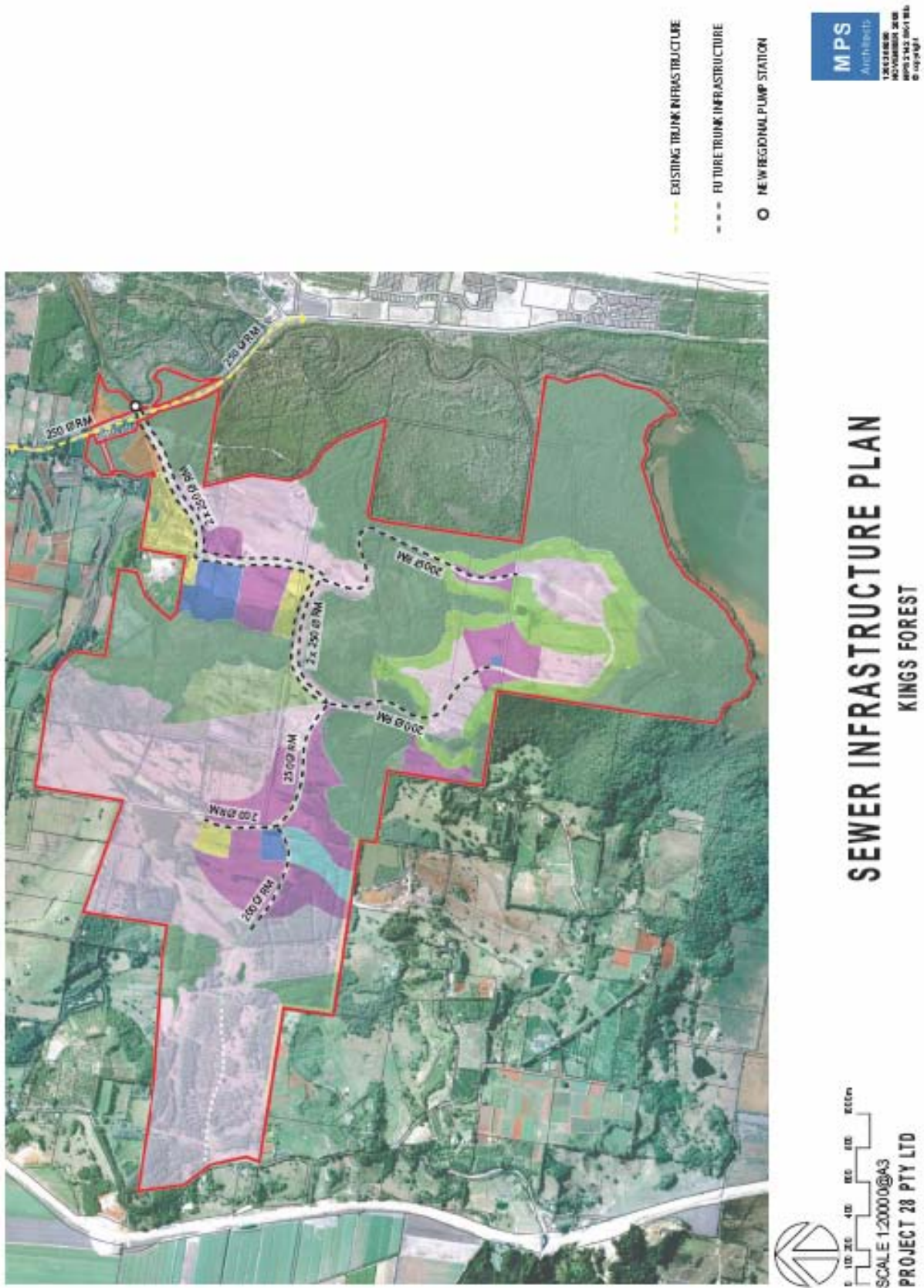
- FUTURE TRUNK INFRASTRUCTURE
- EXISTING TRUNK INFRASTRUCTURE
- EXISTING RESERVOIR (DURANBAH RESERVOIR)

**MPS**  
Architects  
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NOVEMBER 2008  
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## WATER INFRASTRUCTURE PLAN KINGS FOREST

0 100 200 400 600 800 1000 m  
SCALE 1:20000@A3  
PROJECT 28 PTY LTD

# SEWER INFRASTRUCTURE PLAN





It is proposed that design guidelines and codes for subdivision and housing are prepared at a later stage and incorporated into the Concept Plan.

### Lot Sizes

The Tweed LEP currently specifies a minimum lot size of 450m<sup>2</sup> in the 2 (c) zone. The provisions applying to Kings Forest in accordance with the Major Project SEPP have no minimum allotment size for dwellings and subdivisions within the 2(c) zone.

The Concept Plan seeks to provide lot sizes ranging from 120m<sup>2</sup> to 1,200m<sup>2</sup> which is line with the Major Project SEPP.

Additional controls are required for small lot developments as current Council controls only cater for a minimum allotment size of 450m<sup>2</sup>.

### Re-zoning

The Concept Plan includes proposed amendments to zone boundaries.

The applicant has provided that:

*"The proposed refinements to the zone boundaries are intended to align with the physical attributes of the site (natural and built), thus resulting in land use zones commensurate with the natural attributes of the land, in better environmental outcomes and in a more logical and efficient urban structure.*

*Moreover, without the proposed changes, some small areas of the concept plan proposed for development would be prohibited.*

*The changes fall into the following three categories:*

- *Transfer of land from Zone 7(l) Environmental Protection - Habitat to Zone 2(c) Urban Expansion – involving Areas 1 to 7.*
- *Transfer of land from Zone 2(c) Urban Expansion to Zone 7(a) Environmental Protection - Wetlands and Littoral Forests and Zone 7(l) Environmental Protection – Habitat, involving Areas 8-16.*
- *Inserting an ecological buffer omitted from the 2006 zoning map in Area 17."*

Map Reference & Area	Current Zone *	Proposed Zone *	Explanatory summary of changes
1 0.37 ha	7(l) EP-H	2(c) UE	Line shown on map does not reflect the vegetation edge. Proposed boundary reflects the results of ground truthing undertaken by LandPartners Ltd.
2 1.28 ha	7(l) EP-H	2(c) UE	Change facilitates and reflects the realignment of the proposed entry road and provides a 50m buffer including the width of the road. While the zone boundary reflects the off-set recommended by the zone boundary determination for the original zoning of the land (G. Sainty & Assocs), the impact of a 50m buffer on the 2(c) zoned land on the opposite side of Depot Road was not considered.

Map Reference & Area	Current Zone	Proposed Zone *	Explanatory summary of changes
3 0.25 ha	7(l) EP-H	2(c) UE	The shape of this wedge plus a 50m buffer has a detrimental impact on the adjacent urban development area. The loss of a small area of habitat is not considered significant (considering the extent of habitat to be retained elsewhere).
4 0.66 ha	7(l) EP-H	2(c) UE	<p>The zone line was fixed to locate a number of trees within the 7(l) Environmental Protection zone. Elsewhere in this area the zone line is located generally along the edge of native vegetation on the eastern side of a dirt road. It is proposed to locate the zone line in a similar manner here resulting in the trees being located in what would become part of the 2(c) zone. All these trees are to be retained within the proposed golf course area (but outside the designed area of play).</p> <p>DECC, when consulted on this matter, raised no objection, and the management plan for the golf course will mitigate impacts on the loss of Bush Stone curlew habitat.</p>
5 0.42 ha	7(l) EP-H	2(c) UE	<p>The proposal to construct a golf course in the Cudgen Paddock was central to resolving Kings Forest's zonings, and led to the layout of the golf course being amended to create a larger area of land to the south available for environmental protection. This layout resolved the location of the boundary between the 2(c) zone and 7(l) zone in that area. The gazetted layout, however, resulted in the golf tees serving two holes being located just within the Environmental Protection area. It is now necessary for the area required for these tees to be zoned Urban Expansion.</p> <p>DECC raised no objection and the management plan for the golf course will mitigate impacts on the loss of Bush Stone curlew habitat.</p> <p>The loss of a small area of Wallum frog habitat is not considered significant</p>
6 0.43 ha	7(l) EP-H	2(c) UE	
7 0.05 ha	7(l) EP-H	2(c) UE	This very small piece of land should have been amongst a number of parcels identified as off-sets in the zone boundary determination for the original zoning of the land (undertaken by G. Sainty & Assocs) but was inadvertently left out.
8 0.47 ha	2(c) UE	7(a) EP-W&LR	<p>These areas represent infill habitat to the irregular edge of the present zoning which follows the mapped line of existing high value vegetation.</p> <p>The addition of these areas to the Environmental Protection Zone consolidates the area and smoothes the edge thus providing benefits by facilitating buffer and management arrangements.</p>
9 0.26 ha	2(c) UE	7(a) EP-W&LR	
10 3.16 ha	2(c) UE	7(l) EP-H	

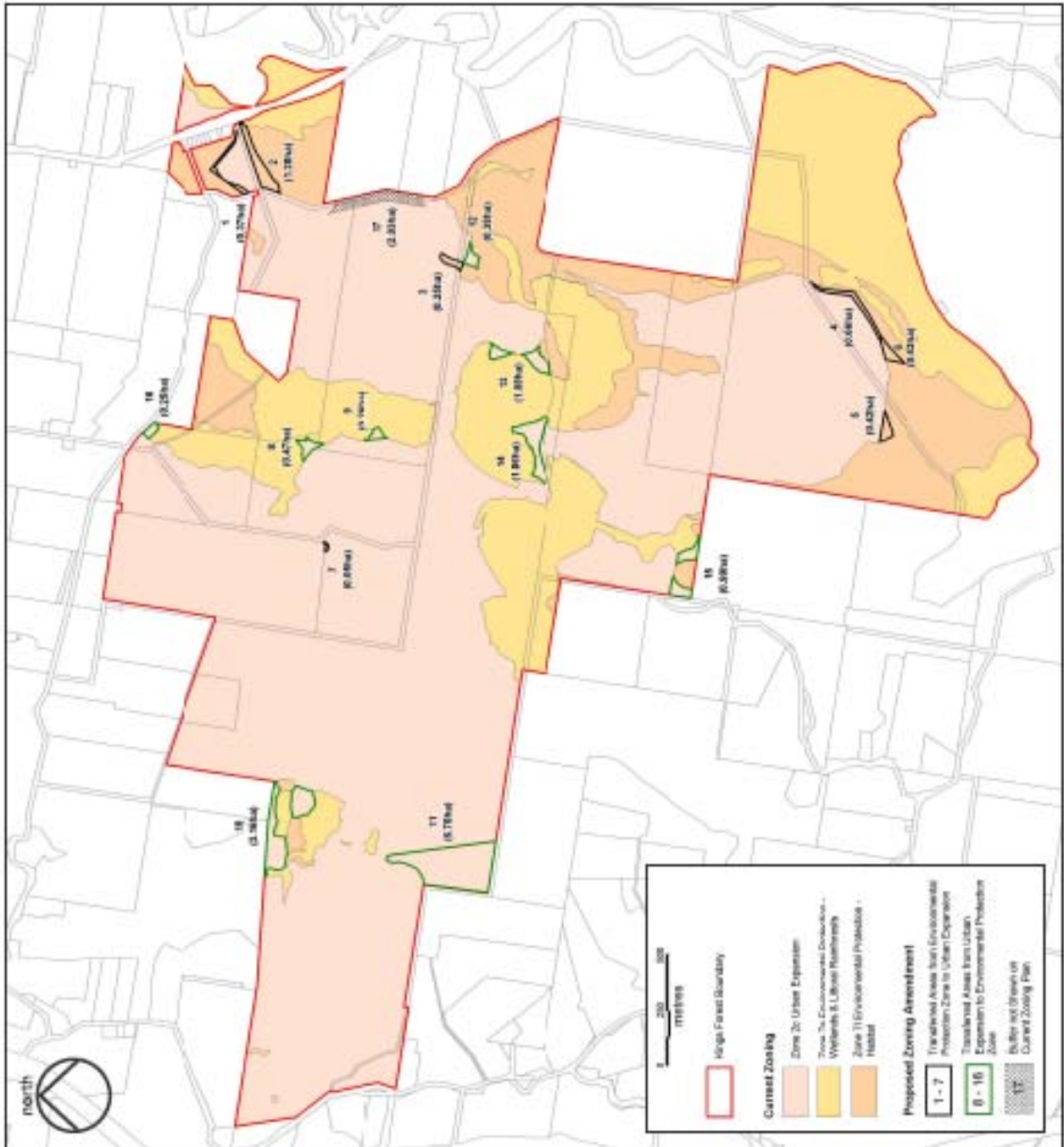
Map Reference & Area	Current Zone	Proposed Zone *	Explanatory summary of changes
11 6.78 ha	2(c) UE	7(l) EP-H	This area satisfies the recommendation contained in the Koala Plan of Management (Carrick 2008) that a north-south koala movement linkage be established to connect with Area 10 and the smaller areas of Environmental Protection to its south. This will yield a continuous linkage between the southern and northern boundaries of Kings Forest.
12 0.38 ha	2(c) UE	7(a) EP-W&LR	These three small areas provide infill habitat to the irregular edge of the present zoning which follows the mapped line of existing high value vegetation. The addition of these areas to the Environmental Protection Zone consolidates the area, smoothes the edge, and provided benefits through better buffer and management arrangements.
13 1.08 ha	2(c) UE	7(a) EP-W&LR and 7(l) EP-H	
14 1.86 ha	2(c) UE	7(a) EP-W&LR	
15 0.99 ha	2(c) UE	7(l) EP-H	
16 0.25 ha	2(c) UE	7(a) EP-W&LR	Adding this land to the 7(a) zone facilitates edge management and provides the opportunity for regeneration of what would otherwise be left-over land.
17	n/a	Buffer	Drafting error. Buffer omitted from zoning map and needs to be shown.

\* 7(l) EP - H = Zone 7(l) Environmental Protection - Habitat

7(a) EP - W&LR = Zone 7(a) Environmental Protection - Wetlands and Littoral Rainforests

2(c) UE = Zone 2(c) Urban Expansion

**PROPOSED ZONING CHANGES**



**ENDANGERED ECOLOGICAL COMMUNITIES AND THREATENED FLORA**

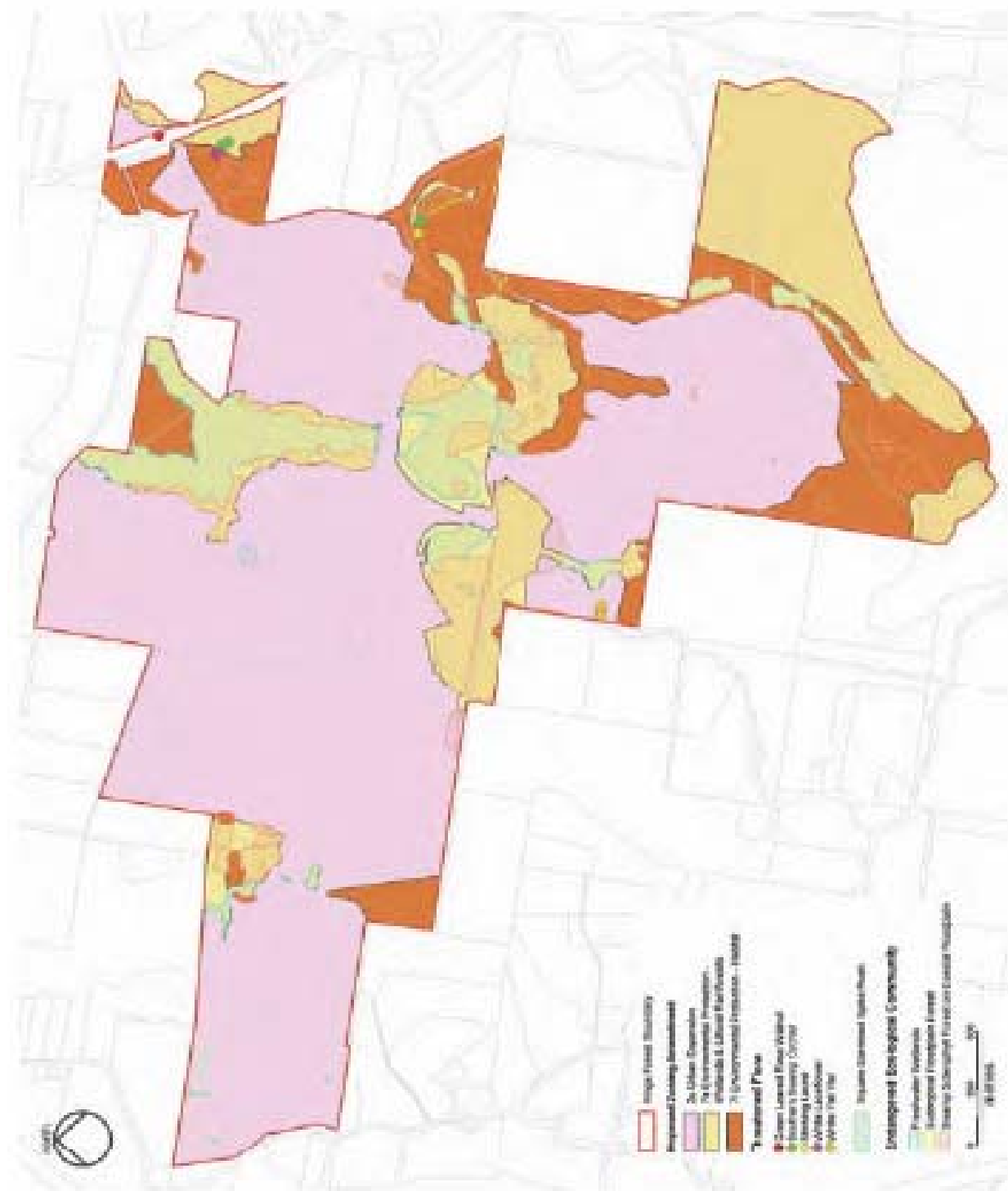


Figure 23 - Endangered Ecological Communities and Threatened Flora (Source: LandPatrol)



### Draft Submission

The EAR and Concept Plan were circulated to Council Officers with expertise in the following fields:

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

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

Major issues raised include the following:

### **Proposed Re-Zonings**

- The proposed re-zonings are not supported on ecological grounds. Further negotiations should be undertaken to consider other potential offset areas.

### **Koala Issues**

- A revised Koala Plan of Management is required (prior to approval of the concept plan) to ensure the long term protection of the Koala is maintained within and around the subject site.

### **Landforming**

- The Concept Plan does not include a coherent landforming or stormwater management plan, it is not considered that the Concept Plan can proceed without a conceptual earthworks plan.

### **Stormwater**

- Insufficient detail is provided in the Concept Plan to demonstrate that adequate drainage infrastructure can cater for external (minimal) and internal runoff catchments

### **Sewer**

- Council presently does not have capacity within its treatment plants and trunk conveyancing systems to cater for the overall proposed development, however the adopted 30 year capital works plan allows for these

augmentations. Approvals to permit such augmentations can not be guaranteed and if not gained or are delayed, will impact on the granting of future approvals for this development.

### **Water Strategy**

- Comments on the Water Demand Strategy are dependent on the endorsement of the preferred approach recommended in the strategy.
- Council presently does not have capacity within its current bulk water supply system to cater for the proposed overall development, however the adopted 30 year capital works plan allows for its augmentation. Approvals to permit such augmentations can not be guaranteed and if not gained or are delayed, will impact on the granting of future approvals for this development.

### **Proposed Lake**

- Public ownership of the lake is not supported. The ongoing management of the lake needs to be in private ownership. A concept design for the lake should be submitted with the concept plan

### **Proposed Golf Course**

- Significant urban areas will be discharging stormwater runoff to the golf course. The concept plan needs to include a stormwater drainage catchment plan for the golf course area.
- The golf course management plan addresses many potentially conflicting issues with regard to habitat enhancement, asset protection zones, stormwater treatment and a functioning golf course. A plan is required demonstrating how all of these differing functions are capable of working while maintaining an initial 30m buffer densely vegetated where it abuts natural areas.

### **Roads, Footpaths & Cycleways**

- A new intersection is required at Tweed Coast Road and the proposed Kings Forest Parkway before completion of works in relation to the first stage subdivision.
- The applicant needs to commit to compliance with Council's minimum standards for road design incorporating footpaths and cycleways in accordance with Tweed DCP Section A5.
- The proposed business park is not supported based on the submitted single lane or double lane round-a-bout proposals.
- The alignment of Kings Forest Parkway needs amending.
- A public transport strategy is required as part of the concept plan.

### **Section 94 Plans**

- The EA states that s64 and s94 plans will be "negotiated" with Council. It is considered that these plans are adopted and remain applicable unless new planning agreements developed.

## Open space

- Further break down of open space uses is required. For example, areas proposed for structured, casual parks, local parks, environmental and restoration areas should be distinguished.
- Further detail on the proposed long-term maintenance of open space areas proposed to be dedicated and costs associated with maintenance.
- The concept plans needs amending to delete reference to the Depot Road Waste Management Site as Council is utilising this land for its own purposes.

## Buffers

- Buffers to adjoining agricultural land should be established in accordance with the SEPP Major project (150m).
- The ecological buffer treatment is inadequately defined. A consistent approach is required across the site

## Bushfire

- Asset Protection Zone locations unclear. The Bushfire plan indicates they may be in private land, in roads, batters or within nature strips. The future management of APZs is therefore unclear.
- APZs should remain in private land unless Council is provided with funding to undertake maintenance and (easements), where maintenance is reasonable.

## Planning

- The proposed development on the eastern side of Tweed Coast Road is uncharacteristic with the local area.
- The employment land should be designed specifically to meet local and regional employment objectives.
- Definitions in the development matrix should align with Standard LEP template definition or provide clear definitions.
- The proposed Development Codes (or design codes) are required up-front with the Concept Plan for proper assessment.
- Inconsistencies with standards indicated in indicative building plans need to be justified where inconsistent with Section A1.
- Further detail should be included in the Concept Plan residential domain, including high, medium and low residential density areas.
- The concept plan needs to have greater regard to the ultimate built form of the site with a view to preventing monotony in the built landscape.
- The concept plans needs to be justified and proven to be the best utilisation of the site;
- Indicative buildings plans need to conform with Council's DCP Section A1 dwelling type definitions (or specify A1 where being over-ridden).

- Walkable neighbourhoods should be provided to the majority of lots, through provision of public transport routes that extend throughout the site.
- Housing affordability is not addressed.
- Provide a public transport plan.

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Council has the opportunity to make a submission to the Department of Planning on the proposed Major Project Kings Forest Concept Plan.

Various internal experts have assessed the Environmental Assessment Report and Concept Plan currently on public exhibition. These comments have been collated into the attached draft submission.

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

**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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Director General Requirements (ECM 1980663)
  2. Draft Letter to Department of Planning (ECM 1981901)
-

**P10 [PR-PC] Cobaki Lakes Concept Plan - Residential Community Development - Council Submission to the Department of Planning**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/52 Pt8**

**SUMMARY OF REPORT:**

The purpose of this report is to seek Council's endorsement of the proposed submission to the Department of Planning on the Major Project Concept Plan application for the Cobaki Lakes Residential Community Development (MP06\_0316).

**RECOMMENDATION:**

**That Council endorses the attached draft submission on the Cobaki Lakes Residential Community Development and be submitted to the Department of Planning.**

**REPORT:**

**Applicant:** Leda Manorstead Pty Ltd  
**Owner:** Leda Manorstead Pty Ltd  
**Location:** Lot 1 DP570076, Lot 2 DP566529, Lot 1 DP562222, Lot 1 DP570077, Lot 1 DP823679, Lot 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 & 305 DP755740 at Cobaki lakes Estate, Tweed Heads  
**Zoning:** 2 (c) Urban Expansion, 2 (e) Residential Tourist, 6 (b) Recreation, 7 (d) Environmental Protection (Scenic Escarpments) and 7 (l) Environmental Protection (Habitat)  
**Cost:** N/A

**BACKGROUND:**

Existing Development Consents

Cobaki Lakes has received several Development Consents between 1993 and 2002 for bulk earthworks and residential subdivision.

A summary of existing consents is outlined in the table below. The majority of the bulk earthwork consents have commenced and works are currently underway.

<b>Consents</b>		
<b>Reference</b>	<b>Description</b>	<b>Date of Consent</b>
92/315	Boyd Street Extensions	5 January 1993
94/438	Bulk Earthworks	27 January 1995
S94/194	730 Lot Urban Subdivision Parcels 1 to 5 and 13 Englobo Parcels (The Entrance, The Sand Ridge)	19 September 1995
96/271	Bridge over Cobaki Creek	8 April 1997
S97/54	430 lot residential subdivision – parcel 7 to 10 (The Knoll, Piggabeen)	21 October 1997
K99/1124	560 Lot Urban Subdivision (The Foothills, The Plateau, Valley East, Valley West, East Ridge)	21 July 2000
1162/2001DA	8 Management Lots and Bulk Earthworks (town centre)	8 October 2002

A number of Construction Certificates have also been issued for bulk earthworks and other civil engineering works and progress of these works continues. The majority of works are for filling of flood prone land within the 2 (c) Urban Expansion zone and cutting of steep slopes.

The extract from the Environmental Assessment (EA) below outline the areas of approved works that have been completed to date or have commenced. The applicant intends to continue with and complete these works.



It is proposed to preserve existing subdivision consents until future subdivision consents are issued. It is also proposed to preserve the existing consents for Precincts 1 and 2 in the Concept Plan in perpetuity.

Cobaki Lakes Estate, Tweed Heads Part 3A Concept Plan | December 2008

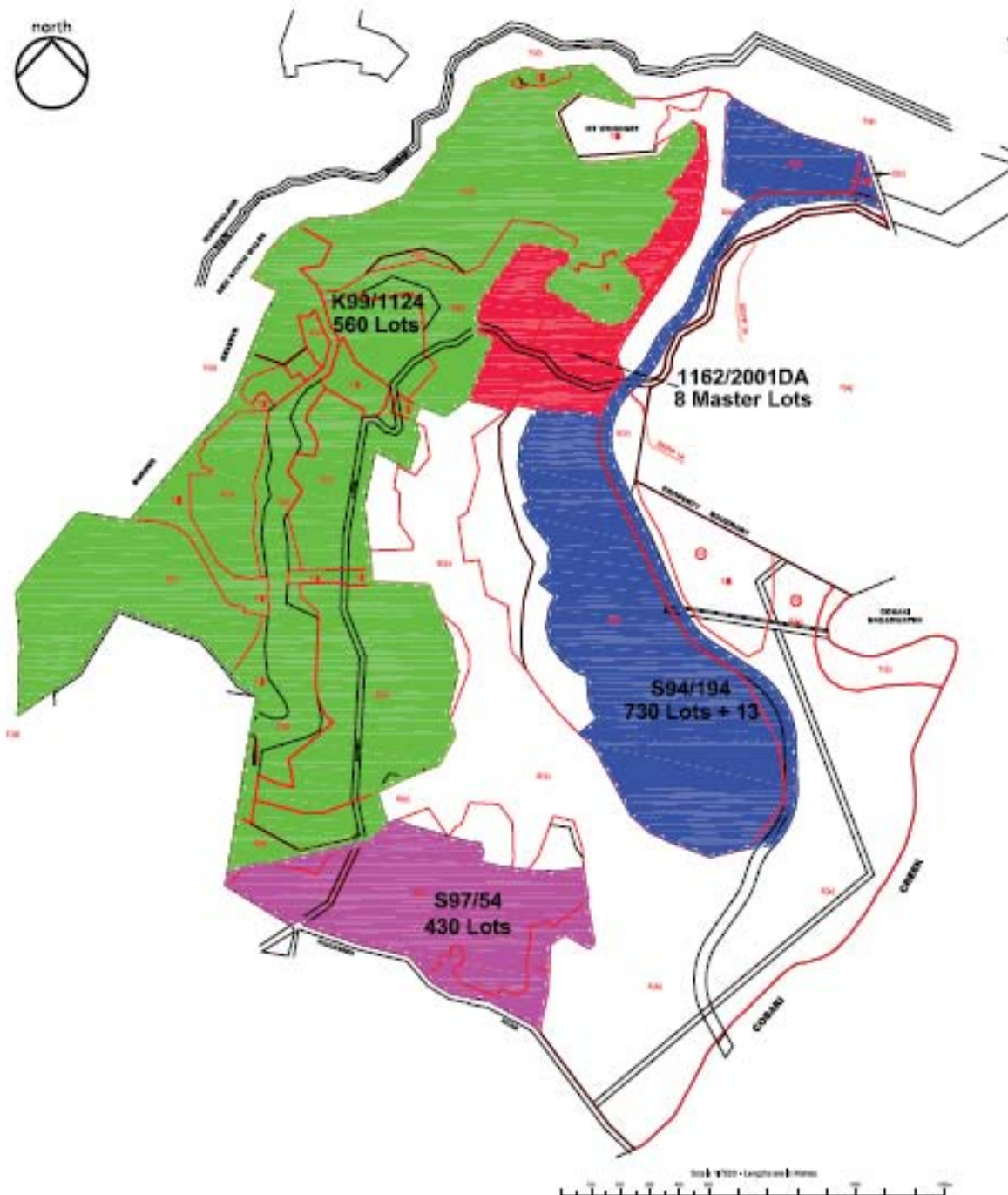


Figure 6 – Existing Subdivision and Development Consents

Cobaki Lakes Estate, Tweed Heads Part 3A Concept Plan | December 2008

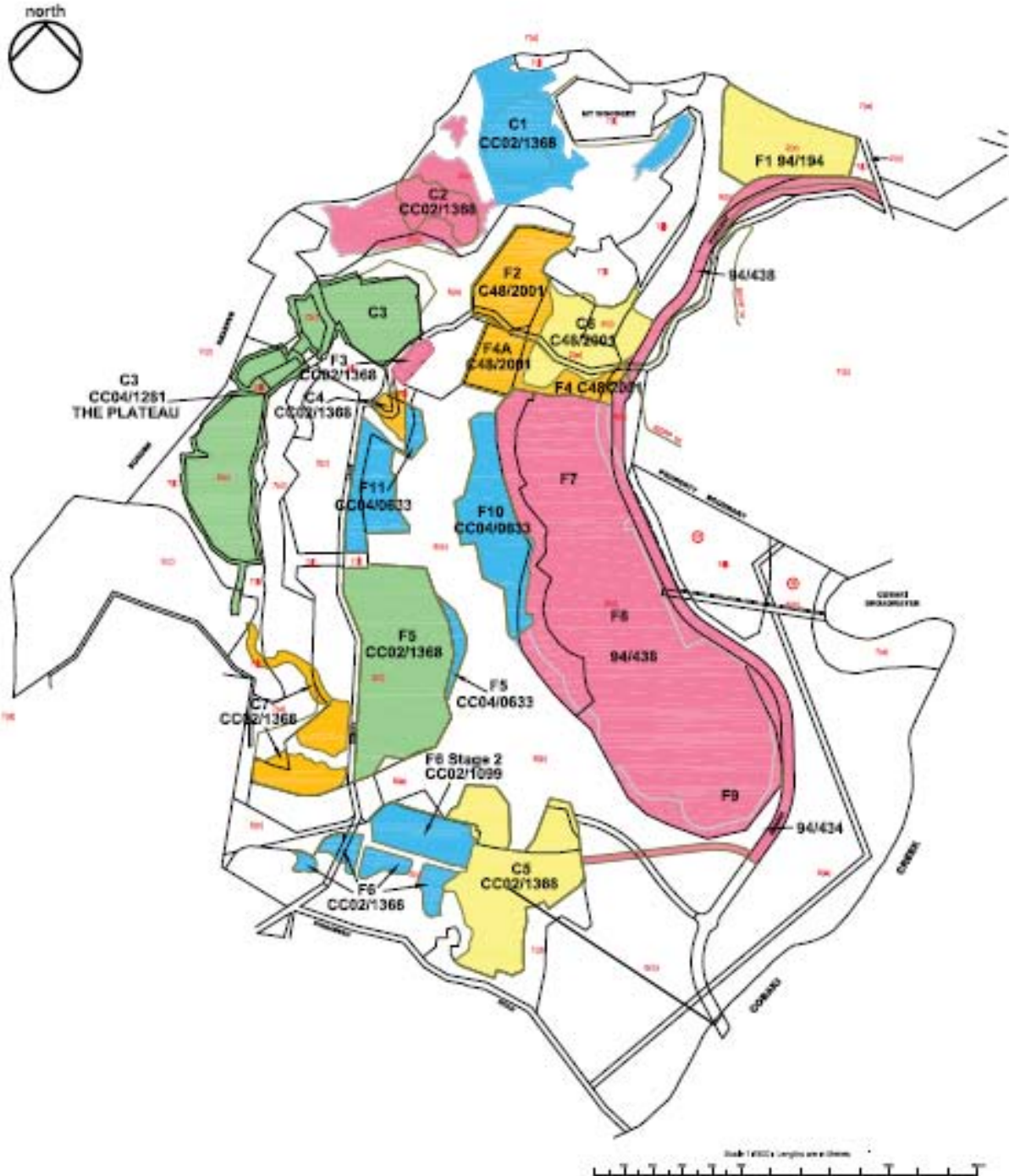


Figure 7 -Existing Earthworks Approvals<sup>1</sup>

### Additional Applications

In addition to the Major Project Application for a Concept Plan discussed herein, the Department of Planning has also received a Project Application (stage one works) for the proposed construction, rehabilitation and subdivision of the proposed central open space lake area in the Cobaki Lakes Residential Development (MP08\_0200).

The Director General Requirement's (DGRs) for the Project Application were issued to the developer on 5 November 2009 and the Department is awaiting lodgement of an Environmental Assessment (EA) addressing the DGRs.

### **THE SITE**

The site is known as Cobaki Lakes and comprises of 17 allotments. It has a total area of 593.5ha.

The site is situated approximately 6km west of Tweed Heads.

Existing on-site vegetation includes dry sclerophyll forest, rainforest, woodland, heathland, mangrove forest, grassland and rushland/sedgeland.

Topography on the site varies significantly including relatively steep slopes and ridges to the north and west and low lying flood plains in the centre of the site.

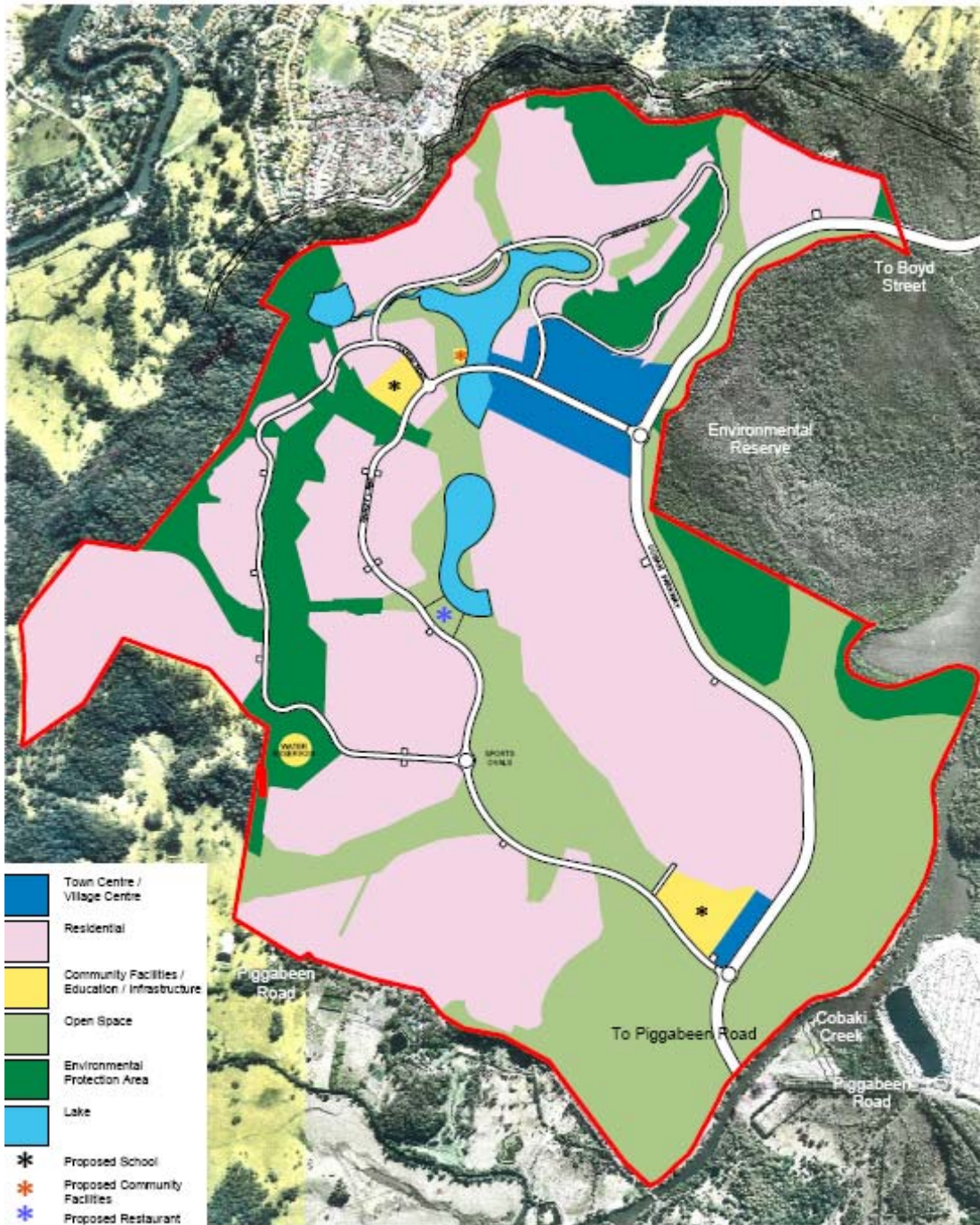
### Site Constraints

The site is subject to the following constraints:

- Part of the site is sensitive coastal location and part coastal location under SEPP 71;
- Wetlands occurs over part of the site (SEPP 14 is applicable);
- Koala habitat is identified on the site (SEPP 44 is applicable);
- On-site and adjoining waterbodies are known breeding areas for mosquitoes and midges;
- Tree Protection Orders 1990 and 2004 apply to the majority of the site;
- Acid Sulfate Soils class 1 to 3 are applicable over most of the site;
- The land is flood prone;
- A transmission line corridor runs through part of the site;
- The site is identified as bushfire prone;
- Regionally significant farmland is located to the north east and south of the site;
- An old cattle dip is located on the site;
- The site is contained in Council's Aboriginal Cultural Heritage landscape mapping; and
- Previous land uses undertaken on-site may have resulted in contaminated land (SEPP 55 remediation of land is applicable).



**SITE DIAGRAM:**



Concept Plan for LEDA MANORSTEAD PTY LTD

of COBAKI LAKES, NSW

Scale: 1:12000 @ A3

LED008 / SK 01.01

Friday, 16 August 2008

Issue U



## **PROPOSED CONCEPT PLAN:**

### Process

The Department of Planning received an application for a Major Project lodged by Leda Manostead Pty Ltd on 21 November 2006.

The application was lodged pursuant to Part 3A of the Environmental Planning and Assessment Act 1979 and the Minister authorised the submission of a Concept Plan for the proposed Development in accordance with s75M of the Act on 24 January 2007.

On 5 March 2007, the Department of Planning issued the Director General's Environmental Assessment Requirements (DGR's) to Leda (refer attached).

The Department of Planning accepted the Environmental Assessment (EA) prepared for the Concept Plan and placed the EA on exhibition from 17 December 2008 until 19 February 2009. Council has been invited to provide comments on the Concept Plan, to the Department of Planning during the exhibition period.

The Department of Planning has extended the submission period for Council to 23 February 2009 and the submission will be required by that date. This is to allow for endorsement at the Planning Committee meeting of 17 February 2009.

The purpose of this report is to seek Council endorsement of the draft submission attached.

The Concept Plan allows only for approval of the concept and additional development applications will be required to undertake the subdivision.

### Future Applications for Development Approval

The subdivision, rehabilitation and construction of the central open space and lake system is proposed to be the subject of a future Major Project Application for approval by the Minister (as discussed above). This will essentially form stage 1 of the development.

Subject to the Ministers determination, the further subdivision, design and construction of all other areas in the Concept Plan area are proposed to be subject of future development assessment by Tweed Shire Council under Part 4 of the EP&A Act.

### Development

The EA identifies the proposal is comprised of the following components:

- A town centre precinct, mixed retail, commercial with up to 9,500m<sup>2</sup> of retail space and 200 multi-unit dwellings covering 18 ha.
- Residential precincts with a mix of housing types including detached houses, town houses and multi-unit housing up to 3 storeys with up to 5,300 dwellings covering approximately 283ha of land excluding roads.
- Mix of lot sizes ranging from 120m<sup>2</sup> to 1,200m<sup>2</sup>.

- Community and education precincts including two schools over 7ha of land.
- Open space, lakes and environmental protection areas covering 267ha of land.
- Access network of roads, public transport routes, pedestrian / cyclepaths.
- Landscaping and vegetation management.
- Water management.
- Utility services infrastructure.

The proposal will result in an estimated population of 12,000 after 15 years.

The Concept Plan includes a Precinct Development Matrix (refer below) which outlines “Domains”, preferred development in each Domain, residential density in each domain and urban design principles for each domain.

Concept Plan Domain	Preferred Development	Residential Density	Non-Residential Density	Urban Design Principles
Town Centre/ Neighbourhood Centre	<ul style="list-style-type: none"> <li>▪ Shop</li> <li>▪ Retail premises</li> <li>▪ Business premises</li> <li>▪ Office premises</li> <li>▪ Medical Centre</li> <li>▪ Community facility</li> <li>▪ Restaurant</li> <li>▪ Takeaway food and drink premises</li> <li>▪ Entertainment facility</li> <li>▪ Recreational facility(indoor)</li> <li>▪ Car Park</li> <li>▪ Child Care Centre</li> <li>▪ Pub</li> <li>▪ Information and education facility</li> <li>▪ Residential types in Development Code</li> <li>▪ Telecommunications facility</li> <li>▪ Service station</li> </ul>	200 multi-units  Approx area: 17.4 Ha	Shop, pub, takeaway food, restaurant Max 5000 sq m GFA  Office, commercial & medical Max 2500 sq m GFA  Supermarket Max 4000 sq m GFA  Community use Max 1000 sq m GFA	<ul style="list-style-type: none"> <li>▪ Retail and commercial resident friendly</li> <li>▪ Urban form controlled by Development Code</li> <li>▪ Building height controlled by Development Code</li> <li>▪ Incorporate urban art and public amenity</li> <li>▪ Public transport interchange</li> <li>▪ Town square focus</li> <li>▪ Public car parking concealed from view</li> <li>▪ Non-residential use at street level</li> <li>▪ Reduced setbacks</li> <li>▪ Pedestrian friendly streetscape with awnings</li> <li>▪ Designs must optimise residential amenity, privacy and solar access</li> <li>▪ Must demonstrate sensitive interface with surrounding development</li> <li>▪ Screen or conceal passive facades and service areas</li> <li>▪ Incorporate passive surveillance and public safety principles</li> </ul>
Residential	<ul style="list-style-type: none"> <li>▪ Residential types in Development Code</li> <li>▪ Exhibition village</li> <li>▪ Community facility</li> <li>▪ Child care centre</li> <li>▪ Residential care facility</li> <li>▪ Seniors housing</li> <li>▪ Recreation area</li> <li>▪ Environmental facility</li> <li>▪ Recreation facility(indoor)</li> </ul>	10 - 40 dw/Ha  Approx area: 282.7 Ha  5300 dw  (2500 detached 2400 small lot integrated housing, 400 multi-units)		<ul style="list-style-type: none"> <li>▪ Urban form controlled by lot layout and Development Code</li> <li>▪ Create diversity of housing choice</li> <li>▪ Designs must optimise residential amenity, privacy and solar access</li> <li>▪ Strong streetscape character with articulated setbacks</li> <li>▪ Garage doors must not dominate streetscape</li> <li>▪ Incorporate passive surveillance and public safety principles</li> <li>▪ Incorporate public open space within walkable radius of each dwelling</li> </ul>
Education/Community Facilities/Utilities	<ul style="list-style-type: none"> <li>▪ School</li> <li>▪ Community facility</li> <li>▪ Place of worship</li> <li>▪ Child Care centre</li> <li>▪ Public utility undertaking</li> <li>▪ Recreation area</li> <li>▪ Recreation facility (outdoor)</li> <li>▪ Recreation facility (indoor)</li> <li>▪ Environmental facility</li> <li>▪ Carpark</li> </ul>	Approx area: 7.2 Ha	N/A	<ul style="list-style-type: none"> <li>▪ Locate school buildings with integrated parking and shared facilities</li> <li>▪ Provide adequate safe setback areas</li> <li>▪ Sporting facilities may be shared between schools and community</li> <li>▪ Must demonstrate sensitive interface with surrounding development</li> <li>▪ Enhance community education on surrounding environment</li> <li>▪ Neighbourhood scale</li> <li>▪ Utilities landscaped to minimise visual impact</li> </ul>
Open Space	<ul style="list-style-type: none"> <li>▪ Community facility</li> <li>▪ Environmental facility</li> <li>▪ Recreation area</li> <li>▪ Recreation facility (outdoor)</li> <li>▪ Recreation facility (indoor)</li> <li>▪ Restaurant(max 300 sqm)</li> <li>▪ Carpark</li> </ul>	Approx area: 166.7 Ha	N/A	<ul style="list-style-type: none"> <li>▪ Include range of active and passive uses</li> <li>▪ Incorporate community facilities appropriate to uses ovals / buildings / carparking</li> <li>▪ Sporting facilities to be shared between schools and community</li> <li>▪ Incorporate community facilities appropriate to uses</li> <li>▪ Located on community spine</li> <li>▪ Incorporate stormwater paths and treatment areas</li> </ul>
Environmental Protection Areas	<ul style="list-style-type: none"> <li>▪ Environmental facility</li> </ul>	Approx area: 84.3 Ha	N/A	<ul style="list-style-type: none"> <li>▪ Incorporate low impact community trails</li> <li>▪ Provide linkages to open space areas for wildlife corridors</li> <li>▪ Managed by Council or the State government</li> </ul>
Lake	<ul style="list-style-type: none"> <li>▪ Recreation area</li> <li>▪ Recreation facility(outdoor)</li> <li>▪ Water recreation structure</li> <li>▪ Jetty</li> <li>▪ Environmental facility</li> </ul>	Approx area: 15.6 Ha	N/A	<ul style="list-style-type: none"> <li>▪ Provide low impact public access</li> <li>▪ Provide linkages around the lake to pedestrian walkway</li> </ul>
<b>Residential Density Totals</b>	N/A	<b>5500 dwellings</b>	N/A	

The Concept Plan also includes a Precinct Plan, Circulation, Access and Transport Plan, Water Management Concept, Utility Services Strategy and an indicative staging plan (refer attached).

It is proposed that design guidelines and codes (or development codes) for subdivision and housing are prepared at a later stage and incorporated into the Concept Plan.



### Lot Sizes

A key component of the Concept Plan is to allow for reduced lot size. The Tweed LEP currently specifies a minimum lot size of 450m<sup>2</sup> in the 2 (c) and 2 (e) zones. The Concept Plan seeks to provide lot sizes ranging from 120m<sup>2</sup> to 1,200m<sup>2</sup>. The applicant has requested the Minister amend the Tweed LEP to allow for minimum lot sizes proposed.

### Re-zoning

The Concept Plan includes proposed amendments to zone boundaries to align with existing approvals, cadastral boundaries and physical attributes of the land. Proposed zone boundary changes are proposed under the following categories:

1. Tweed LEP Clause 52 – Determination of Zone boundaries;
2. Alignment of zone boundaries with Existing Development Consents and completed earthworks; and
3. General rationalisation of zone boundaries.

The following figures depict the areas of rezoning proposed.





Figure 12 – Proposed Amendments to Zoning Map additional to Clause 52

### Draft Submission

The EA and Concept Plan were circulated to Council Officers with expertise in the following fields:

- Ecologist
- Strategic and Social Planning
- Infrastructure Engineering (Flooding)
- Subdivision Engineering

- Building Surveyor
- Environmental Health
- Traffic
- Entomology
- Water Services
- Natural Resource Management

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

The key issues raised in the submission are summarised below:

### **Water Strategy**

- Comments on the preferred water cycle management strategy based on the Water Demand Management Strategy, however this is dependent on the endorsement of the preferred approach by Council.
- Council presently does not have capacity within its current bulk water supply system to cater for the proposed overall development, however the adopted 30 year capital works plan allows for its augmentation. Approvals to permit such augmentations can not be guaranteed and if not gained or are delayed, will impact on the granting of future approvals for this development.

### **Sewer**

- Council presently does not have capacity within its treatment plants and trunk conveyancing systems to cater for the overall proposed development, however the adopted 30 year capital works plan allows for these augmentations. Approvals to permit such augmentations can not be guaranteed and if not gained or are delayed, will impact on the granting of future approvals for this development.

### **On-site Saltmarsh**

- The Saltmarsh is currently zoned 6b – Recreation. This should be rezoned to 7a Environment Protection and dedicated to Council after an agreed rehabilitation and maintenance program.
- Further information is required in relation to potential impacts from stormwater management (particularly release of freshwater) on the saltmarsh.
- The developer should commit to manage erosion restoration on Cobaki Creek bank adjacent to saltmarsh as part of the saltmarsh restoration.
- Rehabilitation, restoration and maintenance performance criteria should be agreed along with an extended developer maintenance period (up to 10 years), prior to dedication to Council.
- Costs of on-going Council management of the saltmarsh should be articulated and source/s of funds identified for Council maintenance in perpetuity.

### **ASS and Water quality of lake**

- Inconsistent information is proposed in relation to the proposed construction method of the central lake system.
- In order for Council to agree to take on management of the central lake system as public open space, further detail is required in relation to Acid Sulfate Soil (ASS) management, dewatering management and water quality due to the potential maintenance burden on Council. This issue is to be further discussed with the developer in the up-coming weeks.

### **Scribbly gum**

- The scribbly gum area should be maintained in a reserve.
- Rehabilitation, restoration and maintenance performance criteria should be agreed along with an extended developer maintenance period (up to 10 years), prior to dedication to Council.
- Costs of on-going Council maintenance of the Scribbly gum reserve should be articulated and source/s of funds identified for Council maintenance in perpetuity.

### **Rezoning**

- Some of the proposed rezoning is not supported due to ecological impacts. Previously suggested compensatory off-sets have are not proposed to be implemented in the EA.

### **Landforming**

- Given that the Concept Plan does not include a single coherent landforming or stormwater management plan, it is not considered that preservation of existing earthwork DAs (until new DAs are approved) is acceptable. This issue is to be further discussed with the developer in up-coming weeks.

### **Stormwater**

- Insufficient detail is provided in the Concept Plan to demonstrate that adequate drainage infrastructure can cater for external and internal runoff catchments
- The role of the central lake system is not identified in the stormwater management plan. As discussed above, the future management of the lake will be discussed further with the developer over the next few weeks. Given current lack of detail in relation to the lakes and potential maintenance risks / costs, dedication to Council is not currently supported.

### **Section 94 Plans**

- The EA states that s94 plans will be “negotiated” with Council. It is considered that these plans are adopted and remain applicable unless new planning agreements are developed.

## **Bushfire**

- Asset Protection Zone locations are unclear. The Bushfire plan indicates they may be in private land, in roads, batters or within nature strips. The future management responsibility of APZs is therefore unclear.
- APZs should remain in private land unless Council is provided with funding to undertake maintenance, where maintenance levels are reasonable.

## **Open space**

- Further break down of open space uses is required. For example, areas proposed for structured, casual parks, local parks, environmental and restoration areas should be distinguished on the Concept Plan.
- As above, further detail is required on the proposed long-term maintenance of open space areas proposed to be dedicated and costs associated with maintenance.

## **Traffic**

- A second access connection is required to Piggabeen Road.
- Reference to TSC and Leda agreement in the Statement of Commitments is to be updated to reflect the latest agreements.

## **Adjoining Agricultural Land**

- Buffers to adjoining agricultural land should be increased from 30 metres to 250 meters.

## **Planning**

- Employment land should be provided within the site.
- Walkable neighbourhoods should be provided to the majority of lots, through provision of public transport routes that extend throughout the site.
- Housing affordability is not addressed.
- Further detail should be included in the Concept Plan residential domain, including high, medium and low residential density areas.
- The proposed Development Codes (or design codes) are required up-front with the Concept Plan for proper assessment of small lot housing.
- Indicative buildings plans need to conform with Council's DCP Section A1 dwelling type definitions (or specify A1 where be over-riden)
- Inconsistencies with standards indicated in indicative building plans need to be justified where inconsistent with Section A1
- Definitions in the development matrix should align with Standard LEP template definition or provide clear definitions.
- A public transport plan should be provided including evidence of consultation with Queensland Rail / Queensland Transport.



**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Council has the opportunity to make a submission to the Department of Planning on the proposed Major Project Cobaki Lakes Concept Plan.

Various internal experts have assessed the Environmental Assessment and Concept Plan currently on public exhibition. These comments have been collated into the attached draft submission.

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

**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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Director General Requirements (ECM 1978434)
  2. Concept Plan Maps (ECM 1978677)
  3. Draft Letter to Department of Planning (ECM 1982031)
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