

Mayor: Cr Warren Polglase

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



Agenda - Planning Reports Ordinary Council Meeting

Tuesday 20 October 2009

held at Murwillumbah Cultural & Civic Centre
commencing at 4.30pm

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

ORIGIN:

Development Assessment

FILE NO: DA09/0466 Pt2

SUMMARY OF REPORT:

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

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

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

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

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

RECOMMENDATION:

That Council:-

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

REPORT:

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

BACKGROUND:

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

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

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

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

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

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

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

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

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

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

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

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

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

The Site

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

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

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

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

The State Significant Site Application

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

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

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

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

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

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

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

- a. the State or regional planning significance of the site (having regard to the 'Guideline -State Significant Sites');*
- b. the suitability of the site for any proposed land use taking into consideration environmental, social or economic factors, the principles of ecologically sustainable development and any State or regional planning strategy;*
- c. the implications of any proposed land use for local and regional land use, infrastructure, service delivery and natural resource planning;*
- d. the likelihood of the proposed rezoning for residential and employment purposes achieving the desired outcomes of the State Government's draft and adopted regional and sub-regional strategies;*
- e. the recommended land uses and development controls for the site that should be included in Schedule 3 including zones (Standard Instrument zones) and provisions for height, FSR (or other density controls), and heritage-listings. Maps related to these provisions should also be provided;*

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

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

The Concept Plan

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

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

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

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

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

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

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

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

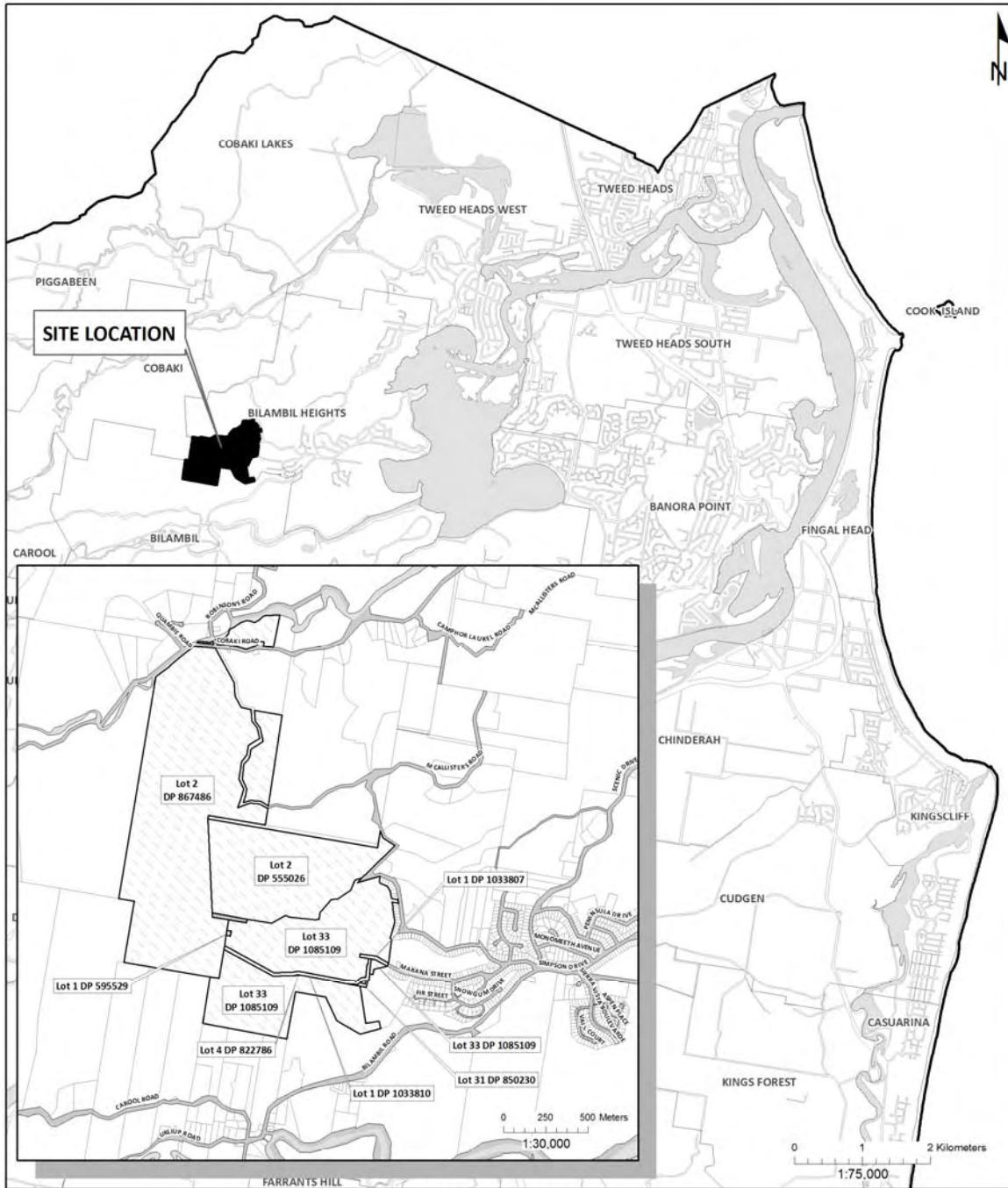
The Process

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

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

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

SITE DIAGRAM:



LEGEND

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

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Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre 24 September, 2009
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AERIAL PHOTOGRAPH

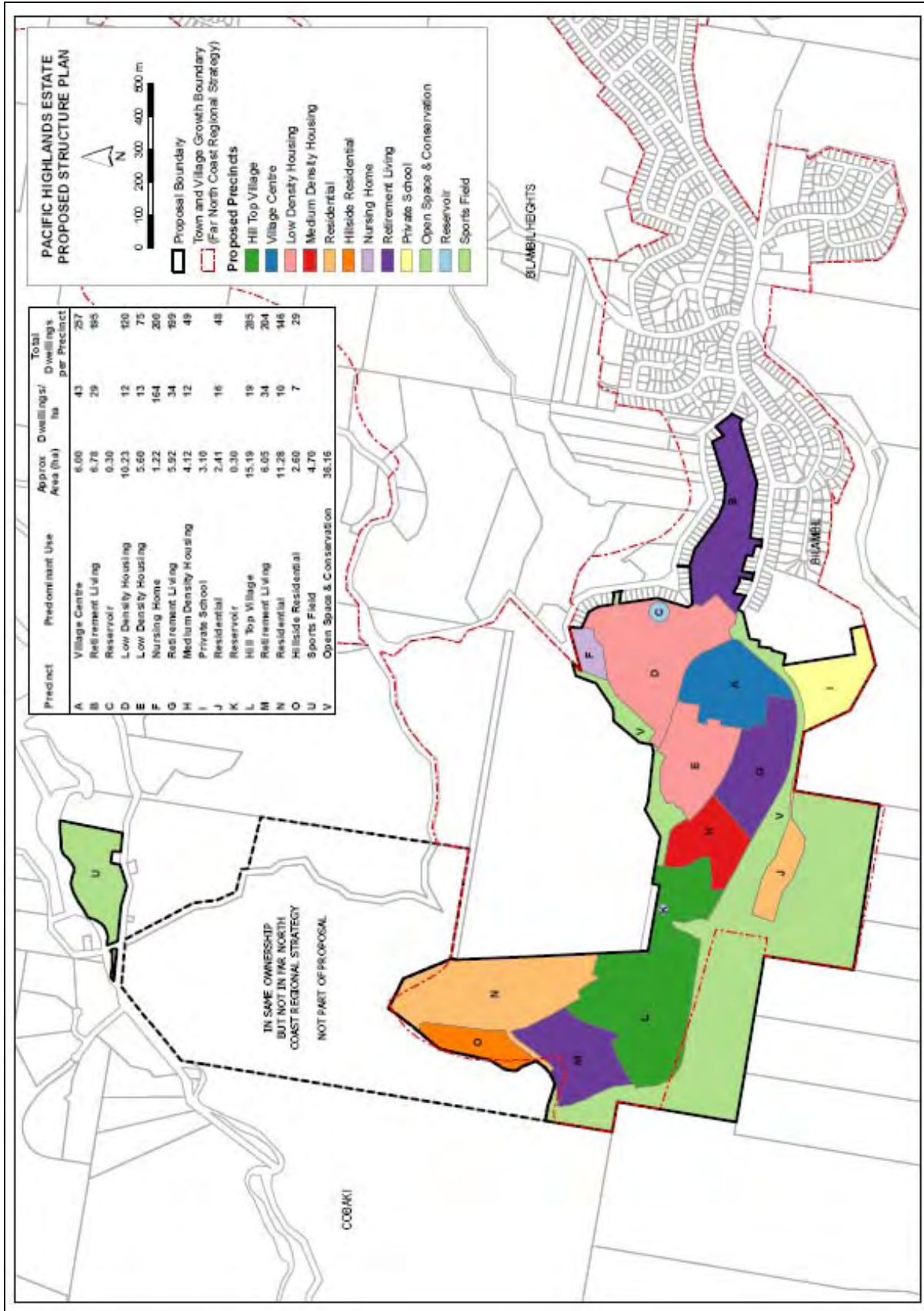


LEGEND / TITLE

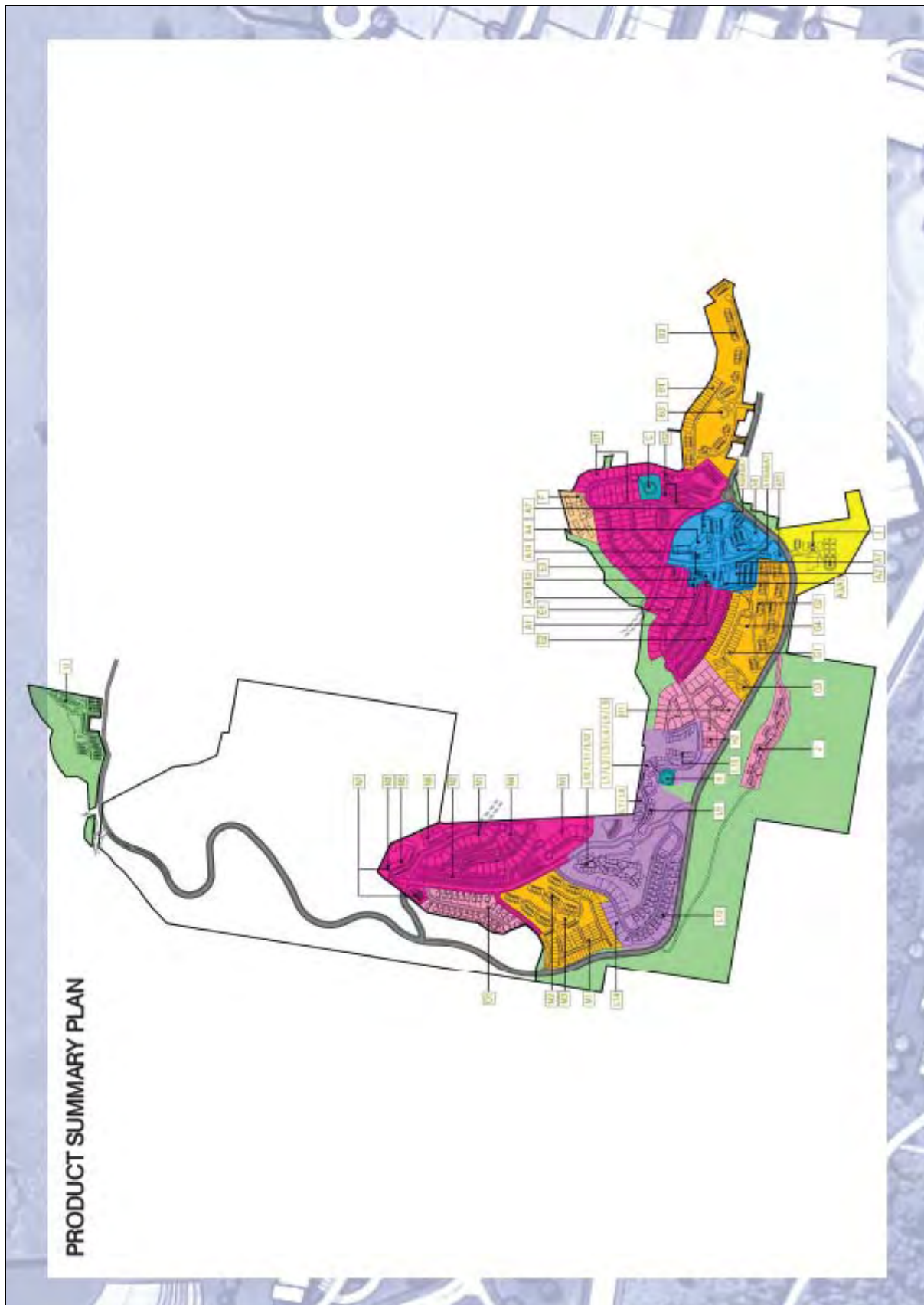
Lot 1 DP 595529, Lot 1 DP 1033810, Lot 1 DP 1033807, Lot 4 DP 822786, Lot 31 DP 850230,
 Lot 2 DP 876486 and Lot 33 DP 1085109 Marana Street, Lot 31 DP 850230 Conmurra Avenue,
 Lot 2 DP 555026 147 McAllisters Road, Bilambil Heights

Filename: z:\gis\jobs\...000	Author: J.Batchelor - Planning Reforms Unit	Date Printed: 19 October, 2009
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PROPOSED STRUCTURE PLAN



PRODUCT SUMMARY PLAN



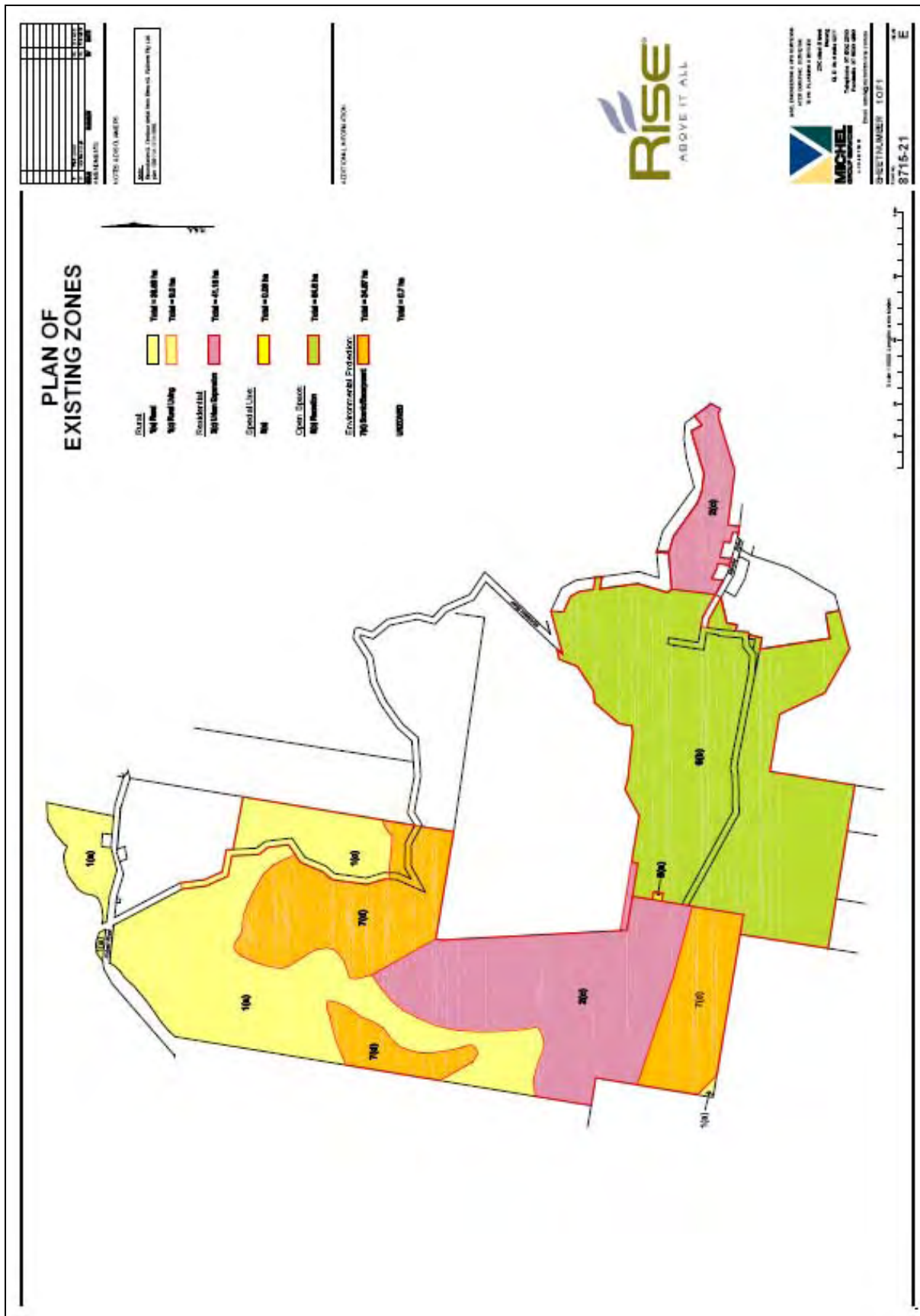
PRODUCT SUMMARY DATA

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

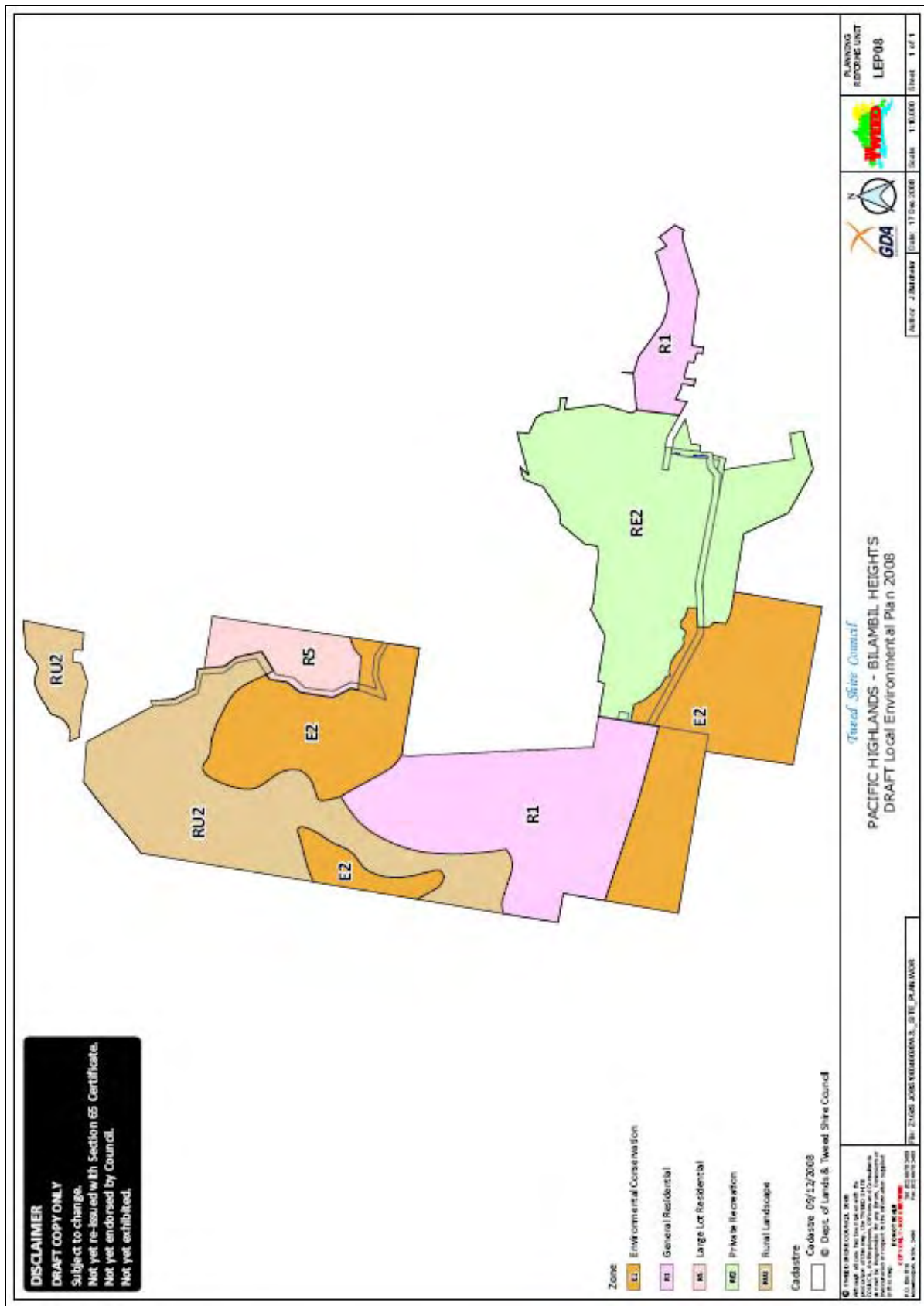
PRODUCT SUMMARY DATA (continued)

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

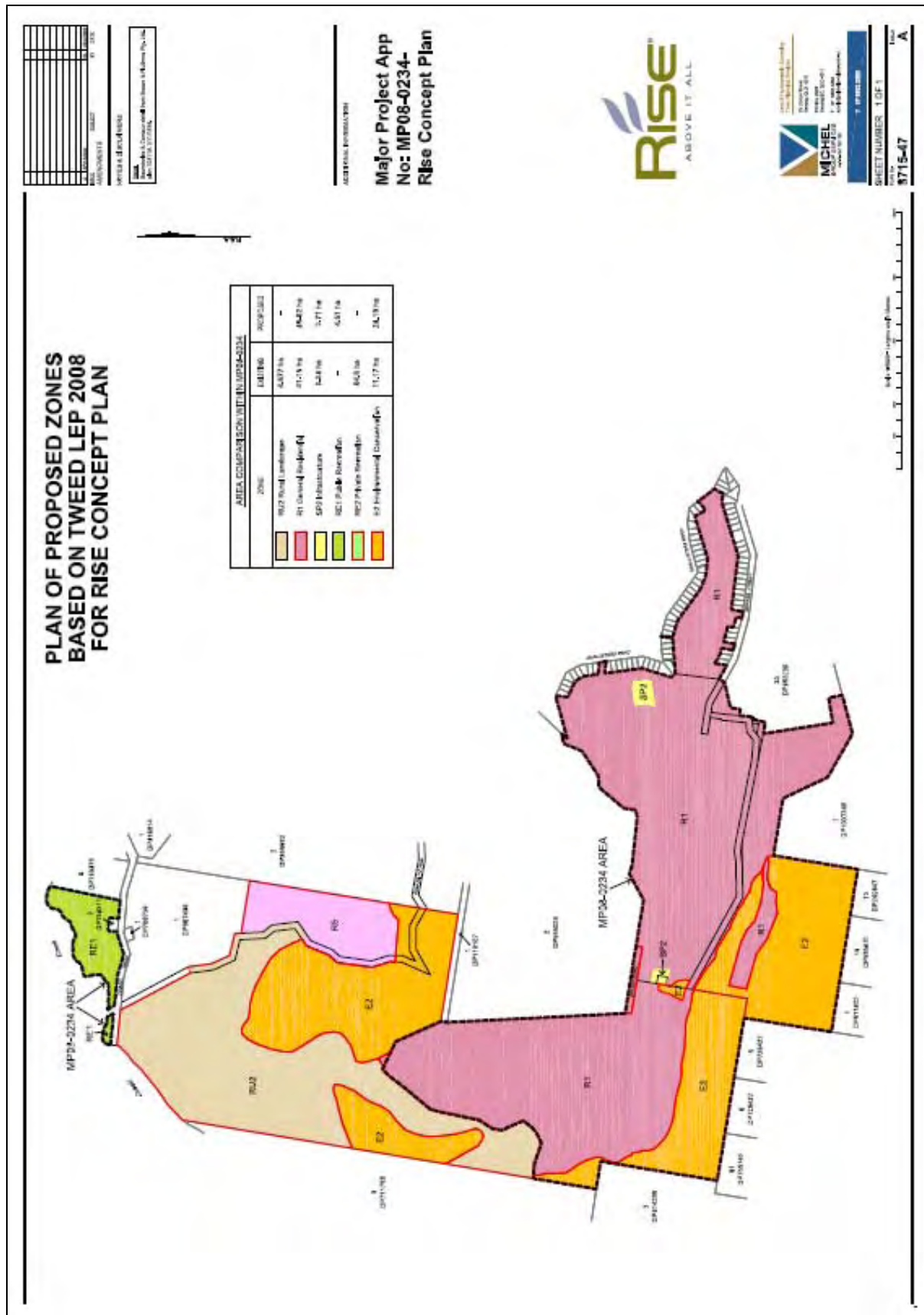
PLAN OF EXISTING ZONES



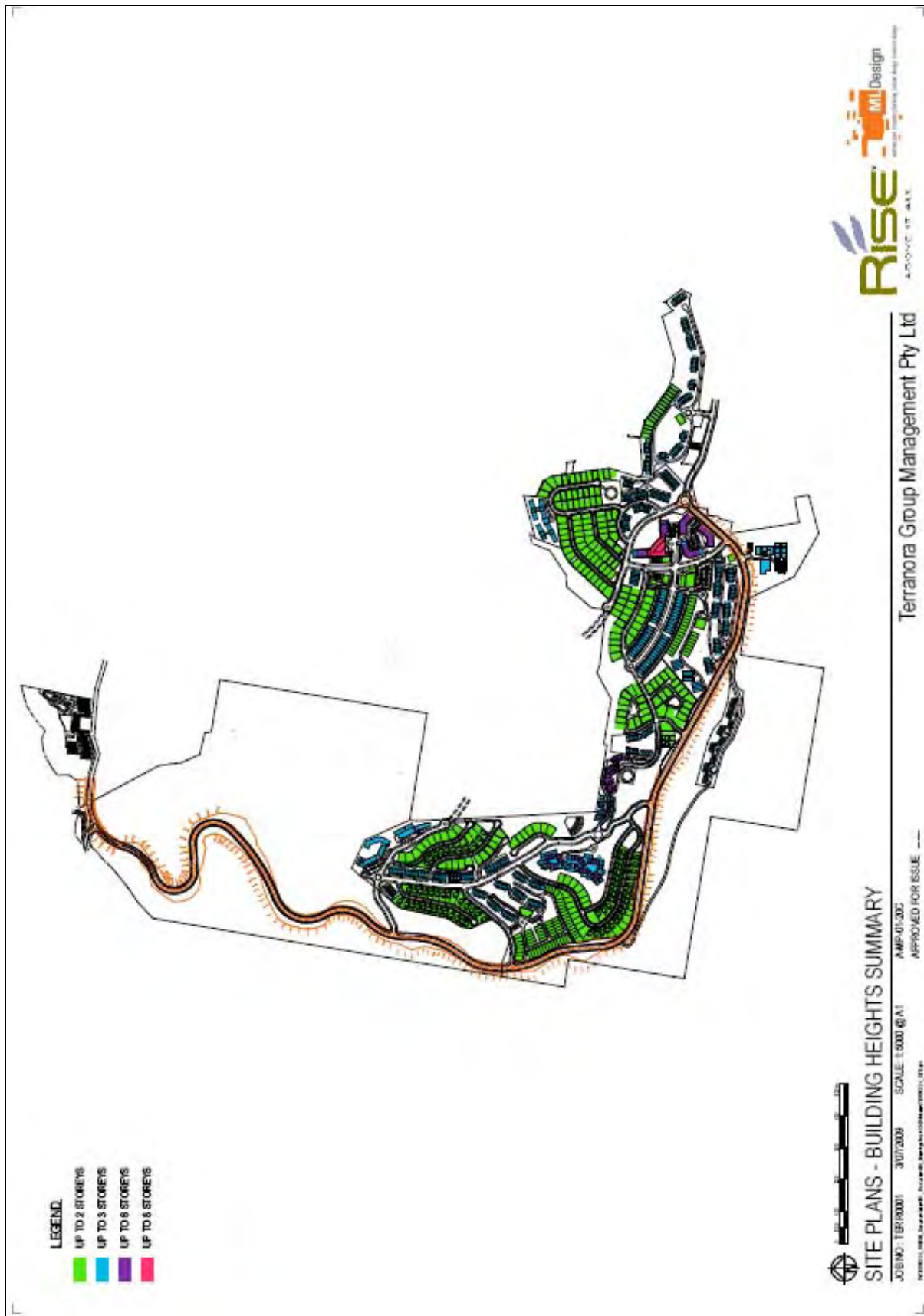
PLAN OF PROPOSED ZONES UNDER TWEED LEP 2008 (2010)



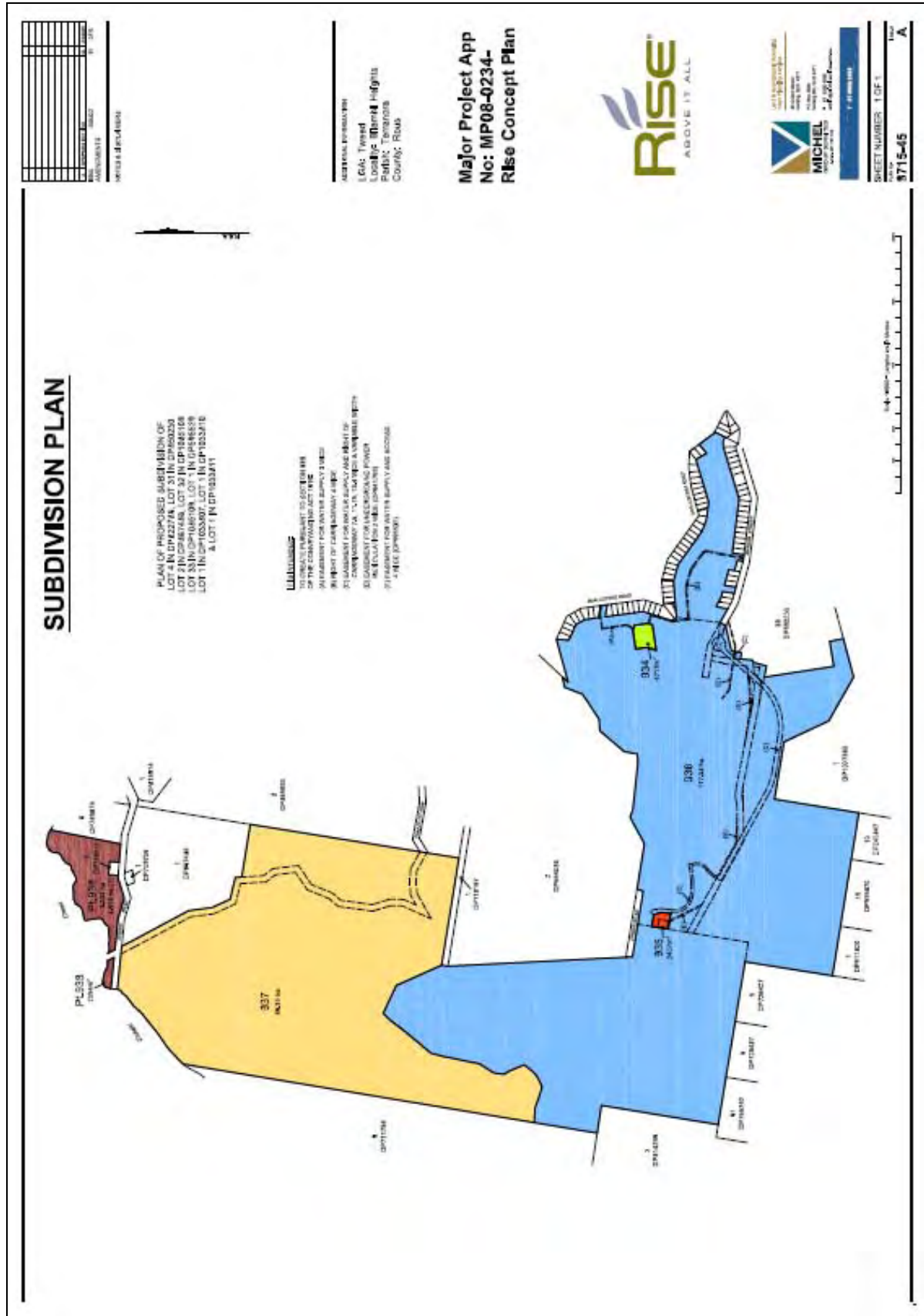
PLAN OF PROPOSED ZONES UNDER STATE SIGNIFICANT SITE APPLICATION



PLAN OF PROPOSED HEIGHTS UNDER STATE SIGNIFICANT SITE APPLICATION



PLAN OF PROPOSED SUBDIVISION UNDER THE CONCEPT PLAN



THE CONCEPT MASTER PLAN

18

CONCEPT MASTER PLAN

PREFACE

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

This report has recognized these changes and proposes considered solutions.

SITE PLAN

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

THE LANDSCAPE MASTER PLAN

2.0 Landscape Masterplan

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

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

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

Landscape Open Space Concept Plan Report

Draft Submission

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

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

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

Major issues raised include the following:

Strategic Context

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

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

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

Strategic Context / Relatedness

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

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

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

Tweed 2000+ Strategic Plan and Tweed 4/24

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

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

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

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

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

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

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

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

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

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

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

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

Far North Coast Regional Strategy (FNCRS)

Town and Village Growth Boundaries

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

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

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

Settlement Character and Design

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

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

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

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

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

Urban Design / Natural Amenity

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

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

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

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

Strategic Conclusion

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

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

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

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

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

Bilambil Heights Release Area –The Local Area Structure Plan

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

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

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

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

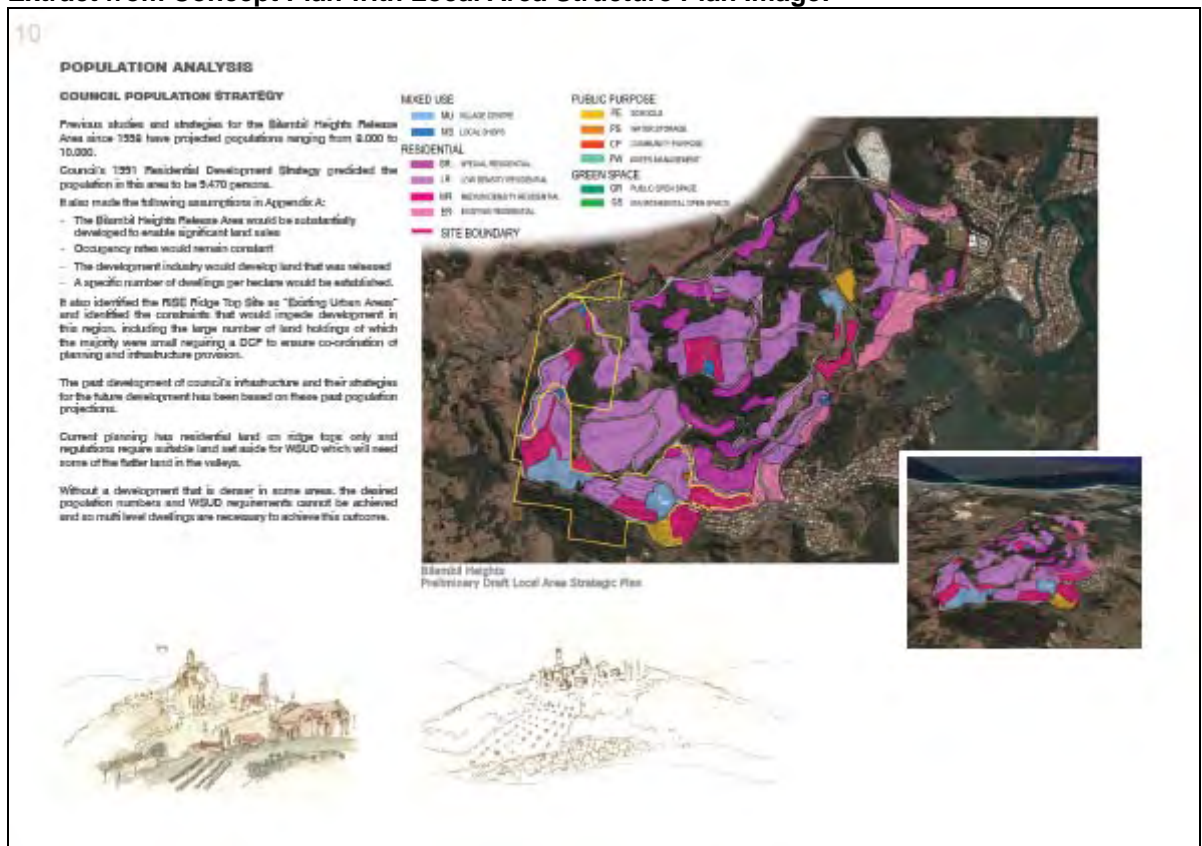
Until negotiations are concluded with Council and the Department of Planning in relation to the Pacific Highlands State Significant Site Submission and Concept plan, copyright in the Draft Bilambil Heights Local Area Structure Plan will remain with Terranora Group Management Pty Ltd.

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

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

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

Extract from Concept Plan with Local Area Structure Plan Image:



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

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

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

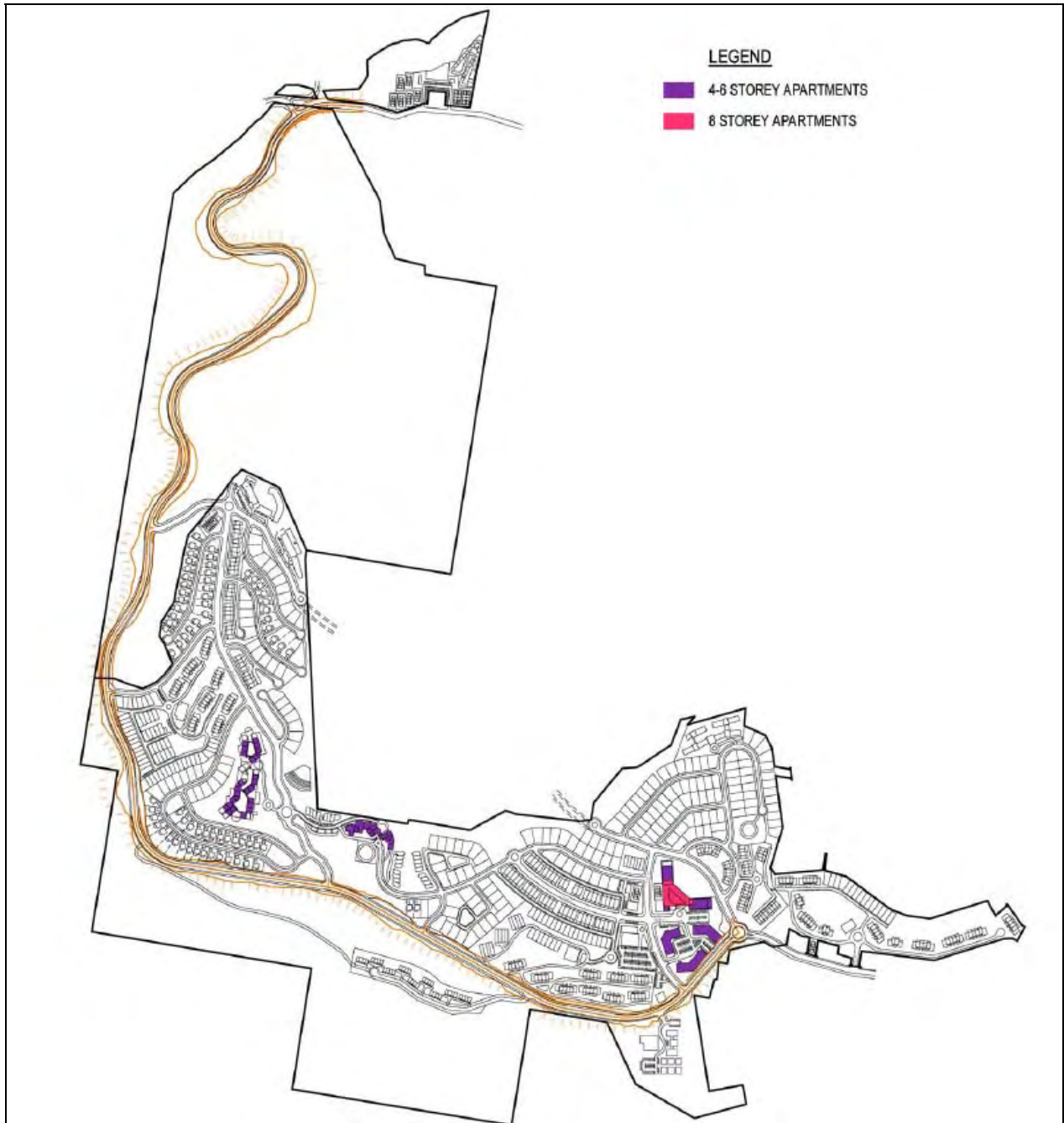
Council will need to re-consider the Strategic Planning options associated with Bilambil Heights and review whether the Local Area Structure Plan can or should be used as a basis for any future planning. Subsequently it is recommended:

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

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

Height & View Analysis

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



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

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

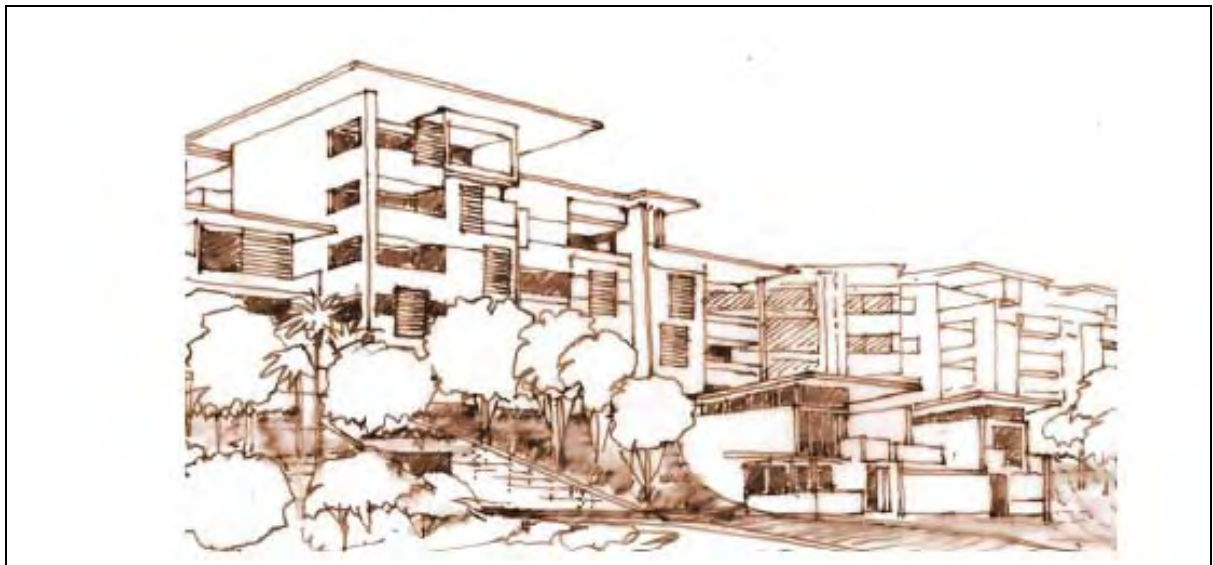
Although not as important as views from public spaces, similar views would also be obtainable from private properties near to the selected streets from which the observations were made.

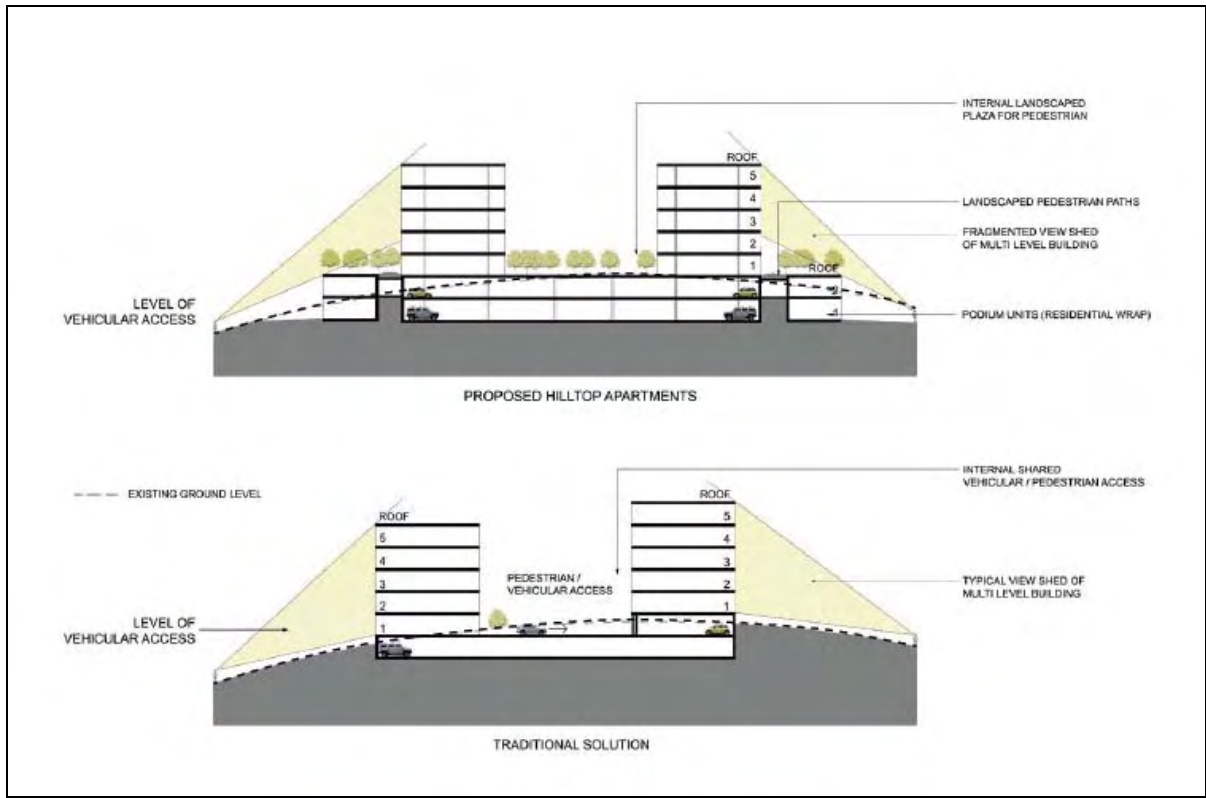
There are few locations from which the full extent of the site forms an important element in the view shed and even when it does, other existing urban developments are either more visually dominant or are more apparent.

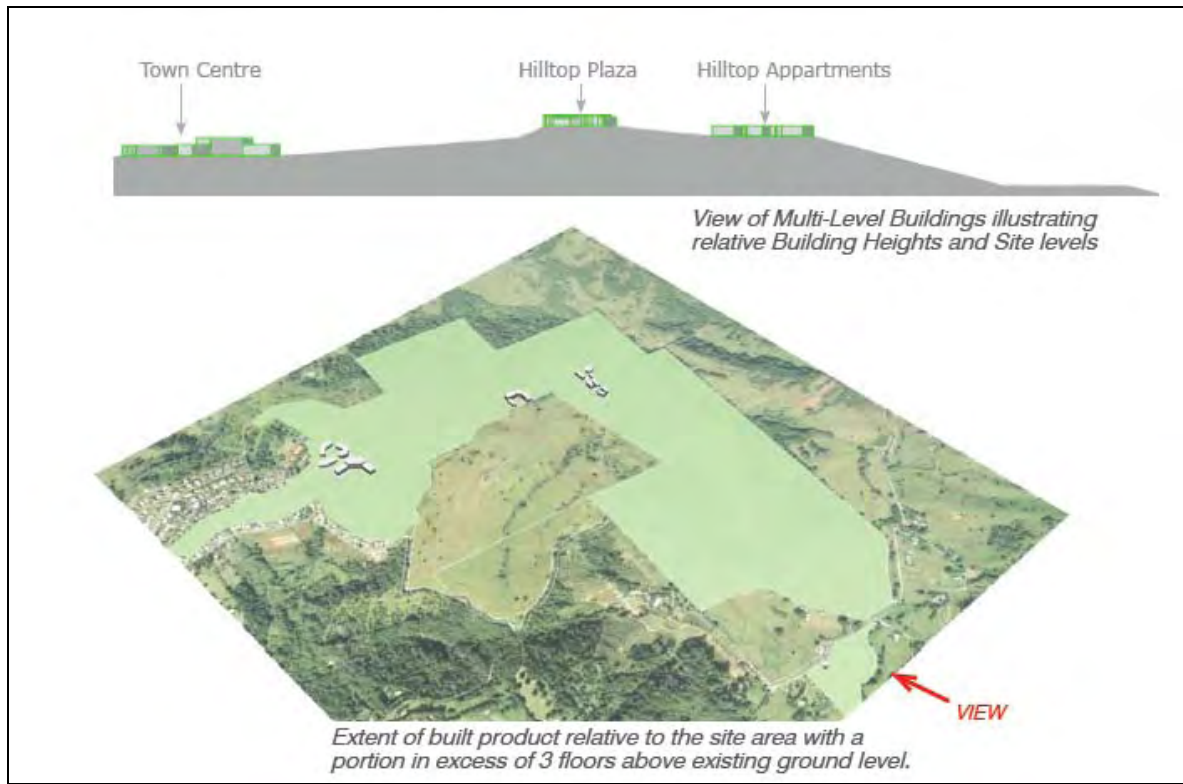
Viewed from locations where the site is quite visible, the parts of the site which are quite obvious will remain as open space and the parts of the site which will be subject to urban development will be visually subservient or screened from those viewpoints.

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

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







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

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

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

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

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

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

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

Ecology

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

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

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

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

Infrastructure Capacity

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

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

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

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

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

Traffic

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

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

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

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

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

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

Council's resolution stated (in part):

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

Cobaki Parkway is continuously constructed from Piggabeen Road to Boyd Street

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

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

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

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

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

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

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

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

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

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

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

Planning & Infrastructure Engineering

Stormwater Management

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

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

Limitations of the systems include:

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

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

Flooding

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

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

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

Site Regrading

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

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

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

Variations to Development Controls

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

Roads & Access

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

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

Future connections

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

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

The applicant should investigate options for one addition connection point.

Development Engineering

The applicant has detailed future possible variations to:

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

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

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

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

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

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

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

Open Space

- Structured Open Space

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

It was determined that a Statement of Commitment could include:

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

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

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

- Casual Open Space

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

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

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

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

EHO Issues

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

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

Property

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

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

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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

ORIGIN:

Development Assessment

FILE NO: DA09/0527 Pt2

SUMMARY OF REPORT:

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

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

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

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

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

RECOMMENDATION:

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

REPORT:

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

BACKGROUND:

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

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

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

SITE DESCRIPTION:

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

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

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

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

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

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

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

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

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

The land is potentially contaminated from previous farm uses.

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

PROPOSAL

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

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

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

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

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

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

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

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

Stage 6 – create lots 56 to 62.

Stage 7 – create lots 64 to 80.

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

Provision of Services

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

Community Title

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

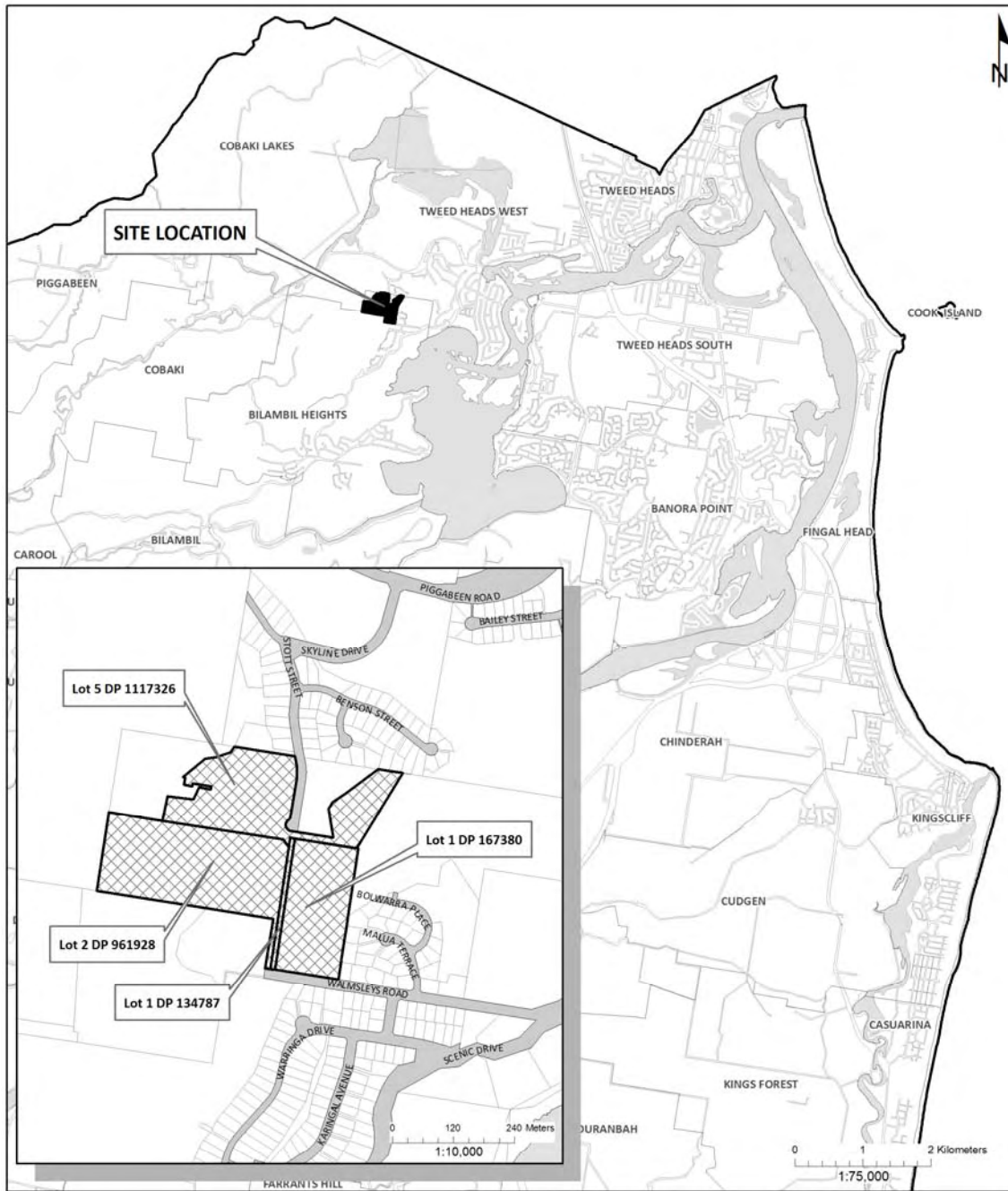
Built Form

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

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

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

SITE DIAGRAM:



LEGEND

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

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Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Cadastre 24 September, 2009
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Tweed Shire Council

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Murwillumbah
NSW 2484

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CONSTRAINTS

The site is constrained as follows:

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

The EA includes specialist reports addressing these constraints.

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

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

COUNCIL OFFICER COMMENTS

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

Planning

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

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

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

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

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

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

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

Ecological Issues

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

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

Stormwater

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

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

- Ensure that Q100 overland flow is catered for.

Landforming

An amended landforming plan is required which includes the following:

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

Roads and Access

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

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

Water

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

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

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

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

Sewer

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

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

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

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

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

Public Open Space and Landscaping

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

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

Contaminated Land

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

Overhead Power Lines

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

Statement of Commitments / Conditions

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

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

CONCLUSION:

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

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

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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

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

ORIGIN:

Development Assessment

FILE NO: DA09/0415 Pt1

SUMMARY OF REPORT:

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

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

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

RECOMMENDATION:

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

GENERAL

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

[GEN0005]

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

[GEN0115]

BUSHFIRE PROTECTION

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

[GENNS01]

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

[GENNS02]

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

[GENNS03]

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

[GENNS05]

PRIOR TO COMMENCEMENT OF WORK

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

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

[PCW0215]

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

[PCW0225]

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

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

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

[PCW0255]

13. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available.

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

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

[DUR0375]

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

[DUR0405]

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

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

[DUR1005]

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

[DUR1875]

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

[DUR2185]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0205]

REPORT:

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

BACKGROUND:

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

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

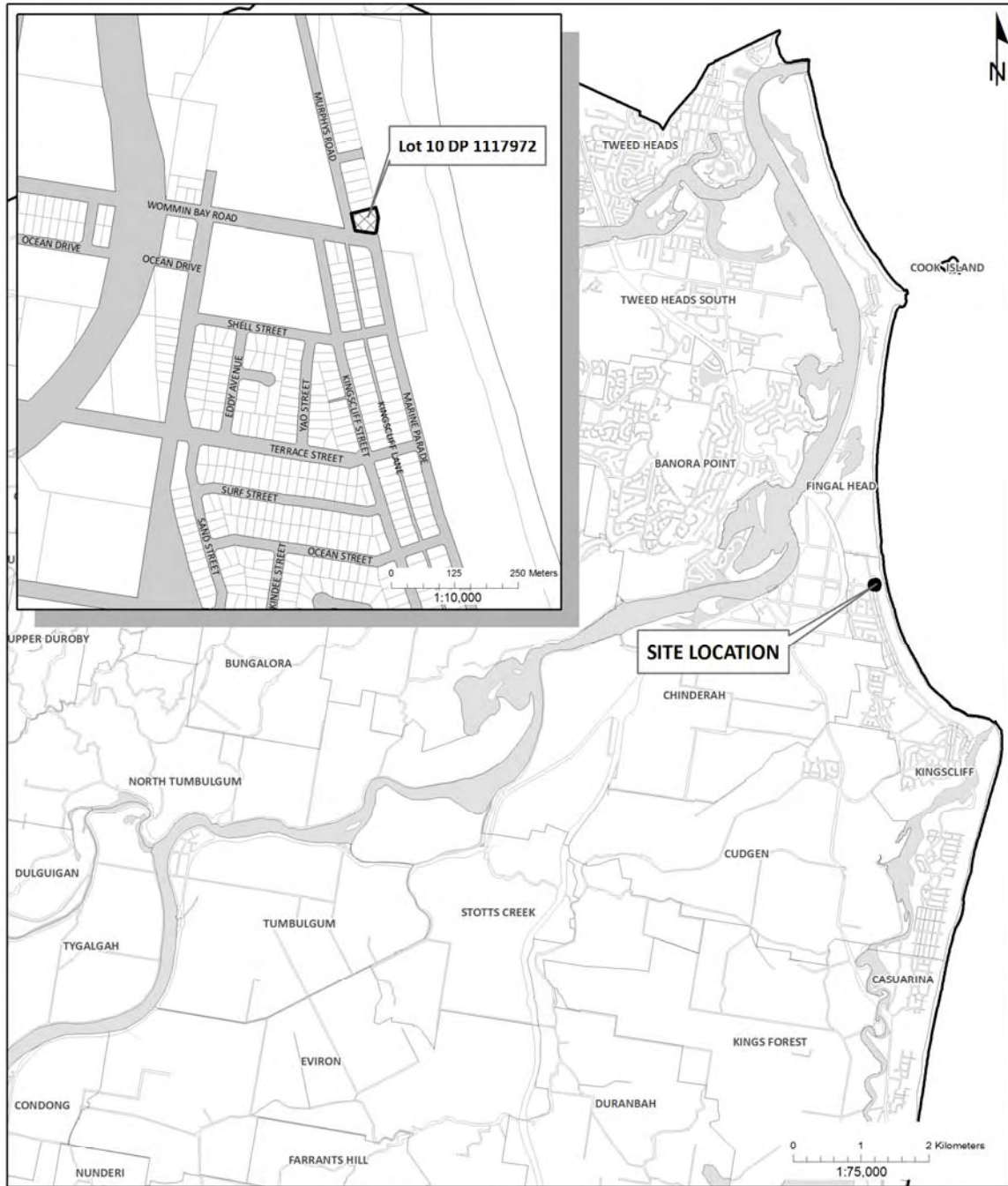
- *The shadow diagrams at Figure 3 show the extent of overshadowing by the existing and proposed buildings. Although the area of shadow will increase, it is still relatively minor (1205m²) in the context of the total area of foreshore reserve.*
- *In June shadows from the proposed building will increase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

The SEPP 1 objection was supported.

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

The building subject of these approvals has recently been constructed.

SITE DIAGRAM:



LEGEND

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

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Cadastral 24 September, 2009
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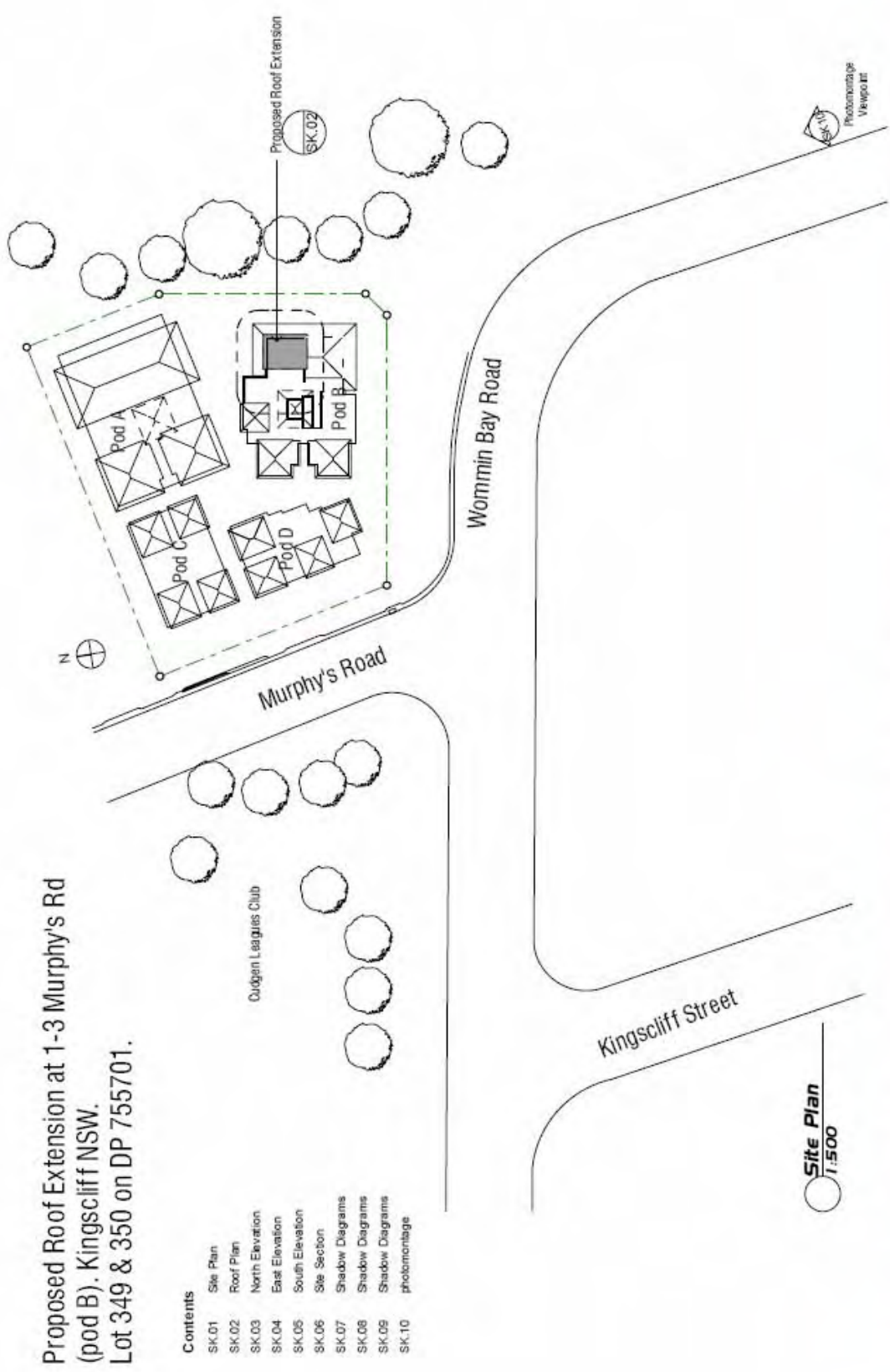
Coordinate System - MGA Zone 56
 Datum - GDA 94

DO NOT SCALE
 COPY ONLY - NOT CERTIFIED



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

DEVELOPMENT PLANS:



Scale: 1:500, 1:1 SK.01

Site Plan

Eric & Wendy Zupp

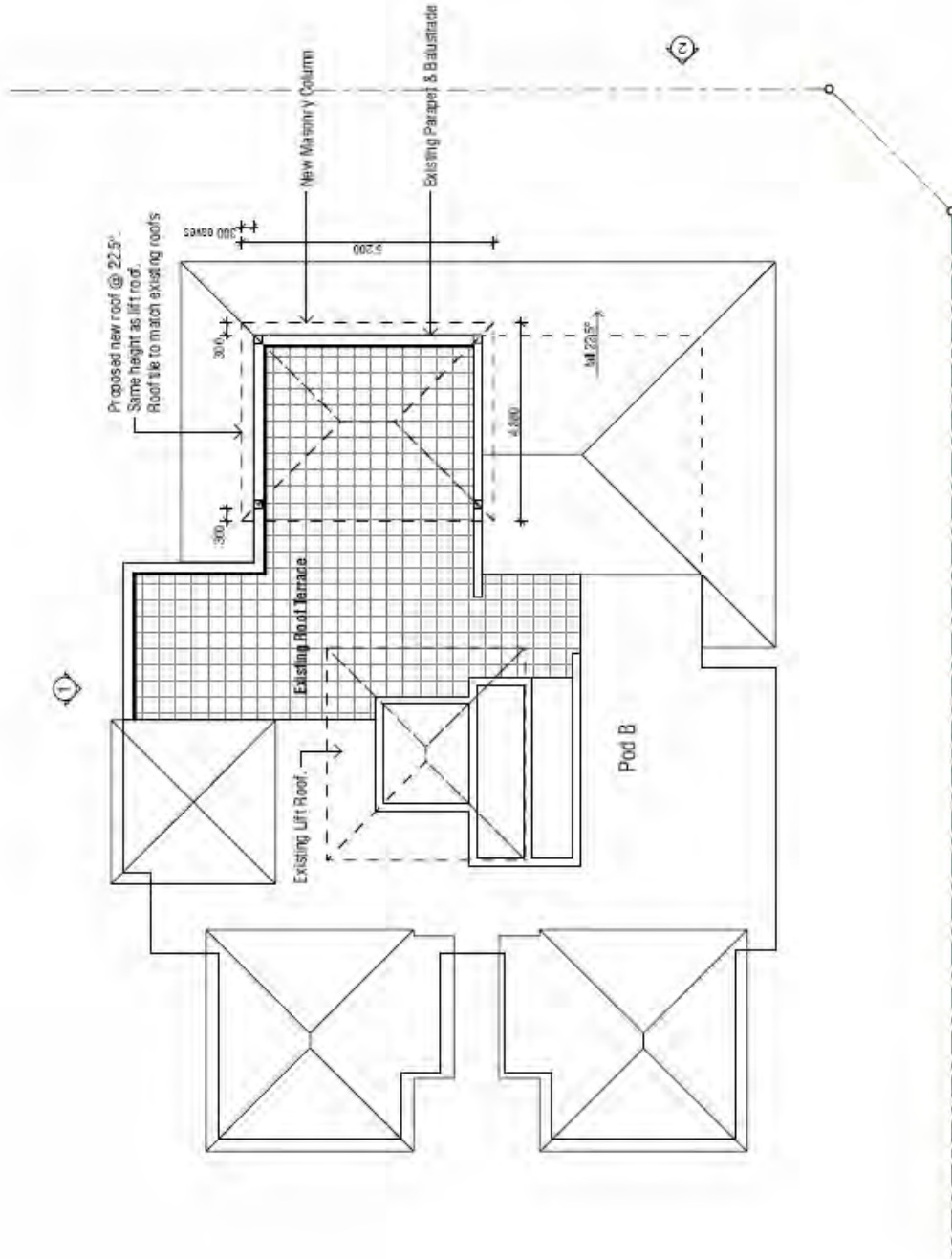
1289 One Murphy's Rd

Date: 01.07.09

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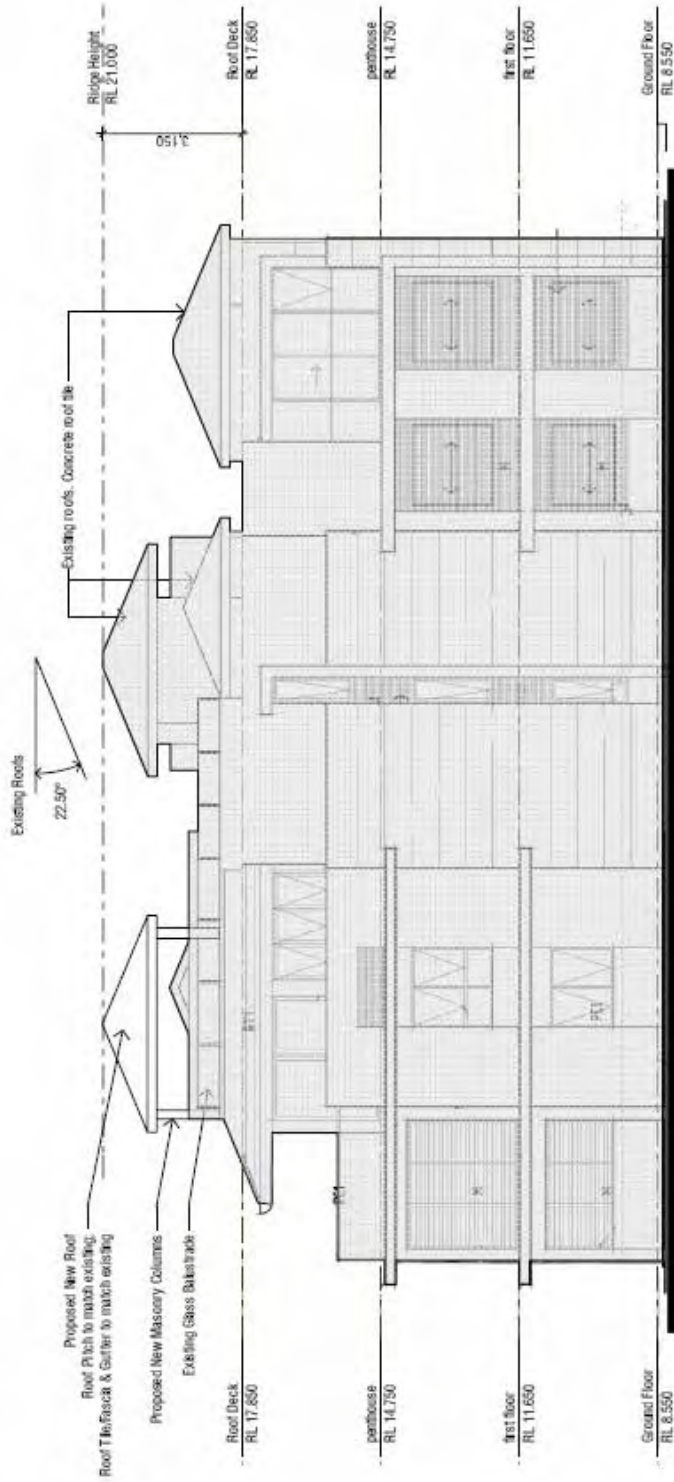
Issue: A
Date: 01.07.09

Scale: 1:100

Eric & Wendy Zupp

1289 One Murphys Rd

STK02



North Elevation 1
1:100

Issue: A

Scale: 1:100

SK.03

1289 One Murphys Rd

Eric & Wendy Zupp

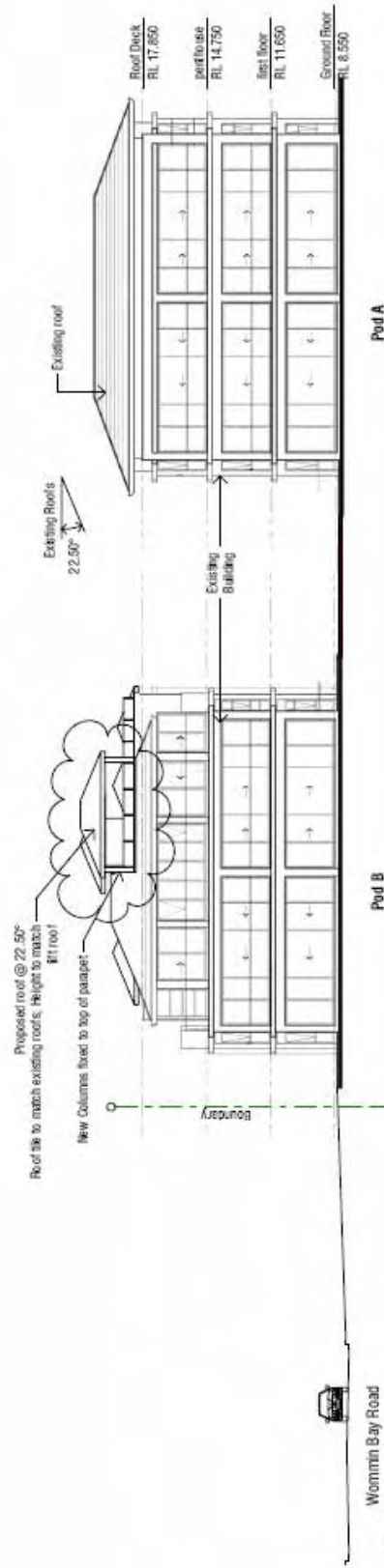
North Elevation

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Date: 01.07.09

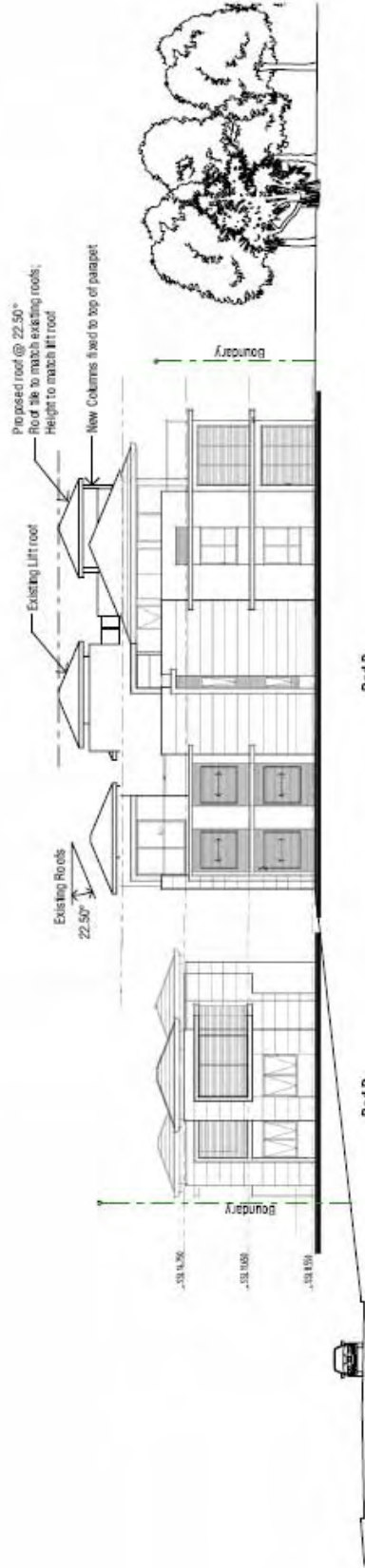


East Elevation
1:200

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

Date: 01.07.09 www.lightwave.com.au

Lightwave
L:\09 Projects\1289 One Murphys Road\Pod A\Pod A.mxd



South Elevation
1:200

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

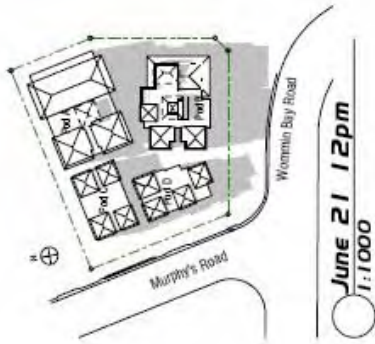
Date: 01.07.09

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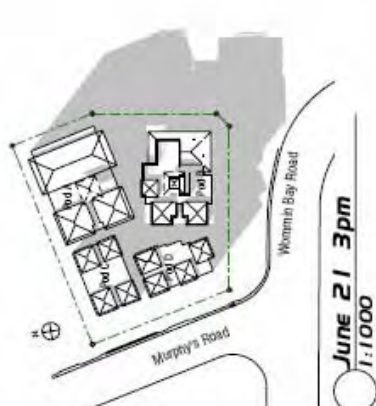
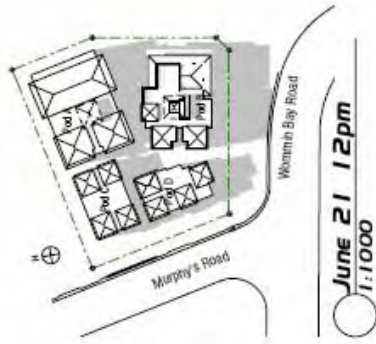
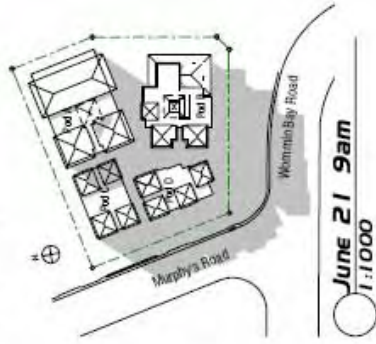
LIGHTWAVE CONSULTANTS
100 Ryland Road, One Murphys Road, Ryland, SA 5043, Australia

Lightwave

Proposed Roof



Existing Development



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

Issue: A

Date: 01.07.09

1289 One Murphy's Rd

www.lightwave.com.au

Eric & Wendy Zupp

Shadow Diagrams

Scale: 1:1000

SK09

Lightwave

Lightwave Pty Ltd. 100 The Esplanade, Perth, WA 6000. Tel: 08 9442 1111. Fax: 08 9442 1112.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

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

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

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 - Zone objectives

The consent authority may grant consent to development only if:

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

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

Clause 11- 2(b)Medium Density Residential

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

Primary Objective

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

Secondary Objective

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

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

Clause 15 - Essential Services

The Objectives of the Clause are outlined as:

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

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

The objective of this clause is:

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

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

Clause 34 – Flooding

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

Clause 35 - Acid Sulfate Soils

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

Clause 39A - Bushfire

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Specific Clauses

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

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

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

The proposed roof is landward of any known erosion zones.

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

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

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

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

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

Clause 43: Residential development

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

SEPP No. 1 - Development Standards

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

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

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

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

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

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

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

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

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

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



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

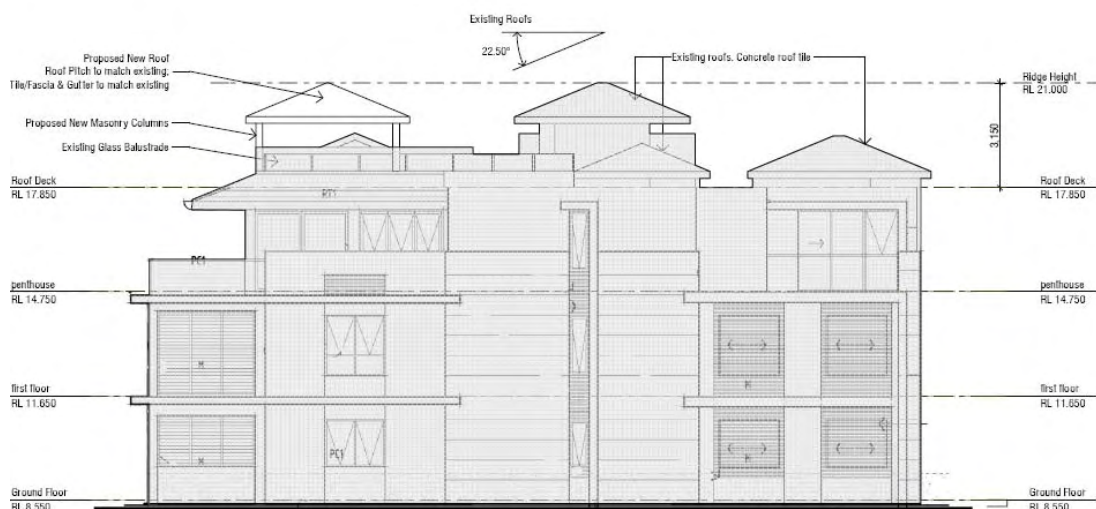


With regard to the above, it is considered that there is sufficient justification for the objection, as outlined further below.

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

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

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



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

The aims of the policy are as follows:-

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

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

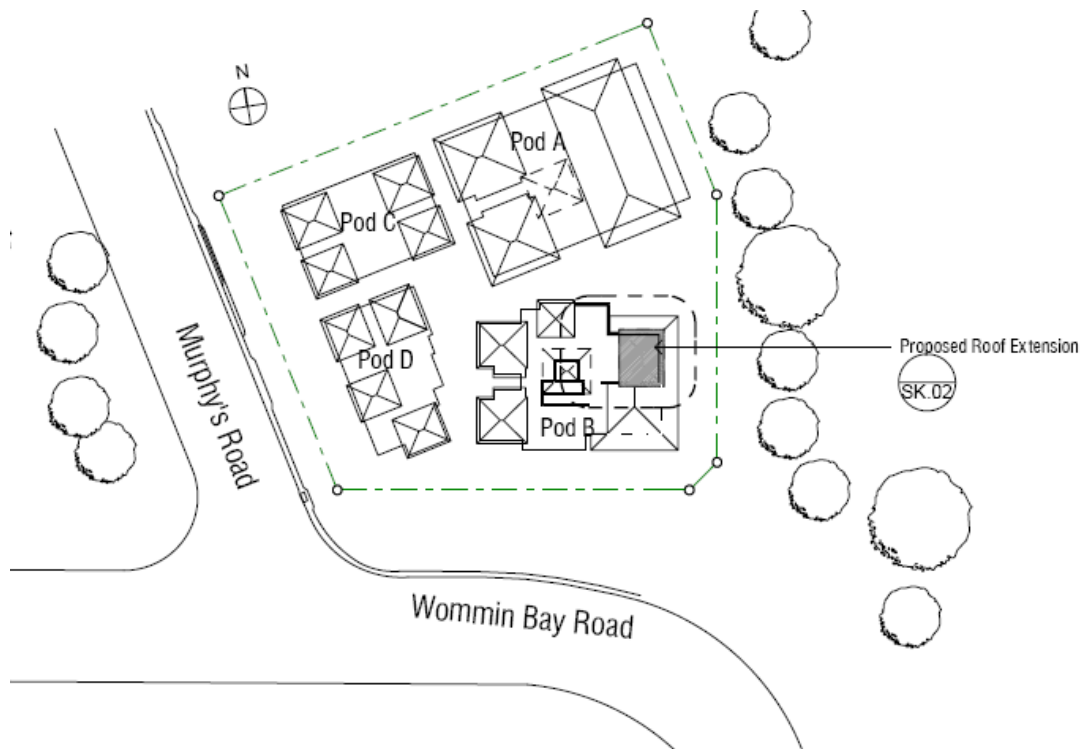
The proposed development will not affect the proper management, conservation of natural resources as it is proposed within an existing residential development. The proposed development is considered to be an orderly and economic use of the land, by enabling a more usable rooftop terrace for open space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

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

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

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

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



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

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

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



Existing Development
1:1.3



Proposed Roof
1:0.8

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

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

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

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

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



Compliant temporary structure
1:1.3

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

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

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

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

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

SEPP No. 65- Residential Flat Building

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

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

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

SEPP No 71 – Coastal Protection

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

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

There are no Draft instruments applicable to the subject application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

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

A11-Public Notification of Development Proposals

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

B9- Tweed Coast Strategy

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

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

Clause 93 Fire Safety Considerations

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

Clause 94 Buildings to be upgraded

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

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

Context and Setting

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

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

(c) Suitability of the site for the development

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

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

Two submissions were received during the notification process.

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

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

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

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

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

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

Of relevance is the following:

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

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

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

(e) Public interest

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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

ORIGIN:

Development Assessment

FILE NO: DA08/0293 Pt2

SUMMARY OF REPORT:

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

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

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

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

It is therefore recommended that the application be refused.

RECOMMENDATION:

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

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

accommodating adequate facilities for treatment and disposal of sewerage.

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

REPORT:

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

BACKGROUND:

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

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

Proposal

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

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

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

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

Site

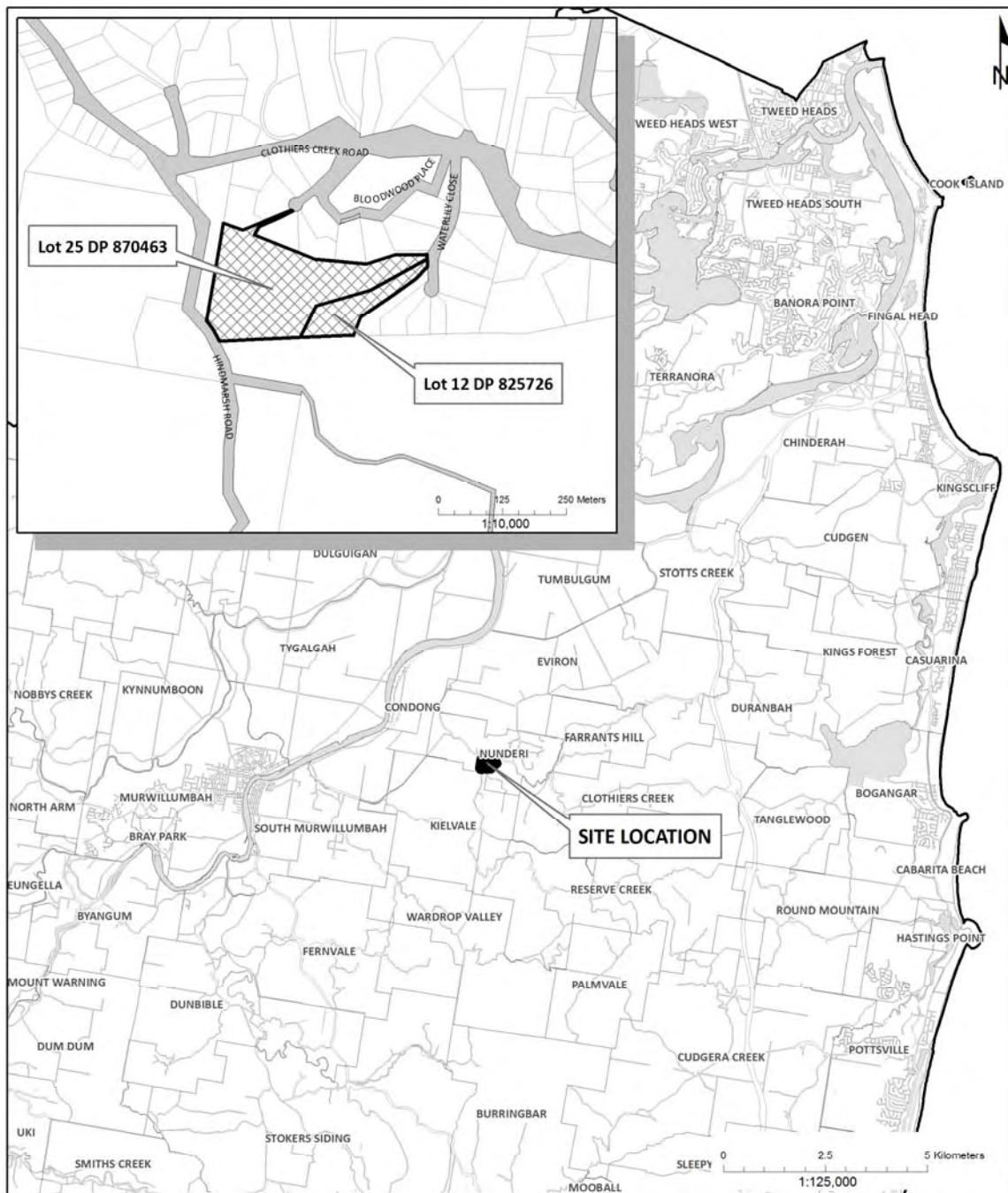
The subject site includes Lot 12 DP825726 and Lot 25 DP870463 and has a total area of 6.208 hectares (62,050m²) with Lot 25 having an area of 5.07 hectare and Lot 12 having an area of 1.138 hectares.

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

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

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

SITE DIAGRAM:



LEGEND

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

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Author: J. Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Cadastre 24 September, 2009
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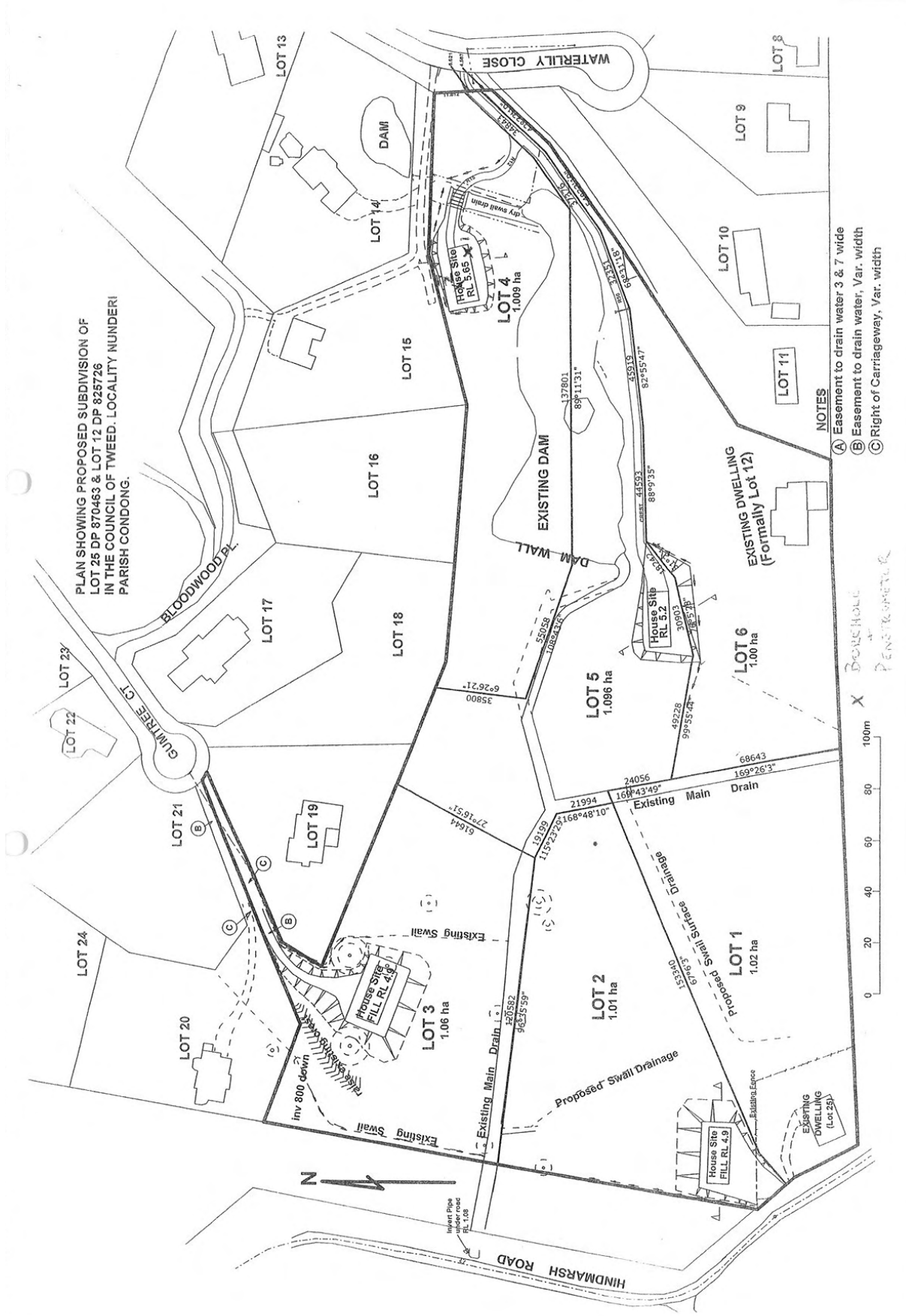
Coordinate System - MGA Zone 56
Datum - GDA 94

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DEVELOPMENT PLAN:



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

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

Tweed Local Environmental Plan 2000 (TLEP)

Clause 4 of states the aims of the plan which among other things, seeks to give effect to the strategic plan and the vision which is the “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced” and to encourage sustainable economic development of the Tweed compatible with the area’s environmental and residential amenity qualities.

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

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

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

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

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

Primary Objectives

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

Secondary Objective

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

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

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

Water:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sewer:

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

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

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

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

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

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

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

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

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

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

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

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

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

Comments in relation to option 2 are outlined below.

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

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

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

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

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

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

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

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

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

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

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

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

- (3) *Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent authority of the mean high-water mark or, where there is no mean high-water mark, the top of the bank or shore of a stream, creek, river, lagoon or lake unless it is satisfied that:*
- (a) *the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and*

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

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

Public access is not appropriate at this site.

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

There are no management plans applicable to the site.

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

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

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

The applicant has not addressed this issue.

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

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

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

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

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

State Environmental Planning Policies

North Coast Regional Environmental Plan 1988

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

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

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

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

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

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

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

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

Not applicable.

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

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

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

Not applicable.

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

Not applicable.

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

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

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

Not applicable.

Clause 12 relates to impact of development on agricultural activities.

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

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

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

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

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

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

DCP A3 Development of Flood Liable Land

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

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

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

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

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

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

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

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

DCP A5 Subdivision Manual

Roads / Access

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Landforming / Site Regrading

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

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

Maximum height of retaining walls or batters:

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

Boundary setback:

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

Retaining wall ownership:

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

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

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

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

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

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

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

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

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

Flora and Fauna

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

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

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

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

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



Environmental Health

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

Stormwater and Flooding

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

Traffic

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

(c) Suitability of the site for the development

Contaminated Land

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

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

Geotechnical Issues

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

Lot 2

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

Lot 3

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

Lot 4

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

Lot 5

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Public interest

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

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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

ORIGIN:

Development Assessment

FILE NO: GT1/51 Pt9

SUMMARY OF REPORT:

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

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

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

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

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

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

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

RECOMMENDATION:

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

REPORT:

Applicant: Leda Manorstead Pty Ltd

Owner: Leda Manorstead Pty Ltd

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

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

Cost: N/A

PROCESS:

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

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

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

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

“Option 1 – Deferral of Detailed Environmental Assessment

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

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

Option 2 – Provision of Detailed Information

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

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

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

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

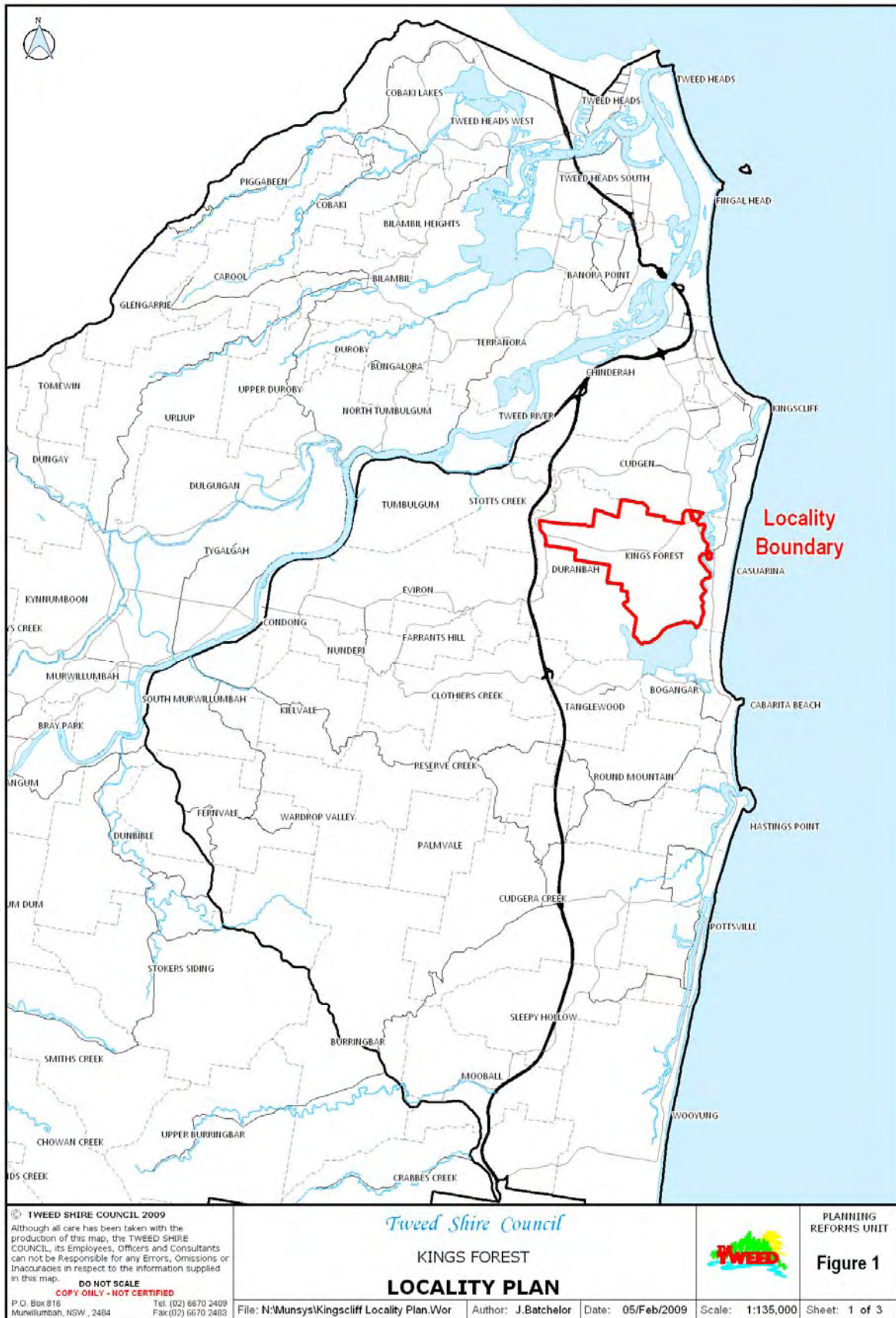
Importantly this report also undertakes a review of the applicant's Development Code which forms part of the Preferred Project Report. The Development Code has been prepared by the applicants and acts as the principal planning instrument that will guide all future development at Kings Forest.

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

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

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

LOCALITY PLAN:



AERIAL PHOTOGRAPH:



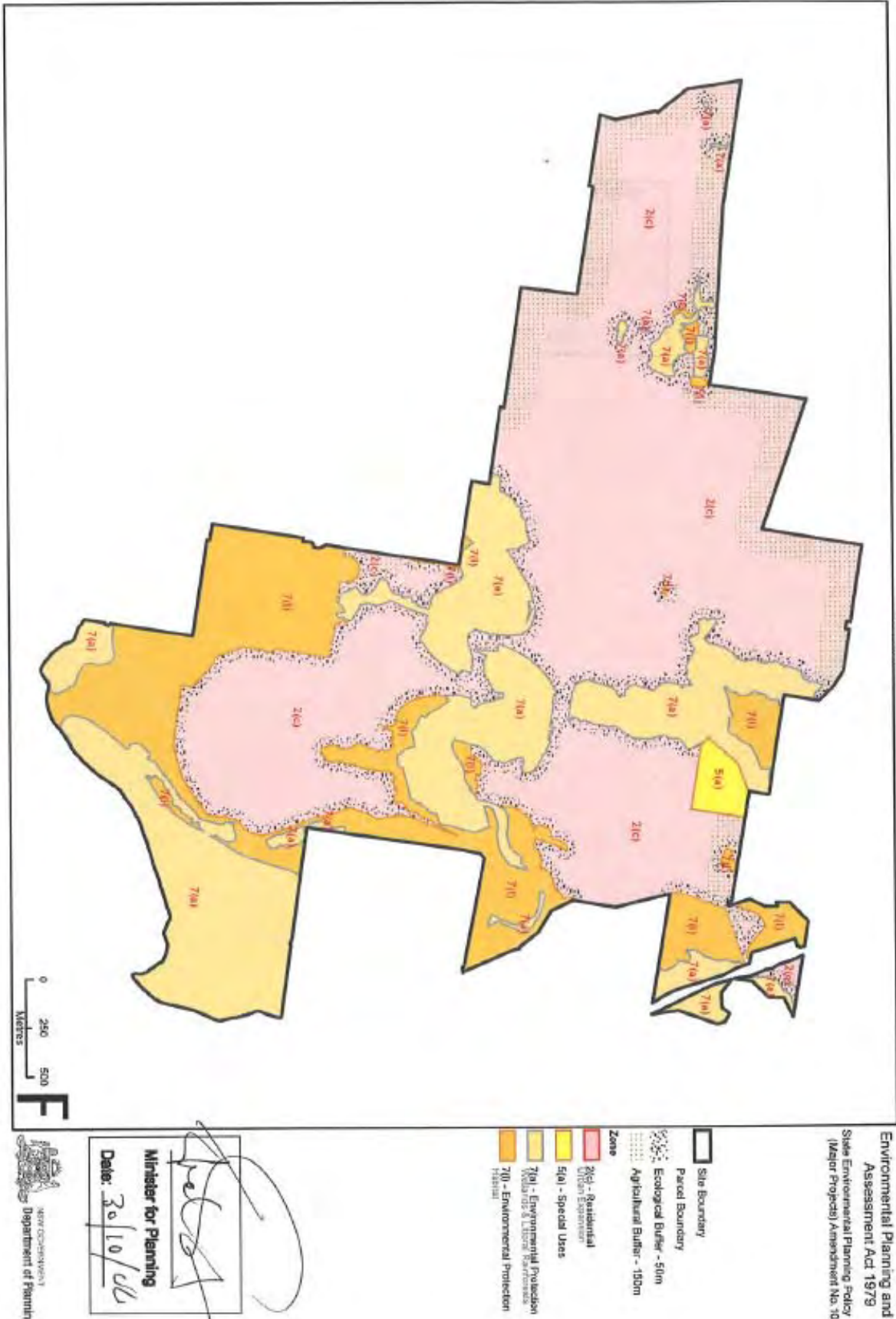
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Tweed Shire Council
KINGS FOREST
AERIAL PHOTO - TAKEN MAY 2007
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PLANNING REFORMS UNIT
Figure 2
Author: J.Batchelor Date: 05/Feb/2009 Scale: 1:20,000 Sheet: 2 of 3

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



CHANGES WITHIN THE PREFERRED PROJECT REPORT (PPR)

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

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

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

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

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

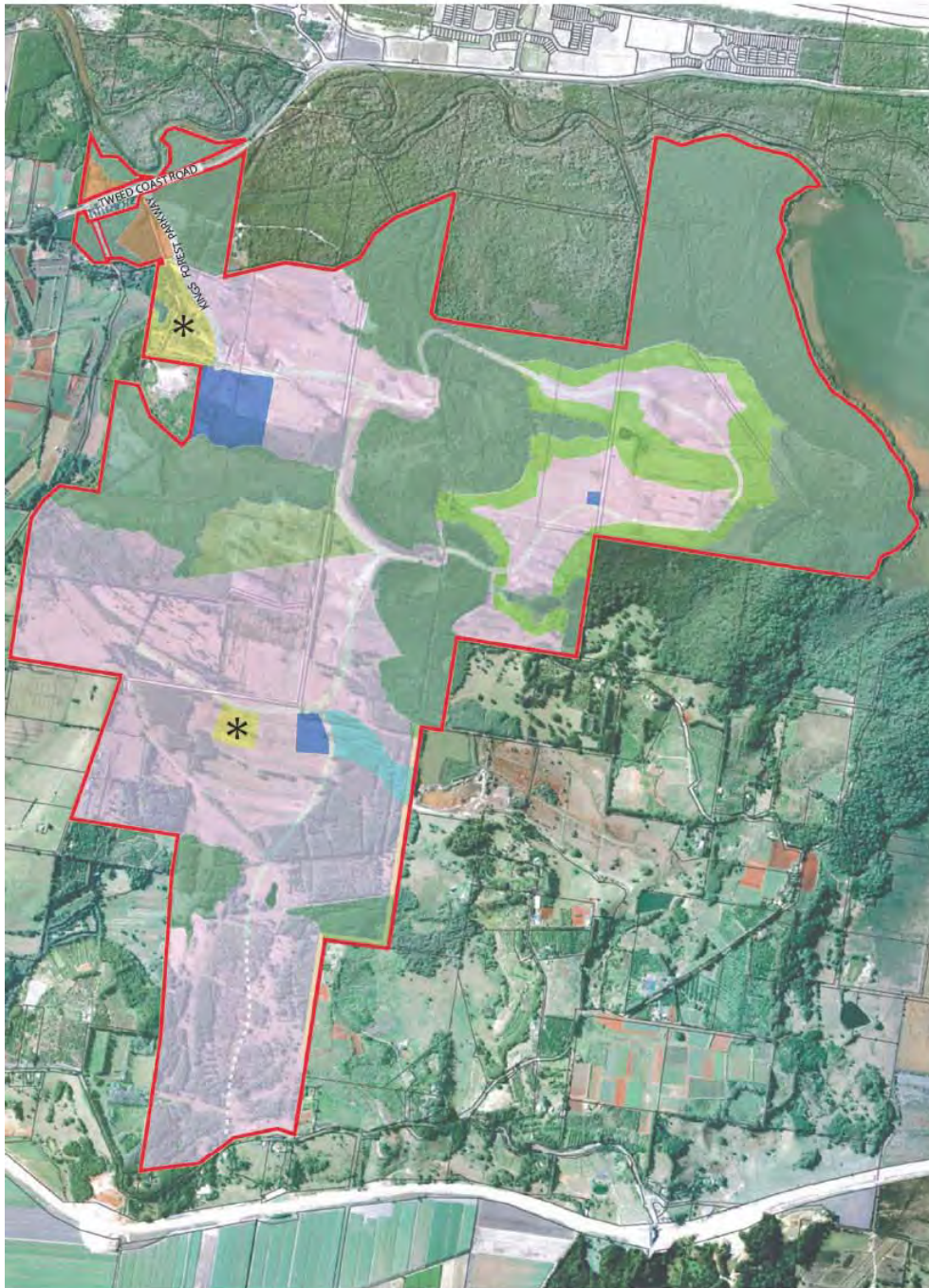
It is important to note that this development will result in a very different "product" to that currently experienced within the Tweed. The small lot style of development (lots as small as 125m²) was authorised within the SEPP (Major Development) 2005. However the type of buildings proposed and the amount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

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

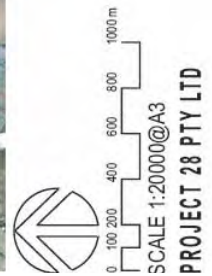
PREFERRED PROJECT CONCEPT PLAN:

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

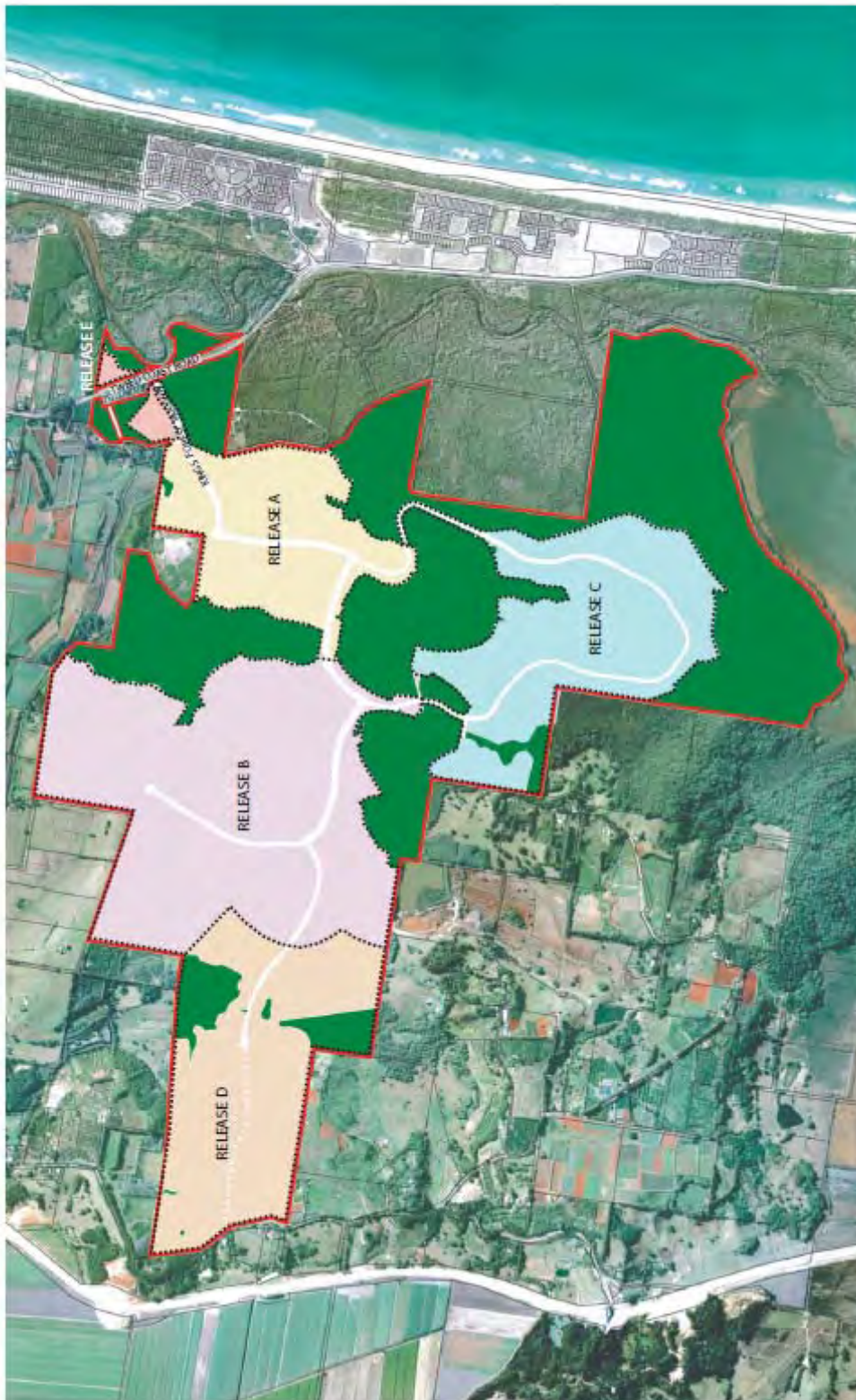
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CONCEPT PLAN
KINGS FOREST



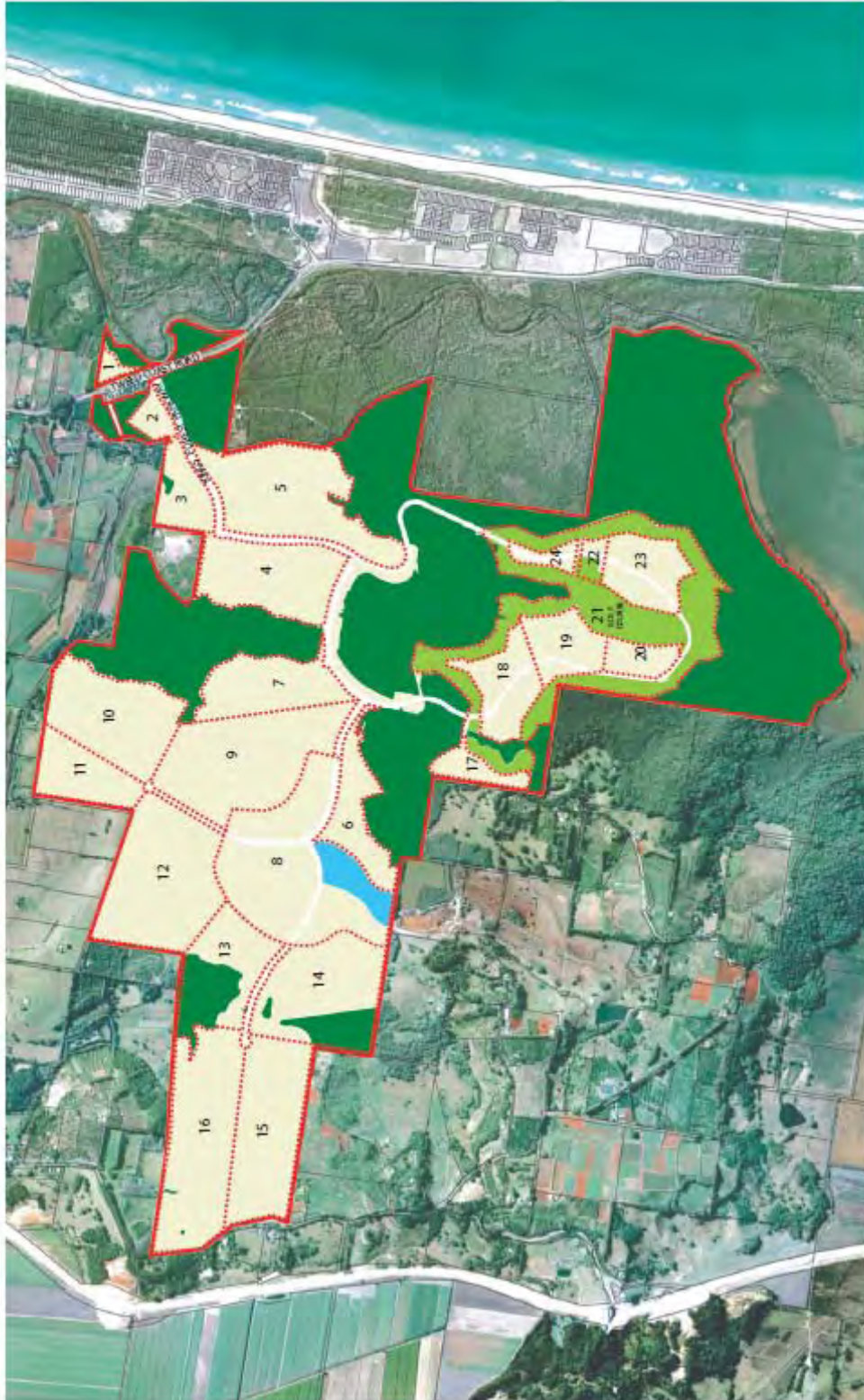
PREFERRED PROJECT RELEASE AREAS:



RELEASE AREAS PLAN
KINGS FOREST



PREFERRED PROJECT PRECINCT AREAS:



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PRECINCT PLAN
KINGS FOREST


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PROJECT 28 PTY LTD

PREFERRED PROJECT DEVELOPMENT MATRIX:

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

DEVELOPMENT MATRIX

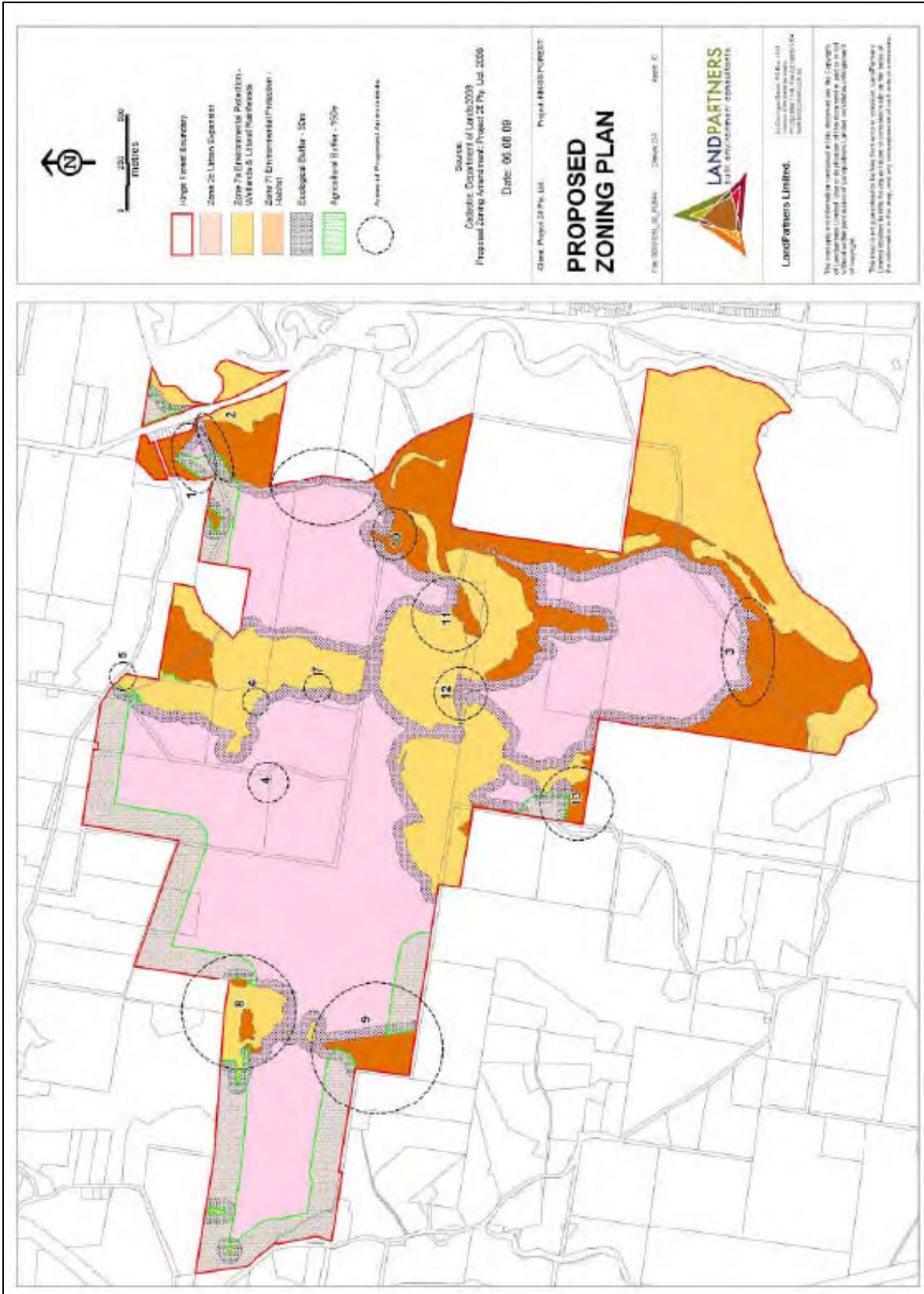
KINGS FOREST

PROJECT 28 PTY LTD

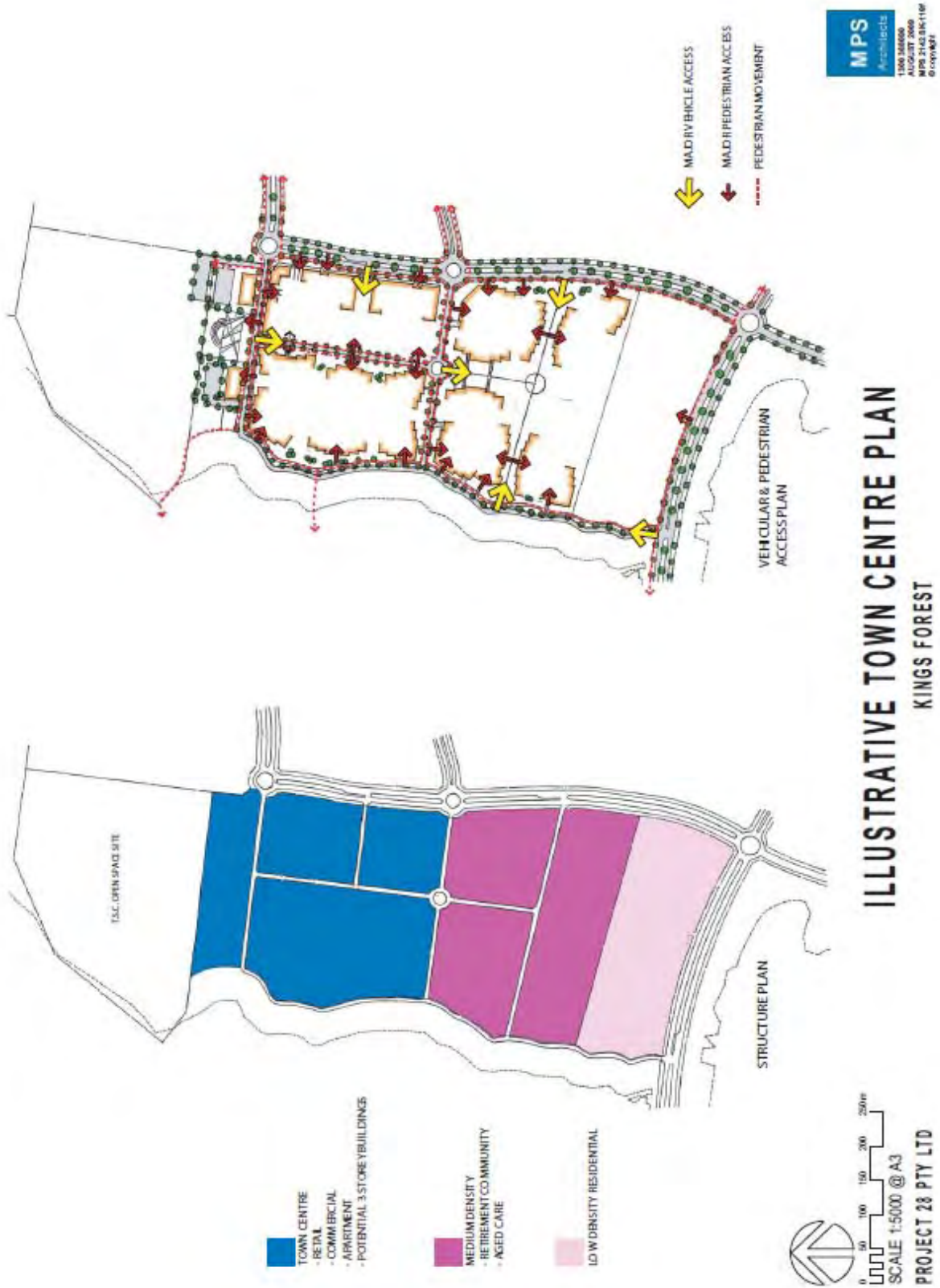


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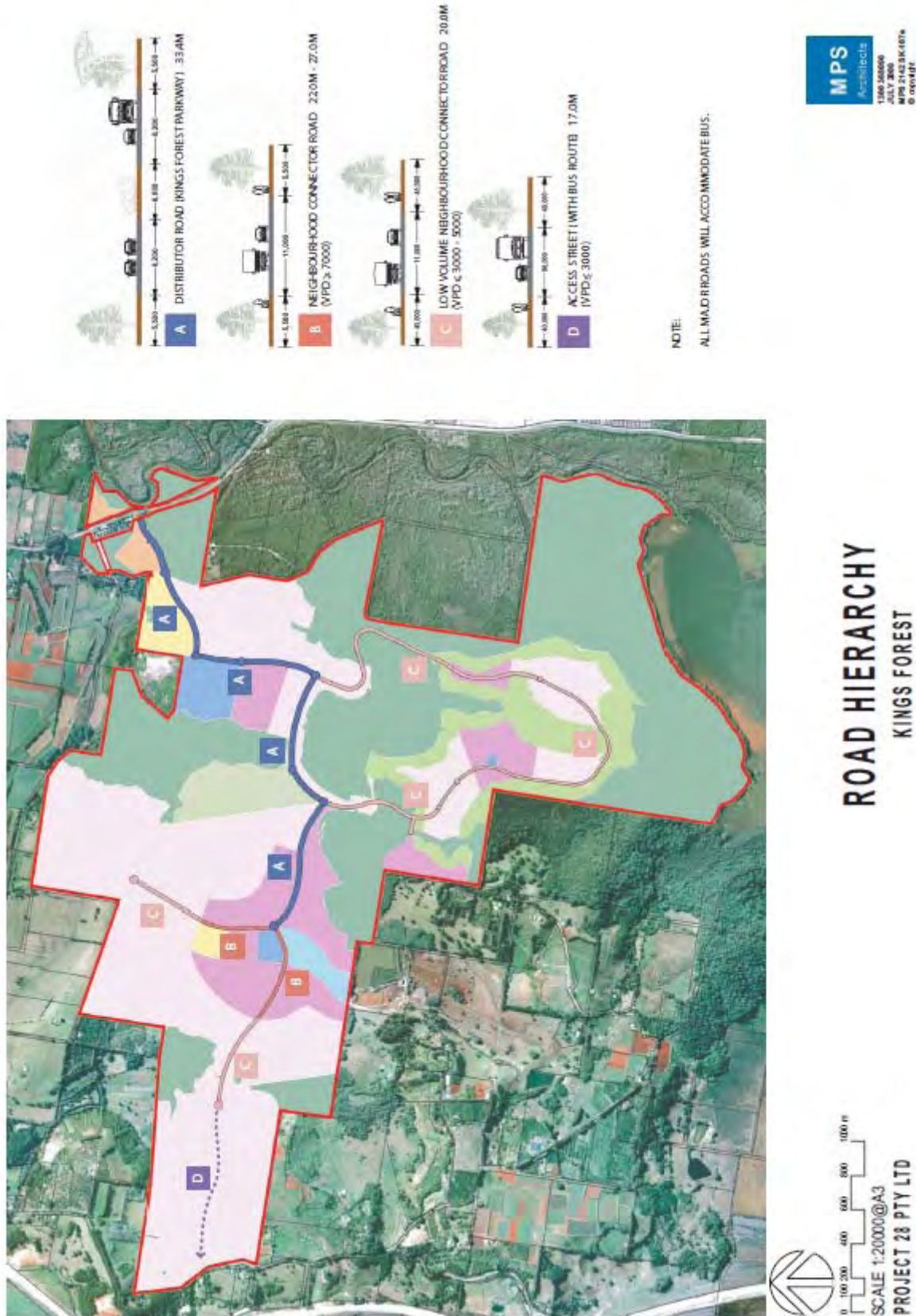
PROPOSED REZONING PLAN:



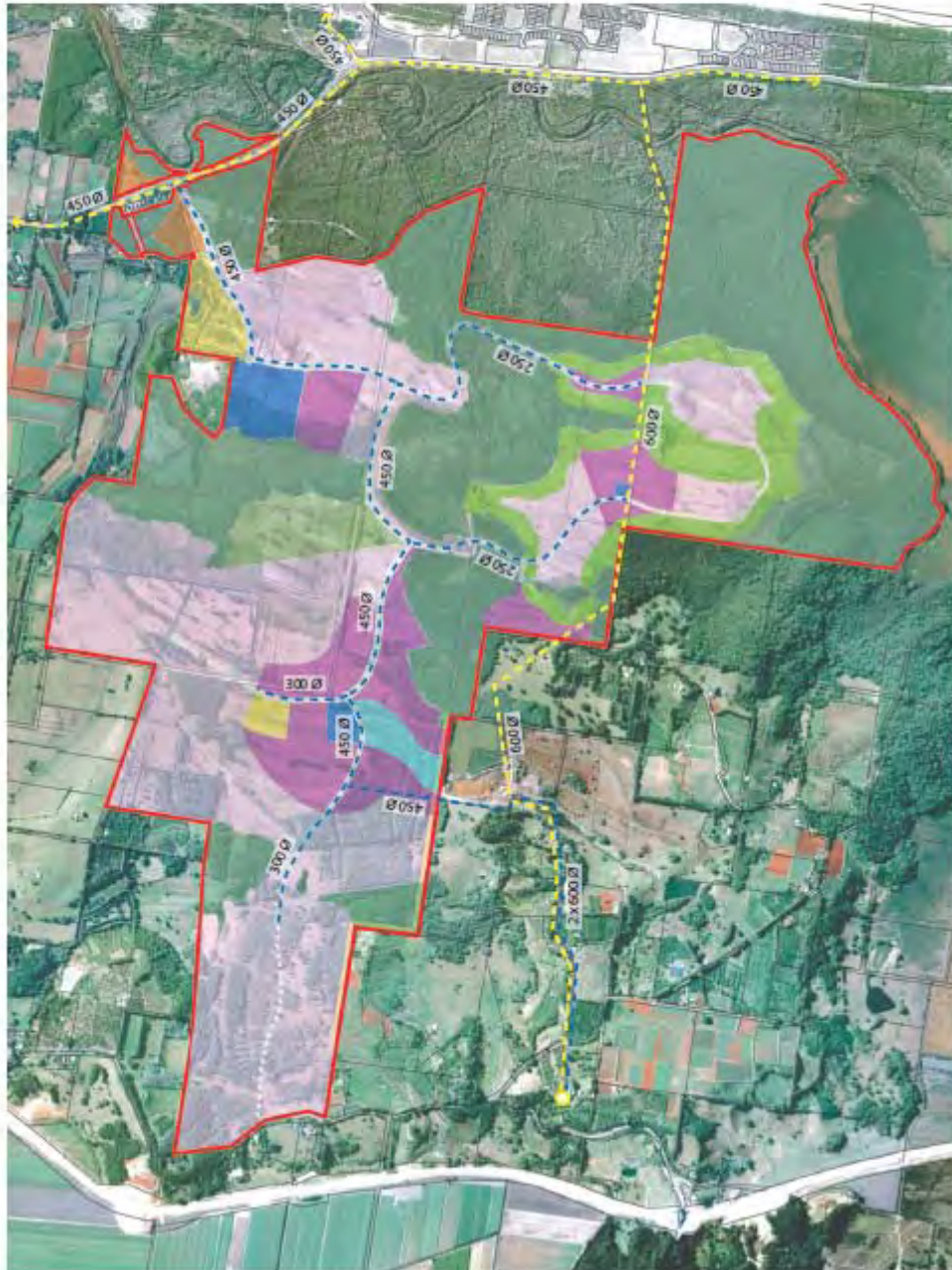
PREFERRED PROJECT ILLUSTRATIVE TOWN CENTRE:



PREFERRED PROJECT ROAD NETWORK PLAN:



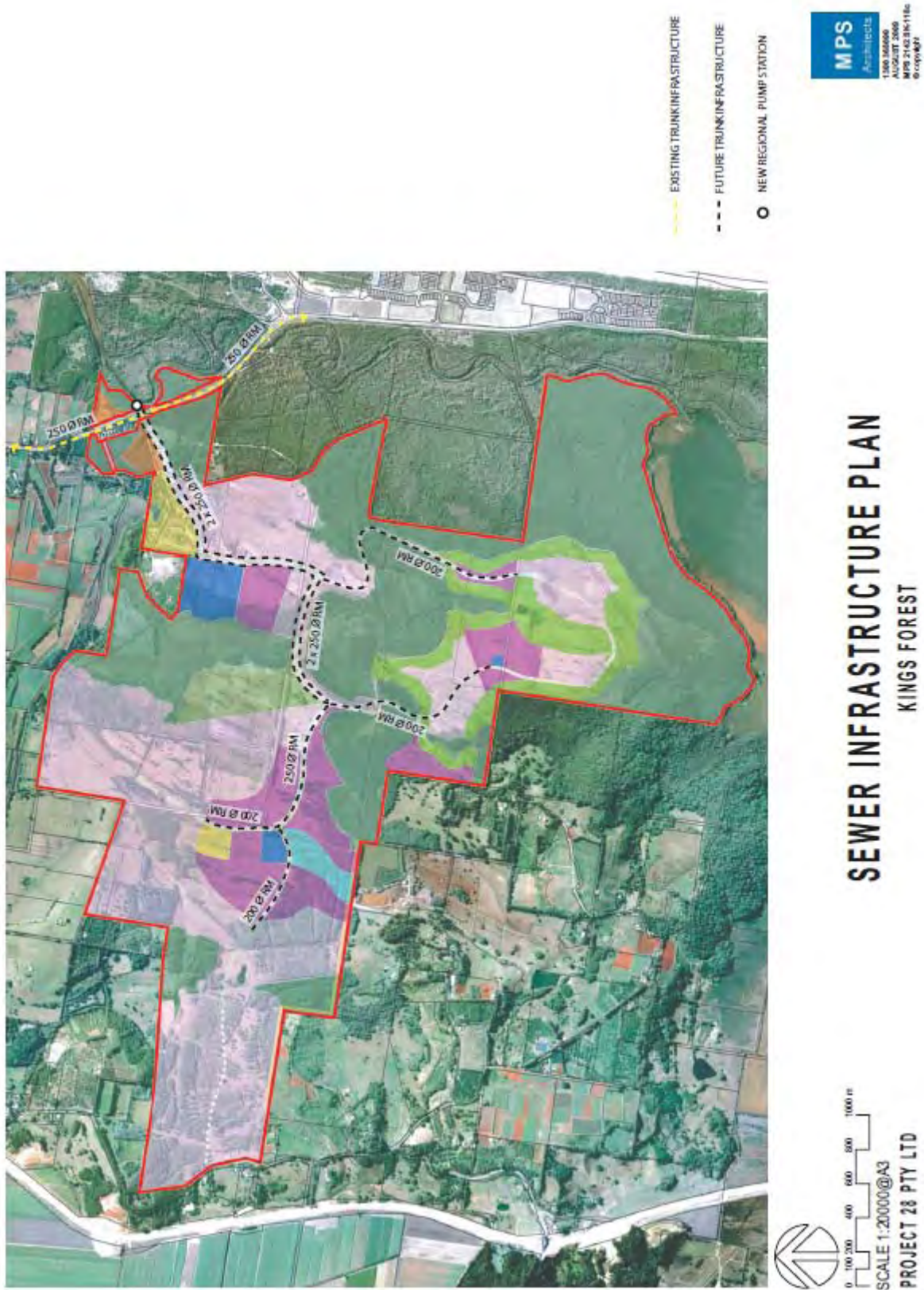
PREFERRED PROJECT Water INFRASTRUCTURE PLAN:



WATER INFRASTRUCTURE PLAN
KINGS FOREST



PREFERRED PROJECT SEWER INFRASTRUCTURE PLAN:



ISSUES:

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

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

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

The Kings Forest Development Code

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

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

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

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

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

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

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

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

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

The proposed Code has not been exhibited for public comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Dwelling Types

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

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

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

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

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

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

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

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

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

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

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

Apartments:

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

Retirement Communities:

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

Tourist Accommodation:

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

Development Lot:

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

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

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

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

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

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

Urban Design & Street Layout

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

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

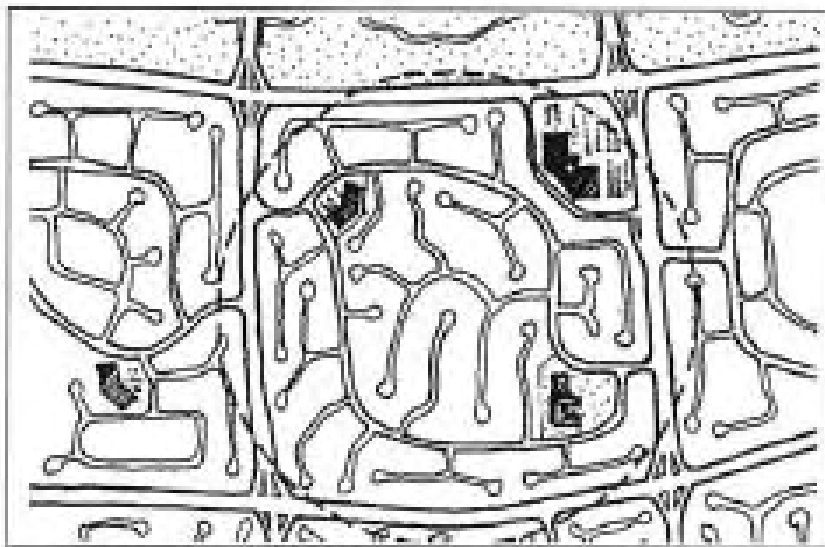
- (a) *establish a permeable pedestrian and cycleway network that is based on AMCORD principles,*
- (b) *encourage walking and cycling and reduce travel distances involving those activities,*
- (c) *maximise neighbourhood connectivity between residential neighbourhoods, community facilities and open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

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

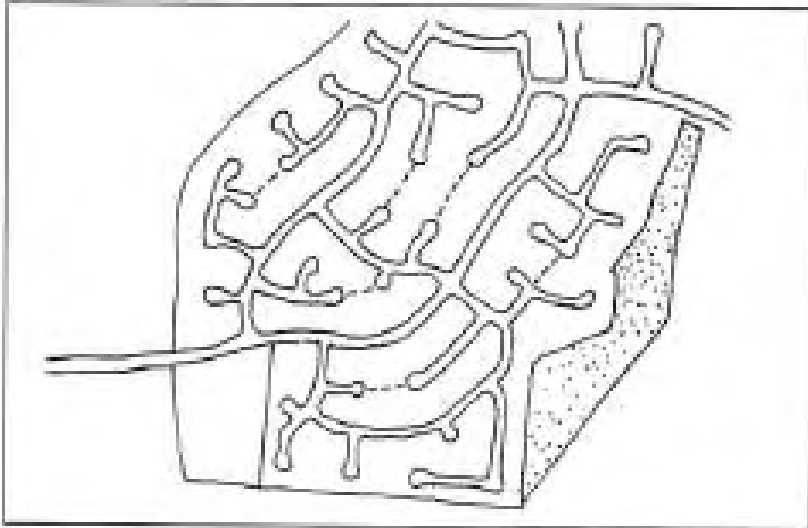
Connectivity within street layouts is encouraged within:

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

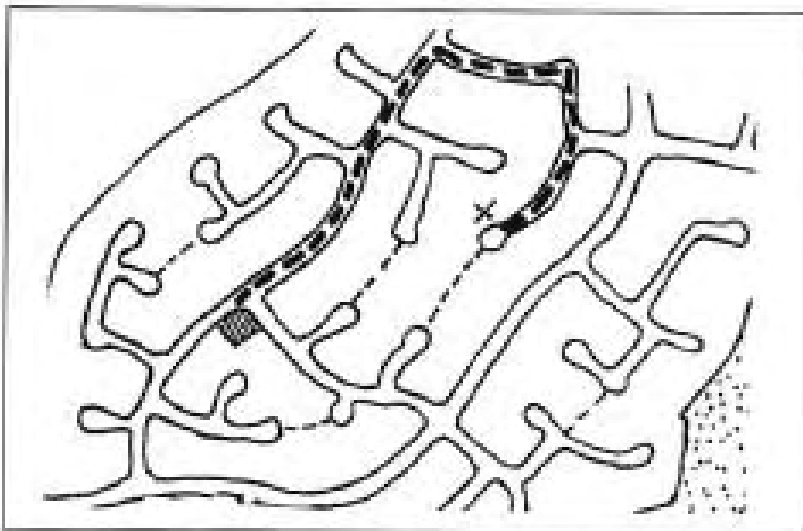
Below is some examples of how streets should **not** look like:



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



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

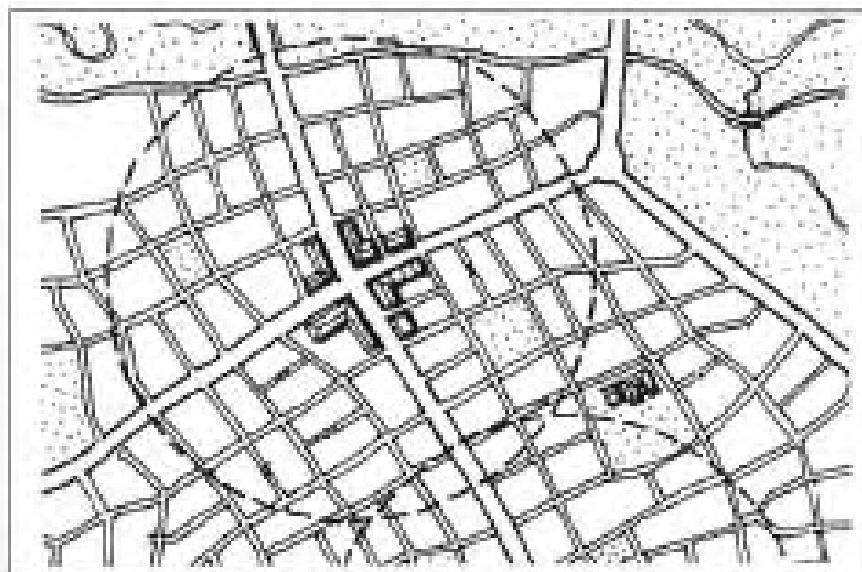


Getting from A to B is via C, D and E.

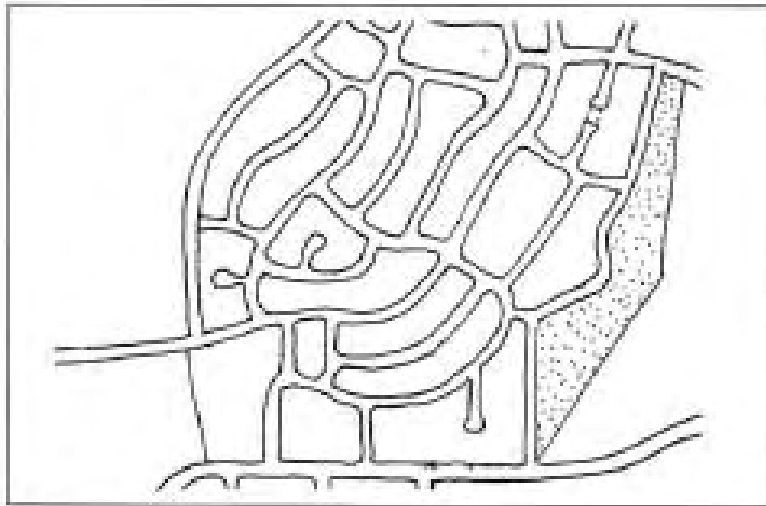


A long, dead end road is a poor quality cul-de-sac. This type of road creates confusing street patterns.

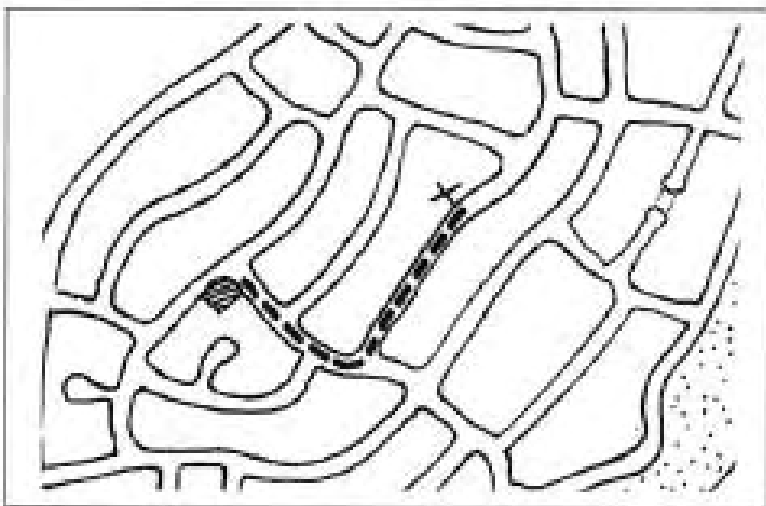
Below is a series of examples of how streets **should** look like:



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



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



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



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

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

Ecology

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

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

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

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

Marked improvements to the proposal could be achieved if;

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

Koala Plan of Management

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

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

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

Accordingly the applicants Revised Koala Plan of Management proposes:

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

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

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

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

Council would be recommending:

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

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

Other threatened species

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

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

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

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

Proposed Rezoning

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

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

Ecological Buffers

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

Golf Course

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

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

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

Restoration and rehabilitation

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

Revised Feral Animal Management Plan

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

Development Code

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

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

Statement of Commitments

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

Landforming

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

Stormwater

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

Proposed Lake

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

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

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

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

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

Proposed Golf Course

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

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

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

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

Roads, Footpaths & Cycleways

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

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

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

Traffic Management

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

Developer Contributions

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

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

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

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

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

Flooding & Climate Change

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

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

Water Strategy

Integrated Water Cycle Management (IWCM)

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

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

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

Water Supply

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

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

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

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

Sewerage Infrastructure

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

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

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

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

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

Open space & Landscaping

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

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

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

Accredited Certifier

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

2.2 Complying Development

Objectives

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

Statement of Commitments

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

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

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

Planning

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

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

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

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

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

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

CONCLUSION:

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

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

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

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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

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

ORIGIN:

Development Assessment

FILE NO: DA08/1241 Pt2

SUMMARY OF REPORT:

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

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

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

One objection has been received to this S96 Modification.

On balance of all the issues associated with this matter the proposed variation to the height of the new house is recommended for approval subject to conditions for the reasons discussed in this report.

RECOMMENDATION:

That Development Application DA08/1241.07 for an amendment to development consent DA08/1241 for a new dwelling, in ground swimming pool and detached granny flat at Lot 281 DP 1120559, No. 11 Woodfull Crescent, Pottsville be approved subject to the following changes being made to the conditions of consent:-

1. Delete Condition 1 and replace with a new condition 1A as follows:

1A. The development shall be completed in accordance with the Statement of Environmental Effects and the approved S96 Plans (DA08/1241.07) as follows:

- **Sheet Nos 1A, 2A, 3, 4, 5A, 6A, 7, 10, 12A, 13A, and 14A prepared by Parameter Designs and dated 09/06/2009, except where varied by the conditions of this consent.**

[GEN0005]

REPORT:

Applicant: Mr SG Read and Mrs P Read
Owner: Mr SG Read and Mrs PJ Read
Location: Lot 281 DP 1120559 No. 11 Woodfull Crescent, Pottsville
Zoning: 2(a) Low Density Residential and 7(d) Environmental Protection
(Scenic/Escarpment)
Cost: Nil

BACKGROUND:

On 14 April 2009 Council (under staff delegation) granted consent for a new dwelling, in ground swimming pool and detached granny flat at Lot 281 Woodfull Crescent, Pottsville (DA08/1241).

The subject site is a battle axe allotment accessed of a shared right of carriageway. The site is elevated and has distant ocean and valley views.

Construction of the new dwelling has commenced (with the roof now completed) in accordance with a Construction Certificate, however construction of the Granny Flat has not commenced.

Council is now in receipt of a S96 Modification to amend DA08/1241 that proposes the following amendments:

- Reposition the proposed granny flat which has the effect of:
 - Increasing the level of fill (800mm) under the proposed garage and granny flat;
 - Increasing the height of the proposed garage from RL 14.9m to RL 15.7m and
 - Increasing the height of the proposed granny flat from RL 14.2m to RL 15m.
- Increase the approved height of the main dwelling to reflect a minor building anomaly from RL 20.42m to RL 20.545 (12.5cm).

The S96 was originally just for the relocation of the Granny Flat. However, an adjoining neighbour noticed that the height of the partially constructed house appeared higher than that approved by Council. The adjoining neighbour had the partially constructed house surveyed and discovered the main house had been constructed 125mm (12.5cm) higher than the approved plans. The adjoining neighbour alerted Council to this non compliance.

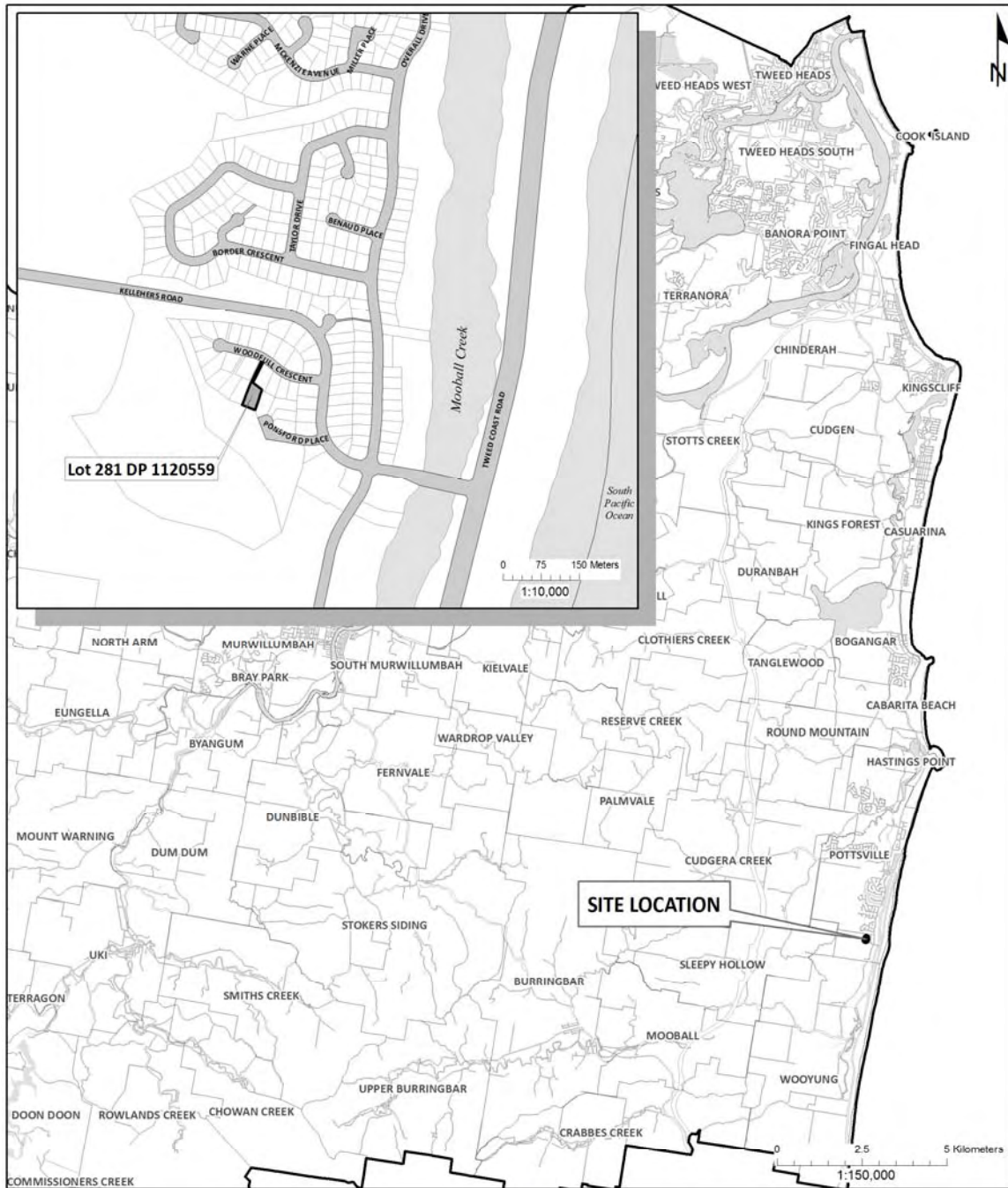
The owner of the subject property (DA08/1241) was alerted to the non compliance by Council and changed his S96 Modification to seek approval for the already constructed building height anomaly of an additional 12.5cm.

Accordingly, the increase in height of the main dwelling by 12.5cm is the main issue for consideration as part of this report.

This aspect of the modification has attracted an objection from an adjoining neighbour. The grounds for the objection are discussed in detail in the following report.

This matter has been reported to Council as Councillor Van Lieshout called up the application for full Council consideration.

SITE DIAGRAM:



LEGEND

Lot 281 DP 1120559
No. 11 Woodfull Crescent, Pottsville

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

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 30 September, 2009

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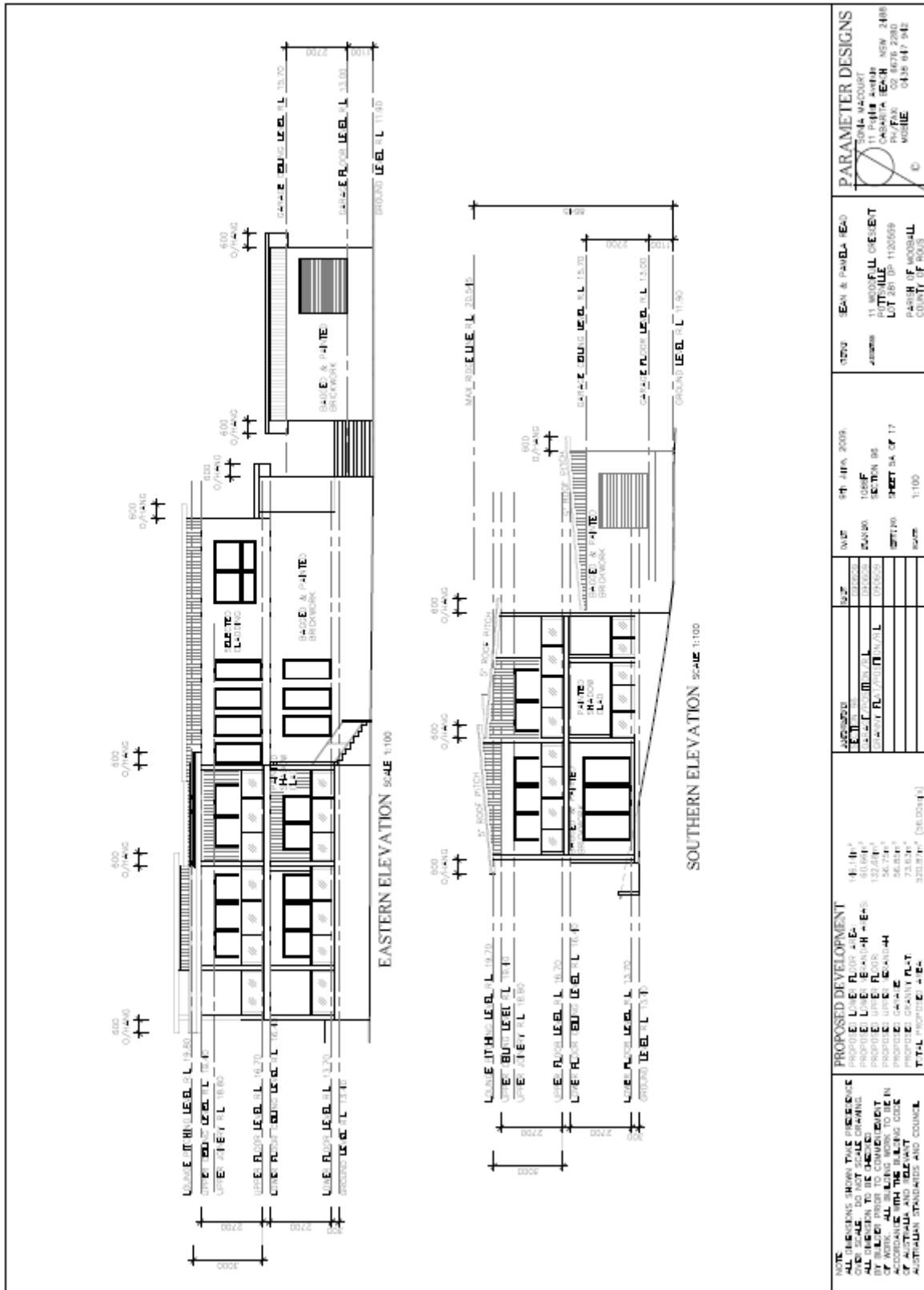
Cadastre 30 September, 2009
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Coordinate System - MGA Zone 56
Datum - GDA 94

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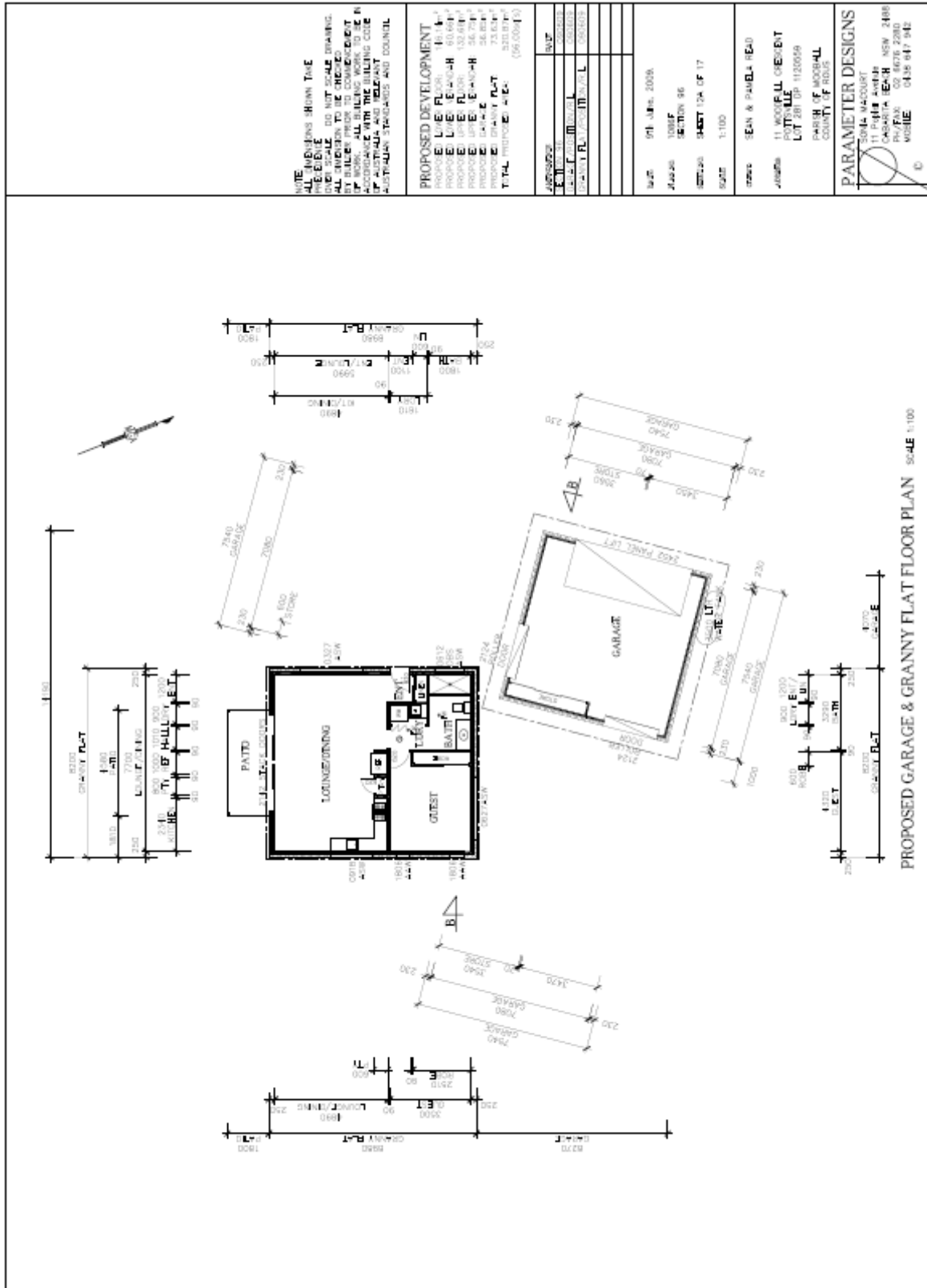
SEAN & PAVLA READ
 11 MOOREVILLE CRESENT
 POTTINGVILLE VIC 3488
 LOT 381 DP 1120559
 PARISH OF MOORABILL
 COUNTY OF ROUS

DATE: 14th APR 2009
 1085F SECTION 06
 SHEET 04 OF 17
 SCALE: 1:100

NO	DATE	DESCRIPTION
01	14/04/09	ISSUED FOR PERMIT
02	14/04/09	REVISED PERMIT
03	14/04/09	REVISED PERMIT
04	14/04/09	REVISED PERMIT

PROPOSED DEVELOPMENT	18.11m
PROPOSED LOWE FLOOR +E-	60.04m
PROPOSED EXPOSED HIGH +E-	122.81m
PROPOSED UPPER FLOOR +E-	56.83m
PROPOSED CHIMNEY +E-	73.83m
TOTAL PROPOSED +E-	320.52m

NOTE: DRAWINGS SHOW TRUE RESIDUAL
 GROUND LEVELS. ALL SCALE DRAWINGS
 ALL DIMENSIONS TO BE CHECKED
 BY BUILDER PRIOR TO CONSTRUCTION
 IN ACCORDANCE WITH THE BUILDING CODE
 OF AUSTRALIA AND DEPARTMENT
 OF AUSTRALIAN STANDARDS AND COUNCIL



CONSIDERATIONS UNDER SECTION 79C AND 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96(1A) of the EPA Act 1979 provides that a consent authority may, on application being made by the applicant modify the consent. The Act requires the consent authority to be:

(a) satisfied that the proposed modification is of minimal environmental impact

The proposed amendment satisfies this criterion as it will still result in a new house, in ground swimming pool and detached Granny Flat. The proposed amendments in location and overall height will have no foreseeable negative environmental impact.

(b) satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

The proposed amendments are minor in nature and will still result in a development that is substantially the same as the development to which approval was originally granted.

(c) satisfied that it has notified the application in accordance with the applicable legislation:

S96(1A) Modifications do not require notification to adjoining properties in accordance with Tweed DCP Section A11.

Notwithstanding the S96(1A) was notified to adjoining property owners given that the S96 stemmed from a compliance matter that was brought to Council's attention from an adjoining owner.

(d) satisfied that it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Following the notification period Council received one written objection to the proposed S96 Modification.

The objection was not focussed on the proposed changes to the Granny Flat but was specifically in regard to the new house being constructed 125mm higher than the previously approved plans.

The objection is duplicated below in its entirety:

“As Council is aware we are adjoining property owners and our property is at Lot 282 Woodfull Crescent, Pottsville. Would Council please note our objection to the proposed amended plans insofar as they relate to increasing the height of the main dwelling from RL 20.42m to RL 20.545m.”

The grounds of our objection are as follows:

- (a) On the 28th January 2009 we inspected the plans approved by Council for the dwelling to be built on Lot 281 to check the heights of the buildings to be erected. We relied on those approved plans when we signed the contract with our builder to build our home at Lot 282. Our architect had been instructed to draw up the plans for the erection of our house at Lot 282, so that we would have unobstructed ocean views from the second level of our home.*
- (b) Construction of our home began in June 2009. After the slab was poured we discovered that our architect had miscalculated the heights of the proposed buildings at Lot 281, we immediately stopped work on the building of our home and applied to Council to amend our plans, so that we could have the views we wanted. That reason was clearly set out in our application to Council dated 1 July 2009, which Council presumably sent to our neighbours, including those at Lot 281. Notwithstanding that none of our neighbours would be affected by an increase in the height of our house, our amended plans were drafted to keep our home within Council's height restrictions. Council approved the amendments to our plans on 27 July 2009, following which we resumed construction. The cost to rectify the miscalculation was substantial.*
- (c) On the other hand the main dwelling at Lot 281 has exceeded the height approved by Council because of an error on their builder's behalf. Notwithstanding that breach of Council's approval, construction on the main dwelling has continued.*
- (d) Had we known that our neighbours would build the main dwelling exceeding Council's approval, we would not have commenced the erection of our home rather we would have waited for the completion of the building work at Lot 281. We are now in a position where we are unable to change our plan to achieve the views for which they were approved.*
- (e) If Council approves an amendment to the plans to allow an increase in height of the main dwelling at Lot 281, it will have a significant impact on our enjoyment of our home because our ocean views will then be restricted. It may also affect the value of our home.*

We have no objection to the proposed amendments to the garage and granny flat."

The following photos depict the subject property and the objector's property:



Photo 1 (above) depicts the subject property (which is seeking approval for an increased height limit of 125mm for the constructed home) on the left and the objector's home (which is also under construction) on the right.



Photo 2 (above) is taken from the objector's home presently under construction and indicates that at this section of the house the horizon is not visible over the roof of the house at the subject property.



Photo 3 (above) is taken from the objector's home presently under construction and indicates that at this section of the house the horizon is visible over the roof of the house at the subject property (as the middle of the subject properties roof is lowered).



Photo 4 (above) is taken from the objector's home presently under construction and indicates that to the north there is an extensive outlook available.

In assessing the reasonableness of the proposed S96 Modification Council must have regard to the Tweed LEP 2000, and the Tweed DCP (specifically Section A1 – Residential and Tourist Code)

In accordance with the Tweed LEP 2000 the subject property (and the objector's property) is subject to a two storey statutory height limit (Clause 16 of the Tweed LEP 2000)

The subject property has an approval for a two storey dwelling (and Granny Flat) and therefore satisfies the two storey statutory height limit. The proposed modification will not impact on the number of storey's within the building, thus retaining a compliant building.

The objector's property has an approval for a technically defined partial third storey (which required approval by Council for the associated SEPP 1 objection).

In accordance with the Tweed DCP Section A1 – Residential and Tourist Code the subject property (and the objectors property) is subject to a maximum overall building height of 9m, with a maximum wall plate height of 8.5m.

The subject property has an approval for an 8.22m maximum overall building height and therefore satisfies the 9m height limit. The proposed modification will increase this maximum overall height to 8.345m which still represents a compliant building.

The objector's property has an approval for an 8.8m maximum overall building height and therefore satisfies the 9m height limit.

Given that the proposed height increase of 125mm satisfies the numerical provisions of the applicable planning instruments it is necessary to still undertake a merit assessment of the issue of view loss as expressed by the objector.

The following principle is extracted from recent court cases from the Land and Environment Court of NSW. The principle forms precedence for subsequent applications brought before the Court that may have similar planning issues.

View Sharing

The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. Taking all views away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.

To decide whether or not view sharing is reasonable, a four-step assessment is adopted.

- A. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of Mount Warning, Point Danger, Razorback,) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible or where an*

island or structure is wholly visible are more valuable than one in which it is obscured.

- B. The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
- C. The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House, obscurity of half of Mount Warning or the water interface of a headland. It is usually more useful to assess the view loss qualitatively using everyday terms as negligible, minor, moderate, severe or devastating.*
- D. The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

In applying the four step assessment technique to the subject site the following is noted:

The views that the objector wishes to retain are sideways views of the distant coast obtained when standing in bedrooms, a media room and an outdoor deck along the eastern boundary of the house. A balcony on the north eastern corner of the objector's property would have some sitting views to the northeast and standing views to the east. The existing sitting views are not affected by the proposed modification.

The extent of the impact is significant for the objector however, in planning terms they would be considered minor.

It is not reasonable to assume that such views could be retained. The proposed modification complies with the statutory height limit, complies with the DCP and provides for view sharing opportunities as the central part of the roof is lowered.

In addition the objector's property will still experience a significant outlook to the north.

For these reasons the proposed modification is recommended for approval notwithstanding that it will have some impact on the adjoining property.

Compliance

Whilst the subject building has already been constructed to the higher level it is not recommended to issue any Penalty Infringement Notices in this instance as the minor departure 125mm appears to have occurred as a result of a building anomaly. Survey has suggested that the slab height is correct and that the extra 125mm has occurred through the building materials used.

The applicant has sought to rectify the non compliance with the subject S96 and therefore subject to this S96 being approved no further action is recommended.

Miscellaneous

The proposed modifications are considered to be consistent with the design controls of the DCP Section A1.

The granny flat retains a minimum of 900mm setback from the eastern side boundary. Due to the granny flat no longer being positioned parallel to this boundary the setback gradually increases from this boundary.

The additional fill within the approved footprints of the garage and granny flat would only increase the development's overall height by 800mm. The additional fill is in harmony with the natural environment/landform and will not adversely affect adjoining properties by way of unreasonable levels of shadow and the like.

The overall height proposed within the modification satisfies the design control.

In all other regards the proposed S96 Modification is considered to satisfy the statutory planning legislation.

OPTIONS:

1. Approve the S96 Application as per the recommendation
2. Refuse the S96 Application with reasons for the refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to approve the S96 Application as recommended there are no third party merit appeals as only judicial review is available.

Should Council resolve to refuse this S96 Application the applicant may lodge an appeal with the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Whilst the proposed S96 is quite minor in nature, the associated impact for the affected properties is very real.

On balance the S96 (and specifically the minor increase in height of 125mm) is within the acceptable height limit imposed on the site and does not unreasonably impact on the adjoining properties having regard to the Court's interpretation surrounding view sharing principals.

Furthermore, the increase in height has resulted from an innocent building anomaly. It would be unreasonable to seek compliance with the previously approved height in this instance and therefore the S96 Application is recommended for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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- 11 [PR-CM] Development Application DA08/0911 for a Staged Integrated Housing Development Comprising 18 Residential Dwellings, Community Building, Car Parking, 19 Lot Community Title Subdivision with Pathway to Public Open Space at Lot 86 DP 1066472; Lot 238 DP 1070792, Salt Water Crescent & No. 41 Elliston Street, Kingscliff**

ORIGIN:

Development Assessment

FILE NO: DA08/0911 Pt2

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 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 56%.

The SEPP No. 1 variation relates to Schedule 3 of the Tweed Local Environmental Plan 2000 (LEP 2000) which contains an enabling clause that permits integrated housing in the 2(f) zone. Subclause (2) of the enabling clause stipulates that proposed allotment sizes for the creation of dwelling houses within a subdivision of the subject land must have a minimum area of 450m². Areas of proposed lots range from 199m² to 404m².

The applicant seeks consent for 18 residential dwellings (13x3 bedrooms and 5x4 bedrooms), a community building and a 19 lot staged community title subdivision (inclusive of common lot):

- Stage 1 comprises of the community building, all civil works, landscape works and the registration of the proposed subdivision (community title)
- Remaining Stages (number unknown) comprise of the development of the approved housing. The applicant has advised they wish to have flexibility within these stages to sell/construct as many dwellings as the market demands at the time.

The applicant also proposes to undertake continuation of a pedestrian pathway within an adjoining lot to the site's north, Lot 86 DP 1066472. This lot is a Council owned public reserve. Council officers support these works subject to conditions of consent.

The proposal was placed on public exhibition for fourteen days. No submissions were received.

It is considered that the application is suitable for approval, subject to conditions.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Schedule 3 of the Tweed Local Environmental Plan 2000 regarding minimum allotment sizes in the 2(f) zone be supported and the concurrence of the Director-General of the Department of Planning be assumed, and**
- B. Development Application DA08/0911 for a staged integrated housing development comprising 18 residential dwellings, community building, car parking, 19 lot community title subdivision (inclusive of common lot) with pathway to public open space at Lot 86 DP 1066472; Lot 238 DP 1070792, Saltwater Crescent and No. 41 Elliston Street, Kingscliff be approved subject to the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans:**
 - **Plan No. 2008 02 - 01b Revision 1 (Community Lots) dated 22/04/09, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 - 01c Revision 1 (Site Plan Ground) dated 22/04/09, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 01d Revision 1 (Site Plan Upper) dated 22/04/09, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02-01h Revision 2 (Concept Landscape Plan) (as amended in red) dated 30/09/09, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 - 01h/s Revision 1 (Streetscape Fencing Design) (as amended in red) dated 22/04/09, prepared by Anstey Designer Homes**
 - **Plan No. 01/01 Issue 1A (Vehicle Manoeuvring Plan) dated 17 April 2009, prepared by Greg Alderson and Associates Pty Ltd**
 - **Plan No. 2008 02 - 02 (Lot 1 Model DR Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 - 02c (Lot 1 Model DR Elevations) dated 3/06/08, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 - 02d (Lot 1 Model DR Elevations) dated 3/06/08, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 - 03 (Lot 2 Model D2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 - 03c (Lot 2 Model D2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes**
 - **Plan No. 2008 02 - 03d (Lot 2 Model D2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes**

- Plan No. 2008 02 - 04 (Lots 3-5 Model D Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 04/6 (Lot 6 Model D Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 04c (Lots 3-6 Model D Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 04d (Lots 3-6 Model D Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 05 (Lots 7, 9, 10, 12 and 13 Model A Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 05c (Lots 7 - 13 Model A Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 05d (Lots 7 - 13 Model A Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 06 (Lots 8 and 11 Model A2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 06c (Lots 8 and 11 Model A2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 06d (Lots 8 and 11 Model A2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 07 (Lot 14 Model E1 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 07c (Lot 14 Model E1 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 07d (Lot 14 Model E1 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 08 (Lot 15 Model E2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 08c (Lot 15 Model E2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 08d (Lot 15 Model E2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 09 (Lot 16 Model C Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 09c (Lot 16 Model C Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 09d (Lot 16 Model C Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 10 (Lot 17 Model B3 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes

- Plan No. 2008 02 - 10c (Lot 17 Model B3 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 10d (Lot 17 Model B3 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 11 (Lot 18 Model B2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 11c (Lot 18 Model B2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 11d (Lot 18 Model B2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes,

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. The development is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

4. 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]

5. 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]

6. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve or footpath for connecting access pathways to Casuarina Way. Applications for consent under Section 138 must be

submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GENN0245]

7. Stormwater management shall be in general accordance with the Stormwater Management Report prepared by Greg Alderson and Associates Pty Ltd, dated 17th April 2009, except where varied by the conditions of this consent.

The proposed Gross Pollutant Trap (GPT) must be installed upstream of the proposed On Site Detention (OSD) tank.

[GENNS01]

8. Erosion and Sediment Control shall be designed, installed and maintained 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".

[GENNS02]

9. All works shall be retained within the development site. No parking, storage or access is permitted to occur through the adjoining public land.

[GENNS03]

10. Should the existing landscaping on the adjoining public land be affected by construction, it must be repaired to the satisfaction of Council's General Manager or delegate.

[GENNS04]

11. The proposed access path on Community Land, north of the development (Lot 86 DP1066472) is acceptable provided the following are achieved:

- i. Any damage to the existing garden bed shall be repaired.
- ii. No plants are permitted within 1m of the path so as not to overgrow the path. Any plants within this distance are to be removed using appropriate horticultural methods.
- iii. An inspection of the completed works associated with this path must be undertaken by Council's Recreation Services staff in the presence of the developer's representative before any occupation certificate is issued.

[GENNS05]

12. The site is to be developed into a Community Title Subdivision. The plan of subdivision shall be registered with the Lands Titles Office prior to issue of any occupation certificate for any dwelling associated with this consent.

[GENNS06]

13. Outdoor security lighting shall be located and designed so as to avoid light spill into the living and sleeping areas of the dwelling. Light spill shall be confined to the source property.

[GENNS07]

14. All air conditioning and barbeque facilities shall be consistent with the Tweed Development Control Plan Section A1.

[GENNS08]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

15. The developer shall provide the following parking facilities including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

- A minimum of 2 car parking spaces per dwelling,
- A minimum of 5 visitor car spaces with unrestricted access,
- A minimum of 2 car wash bays – note Council will accept these car wash bays being of dual use with visitor car spaces

Full design detail of the proposed parking and maneuvering areas shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

[PCC0065]

16. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,552).

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

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

[PCC0275]

17. 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]

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

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

[PCC0485]

19. Prior to the issue of a Construction Certificate for Civil works, the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks / access including;
- (c) Provision of an 6.0m wide private access in accordance with Section A2 – “*Site Access and Parking Code*” of Council’s consolidated Tweed Development Control Plan and Council’s “*Driveway Access to Property – Part 1*” Design Specification June 2004.

The access shall provide the required 2m x 2m “sight triangle” envelope at the entrance to Salt Water Crescent.

 - stormwater drainage including;
- (d) Permanent stormwater quality treatment, sized according to Council’s Development Design Specification D7 – *Stormwater Quality*, Section D7.12.
 - water supply works including;
- (e) Internal reticulation and hydrants,
- (f) Bulk water meter
 - sewerage works including;
- (g) New manhole off existing stub in western corner of the site,
 - internal reticulation
 - 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]

20. Permanent stormwater quality treatment shall be provided 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 may 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:
 - (e) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.
 - (f) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 – *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
 - (g) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

21. Disposal of stormwater by means of infiltration devices shall be carried out in accordance with Section D7.9 of Tweed Shire Councils Development Design and Construction Specification - Stormwater Quality.

[PCC1125]

22. 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) Surchage 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 maximise 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]

23. The development is required to provide a single bulk water service, placed at a suitable location within the subject land off Salt Water Crescent, to the satisfaction of the Director of Engineering Services.

Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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

[PCC1185]

24. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for the installation of stormwater quality control devices prior to the issue of a Construction Certificate.

The Legal Point of Discharge for piped stormwater for the development is via connection into the existing field inlet and 450mm dia pipe in the north-western corner of the site.

[PCC1195]

25. The applicant shall prepare a site plan and applicable elevations demonstrating the central letterbox structure is consistent with the Tweed Development Control Plan Section A1. The plans shall be prepared to the satisfaction of Council's General Manager or delegate.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

26. 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]

27. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

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

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

29. 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]

30. 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]

31. 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]

32. 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]

33. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

34. Any imported fill material shall be from an approved source.

[PCW0375]

35. Civil work in accordance with a development consent must not be commenced until:-
- (a) a Construction Certificate for the civil work has been issued in accordance with Councils Development Design and Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, Appendix C, with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
 - C4: Accredited Certifier – Stormwater management facilities construction compliance
 - C6: Accredited Certifier – Subdivision road and drainage construction compliance
 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

36. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

37. 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.

[PCW0985]

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

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

40. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the *National Parks and Wildlife Act 1974*.

[DUR0025]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

42. 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.

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

B. Long term period - the duration.

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

[DUR0215]

43. 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]

44. 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]

45. 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]

46. 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]

47. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

[DUR0795]

48. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house or building is strictly prohibited.

[DUR0815]

49. 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]

50. Provision to be made for the designation of two durable and pervious car wash-down bays. The wash bays must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the areas. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0975]

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

[DUR0985]

52. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of any Occupation Certificate.

[DUR0995]

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

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

[DUR1005]

54. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

55. 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]

56. All landscaping is to comply with the 88B Instrument pertaining to the site.

[DUR1055]

57. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

58. Before the commencement of the access road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

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

[DUR1805]

59. During the construction of the access, tests shall be undertaken by a Registered NATA Geotechnical firm. A report, including copies of test results shall be submitted to the PCA demonstrating;

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

[DUR1825]

60. The proponent must not undertake any work within the public road reserve without giving Council's Engineering and Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

61. 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 Council's Development Design and Construction Specifications prior to any use or occupation of any buildings.

[DUR1875]

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

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

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

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

[DUR1895]

63. Where the kerb or footpath is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb or footpath must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

64. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

65. **Swimming Pools (Building)**

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 and AS 1926.3 -2003. (Refer Council's web site 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]

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

[DUR2085]

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

[DUR2185]

68. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".

[DUR2195]

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

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

70. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

71. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

72. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

73. 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]

74. 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]

75. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

76. 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]

77. 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]

78. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- * 50°C in all other classes of buildings.**

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

79. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter.

[DUR2615]

80. Sedimentation and erosion control measures shall be placed and maintained to the satisfaction of the General Manager.

[DURNS01]

81. Fixed bollards (or equivalent) shall be provided between the proposed car wash bays and Casuarina Way to prevent vehicles from entering or exiting the site in this location.

[DURNS02]

82. Landscaping of the subject site is to be undertaken in accordance with Landscaping Concept Plans (Sheets 1 to 11) dated May 2009 prepared by Bizscapes unless otherwise authorised by the General Manager or his delegate.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

83. Prior to issue of an occupation certificate, all works/actions/inspections and the like required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

84. 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]

- 85. 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 professionally 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]

- 86. 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]

- 87. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.**

[POC0475]

- 88. 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]

- 89. Prior to occupation of any building and prior to the issue of an occupation certificate Council shall be provided with a report by a suitably qualified person which confirms that construction elements utilised in the various buildings comply with the report, Residential Development lot 238 Saltwater Crescent, Kingscliff, Acoustic Design Review, Ron Rumble P/L July 2008.**

[POCNS01]

USE

- 90. 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]

- 91. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act,**

the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.

[USE0155]

92. 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]

93. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

94. All plant and equipment installed or used in or on the premises: -
- (a) Must be maintained in a proper and efficient condition, and
 - (b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

95. All commercial / industrial / residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

96. The premises shall be maintained in a clean and tidy manner.

[USE0965]

97. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

98. **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]

99. Any water stored within on site water storage tanks shall not be utilised for potable purposes. Appropriate signage shall be provided to the satisfaction of the General Manager.

[USENS01]

100. All shared community facilities shall be maintained in a clean and tidy at all times.

[USENS02]

101. Collection points for domestic waste from the development are not to restrict access to the bus stop located on Casuarina Way.

[USENS03]

102. If the subdivision certificate at any stage is to be released prior to construction of the proposed dwellings, an appropriate restriction as to user is to be placed on the title of each lot stating that a dwelling may only be constructed on the lot in accordance with DA08/0911.

[USENS04]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

103. Prior to issue of a subdivision certificate, all works/actions/inspections/ conditions of consent associated with the subdivisional component of the development and the Construction Certificate for Civil Works shall be completed in accordance with those conditions or plans.

[PSC0005]

104. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP6:	17.2 ET @ \$10709 per ET	\$184,194.80
South Kingscliff Water Levy:	17.2 ET @ 248.4 per ET	\$4,272.00
Sewer Kingscliff:	17.6 ET @ \$5146 per ET	\$90,569.60

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

[PSC0165]

105. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

These charges include indexation provided for in the S94 Plan and 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: | |
| 110.5 Trips @ \$955 per Trips | \$105,528 |
| (\$868 base rate + \$87 indexation) | |
| S94 Plan No. 4 | |
| Sector7_4 | |
| (b) Shirewide Library Facilities: | |
| 17 ET @ \$374 per ET | \$6,358 |
| (\$374 base rate + \$0 indexation) | |
| S94 Plan No. 11 | |
| (c) Bus Shelters: | |
| 17 ET @ \$26 per ET | \$442 |
| (\$26 base rate + \$0 indexation) | |

	S94 Plan No. 12	
(d)	Eviron Cemetery:	
	17 ET @ \$131 per ET	\$2,227
	(\$131 base rate + \$0 indexation)	
	S94 Plan No. 13	
(e)	Community Facilities (Tweed Coast - North)	
	17 ET @ \$492 per ET	\$8,364
	(\$492 base rate + \$0 indexation)	
	S94 Plan No. 15	
(f)	Emergency Facilities (Surf Lifesaving):	
	17 ET @ \$200 per ET	\$3,400
	(\$200 base rate + \$0 indexation)	
	S94 Plan No. 16	
(g)	Extensions to Council Administration Offices & Technical Support Facilities	
	17 ET @ \$1996.8 per ET	\$33,945.60
	(\$1996.8 base rate + \$0 indexation)	
	S94 Plan No. 18	
(h)	Cycleways:	
	17 ET @ \$352 per ET	\$5,984
	(\$352 base rate + \$0 indexation)	
	S94 Plan No. 22	
(i)	Regional Open Space (Casual)	
	17 ET @ \$855 per ET	\$14,535
	(\$855 base rate + \$0 indexation)	
	S94 Plan No. 26	
(j)	Regional Open Space (Structured):	
	17 ET @ \$2327 per ET	\$39,559
	(\$2327 base rate + \$0 indexation)	
	S94 Plan No. 26	

[PSC0175]

106. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is

the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

107. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

108. Prior to the issue of a Subdivision Certificate, Works as Executed Plans of the constructed access road and the constructed civil services to all properties associated with the development shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[PSC0735]

109. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions associated with the subdivision component of this Development Consent, including the construction of all services to all properties within the development and the construction of the access road have been complied with.

[PSC0825]

110. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of

carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

111. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

112. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

113. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

114. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate – Roads
- (b) Compliance Certificate – Water Reticulation
- (c) Compliance Certificate – Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

115. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

116. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation (including household connections) shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP – Section A5 – Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005. Location of hydrants to be appropriately marked with standard blue reflectors on road pavement.

A new sewer manhole shall be constructed off the existing sewer main stub in western corner of the site. This manhole will become public infrastructure. All internal sewer infrastructure servicing the development from this manhole will become private infrastructure. An easement for drainage of sewer, benefiting Council must extend a minimum of 1.0 beyond this manhole.

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.

[PSC1115]

117. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

118. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity has been completed; and

- (b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard.**

[PSC1185]

- 119. Prior to the issue of a subdivision certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.**

[PSCNS01]

- 120. Prior to issue of Subdivision Certificate a final Community Management Statement is to be submitted too and approved by Council. The statement is to include provisions for (but not be limited to) the use of the access road by emergency services, bona fide members of the public and public authorities.**

The statement must also provide a Utility Services plan, showing works as executed (WAE).

[PSCNS02]

- 121. The applicant shall formally lodge a S96 application for DA02/1422 to amend and update the approved Staging Plan for SALT, prior to the release of a subdivision certificate for Stage 3.**

[PSCNS03]

REPORT:

Applicant: Newton Denny Chapelle
Owner: South Kingscliff Developments Pty Ltd
Location: Lot 86 DP 1066472; Lot 238 DP 1070792, Salt Water Crescent and No. 41 Elliston Street, Kingscliff
Zoning: 2(f) Tourism
Cost: \$3,726,000

BACKGROUND:

History

DA02/1422 was the initial development application for Salt, which was granted consent on 24 April 2003 for a 473 lot staged subdivision of Lot 907 DP 1070791, with several subsequent amendments. The approved master plan for Salt involved a variety of development from single dwelling sites to multi dwelling housing and tourist resorts. This application relates to Stage 3 of Salt, which was originally approved under the concept master plan as a large vacant allotment.

Stage 3 is located at the northern end of the Salt development, on the eastern side of Casuarina Way, adjacent to an existing open space area to the north and south. Stage 2 is to the west and Stage 1A2 is to the east. Some of Stage 3 adjacent to Salt Water Crescent has previously been developed as individual residential lots.

The subject site is irregular in shape and has a western frontage to Casuarina Way, a northern frontage to a public reserve, an eastern frontage to Salt Water Crescent (by way only of access handle) and a southern frontage to a public reserve. The parcel of land is presently vacant with a low cut grass cover.

Prior to the application being lodged in July 2008, the developers met with Council officers at the Development Assessment Panel meeting held on Wednesday 12 March 2008.

The original proposal involved the development of 16 dwellings within a community title subdivision scheme.

Development of the residue allotment in Stage 3 of Salt involves an eighteen (18) lot residential subdivision, with lots ranging from 199m² up to 404m² and includes common property in the form of an internal roadway and community building. Access to the site is through an access handle with frontage onto Salt Water Crescent. No vehicular access for individual allotments is proposed to Casuarina Way.

The Subject Site

The subject land is described as Lot 238 DP 1070792 Salt Water Crescent, Kingscliff and has a total area of 6420m² (0.642 hectare). Extension of a pathway into Lot 86 DP 1066472 (public reserve) is also included in the proposal.

The site is an irregular-shaped allotment with a frontage of 9m (access handle) to Salt Water Crescent and a secondary frontage of 125.45m to Casuarina Way. The site has a moderate slope of 6.25 – 8.5%, with a gentle fall from the eastern to the western boundary. The average depth of the site is 42m. Development is proposed for approximately 59% of the site. Vehicular access to the site is from Salt Water Crescent only. All services are available to the site. Provision of some on-site stormwater detention is required.

The site is located in an area generally characterised as residential and adjoins public reserves to the north and south. Surrounding development comprises medium density residential and tourist uses. Two-storey detached dwellings are located on the eastern boundary of the subject site with frontage to Salt Water Crescent.

The Proposed Development

The applicant seeks consent for 18 residential dwellings (13x3 bedrooms and 5x4 bedrooms), a community building and a 19 lot staged community title subdivision (inclusive of common lot):

- Stage 1 comprises of the community building, all civil works, landscape works and the registration of the proposed subdivision (community title)
- Remaining Stages (number unknown) comprise of the development of the approved housing.

The applicant also proposes to undertake continuation of a pedestrian pathway within an adjoining lot to the site's north, Lot 86 DP 1066472.

The proposal includes:

- Associated swimming pools
- On-site car parking and driveways with permeable paving
- Earthworks / Civil works
- Landscaping and stormwater controls
- Pathways and connections to public reserves with permeable paving
- Boundary and lot perimeter fencing
- A community facility building with open shared area and cooking/office facilities (this building will be used as a site office until construction of the dwellings is completed).

As shown in the architectural plans, the dwellings have been designed to include a variety of individual types through the nine (9) design models. The dwellings provide opportunities for living areas at either the ground or first floor levels and whilst adding variety, maintain a primary, integrated architectural theme to the building facades. External colours proposed provide differing neutral shades and tones that co-ordinate well with existing surrounding residential development.

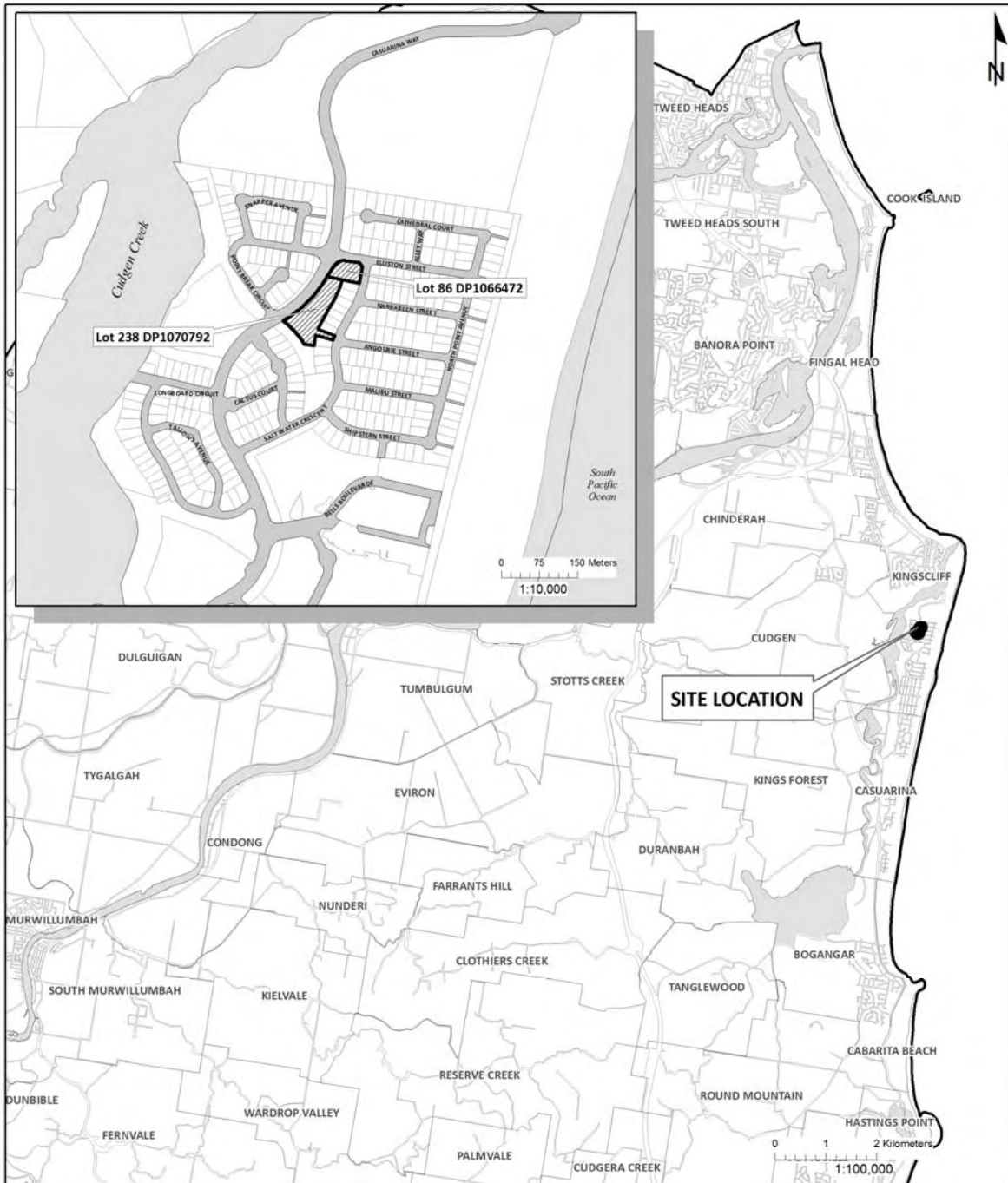
Public Submissions

The proposed development did not attract any letters of support or objection following exhibition of the application.

Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding residential development, amenity issues and an assessment against SEPP 1 and Schedule 3 of the Tweed LEP 2000 in particular, the proposed staged integrated housing development comprising 18 residential dwellings, community building, car parking, 19 lot community title subdivision (inclusive of common lot) with pathway to public open space is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

SITE DIAGRAM:



LEGEND

Lot 86 DP 1066472; Lot 238 DP 1070792
Salt Water Crescent & No. 41 Elliston Street, Kingscliff

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 30 September, 2009

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Cadastre 30 September, 2009
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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Tweed Shire Council
 PO Box 816, Murwillumbah NSW 2484
 Tel: (02) 6670 2409
 Fax: (02) 6670 2483

DEVELOPMENT PLANS:



DESIGN HOMES
ansteyhomes.com.au Ph: 0256 80333 - Lic No: 17221C
REVISION - 22 04 09
1. Amendments as requested by TSC



Proposed Community Title Residential Development
SALT 3 Pty Ltd
Lot No: 238 DP No: 1070792
Salt Water Crescent
KINGSCLIFF
COMMUNITY LOTS
DATE 03 / 06 / 08 SCALE 1 : 400

LOT 238 DP 1070792 Site Area 6420 m²



Lot Boundaries Colour Coded as detailed and Lot areas as indicated

Architectural Commentary

The Saltspay development has been designed for those downsizing to Salt by the Sea in mind, with 18 freestanding homes offering private courtyards, with a lush, tropical and harmonious landscape, that overlays the entire site, melting into the surrounding parklands.

Living area orientation has been maximised to capture northern solar access, mountain views in the northwest to southwest and predominant breezes from the east.

A community facility has been incorporated to encourage share facilities within the complex and pathways link walking access to the adjacent parks to the north and south, with an easy stroll to the town centre.....lifestyle by design.

SALT WATER CRESCENT

2008 02 - 01b
DESIGNED IN ACCORDANCE WITH THE BCA 2005

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ANSTEY
DESIGNER ARCHITECTS

ansteydesign.com - Ph: 0266 809233 - LIC No: 1372416

REVISION - 22 04 09

1. Amendments as requested by TSC



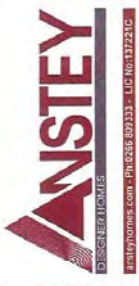
Proposed Community Title Residential Development
SALT 3 Pty Ltd

Lot No: 238 DP No: 1070792
Salt Water Crescent
KINGSCLIFF
SITE PLAN
GROUND
DATE 03 / 06 / 08 SCALE 1 : 400

2008 02 - 01c
DESIGNED IN ACCORDANCE WITH THE BCA 2005

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anstey design



REVISION - 22-04-08 30-07-09
 1. Amendments as requested by TSC
 2. 11

1800h x 6m aluminum permeable fence bays to each lot, north approved solid panel fencing adjoining Refer sheet 01/18
 1200w corrugated access path to park in accordance with SD013 (TSC)



1500h aluminum permeable fence and gates to Casuarina Way - Lots 7 - 13 Refer Sheet 01/18

1200w corrugated access path for Bays to street in accordance with SD013 (TSC)

1500h solid panel/pier fence to Casuarina Way - Lots 6 & 14 Refer Sheet 01/18

1200w corrugated access path for Bays to street in accordance with SD013 (TSC)

Existing Park landscape - Tuckeroo, Tea Trees, Lamandra

1800h x 6m aluminum permeable fence bays to each lot, south approved solid panel fencing adjoining Refer sheet 01/18

1500h aluminum permeable fence and gates to Casuarina Way - Lots 7 - 13 Refer Sheet 01/18

1200w corrugated access path for Bays to street in accordance with SD013 (TSC)

1500h solid panel/pier fence to Casuarina Way - Lots 6 & 14 Refer Sheet 01/18

1200w corrugated access path for Bays to street in accordance with SD013 (TSC)

Proposed Community Title Residential Development
SALT 3 Pty Ltd
 Lot No: 238 DP No: 1070792
Salt Water Crescent
KINGSCLIFF
CONCEPT LANDSCAPE PLAN
 DATE 03/06/08 SCALE 1:400

2008 02 - 01h
 DESIGNED IN ACCORDANCE WITH THE BCA 2003

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PLANT SCHEDULE

TREES (to 10m)	SHRUBS (1 - 2m)
A - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	A - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
B - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	B - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
C - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	C - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
D - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	D - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
E - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	E - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
F - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	F - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
G - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	G - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
H - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	H - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
I - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	I - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
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P - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	P - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
Q - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	Q - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
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S - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	S - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
T - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	T - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
U - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	U - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
V - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	V - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
W - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	W - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
X - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	X - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
Y - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	Y - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)
Z - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)	Z - Section from: Myrsine, Gorse, Rose, Borage, Blackberry, Black Cherry, Riberry, (G2 Golden Feeds), Brown Kunzea, (Brown Kunzea)

LANDSCAPE DESIGN (To be read in conjunction with Design by "Biscapies")

The design intent of coastal areas seeks to reflect the natural pattern of coastal vegetation found in local street and adjacent park, planting complemented with the objective of the landscape treatment is to soften the impact of the built form of the development and to blend with the overall landscaping of the existing park. Proposed site layout, available area with suitable planting products. Areas within deep soil zones, common plants can wash and oxidized areas. Streetscape landscape is to be in accordance with the design intent of coastal areas. Generally plants shall be a selection from: Coastal, Riparian, Indigenous and Fig. Rainforest Species 6-10m will be used to shade open areas and shall be integrated with Screen Planting. Screen Planting shall be: Mulched planting beds: 600 x 1000mm. Indigenous and low water usage plants.

Driveway strip planting - syzigium selection at 2m centres - lomandra longitudinal/garden bed

Driveway strip planting - syzigium selection at 2m centres - lomandra longitudinal/garden bed

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Driveway strip planting - syzigium selection at 2m centres - lomandra longitudinal/garden bed

ansteys
design



ansteys.com.au Ph: 06 68 80333 - Lic No: 13721C
 REVISION - 22 04 09
 1. Amendments as requested by TSC



lot 14 Panel/PIER solid fences 1300-1600h
 lot 7 Panel/PIER solid fence to 1500h
 Fixed bollards to Car bays
 125.45m
 Street Elevation - Casuarina Way SCALE 1 : 400



Typical Panel /PIER Fence to 1300-1600h
 Detail lot 14 1200h over 0-400h subwall
 Refer Lot 14 Elevations & Sections 07c-e
 SCALE 1:200



Typical Permeable Aluminium Fence to 1500h
 Detail lot 9,10
 SCALE 1:200



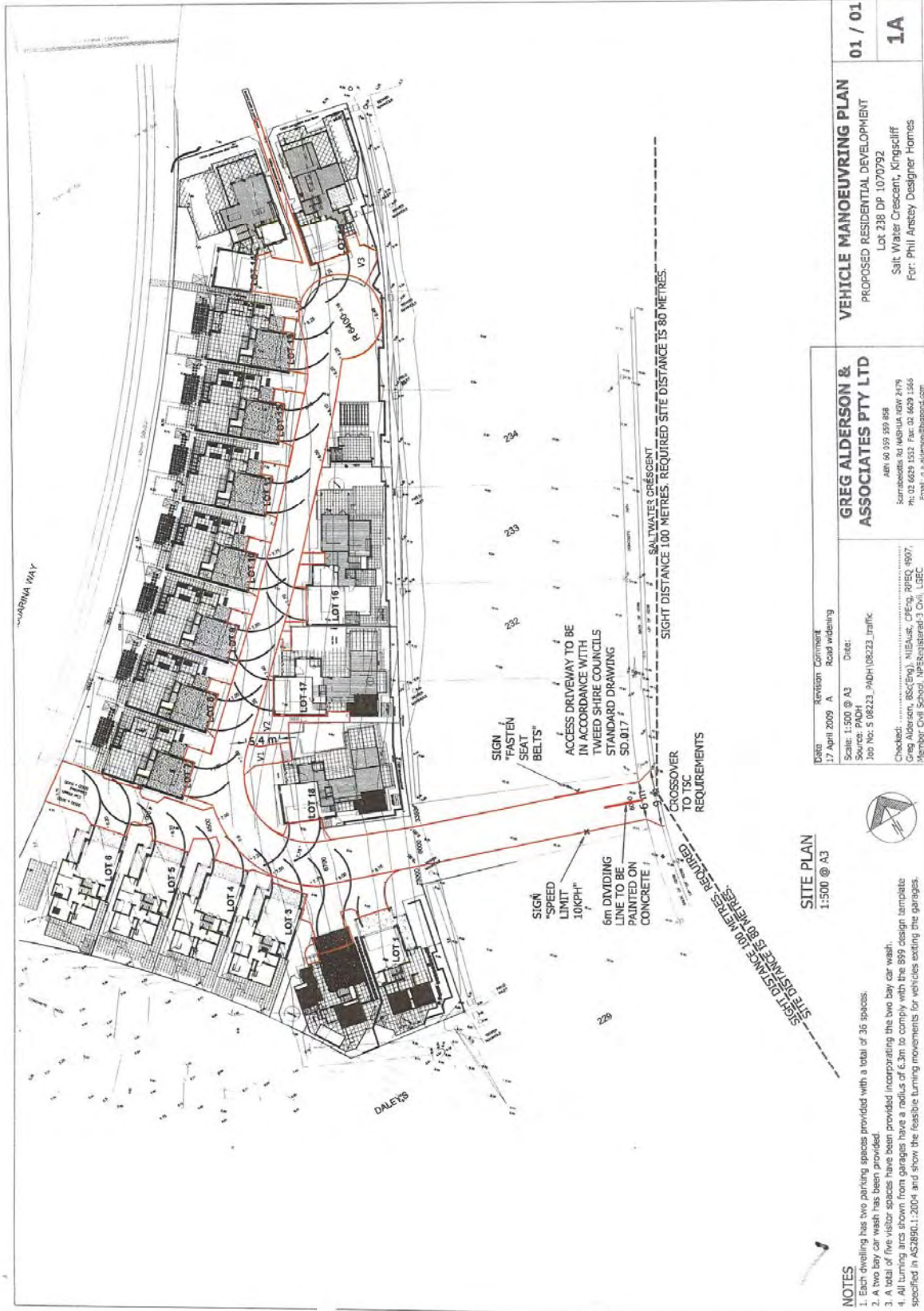
Typical Fence Interaction
 Aluminium to Solid Panel/PIER
 1500 high

Proposed Community Title
 Residential Development
SALT 3 Pty Ltd
 Lot No:238 DP No: 1070792
 Salt Water Crescent
 KINGSCLIFF
STREETSCAPE

DATE 03 / 06 / 08 SCALE 1 : 200/400

2008 02 - 01h/s
 DESIGNED IN ACCORDANCE WITH THE BCA 2005

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- NOTES**
1. Each dwelling has two parking spaces provided with a total of 36 spaces.
 2. A two bay car wash has been provided.
 3. A total of five visitor spaces have been provided incorporating the two bay car wash.
 4. All turning arcs shown from garages have a radius of 6.3m to comply with the 999 design template specified in AS2895.1:2004 and show the feasible turning movements for vehicles exiting the garages.

SITE PLAN
1:500 @ A3



Date: 17 April 2009
Revision: A
Comment: Road widening

Scale: 1:500 @ A3
Source: P&H
Job No: 5 08223_P&H/08223_traffic

Checked by: Greg Alderson, BSc(Eng), NIEAUS, CPEng, RPEQ, 4907, Member Civil School, NP&R/Registered J Civil, LSECC
Email: g.alderson@pandh.com.au

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VEHICLE MANOEUVRING PLAN
PROPOSED RESIDENTIAL DEVELOPMENT

Lot 238 DP 1070792
Salt Water Crescent, Kingscliff
For: Phil Anstey Designer Homes

01 / 01

1A

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

Clause 8 - Zone objectives

The site is zoned 2(f) Tourism as per the TLEP. Primary objectives for the zone relate to the encouragement of tourist development and the 'best-use' development of prime sites so that their economic and employment generating use for the area is fulfilled.

The secondary object of the zone permits high quality residential development that is supportive of the primary intent of this zone and that is consistent with and enhances the proposed tourist resort character in terms of scale, design and management structure.

The proposed residential development is consistent with the applicable secondary objective of the zone in that it represents high quality development of appropriate scale and character to that of the locality.

The subject site was earmarked for medium density development (number of units anticipated is not clear within the staging plan) within the Salt Masterplan.

The proposed development is permissible within the zone. It is noted that this zone's prohibition of dwelling houses in Item 4 does not apply as the development by definition is regarded as an integrated housing development, as regulated by Schedule 3.

Clause 15 - Essential Services

Water supply and sewer system are available within the area. Reticulated water supply and sewerage is to be extended to all lots.

Clause 16 - Height of Building

According to subclause (4) of Clause 16, this clause does not apply to the land to which Clause 53B applies.

Clause 17 - Social Impact Assessment

Given the minor residential nature of the proposal a Social Impact Assessment is not considered necessary.

Clause 35 - Acid Sulfate Soils

The site is identified as having class 4 acid sulfate soils. The site has been the subject of major disturbance and earthworks for construction of the original subdivision. Any ASS which may have been present were required to be identified and addressed at the original subdivision earthworks stage.

Other Specific Clauses

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent.

Clause 34 – Flooding

The site is identified as being flood affected the adopted minimum floor level for the site is RL 2.83m AHD. Due to previous earthworks undertaken in conjunction with the earthworks for the Salt subdivision (DA02/1422), the lowest natural ground surface of the site is approximately RL 5.25m AHD, which is above the minimum floor level.

Clause 53B – Height restrictions – Coast Road, South Kingscliff

Clause 53B relates to height restrictions for the Coast Road at South Kingscliff within which the subject site is located. This clause imposes a maximum two-storey height limit for all single dwelling houses, integrated housing or multi-dwelling housing. It is noted each dwelling will be on a separate community lot. The development is consistent with this height limit being a maximum of two storeys.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

Site erosion will be minimised throughout the construction phase and enforced via conditions of consent. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size for a residential subdivision as contained within Schedule 3 (subclause 2) of the Tweed LEP 2000.

The applicant contends that *the proposed development raises no matters of adverse significance in local, regional or state terms and no public benefit will result from the maintenance of the subject development standard in this case.*

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

In support of the proposed variation, the applicant has provided the following:

The upholding of the prescribed 450m² minimum lot size is considered to be both unreasonable and unnecessary in this instance based on the following grounds:

- *The subject land permits integrated housing for which the proposal satisfies the prescribed density under the Tweed DCP 2000 – Section A1*
- *The proposal is consistent with the land use definition for integrated housing and permissible under the Tweed LEP 2000*
- *The proposed lots reflect the proposed built form and as such are compatible with the strategic planning for the site and other integrated housing in the surrounding Salt Estate*
- *The proposal provides an acceptable form of housing which adds to the variety of housing choice within the Salt Estate and wider community*
- *The property is well placed in location relative to key community, educational and commercial services*

- *The subdivision will not result in any irreversible environmental impact*
- *The proposal is consistent with the provisions of Clause 43 of the NCREP (Deemed SEPP) in so far that it maximises the density without affecting the environmental features of the site.*

The application is consistent with the objectives of the Schedule 3 development standard in that:

- *The proposed development seeks to meet the need for housing in Tweed by providing a variety in housing choice in an area close to existing services and infrastructure.*
- *The proposed architectural design will provide a high quality residential development which compliments the existing retail, service and tourist facilities located within the immediate surrounding locality.*
- *The community title scheme associated with the development provides a tourist like structure to the multi dwellings, through the managed neighbourhood statement and community facilities.*
- *The proposed landscaping will contribute to the visual amenity of the locality through the use of landscape species, colours and shapes commonly found in the natural landscape within the coastal environment of Salt and will therefore contribute positively to the quality of the residential development.*

The applicant's entire submission is attached to this report.

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

- 1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective of Schedule 3 of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum allotment size. The objectives of Schedule 3 provide for the control of density in the subject land known as Portions 194, 301 and 312 Kings Beach, South Kingscliff through the use of the development standard.

The proposal is of a high quality design that is consistent with surrounding development. It does not compromising density controls within Schedule 3.

The applicant's submission in relation to being well founded is supported.

- 2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*; and**

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for a community title subdivision that incorporates a modern, energy efficient residential development with access to utility services and within close proximity to community facilities.

It is not considered that the granting of this application would hinder the attainment of such objectives.

- 3. It is also important to consider:**
 - a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
 - b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Schedule 3 of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this case as it would not allow such dwelling diversity that is warranted in a coastal area frequented as a tourist destination. The streetscape and amenity of the locality will be enhanced by the modern, energy efficient dwelling and infrastructure designs which in turn may lead to a resource-related wider public benefit.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

It is recommended that Council assume the Director's concurrence.

SEPP No. 55 - Remediation of Land

Contaminated land investigations were dealt with under the subdivision DA02/1422 as sand mining residues required remediation. The Cardno

surface radiation validation statement dated 22 June 2008 covered the subject area. As such, there are no contamination issues in relation to the subject land.

SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration. The proposal is consistent with the aims of the SEPP. Public access to the coastal foreshore will not be affected as a result of the proposal.

The protection of cultural heritage has been addressed via a condition of consent, in the event items of cultural significance are discovered all site works shall cease immediately.

The development is suitable for the location in regards to bulk, scale and size. This matter is discussed in further detail later within the A1 assessment associated with this report.

The proposed development is not considered to result in adverse cumulative impacts, which is evident throughout this assessment. The proposal is regarded as being energy efficient.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX certificate demonstrating the proposal meets the energy target score. The energy saving measures such as water tanks are evident on the plans. The proposal is therefore consistent with the SEPP.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

Draft TLEP amendment numbers 20, 21, 70 and 76 apply to the subject site. As per advice from the Department of Planning (Planning Circular 08-013) draft environmental planning instruments exhibited prior to 1 March 2006 and have not been gazetted are no longer required to be taken into consideration by consent authorities when determining development applications under section 79C of the EPA Act 1979. Therefore draft LEP amendment numbers 20 and 21 have not been considered in this assessment. Amendment numbers 70 and 76 are not relevant to the site.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A1-Residential and Tourist Development Code

(Adopted 22 April 2008)

Part B - Dual Occupancy Housing, Granny Flats, Town Houses and Row Houses

The proposed development contains a variety of two-storey dwelling house designs on individual community title lots. Being an integrated housing development, the proposal is more closely aligned with a 'townhouse' development. Townhouse development controls are more stringent than detached dwelling design controls.

Architectural plans supplied for consideration of this application number dwelling lots from 1 to 18 with indication of common property. A subdivision plan has also been provided that allocates the common property as 'Lot 1' and subsequently numbers the dwelling lots from 2 to 19. This assessment refers to dwelling lots 1 to 18 with associated common land, as outlined in the plans recommended for approval.

Variations to design controls are sought in relation to deep soil zones and front fencing. Consideration of the requested variations is included in the following assessment.

Applicable design controls are addressed as follows:

Building Types

Suitable Locations for Town Housing

Town housing is permissible in the 2(f) zone. Ground floors of the proposed dwellings contain a habitable room such as bedroom, study or lounge room and an adjacent external living area.

Dwellings on Lots 6 to 14 are not designed so that front door access is visible to *the public road*. The front door is situated within the development site via an internal driveway and is visible from the internal road. Pedestrian access points into the development site are highlighted along the Casuarina Way frontage. The private road can be accessed by the general public if necessary (eg. visitors) and the positioning of front doors is deemed appropriate in this instance (community title subdivision).

The proposal is regarded as being a quality design which reflects the coastal environment.

Public Domain Amenity

Streetscape

The general locality is relatively new. Any existing development has had regard to the future desired character in relation to design, setbacks, level changes and topographic setting. The proposed development is consistent with outcomes achieved with recently established development in the area.

A 1.5m permeable aluminium fence is proposed along the Casuarina Way frontage adjoining a 3.6m wide buffer on the council verge. A 1.8m permeable aluminium fence is proposed to the park areas to the north and south of the

site. Lots 6 and 14 have solid panel fencing (from 1.3 – 1.6m high) facing Casuarina Way for privacy and acoustic reasons. There are no 'older and well-established' garden landscapes in the area. They are all relatively new developments. However, the landscape theme chosen for this development is consistent with the seaside, rainforest designs found in the Salt subdivision. No significant vegetation exists on-site other than grasses. Proposed local native landscaping includes a variety of species and heights.

The driveway from Saltwater Crescent is the only driveway which will be visible from a public road. The internal driveway will be screened via dwellings and landscaping.

Facades visible from Casuarina Way are well designed, particularly considering this is the western elevation. Treatments to Casuarina Way include windows and private open space areas. Gates are situated along Casuarina Way into private dwellings on Lots 6 to 14.

External colours proposed are a variety of neutral tones for roofing, walls, eaves, downpipes, garage doors and window/door frames (eg. Dune, Paperbark and Surfmist). The applicant has provided coloured representations of each individual dwelling design (using an approximation of the proposed neutral colours). There is variety in the combination of these colours which contributes to the variety in dwelling styles. The applicant has provided an artist's impression of the overall development from Casuarina Way however the colours used in this elevation are not a reflection of the colour palette proposed. The design drawings provided in the original plans of each dwelling type reflect the suitable colour palette chosen for each type of dwelling more accurately.

Public Views and Vistas

There are no surrounding heritage items or landmarks within close proximity of the site. The site is within 200m of Cudgen Creek. The development is two storeys in height and is scattered throughout the site, by way of the internal road and landscaped areas. The 6m setback from the Casuarina Way boundary to the wall of the dwellings enables the view corridor along this frontage to be retained.

Site Configuration

Development Lots

Subdivision layouts have been provided in the application details. The lots range from 199m² to 404m². Due to the enabling clause in the LEP, the lot sizes for a community title subdivision/ integrated housing development in the 2(f) zone may be less than 450m² if a SEPP 1 objection to vary the Schedule 3 standard is lodged, assessed and approved accordingly.

Deep Soil Zones

Variation sought: applicant provided sketches of compliant plans

The subject site is irregular in shape. The applicant has proposed to use the total area required for rear DSZs as per the design control. However the configuration and locations of the DSZs are subject to a variation assessment.

The DSZs are not allocated to each 'dwelling' but are concentrated along the Casuarina Way frontage to provide screening and separation from this road. These DSZ's will join with any existing or future landscaping occurring on the 3.6m wide council verge. The private open space areas of lots 6 to 14 are situated along this frontage. Secondary DSZs are provided on all lots, particularly within the front of Lot 18 and within the communal area adjacent to the community facility. However, The rear DSZs for lots 1-5, 15-18 do not meet minimum dimensions. Detailed landscaping plans have been provided for each dwelling and the sides of the communal driveway into the development.

Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 5.5m. Greater than 8m may be provided if desirable.

Requirements for the whole of the site are calculated as such:

Average width = $125.450\text{m} \times 0.3 = 38\text{m}$

Minimum depth = $42\text{m} \times 0.18 = 7.56\text{m}$

Total area = 287.28m^2

The rear DSZ takes up the whole of the 125.45m on the Casuarina Way frontage minus 8m for emergency vehicle access. The dwellings have a consistent setback of 6m from that boundary. There are permeable pavers and small plunge pools within the DSZ for lots 7 to 13 and larger pools associated with lots 6 and 14.

In total, 501m^2 is provided along the Casuarina Way frontage which exceeds the requirement (by strict compliance with controls) by 213.72m^2 .

The front boundary is actually the boundary that abuts existing development facing Salt Water Crescent. It is practically considered to be a side boundary or secondary rear DSZ's for several lots. However, individual allotments meet the requirement of the control for front DSZs and are adequately landscaped to face the front of the internal road.

In this instance the variation to Deep Soil Zones is supported:

- The applicant has provided an additional 213.72m^2 of DSZ than the control requires
- The DSZs are integrated into the design of the 'dwellings' and therefore become a dual use area as private open space/DSZ area
- Compliant plans prepared by the applicant result in compressed development within the centre of the site if DSZs are concentrated along the Casuarina Way frontage and rear of the site being Saltwater

Crescent. This will further result in an extension to the internal road in turn, increasing the site's impermeability and reducing physical separation and privacy between residents which is not desirable

- The applicant had also highlighted concerns with achieving the anticipated lot yield. To achieve a high development yield the applicant would have to seek a 3 storey proposal which is not supported by Clause 53B
- Detailed landscaping plans have been provided for all dwelling sites. They further strengthen the suitability of the variation and enhance the development overall.

Impermeable Site Area

The maximum area for impervious surfaces is 60% of the allotment area of 6420m² which is 3,852m². The applicant's calculations indicate the development proposes 3,812.5sq.m of impervious surfaces (or 59%) which is consistent with the design control. The applicant has used a range of treatments to reduce the site's impermeability including porous paving, grid paving and landscaped areas.

External Living Areas

External living areas proposed on the ground floor are located adjacent to private open space in order to extend the development's useable living area.

Given the smaller allotment sizes proposed, the ground level external living areas are within 4m from the common side boundaries (but not located closer than 900mm from the side boundary). The areas are sufficiently screened with vegetation and dividing fences and as such, meet the requirement of this control.

Above Ground External Living Spaces, Balconies and Terraces

The above ground external living spaces are consistent with the above control as they are consistent with the minimum area required and are situated immediately adjacent to internal living areas. The configuration of each balcony is functional for outdoor recreation.

The upper floor balcony for dwelling type A (for Lots 7, 8, 9, 10, 11, 12 and 13) is 1.89m x 2.21m = 4.1769m². However this balcony is situated off a minor room in each instance. The primary external living areas for this dwelling type are located adjacent to the main living areas on the ground floor.

Landscaping

Detailed landscaping plans indicate sufficient plantings across the whole development in addition to the nominated rear DSZ.

Each dwelling lot has front, side and rear landscaping. The detailed landscaping plan provides for functional and aesthetic external spaces within

each lot. The ground level patio areas are integrated with the deep soil zones and landscaped areas.

Common areas are proposed to be landscaped generously with local native species. A '750m landscaped garden wall' is proposed along the rear of lots 1 and 15 – 18 and the community facility. It appears that landscaping will be established in front of retaining walls.

All controls are considered to be met. Each dwelling has a 900mm wide pathway incorporated into the design.

Topography, Cut and Fill

Council's Development Engineer reviewed the proposal with regards to cut and fill. The officer advised the site has a moderate slope of 6.25 – 8.5% to the west. The highest part of the site is approximately RL 9.5m AHD (eastern boundary) with the lowest point of around RL 5.5m AHD (near Casuarina Way). The proposal includes several small retaining walls all less than 1m including a wall proposed at the rear of lots 1 and 15-18 and the community building.

Cut and fill contour plans were requested however after reviewing these plans, the officer advised the cut and fill was minor and no further consideration was necessary. Heavy haulage as per TRCP is therefore not required.

The applicant advises the allotment's runoff can be dispersed onto grassed and landscaped areas of the allotment as well as into onsite stormwater detention tanks. Each dwelling has a 3000 litre rainwater tank to collect roof water and reuse it according to BASIX requirements.

Setbacks

Front Setbacks (Building lines)

The applicant has taken Salt Water Crescent to be the primary street frontage. The setback from this street is 12.35m along the entrance driveway due to the site configuration. The secondary setback from Casuarina Way is 6m to the wall of the dwellings. This setback is proposed to be landscaped and includes the DSZ areas. The adjoining sites are open space/parks and are undeveloped. The proposed setbacks to the streets are deemed to be acceptable.

Side Setbacks

The setbacks for the northern and southern boundaries are regarded as the development's side setbacks. The setback proposed for the northern side is 3m. The setback proposed for the southern side ranges from 3.150m to 3.850m.

Dwelling types DR, D2, A1, A2, E1, E2, C, B3 and B2 for Lots 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 do not contain primary living room windows

that face the side boundaries. Dwelling type D for Lots 3-5 contains a primary dining room window within 4m from the boundary. This is regarded as being consistent with the DCP as dining rooms are separately listed (from living room) in the definition for 'habitable'.

Rear Setbacks

The site's configuration does not lend itself to having a 'rear' boundary. However for thoroughness sake, the setback from the eastern boundary (Casuarina Way) could be regarded as the 'rear' of the site, this setback is required to be a minimum of 3m and is actually 6m.

Car Parking and Access

Carparking Generally

Tweed Shire Development Control Plan A2 requires 1 on-site car space per dwelling plus the provision for driveway parking of another vehicle. Double garages are proposed for all dwellings. A visitor space is required for each 4 units.

Rates for Integrated Housing	Proposed
1 space per dwelling plus provision for driveway parking of another vehicle, Visitor parking at ¼ unit	Each dwelling is provided with a double garage totalling 36 spaces, 3 visitor car spaces and 1 disabled car space. Stacked parking is available on several Lots being 1, 4, 5, 6 and 14. A car wash bay is also proposed
Resident: 18 car spaces Informal: 18 stacked spaces Visitor: 4.5 spaces Total: 41 spaces	Resident: 36 spaces (double garages) Informal: 5 spaces Visitor: 4 spaces Car wash bay: 1 space Total: 45 spaces (excluding car wash bay)

Given the design of the development, stacked driveway parking is not possible throughout the site. It is noted the applicant has shown some stacked parking within the site however stacked parking on other lots are likely to obstruct internal vehicular movements. In any case, the informal stacked spaces have been incorporated into the resident spaces by way of double garages.

The configuration of the proposed car parking is considered to be acceptable. The applicant has provided a total of 45 car spaces/informal spaces on-site which is beyond that which was required.

Garages

The garages are not visible nor are they accessed from public roads. All garages are orientated towards the centre of the site and are accessed via an internal driveway. The proposal is consistent with this control. Materials proposed are compatible with those used for the main dwelling.

Building Footprint and Attics, Orientation and Separation

Building Footprint and Attics

This is not applicable given the orientation of the development is north-east.

Building Orientation

The applicant reduced the height of the fencing along the Casuarina Way frontage to 1.5m (from 1.8m) and included pedestrian entries into the private open space of each dwelling.

Living rooms and bedrooms are orientated towards the front and rear of the dwellings and the bathrooms, laundries and similar rooms are situated along the side boundaries.

Primary living areas are orientated north where possible to maximise access to sunlight.

Building Separation

All primary openings of living rooms are orientated towards the internal road or to Casuarina Way rather than towards the proposed dwellings or adjoining development's to the site's east.

The proposal is consistent with the required 2m separation distance between the windows/doors of non-habitable rooms (on any level of the buildings).

Height

Building Height

The maximum overall building height permitted is 9m. The applicant proposes a maximum height of 7.4m.

The maximum wall plate height permitted is 8.5m. The applicant proposes a height of 5.5m.

Ceiling Height

It is encouraged to provide minimum ceiling heights of 2.7m (minimum) from the finished floor level to finished ceiling level for habitable rooms. The proposal is consistent with the control at 2.4m - 2.7m for both ground and upper levels.

Building Amenity

Sunlight Access

The dwellings' private open space areas have been orientated so as to have a northerly aspect where possible.

Lots 6-14 are orientated north. The setback to the wall of these dwellings is 6m. Lot 15 is setback 4m from the site's northern boundary. These dwellings, their primary private open space areas and habitable rooms will receive a minimum of 3 hours of sunlight during 9am-3pm on June 21.

The shadow plan provided for June 21 shows the adjoining dwellings to the site's east will be free of shadow at 1pm. Therefore adjoining windows and private open space areas will enjoy sunlight between at least 9am and 1pm.

Visual Privacy

Balconies located off living areas have been designed to minimise overlooking. The balconies are generally located to face towards the internal road of the site, on the opposite elevation of the adjoining internal site's ground level (primary) private open space.

Lots 15 to 18 adjoin existing residential development to the site's east. These dwellings do not incorporate balconies/decks on the upper levels, thus reducing overlooking potential. Windows of primary living areas are also orientated away from this boundary.

The dwellings have been designed to maintain privacy within the development site itself and adjoining developments to the site's east (Salt Water Crescent). Each lot will be separated by a future shared boundary fence (not part of this DA). The upper levels which adjoin dwellings contain very few windows (bathroom, WC and minor bedroom windows) to reduce the potential of overlooking into neighbours private open space, living room windows and the like.

Acoustic Privacy

Dwellings facing Casuarina Way are considered to be setback a sufficient distance to mitigate any issues in relation to acoustic privacy.

Conditions have been placed on the development consent in relation to the operation of noise generating equipment.

View Sharing

There is no issue in relation to view sharing.

Natural Ventilation

The dwellings contain operable windows to habitable rooms and other non-habitable rooms. Each dwelling contains windows and openings to optimise breezes and to encourage cross-ventilation.

External Building Elements

Side and rear fences

The side fences proposed on the north and southern boundaries are 1.8m high aluminium fences. An existing solid panel fence (approximately 1.5m high) adjoins the site's northern boundary within the adjoining park (Lot 86 DP 1066472). This will act as a buffer between the park and private space.

Front fences

Variation sought: Casuarina Way (secondary frontage)

A 1.5m high black aluminium fence is proposed along the Casuarina Way frontage. This fencing is consistent with the existing fencing along Casuarina Way within Salt. The overall height of the fencing has been amended since the lodgement of the DA, negotiations with the applicant has resulted in a reduced overall height from 1.8m to 1.5m

Lots 6 and 14 will be a combination of aluminium and rendered fencing a maximum of 1.6m high. The solid section of the fence does not have an openness ratio of 60%. A review of the streetscape plan details this section of the fence to be a typical panel/pier fence ranging from 1.3m to 1.6m. Lot 14 is proposed to have a maximum sub-floor of 400mm high with a 1.2m high panel above (the solid/masonry component).

The solid component is intended to reinforce the development along the Casuarina Way frontage. Further Lots 6 and 14 adjoin public parks immediately to the north and south of the site. Also surrounding the site's northern, western and southern boundaries are public pathways. The solid fence and setback of the dwellings will act as a privacy buffer between the public and private space.

Roofs, Dormers and Skylights

The roof designs are consistent with the above controls. All roofs contain articulation, eaves, compatible colours to those used on the dwelling and the roof height is in proportion to the wall heights. The roofs are not trafficable.

Elevations Visible from the Public Domain

The section of fencing fronting lots 7 to 13 contain pedestrian entries to those dwellings which are evident along Casuarina Way.

Entry into each dwelling is clearly defined through the use of covered entry ways, materials and finishes.

Due to the irregular shape of the site and the design of the development, none of the dwellings have dual street frontage.

The indicative landscaping proposed along the Casuarina Way frontage is of such a standard and quality as would be expected of a primary street frontage. This is attributed to the orientation of the dwelling's private open space.

Minor Elements

A communal BBQ area is proposed within the community building. The BBQ is presumably within the footprint of the community building or within this allotment. To ensure the BBQ complies with the DCP, this will be reinforced via a condition.

Drying areas are shown on some of the design models within the ground level private open space areas adjoining Casuarina Way (secondary street frontage), in front of the dwelling houses. The other models do not label a space for clothes drying. These areas are proposed to be screened with vegetation as they are the primary private open space areas for the dwellings and will therefore not be readily visible.

The remaining dwellings informal/formal drying areas are situated along the northern and southern boundaries and the eastern boundary within the private open space areas. These areas are landscaped and as such the areas likely to be used as drying areas will not be readily visible from adjoining properties/parks.

The applicant has advised central letterbox structure is proposed which satisfies the above controls. The letterbox structure will be required to be consistent with the design controls. The central letterbox structure will be conditioned as it does not appear on the landscaping plan as advised.

Outdoor security lighting is to be located and designed so as to avoid light spill into the living and sleeping areas of the subject development and to confine light spill to the source property. This matter will be enforced via a condition of consent.

Building Performance

Energy Efficiency

The applicant has provided a BASIX certificate which demonstrates the proposal achieves the minimum targets for water, thermal comfort and energy (Certificate No. 199726M).

Floor Space Ratio

The site has an area of 6420m². The SEE states the GFA for the dwellings is 3984.96m², thus the FSR is 0.62:1, which is consistent with the design control stipulating a maximum FSR of 0.8:1.

A2-Site Access and Parking Code

As per Section A2 dwellings are required to provide car parking as outlined in the table below:

Rates for Integrated Housing	Proposed
1 space per dwelling plus provision for driveway parking of another vehicle, Visitor parking at ¼ unit	Each dwelling is provided with a double garage totalling 36 spaces, 3 visitor car spaces and 1 disabled car space. Stacked parking is available on several Lots being 1, 4, 5, 6 and 14. A car wash bay is also proposed
Resident: 18 car spaces Informal: 18 stacked spaces Visitor: 4.5 spaces Total: 41 spaces	Resident: 36 spaces (double garages) Informal: 5 spaces Visitor: 4 spaces Car wash bay: 1 space Total: 45 spaces (excluding car wash bay)

Each of the 18 dwellings is provided with a double garage (36 spaces). Four (4) visitor spaces are also provided resulting in a total of 40 car spaces on-site. It is noted that stacked parking within the driveways of the majority of the lots will encroach into the site's internal road. However, the need for stacked parking has been reduced by the provision of double garages for each dwelling.

A3-Development of Flood Liable Land

The site is identified as being flood affected the adopted minimum floor level for the site is RL 2.83m AHD. Due to previous earthworks undertaken in conjunction with the earthworks for the Salt subdivision (DA02/1422), the lowest natural ground surface of the site is approximately RL 5.25m AHD, which is above the minimum floor level.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

The proposal is considered an 'infill subdivision' – that of continuing division of land in an existing urban structure.

Two-way vehicular access to the proposed community lots is via Salt Water Crescent. Service connections are available on site, as discussed previously in this report. Council's Engineers have considered all aspects of the division such as stormwater drainage, water reticulation, traffic generation, site regrading, access, pedestrian networks, earthworks, intersections, parking, sewer and water supply services and flooding.

The site is not listed in Schedule 1 of Council's contaminated lands policy, nor is it within an investigation area under Division 2 of Part 3 of the Contaminated Land Management Act 1997 and Council's Environmental Health Officer has advised that any likelihood of contamination on the subject site was dealt with sufficiently in the original Salt Masterplan division DA02/1422.

The site is stable, not bushfire prone and not at the risk of land slip. The site adjoins public reserves at both the northern and southern ends. Class 4 acid sulfate soil is present, however as previously discussed in this report, it is not a constraint as minor works are to be undertaken as a result of this division.

A11-Public Notification of Development Proposals

Notification of the development was provided to adjoining land owners/properties in accordance with this section. The proposal was placed on exhibition for 14 days from 6 to 20 August 2008. No submissions were received as a result of this process.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

(a) (iv) Any Matters Prescribed by the Regulations

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of 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

There are no further likely impacts in addition to those previously discussed.

The proposal is consistent with surrounding residential character. The site's suitability has been demonstrated throughout the assessment of the proposal including the assessment of the minimal environmental impacts and consistency with environmental planning instruments and the DCP.

(c) Suitability of the site for the development

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan and minimal environmental impacts. The proposal is consistent with the residential character of the locality.

(d) Any submissions made in accordance with the Act or Regulations

As previously discussed the proposal was placed on public exhibition for fourteen days from the 6 to 20 August 2008. To date no submissions have been received.

(e) Public interest

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public.

OPTIONS:

1. Resolve to assume the Director-General's concurrence and support the SEPP submission and resolve to approve the development application with conditions; or
2. Resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the option to appeal the matter in the Land and Environment Court should they be dissatisfied with Council's resolution.

POLICY IMPLICATIONS:

Nil.

CONTRIBUTIONS:

Applicable contribution fees have been calculated for the proposed 18 residential lot subdivision (allowing for the site credit of 1ET for all applicable contribution plans, with the exception of Water contributions which has a credit of 1.2ET) and applied as a condition of consent. The community building on common property attracts a lower Water and Sewer contribution based on the public amenity rate and is not subject to TRCP. A breakdown of the calculations is on file.

It was determined as part of the assessment for DA08/1141 (37 lot subdivision: Stage 6) that the Salt development is in credit of dedication of open space and as such there is no requirement for open space to be dedicated as part of this application.

CONCLUSION:

The proposed integrated housing development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. Applicant's SEPP 1 Objection (ECM 7025655)
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12 [PR-CM] Development Application DA05/0824.07 for a Section 96 Amendment to DA05/0824 for Multi Dwelling Housing Comprising Four (4) Units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA05/0824 Pt3

SUMMARY OF REPORT:

ITEM DEFERRED FROM MEETING HELD:

15 September 2009

Decision this item be deferred to undertake further consultation.

The resolution adopted by Council in respect of this Section 96 application at its meeting held on Tuesday, 21 April 2009, was *'that this item is to be deferred pending further advice and a report from the Director Planning & Regulation'*. The main purpose behind Council's deferral was to verify that there was accurate plan information to base a determination on.

In response to this resolution Council officers have since held further meetings with the applicant prompting the receipt of further amended plans on 3 August 2009, relating to the subject Section 96 application. The changes primarily relate to the applicant's attempt to readdress the constructed buildings non-compliance with the original, approved development application plans. This report seeks to assess the proposed changes and provide a recommendation for Council to determine.

The latest Section 96 plans and documentation outline the applicant's intent to achieve compliance with the approved development application plans. From the officers' assessment, the applicant has produced a height profile for the majority of the East-West length of the proposed building which is actually lower than the approved development application plans. Only the two sections of proposed roof at the rear (eastern) part of the building will now exceed the approved roof heights by 5cm and 6cm respectively for a combined length of 7.97m or 21.04% of the length of the building.

The main form of design amendments include:

1. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.

2. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.
3. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.

The proponent claims:

“the plans have been amended so as to achieve greater compliance with the approved plans where the opportunity exists and where possible, in a manner consistent with the interpretation of the plans by the neighbouring residents.”

It is pertinent to note that the amended plans show the addition of an eave on the roof section adjacent to Seaview Street (marked in Red on the northern and southern elevations and ‘roof plan and roof sections’). This eave is not supported with plans amended in Red deleting reference to the subject eave. The ‘roof plan and roof sections’ also incorrectly identifies the finished floor levels, 0.09m lower than proposed (and built). This error has been amended in Red on the subject plans.

Adjoining owners were notified of the latest amended plans relating to the subject Section 96 application. One submission was received from the owner of No. 28 Seaview Street, who reiterates previous concerns about inaccuracies in the information presented by the applicants, the inconsistencies and non-compliance with approved plans, and the view loss impacts of the proposed retention of two large Norfolk Pines trees in the front section of the site.

Given the applicant's agreement to alter the current unauthorised building works to generally conform to the height levels of the approved original development application, it is considered that the current Section 96 modification is suitable for approval. In this regard, the only exceedence of the approved roof height profile at the rear part of the proposed building (a variation of 5-6cm) will still allow for a reasonable degree of view sharing to adjoining properties, particularly for the owners of No. 28 Seaview Street.

On the basis of this proposed rectification works, as well as other advice reported to Council, the officers have also recommended that Penalty Infringement Notice (PIN) for the sum of \$1500 be issued in respect of the unauthorised works. The officers have also provided information on further criminal proceedings that can be pursued should Council consider it to be appropriate.

It is pertinent for Council to also take account of the attached Council report dated Tuesday 21 April 2009 in their assessment prior to determining this matter, particularly in respect of the other designated plan amendments of this Section 96 application, including the proposed retention of 2 Norfolk Pine trees in the front section of the subject site.

RECOMMENDATION:

That:

- A. Development Application DA05/0824.07 for a Section 96 amendment to DA05/0824 for multi dwelling housing comprising four (4) units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street, Kingscliff be approved and the consent be amended as follows:**

- 1. Condition No. 1 be deleted and replaced with Condition No. 1A which reads as follows:**

1A The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 62531 sheet 1-4 of 7 inclusive prepared by Gordon Bismire and dated 09/02/07 (revised 24/02/09), Plan Nos 62531 sheet 5 of 7 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos 62531 sheet 1 of 1 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos LP01 prepared by Boyds Bay Landscape & Environmental and dated 11.03.09, (as amended in Red on the approved plans) except where varied by the conditions of this consent.

[GEN0005]

- 2. The addition of Condition Nos 6.1 and 76.1:**

6.1 The two Norfolk Pines (within the front setback adjacent to Seaview Street) are permitted to remain whilst it can be demonstrated the potential risk of harm to public safety is appropriately assessed. This shall be determined through the landowner(s) submitting to Council 6 monthly assessments by a suitably qualified Arborist (minimum Australian Qualification Framework Level 5) for a period of 2 years. The first report is to be submitted within 6 months of the date of this amended consent. A section 88B restriction is to be placed on the title of Lot 4 Section 2 DP 7309 giving effect to the terms of this condition.

[GENNS03]

76.1 Prior to the issue of an occupation certificate a surveyor's report prepared by a registered surveyor is to be submitted to Council detailing the height of the building at all relevant points as detailed on the approved plans Plan Nos 62531 sheet 1-4 of 7 inclusive prepared by Gordon Bismire and dated 09/02/07 (revised 24/02/09), Plan Nos 62531 sheet 5 of 7 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos 62531 sheet 1 of 1 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), (as amended in Red on the approved plans) to the satisfaction of Council or delegate. All levels are to be provided in Australian Height Datum.

[POCNS03]

- B. A Penalty Infringement Notice for the sum of \$1500 be issued to Gordon Bismire Builder for the non-compliance with Development Consent DA05/0824 be issued.**
- C. The applicant be advised that if the rectification works have not commenced within 30 days from the date of this amended consent Council will commence Class 5 Criminal proceedings in the Land and Environment Court. Any additional breaches of the development consent as amended will result in Council commencing Class 5 Criminal proceedings in the Land and Environment Court.**
- D. Attachment 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

REPORT:

Applicant: Jeanleighmac Developments Pty Ltd, Mr GF Bismire and Mr WC Engwirda
Owner: Mr GF Bismire, DM Househam, WC Engwirda and Jeanleighmac Pty Ltd
Location: Lot 4 Section 2 DP 7309, No. 26 Seaview Street Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,100,000

BACKGROUND:

Development application DA05/0824 was approved on the 15 August 2006 for the construction of a two storey multi-dwelling housing development containing four units. The main issues of contention in this original application related to the proposed building height and view loss for adjoining and surrounding properties particularly for the adjoining southern property to the south, No. 28 Seaview Street.

Council received a Section 96 application (DA05/0824.01) on the 27 March 2008 following complaints that the building under construction had exceeded the previous approved maximum height levels. This application was refused by Council at its meeting held 16 December 2008 for the following reason:

1. *The unauthorised increase in building height will create an unacceptable visual impact/view loss on the neighbouring property No. 28 Seaview Street Kingscliff.*

Council also resolved as follows: -

- "B. Council's solicitors be engaged as soon as possible to commence appropriate action for unauthorised building works.*
- C. Council will not issue an Occupation Certificate until such breaches are rectified."*

Council's solicitors advised the applicant via letter dated 12 January 2009 to immediately cease construction and to rectify the unauthorised building works within 28 days of the date of the letter, or otherwise Council would commence proceedings in Class 4 of the Land and Environment Court.

The applicant lodged a second Section 96 application (DA05/0824.07) on the 8 January 2009, to rectify the breach in building height, amend the landscaping plan and amend the front fence and other building elements. In accordance with advice from Council's Solicitors, legal proceedings were deferred until the determination of the section 96 is finalised.

The section 96 application (DA05/0824.07) was reported to the Council meeting held Tuesday, 21 April 2009. Following concerns raised regarding the accuracy of the latest plans, Council deferred the determination to seek further clarification. The resolution adopted by Council was *'that this item is to be deferred pending further advice and a report from the Director Planning & Regulation'*.

For a more detailed chronology of events refer to the attached previous Council report dated Tuesday, 21 April 2009.

Since the 21 April Council meeting, further meetings were held between the applicant and Council officers. As a result of those meetings, Council has received further amended plans on the 3 August 2009 (referenced revised 07/07/09), relating to the subject Section 96 application. This report seeks to assess the proposed changes and provide a recommendation for Council recommendation.

The amended plans propose:

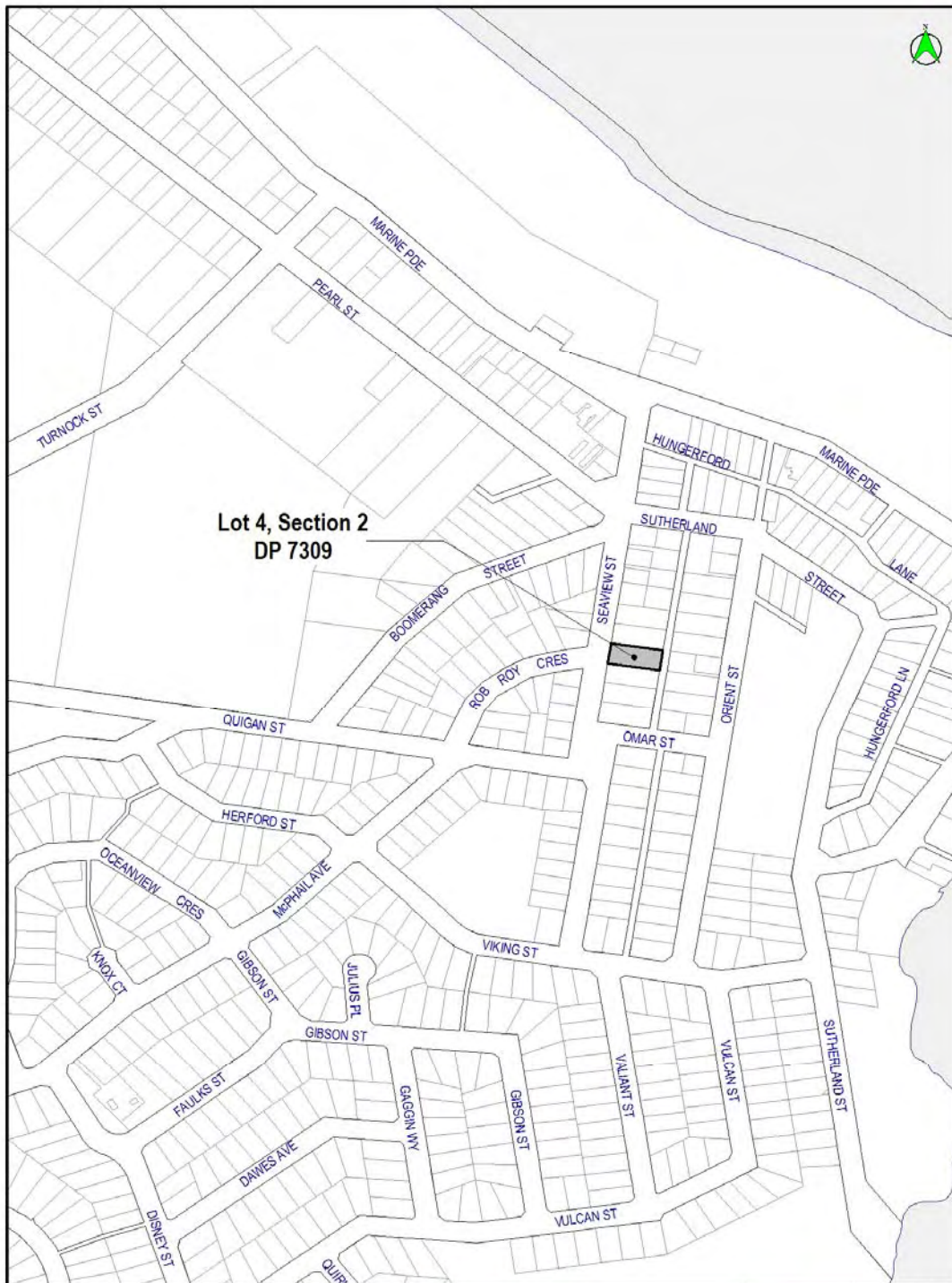
- “1. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.*
- 2. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.*
- 3. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.”*

The proponent claims:

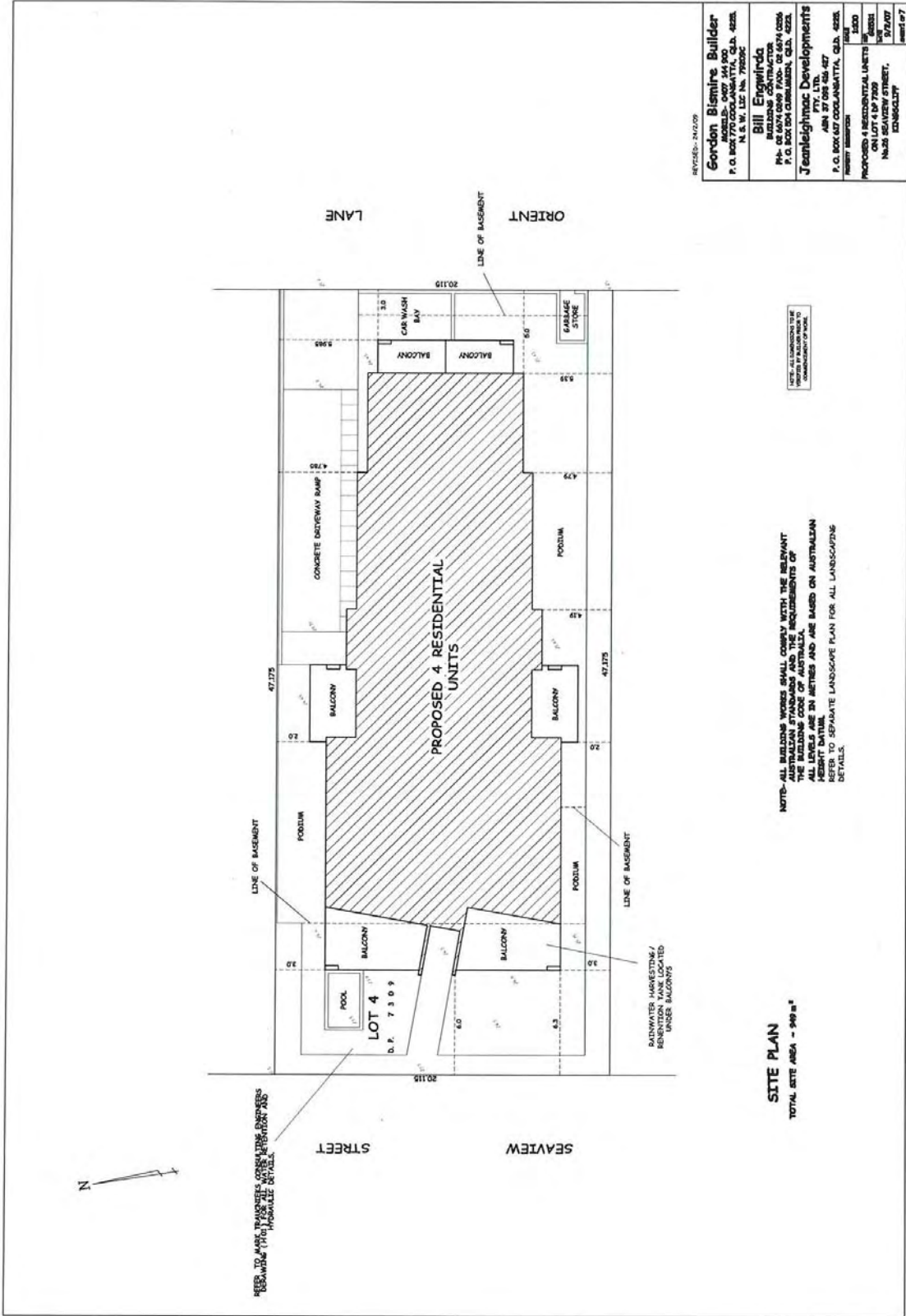
“the plans have been amended so as to achieve greater compliance with the approved plans where the opportunity exists and where possible, in a manner consistent with the interpretation of the plans by the neighbouring residents.”

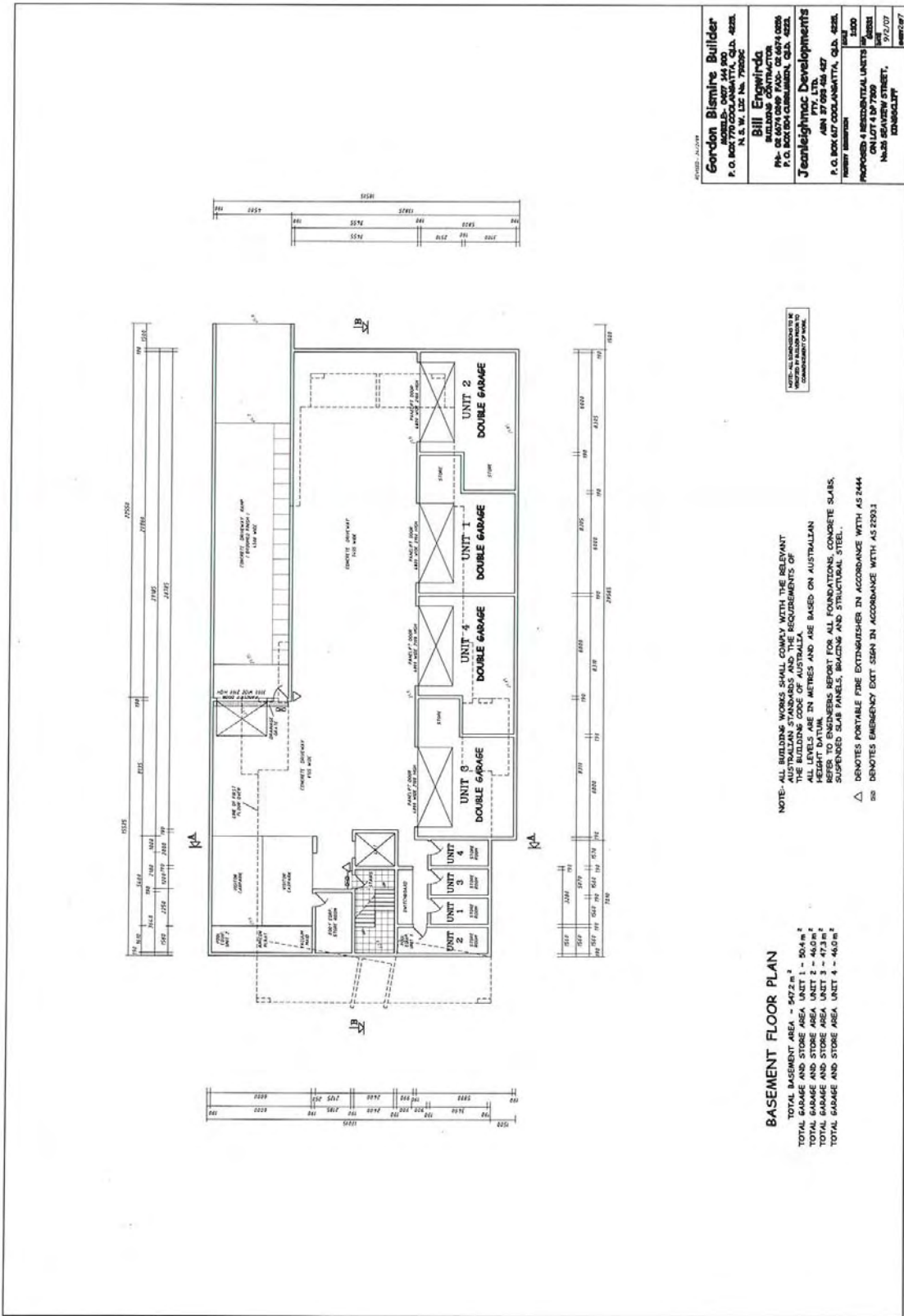
The elevation plans still incorrectly reference the Northern and Southern elevations. The proposed floor levels on the roof sections relating to the ‘Roof plan and roof section plan’ are incorrect. These have been amended in Red on the proposed plans.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah NSW 2484 Tel (02) 6670 2409 Fax (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 4 Section 2 DP 7309, No. 26 Seaview Street Kingscliff</p>		<p>STRATEGIC PLANNING UNIT Site Plan</p>	
<p>File: N:\MapInfo 7...A4P Site Plan Wor</p>	<p>Author: J.Batchelor</p>	<p>Date: 27/June/2006</p>	<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>





CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

PROPOSAL

The latest revised Section 96 application now proposes the following composite of modifications including the latest proposed reconstruction of the roof profile to achieve lower building heights:

1. The swimming pool located on the southern side of the property has been deleted.
2. The skylights on the upper level northern elevation have been deleted.
3. Minor changes to the entry door in the ground floor foyer.
4. The front balcony to Unit 4 (previously known as unit 3) now protrudes across the front elevation, where previously there was a three metre void. This element has been brought about by way of rationalizing the current design and to increase the area of private open space available to the upper level apartment.
5. The glass balustrade to the balcony facing the laneway (east elevation) is to be changed from glass balustrade to a rendered concrete block balustrade. This element has been brought about by way of rationalizing the design, increasing privacy and reducing costs to what is a secondary frontage.
6. Minor change to the bathroom layout on the top floor (bath deleted and shower repositioned).
7. Louver windows to the bathroom and laundry in the northern and southern elevations changed to awning windows.
8. Laundry window to the northern and southern elevations deleted.
9. The eave overhang adjacent to the lift has been reduced. This element has been brought about by way of design rationalization and a response to the need to maintain building heights around the lift overrun.
10. Pine trees to the front of the property to be retained.
11. The front fence height is to be reduced and constructed of rendered brick with a continuous height of 1200mm. The fence is proposed to run parallel to the finished ground level on the property boundary. The original consent was for a rendered brick fence with varying heights up to 1600mm high.
12. Revised landscaping plan.
13. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components

to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.

14. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.
15. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.”
16. Approve the following proposed floor levels:
 - Unit 1 – 24.59
 - Unit 2 – 25.59
 - Unit 3 – 27.59
 - Unit 4 – 28.59

Note these floor levels are all 0.09m (9cm) higher than the approved floor levels.

Assessment under Section 79(c)(1) of the EP&A Act, 1979

The proposed modification is considered to be in accordance with Section 79(c)(1) Matters for consideration, as the modification is consistent with the planning rationale used to support the original approved DA05/0824 in respect of all relevant Council environmental planning instruments and development control plans. It is considered that the proposed modifications will not create any significant adverse impact on the natural or built environments or create social or economic impacts on the locality.

Further details of the assessment of these planning issues relating to of the Section 96 application are provided in the next section of this report.

ASSESSMENT UNDER SECTION 96 (1A) OF THE EP&A ACT, 1979

(a) Minimal Environmental Impacts

The proposed modifications (as outlined in the previous section) numbered 1 to 9 are mainly modifications that are considered not to create an adverse impact on the natural or built environment.

The proposed modifications numbered 10 to 12 are modifications that have been considered in the Council report dated Tuesday 21 August 2009.

The proposed modifications numbered 13 to 16 are the latest modifications relating to building height, and are assessed below:

1. Roof and Building Height

The applicant has sought to remove the entire existing roof (as built) and proposes to rebuild the roof so the height of the building is lower than as measured on the approved plans for roof areas for the majority of the length of the building exceed the approved roof heights by a maximum of 5-6cm and the impacts of this non-

compliance are discussed below. An appropriate condition is recommended requiring a surveyor's report detailing height of the building at all relevant points prior to issue of an occupation certificate.

In assessing the proposed modifications, Council officers relied on the applicant's submission of a qualified surveyor's report on the building constructed to date. This information was further qualified through comparison with an additional surveyor's report provided by one of the objectors to the subject proposal, the owners of No. 28 Seaview Street.

The proposed roof contains five (5) main areas with different maximum height levels. These locations have been used as a reference point for the following scenarios:

1. The first level is located adjacent to Seaview Street,
2. The second level is the lift over run,
3. The third level is located within the centre of the building east of the lift over run,
4. The fourth level is located to the east or to the rear of the site,
5. The fifth level is located adjacent to Orient Lane

The roof levels as currently built are;

(measurements begin from Seaview Street and end at Orient Lane):

1. The first level = 32.70m AHD
2. The second level = 33.42m AHD
3. The third level = 33.13m AHD
4. The fourth level = 32.32m AHD
5. The fifth level = 32.25m AHD

As measured on the Council approved plans by Council officers (DA05/0824) the following roof heights were calculated (measurements begin from Seaview Street and end at Orient Lane):

1. The first level = 31.85m AHD
2. The second level = 33.15m AHD
3. The third level = 32.95m AHD
4. The fourth level = 31.55m AHD
5. The fifth level = 31.45m AHD

The s96 application proposes to physically remove the existing roof structure and reform the pitch and roof height to the following levels:

1. The first level = 31.8m AHD
2. The second level = 33.1m AHD
3. The third level = 32.9m AHD
4. The fourth level = 31.6m AHD
5. The fifth level = 31.51m AHD

Difference between approved plans and proposed reformed roof heights are:

1. The first level = 0.05m lower
2. The second level = 0.05m lower
3. The third level = 0.05m lower
4. The fourth level = 0.05m/5cm higher
5. The fifth level = 0.06m/6cm higher

As identified above the latest s96 plans propose a lower building height than previously approved for the main reference points 1, 2 and 3 being a combined length of 29.9m out of a total of 37.87m or 78.95% of the length of the building. Areas 4 and 5 exceed the approved roof heights by 5cm and 6cm respectively for a combined length of 7.97m or 21.04% of the length of the building.

The southern elevation is directly facing the neighbouring property and that which has the most impact upon their view opportunities.

The proponent provides the following points in regards to roof areas 4 and 5 exceeding the approved roof heights, which are supported;

1. In this regard, the proponent will be seeking a performance based solution as 1/3 ceiling space will be less than 2.4m high;
2. A roof pitch of only 4 degrees has been adopted in this area so as to lower the roof height at the upper pitch as much as possible, thus preserving the view lines for the neighbouring residents as much as is physically possible;
3. If the approved plans had of been pursued strictly in accordance with the approved plan, then well over half of the rear master bedroom on the upper level would have been inconsistent with the ceiling height provisions of the Building Code of Australia, where a height of only 2.1m was proposed between the finished floor level and the underside of the ceiling;
4. The proponent is also splitting the roof from the main roof section so as to lower both the pitch and height further where there is a view impact for the neighbouring property;
5. Given the limitations on floor to ceiling heights with respect to the rear bedroom, there is no ability to flatten the roof, with this action also resulting in an increase in the eave height on the down side of the current roof line. As such, it can only be concluded that the rear roof section has been lowered as much as possible without contravening the provisions of the BCA and indeed the development consent issued (with reference to Condition No. 3); and
6. With respect to the impacts upon the adjoining property that the heights now proposed still afford a reasonable level of view line access over the rear section of the property it is pertinent to note that the adjoining property provides for an approximate level of 26.5m AHD central to the rear portion of their land (where it adjoins the rear section of our clients building). Given a two (2) storey height limit and a physical restriction of 9m overall (giving a potential overall building height of 35.5m it is reasonable to assume that views over the proposed rear ridge of 31.6m AHD can readily be achieved.

In regards to the increase in eave heights on the northern elevations, the plans as proposed incorporate reduced eave widths to the original approved plans and therefore the eave heights will be higher than that approved. This is an important element as it explains why on assessment particularly of the northern elevation, the eave heights appear to be higher than that consented to. The higher eave heights are considered not to adversely impact on neighbouring properties particularly in respect to view lines.

On the basis of the above actions it is considered that the building and roof heights proposed in the revised plans will not create a significant reduction of the views of the adjoining property owners, No. 28 Seaview Street.

(b) Substantially the same Development

The development to which the modification relates is considered to be substantially the same development as the development for which the consent was originally granted.

(c) Notification

Due to applicant amending plans (revised 07/07/09) the application was re-notified. The documentation was on public display at Council's Murwillumbah and Tweed Heads Civic Centres during ordinary office hours and the Kingscliff library during library hours for a period of fourteen (14) days from Monday 17 August 2009 to Monday 31 August 2009 (public holidays excepted).

(d) Consideration of Submissions

One submission was received in relation to the modified plans. The issues raised in the submissions are summarised below;

- Unauthorised building works
- Building Height
- View loss
- Landscape
- Retention of existing "Norfolk Pine" trees, view loss & safety

Please refer to the previous section and Council report dated Tuesday 21 April 2009, for a detailed review and comment on these issues of objection.

(e) Public interest

The proposed development is considered not to negate the public's interest.

OPTIONS:

1. Approve the application subject to the recommended conditions.
2. Refuse the application and provide reasons.

3. Take action in respect of the unauthorised building works.
4. Take no punitive action against the applicant, owners or builders, in respect of the unauthorised building works through Class V of the Land and Environment Court.

Option 1 is recommend by the officers together with a PIN under Option 3. A PIN is recommended as opposed to prosecution in the Land and Environment Court or the Local Court, as approval of this application will result in the developer removing the roof structure and re-constructing the roof with a revised roof height profile generally in accordance with the original consent, which is considered sufficient penalty together with a PIN.

In terms of other variations for criminal proceedings under Option 3, the officers have previously sought legal advice from its' solicitors in respect of possible criminal proceedings under Class 5 of the Land and Environment Court, and also the Local Government Act. A copy of the advice was provided in a confidential attachment to the report for this matter to Council's meeting of 21 April 2009. Council may wish to proceed with the alternative criminal proceedings, should they deem it to be appropriate.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

As stated above, Council officers have recommended the issue of a PIN for the unauthorised building works. Council may wish to consider further prosecution action stated above, taking account of the costs that may be incurred by Council in carrying out such actions.

It is also considered that Council not proceed with its earlier decision to commence investigation for Class 4 proceedings under the Land and Environment Court in respect of the unauthorised works given that the applicant has sought to rectify this non-compliance through the latest amended Section 96 plans.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is considered not to adversely affect the natural or built environments or negate the public's interest.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. **Confidential Attachment** - Legal Advice from Marsdens Law Group (ECM 4983925)
 2. Council of report to Council meeting 21 April 2009 in respect of DA05/0824.07 (ECM 4983926)
-

13 [PR-CM] Development Application DA04/0580.15 for an Amendment to Development Consent No. DA04/0580 for Retail Shops at Lot A DP 380558; Lot 1 DP 772440; Lot B DP 380558; Lot 1 DP 1104696; Lot 1 SP 77979, No. 10-12; 14 & 16 Brisbane Street, Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA04/0580 Pt3

SUMMARY OF REPORT:

Council is in receipt of an application to amend a development consent that was granted by Council in October 2004 for the construction of 7 retail shops in Brisbane Street, Murwillumbah. Several subsequent amendments have been approved since then, resulting in the existing development having only 6 premises, made up of 2 shops, 3 refreshment rooms (Subway; Sushi and Gelato) and a bottle shop.

The original application for the entire site incorporated the use of the outdoor area (adjacent to Shop 1). As the area was encumbered by a Right of Carriageway, which benefits the adjoining business (Budds Farm Supplies Pty Ltd), the use of the area could not be approved.

The applicant has provided written notification that legal action has begun to extinguish the Right of Carriageway over the outdoor area. As a result of the extinguishment of the Right of Carriageway, the applicant wishes to remove the prohibition on the use of the "outdoor" area between Shop 1 and the adjoining building.

The use of the outdoor area as part of the refreshment room premises (Shop 1) generates additional car parking provisions (2 spaces). Previous approvals over the site have effectively used up all available credit spaces. As such, the applicant wishes to pay a cash contribution in lieu of the parking spaces, under the provisions of S94 Plan 23 – Offsite Parking.

This application has been reported to Council as a result of a previous Council resolution (23 January 2007) which stated the following:

"Ensure all new developments in Murwillumbah provide on-site car parking in compliance with Development Control Plan No. 2 Site Access and Parking Code, rather than making monetary contributions, unless exceptional circumstances (such as adverse impacts on street frontages) can be demonstrated."

In accordance with this resolution, Council officers have investigated the issue and are satisfied that the proposal does not constitute "new development" and recommend approval of the proposed modifications, subject to conditions of consent.

RECOMMENDATION:

That Development Application DA04/0580.15 for an amendment to Development Consent No. DA04/0580 for retail shops at Lot A DP 380558; Lot 1 DP 772440; Lot B DP 380558; Lot 1 DP 1104696; Lot 1 SP 77979, No. 10-16 Brisbane Street, Murwillumbah be approved and the conditions be amended as follows: -

1. Delete Condition No. 1B and replace it with Condition No. 1C which reads as follows: -

1C. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No's P478WD-01 (Rev C); WD-02 (Rev C); WD-03 (Rev C); WD-04 (Rev C); WD-05 (Rev C); and WD-06 (Rev A) prepared by Glen Petersen Architects and dated 18/07/05, except where modified by Plan No. P478WD-02 (Rev H) dated 5 December 2005, except where modified by Plan No. SH1/2-4309 (as highlighted), prepared by Mina Drafting Pty Ltd and dated 18 August 2009 (2 Sheets), except where varied by these conditions.

2. Delete Condition No. 18A and replace it with Condition No. 18AA which reads as follows:-

18AA. Section 94 Contributions

- (i) Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate for the outdoor area adjacent to Shop 1 shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

a. Tweed Road Contribution Plan: \$19,479

S94 Plan No. 4 (Version 4.0)

Sector9_4

b. Shirewide Car Parking

2 space/s @ \$15907 per space/s \$31814

(\$0 base rate + \$15907 indexation)

S94 Plan No. 23

3. The following new GENERAL condition are to be ADDED as Condition 6H and 6I:
- 6H. A construction certificate is required for the proposed roof structure over the outdoor area adjacent to Shop 1.
- 6I. The construction certificate shall incorporate details of the fire rated wall which is required along the eastern external boundary of the proposed outdoor area, in accordance with the provisions of the Building Code of Australia (BCA).
4. The following new PRIOR TO CONSTRUCTION CERTIFICATE condition is to be ADDED as Condition 18C:

18C. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions applicable to the outdoor area adjacent to Shop 1 have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Outdoor Area Adjacent to Shop 1

Water DSP2:	0.0936 ET @ \$10709 per ET	\$1002.40
Sewer Murwillumbah:	0.2114 ET @ \$5146 per ET	\$1087.90

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

5. The following new PRIOR TO CONSTRUCTION CERTIFICATE condition is to be ADDED as Condition 18D:
- 18D. Prior to the issue of a Construction Certificate for the roof structure over the outdoor area adjacent to Shop 1, documentation is to be submitted demonstrating that the Right of Carriageway over the outdoor area has been extinguished, to the satisfaction of Council's General Manager or his delegate.

REPORT:

Applicant: Mr A Yap
Owner: The Owners Strata Plan 77979 and Lykapa Pty Ltd
Location: Lot A DP 380558; Lot 1 DP 772440; Lot B DP 380558; Lot 1 DP 1104696; Lot 1 SP 77979, No. 10-12; 14 & 16 Brisbane Street, Murwillumbah
Zoning: 3(b) General Business
Cost: N/A

BACKGROUND:

The existing Shopping centre originally gained development consent (DA04/0580) in October 2004 for the construction of 7 retail shops. Several Section 96 applications to modify the consent have been approved since then, resulting in the existing development having only 6 premises, made up of 2 shops, 3 refreshment rooms (Subway; Sushi and Gelato) and a bottle shop.

The original application for the entire site incorporated the use of the outdoor area (adjacent to Shop 1), but was deleted from the original consent due to the outdoor area being encumbered by a Right of Carriageway over the outdoor area, which had not been extinguished. The use of the outdoor area has never been a planning issue; rather a legal one. All approvals for the site to date have not permitted use of the outdoor area, which benefits the adjoining business (Budds Farm Supplies Pty Ltd).

PROPOSED DEVELOPMENT:

The applicant has provided written notification that legal action has begun to extinguish the Right of Carriageway over the outdoor area. The final process leading to the extinguishment of the Right of Way has started in that a Plan and Section 88B Instrument have been prepared and those documents have already been signed by Lykapa Pty Ltd and the Owners Corporation. Once the appropriate documents are executed by Budds Farm Supplies Pty Ltd and the National Australia Bank, registration will then proceed after that.

As a result of the extinguishment of the Right of Carriageway, the applicant wishes to remove the prohibition on the use of the "outdoor" area between Shop 1 and the adjoining building. The proposed modification seeks to enable the outdoor area as a refreshment room, in conjunction with the approved internal use of Shop 1 as a refreshment room (approved under DA07/1010). The premises is now proposed to operate as a Chinese Restaurant (rather than Gelato business) incorporating both indoor and outdoor dining. The S96 application for DA07/1010 is being assessed concurrently (under delegation) with this application in regard to the proposed Chinese Restaurant.

The use of the outdoor area as part of the refreshment room triggers additional car parking requirements. Previous approvals over the site have effectively used up all available credit spaces. As such, the applicant wishes to pay a cash contribution in lieu of the parking spaces, under the provisions of S94 Plan 23 – Offsite Parking.

In 2006, Council received a report titled the Murwillumbah CBD Parking Study. A copy of the report is **attached**. The report investigated the provision and adequacy of public and private parking within the Murwillumbah CBD. The study also attempted to reconcile the demand for parking created by businesses within the Murwillumbah CBD with the supply of both private and public car parking.

Based on the findings from the study, a series of short term policy and physical options were recommended to Council to address future provision of parking within the Murwillumbah CBD. One such policy option was:

Currently new developments are permitted to pay cash contributions to cover shortfalls in the provision of on-site customer car parking. As there is a shortage of land for Council to provide new public car parks it is proposed to restrict Section 94 Plan 23 Offsite Parking contributions such that all new developments must provide parking as required by DCP2 Site Access and Parking Code. In exceptional circumstances based on merit considerations such as undesirable impacts on street frontages caused by driveway penetrations Council may still consider accepting cash contributions in lieu of on-site provision of parking. This will ensure most developments comply with DCP2 Site Access and Parking Code and reduce the need for Council to provide parking in the future.

Note: One (1) unsupplied parking space in Murwillumbah would normally be charged \$15, 907 in accordance with the recently amended Tweed Section 94 Plan No. 23.

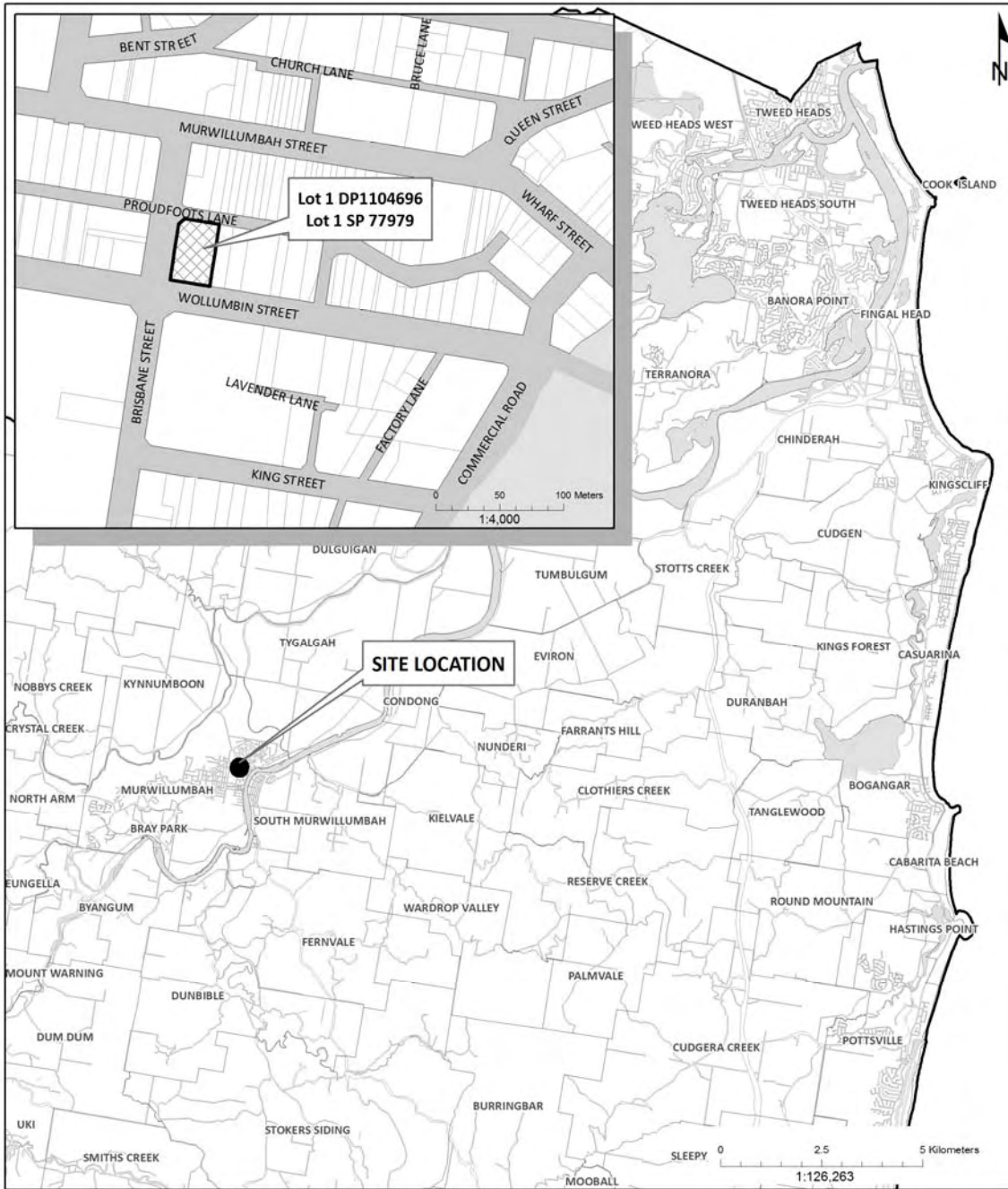
As a result of the findings from the study and the options recommended, Council resolved to endorse a number of short term actions to reduce car parking implications within the Murwillumbah CBD (A copy of the Council resolution and associated report is **attached**) . The most applicable resolution stated:

“Ensure all new developments in Murwillumbah provide on-site car parking in compliance with Development Control Plan No. 2 Site Access and Parking Code, rather than making monetary contributions, unless exceptional circumstances (such as adverse impacts on street frontages) can be demonstrated.”

In accordance with this resolution, Council officers have investigated the issue and are satisfied that the proposed modifications do not constitute “new development”, as noted in the body of the following report.

Although not highlighted within the applicant’s Statement of Environmental Effects, it is also noted that the proposed modifications incorporate the construction of a patio over the outdoor area.

SITE DIAGRAM:



LEGEND

Lot 1 DP 1104696; Lot 1 SP 77979
 (Formerly Lots A DP 380558, Lot B DP 380558 & Lot 1 DP 772440)
 No. 10-16 & No. 1/10-16 Brisbane Street, Murwillumbah

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Cadastre 24 September, 2009

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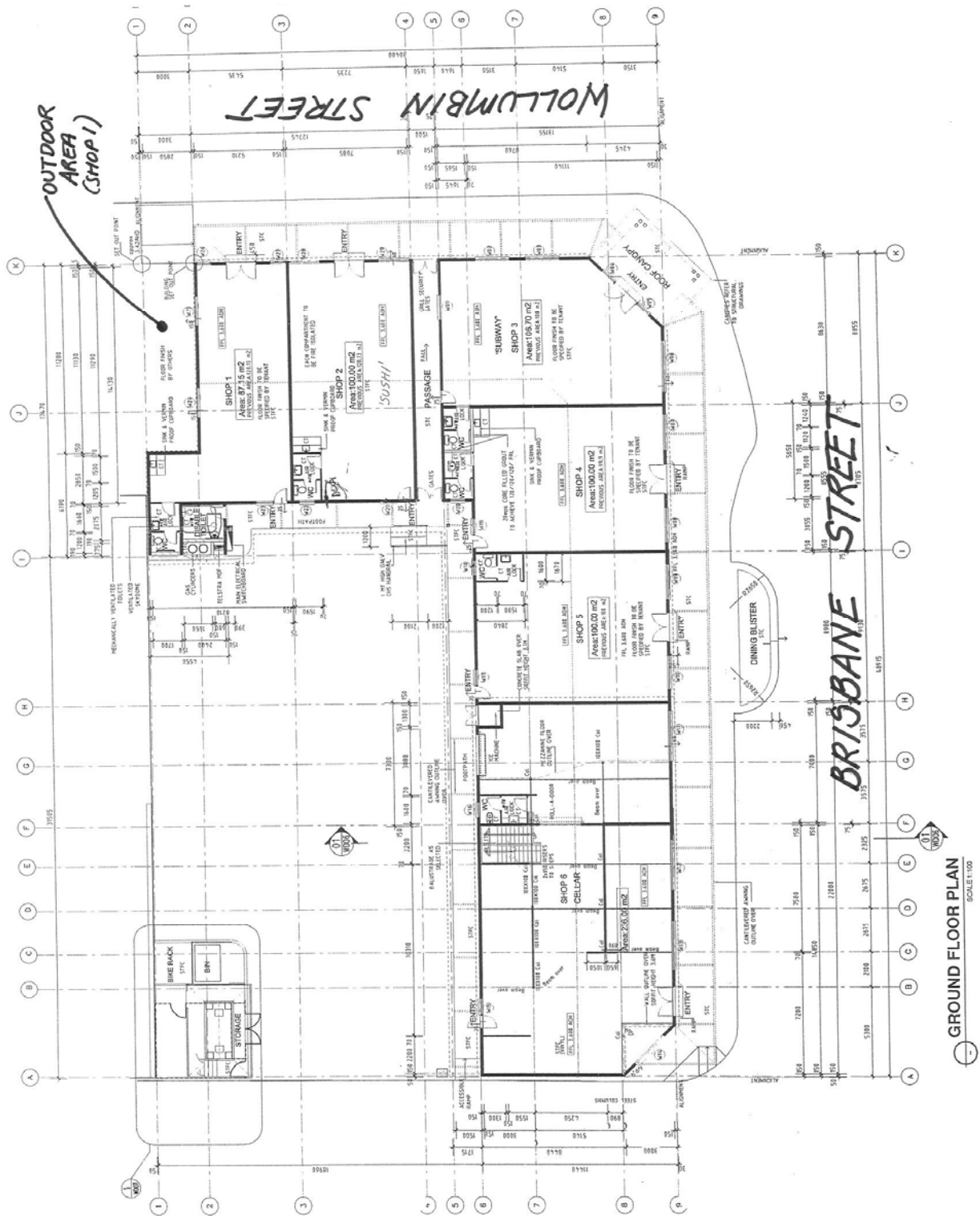
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Tweed Shire Council

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 NSW 2484

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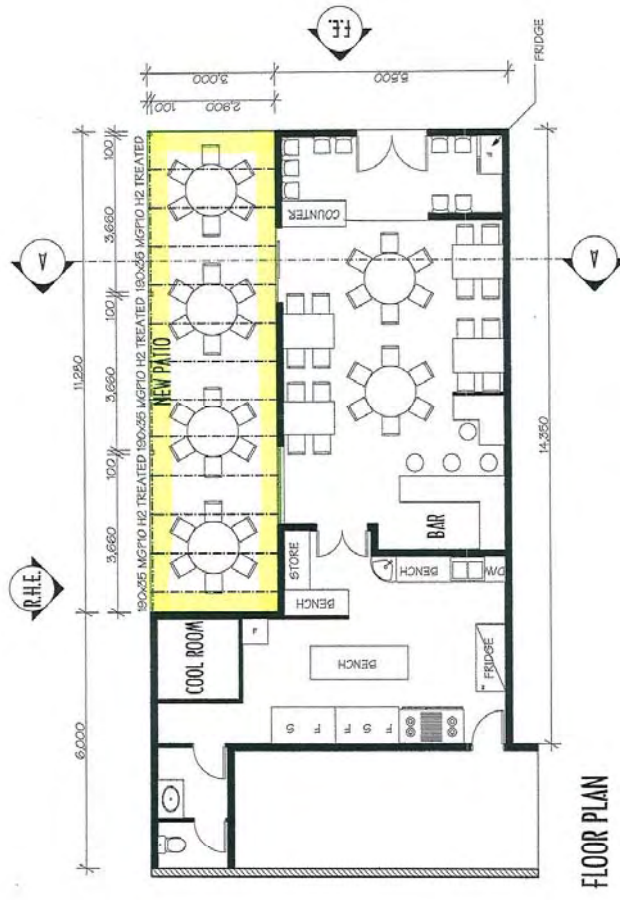


OUTDOOR AREA (SHOP 1)

WOLLUMBIN STREET

BRISBANE STREET

DEVELOPMENT PLANS:



FLOOR PLAN

NOTE:
ALL FOOTINGS, SLAB, BRACING & TIE-DOWN TO ENG. DETAIL

NOTE:
ALL DIMENSIONS, CONSTRUCTION DETAILS AND FINISHES TO BE CHECKED BY BUILDER BEFORE CONSTRUCTION.
ALL MEASUREMENTS TO BE TAKEN IN PREFERENCE TO SCALING

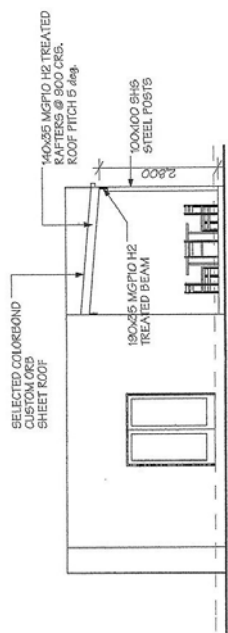
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NO.	DESCRIPTION

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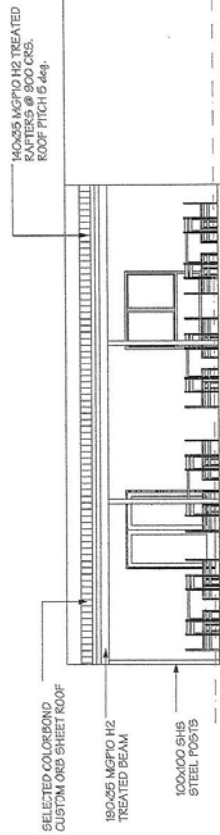
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MURWILLUMBAH, NSW 2484
FOR ...ALAN YAP

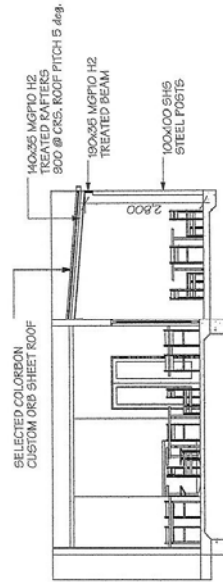
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FRONT ELEVATION



R.H. SIDE ELEVATION



SECTION A - A

NOTE:
ALL FOOTINGS, SLAB, BRACING & TIE-DOWN TO ENG. DETAIL

NOTE:
ALL DIMENSIONS, CONSTRUCTION METHODS AND MATERIALS TO BE CHECKED BY THE CLIENT BEFORE CONSTRUCTION.
ALL MEASUREMENTS TO BE TAKEN IN PREFERENCE TO SCALING

AMENDMENTS	
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DRAWN	H. HANNA
TOR NO.	SH.272-45-09

ALL BUILDING CONSTRUCTION TO COMPLY WITH THE LOCAL AUTHORITY BY-LAWS AND RELEVANT PROVISIONS OF THE BUILDING CODE OF AUSTRALIA 1996 USE GIVEN DIMENSIONS IN PREFERENCE TO SCALE THESE DRAWINGS, THE DESIGN AND THE COPYRIGHT THEREFORE ARE THE PROPERTY OF MINA DRAFTING AND MUST NOT BE USED, RETAINED OR COPIED WHOLLY OR IN PART WITHOUT THE WRITTEN PERMISSION OF MINA DRAFTING.

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CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- “(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.”*

Substantially the Same Development

The proposed modifications relate to the use of the originally approved retail shop development. The amendments involve the existing outdoor area adjacent to Shop 1. The use of this area (upon extinguishment of the existing Right of Carriageway) would not result in any significant changes to the approved uses or the overall appearance of the building. As such, the proposal is considered to be substantially the same development, as that originally approved under Development Consent DA04/0580.

Likely Environmental Impact

Extinguishment of the Right of Carriageway

Although the extinguishment of the Right of Carriageway has not been finalised, the applicant has provided written documentation, confirming agreement between both parties to this effect. It is also noted that legal documentation includes a Plan and Section 88B Instrument for the creation of an easement to permit an encroaching structure (as a result of the Budds Hardware building encroaching onto the subject site), which is not part of this application.

An appropriate condition of consent has been applied with regard to the final documentation being provided, demonstrating the removal of the Right of Carriageway, prior to the issue of a Construction Certificate for the proposed roof structure over the subject outdoor area.

Car Parking Provisions

The most recent approval over the site (DA07/1010) relates to the use of Shop 1 as a Gelato Shop. The assessment of that application concluded that 1.814 credit spaces remained over the site. It should be noted that Council are also currently assessing a

proposed Change of Use application for Shop 5, which is effectively “on hold” until this application is determined. The parking requirements for Shop 5 will use up the remaining credit spaces.

The proposed use of the outdoor area (33.84m²) adjacent to Shop 1, in conjunction with the approved refreshment room, generates the following parking requirements (which are based on parking calculations (i.e. 70% concession for customer parking) applied over the site throughout the history of the development):

1 additional staff member = 1 space / staff – 20% ESD = 0.8spaces
1 space / 7m² dining area = (33.84 / 7) – 70% concession = 1.45 spaces
Total = 2.25 spaces

The applicant has also requested the use of 0.82 credit spaces from DA07/1010.03 (being assessed concurrently), which effectively reduces the required parking provisions to 1.43 spaces. However, In accordance with the provisions of DCP A2, the 1.43 spaces must be rounded up to the nearest whole number. That is, **two (2) car spaces** are generated by the proposed modifications.

As a result of all credit spaces being used up by a separate application and no other opportunity is available for on-site car parking; the applicant has requested the payment of a cash contribution in lieu of supplying the additional spaces on-site.

As noted above, Council’s resolution to “*ensure all new developments in Murwillumbah provide on-site car parking in compliance with Development Control Plan No. 2 Site Access and Parking Code, rather than making monetary contributions, unless exceptional circumstances (such as adverse impacts on street frontages) can be demonstrated*” must be taken into consideration.

The applicant has made the following submission, with regard to exceptional circumstances:

- *“The proposed modification is not a new development, rather, it is simply an infill of the existing outdoor area, development of which was contemplated by the original Development Application and Consent, however it could not be approved at that time because the right of carriageway had not been extinguished.*
- *Modification of the original consent is appropriate because the additional area of 33.84m² is only a very minor increase in the overall floor area of the original development and because the right of carriageway has now been extinguished after extensive negotiations with the benefited party.*
- *Extinguishment of the right of carriageway has taken considerably longer than anticipated and this creates an exceptional circumstance in that it has delayed the applicant’s ability to lodge an application to use the area and therefore the application should be treated as a modification only and not a new development in terms of Council’s resolution.*
- *In addition, the proposed use will provide an active frontage to that section of Murwillumbah Street and eliminate the potential for kerb penetrations for vehicles to actually access the right of carriageway. In overall terms this will provide positive impacts on the street frontage.”*

The applicant's submission that the proposed development is not new development is concurred with. It is also noted that Council's Traffic Engineer provided a similar comment in April 2008 in relation to the same issue on the subject site, stating that it could be argued that...*'the change of use of the individual shops in this complex is not "new development" as the development already physically exists, so if a particular usage exceeds the spare on site parking a contribution could be accepted'*.

Council records indicate that the original assessment of the development would have incorporated the use of the outdoor area, if the Right of Carriageway had not been in place. This supports the argument that the proposal is not new development. In addition, the removal of the Right of Carriageway and subsequent use of the outdoor area in conjunction with the approved refreshment room of Shop 1 is considered to be appropriate activation of the street frontage, which is encouraged by Council's Murwillumbah Town Centre DCP (Section B22).

As such, the payment of a cash contribution for the two (2) spaces is considered to be acceptable in this instance, on the basis that the Right of Carriageway will be extinguished in the near future. Appropriate conditions of consent have been applied in this regard.

Cash Contributions

As the subject site is located within the Murwillumbah CBD area nominated within DCP A2, there is an opportunity for the applicant to pay a cash contribution (pursuant to the provisions of Section 94 Plan No 23 – Off-Site Parking) in lieu of supplying the two (2) spaces required for customer and staff parking. The current monetary rate per car space in the Murwillumbah CBD area is \$15,907. Therefore, the total amount of contributions in this instance is **\$31,814**. Appropriate conditions of consent have been applied in this regard.

Development Contributions

In addition to the proposed payment of cash contribution, the use of the outdoor area triggers the payment of applicable development contributions. S64 Water and Sewer contributions have been calculated, based on the GFA of the outdoor area. Appropriate conditions of consent have been applied in this regard.

To avoid confusion, a new condition has been applied relating to the S64 contributions for the outdoor area only, which is separate from the original S64 contributions (Condition No. 18) applied over the entire development. The new contribution fees will be required to be paid prior to the issue of a construction certificate for the roof structure over the outdoor area.

Construction Works

As noted above, the proposed modifications include the construction of roofing over the existing outdoor area, in the form of timber posts / rafters and Colorbond custom orb sheeting. Council's Building Services Units has assessed the proposed and provided appropriate comments. A Construction Certificate will be required for the structure and needs to incorporate details of the fire rated wall along the eastern external boundary of the outdoor area, in accordance with the provisions of the Building Code of Australia

(BCA). Conditions to this effect have been included in the recommended conditions of approval.

In terms of planning issues, the proposed roof structure is not considered to result in any environmental impacts. Rather, it will provide suitable shelter from rain / sunshine for the customers of Shop 1.

Conclusion

The proposed modifications (including the extinguishment of the Right of Carriageway and subsequent removal of the prohibition on the use of the “outdoor” area between Shop 1 and the adjoining building) are not considered to result in any likely environmental impact upon the surrounding area or community in general.

Consideration of Submissions

The proposed modifications did not require notification. As such, no objections were received.

Public interest

The proposed modifications to Development Consent DA04/0580 are considered to be acceptable in terms of public interest. Given the majority of the required car parking provisions are to be provided on-site (with the applicant being required to pay cash contributions in lieu of the two car spaces triggered by the proposed use of the outdoor area), the proposed modifications are not considered to result in a negative impact upon the existing public car parking provisions in the surrounding area.

OPTIONS:

1. Approve the proposed modifications that result in the payment of a cash contribution in lieu of supplying the additional car parking spaces on-site, subject to the recommended amendments to Development Consent DA04/0580.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal if dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard for all of the issues raised by the amendments to the previously approved retail development, the proposed modifications are considered to be acceptable. As noted above, a detailed assessment has been conducted with regard to the car parking requirements as a result of the proposed use of the existing outdoor area. As such, it is

considered that the proposal warrants approval, subject to the recommended amendments to Development Consent DA04/0580.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Murwillumbah CBD Parking Study (ECM 7023534)
 2. Council Report and Minutes 23 January 2007 (ECM 7023553)
-

14 [PR-CM] Fees in Relation to Construction Certificate Applications

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

In late May 2009 a written submission was received by Council from Coastline Building Certification Group Pty Ltd in relation to Councils proposed 2009/2010 fees and charges as set out in the Draft Management Plan. The submission specifically related to Councils proposed fees relating to the approval of Construction Certificates and building inspections fees.

Similar submissions have been made by this company over a number of years however this report has been prepared to address the issues raised and provide some historical background in the formulation of Councils current fees and charges structure applicable to Construction Certificates.

The review of this matter has highlighted the opportunity to seek increased inspection fees for Construction Certificate applications. It therefore recommended that Council approve the public exhibition of an amendment to Council's 2009/2010 adopted Fees and Charges.

RECOMMENDATION:

That Council: -

- 1. Approves the public exhibition of the proposal to increase the Construction Certificate fee for all classes of buildings including the flat rate for single dwellings by \$50.00.**
- 2. Notes that a further report will be submitted to Council following the completion of the public exhibition referred to in (1) above, seeking final Council endorsement of the proposed fee increases.**
- 3. Advises Coastline Building Certification Group Pty Ltd that their submission has been reviewed and a marginal increase is proposed to Construction Certificates however Council considers that a flat fee for single dwellings and alterations and additions to single dwellings is equitable due to the manner in which these applications are assessed.**

REPORT:

On 22 May 2009 a submission was received by Coastline Building Certification Group Pty Ltd in relation to Councils proposed 2009/2010 fees and charges specifically in relation to the approval of Construction Certificates and related inspections. Their submission is reproduced below:

"I write concerning the Draft Fees and Charges found in Council's Draft Management Plan which is to be considered by Council for adoption on the 28 May 2009.

I note an article in the Tweed Sun newspaper on the 23 April 2009 (copy attached) stating "Council will budget for a \$710,000 shortfall in the general fund next year, mainly due to fewer payments of developer and building fees, meaning cuts to jobs & programs."

This submission will illustrate that the projected shortfall can be reduced by almost 50% by simply charging Construction Certification (approval) and building inspection fees equivalent to those charged by all other Councils on the North Coast of New South Wales. Construction Certification and inspection fees are those fees charged by Council to assess building plans for compliance with the Building Code and to carry out inspections of building works during the course of construction of new buildings. The fees are typically levied on the applicant who may be a builder, project builder, developer or home owner.

The proposed Council charge for its Construction Certification and building inspection fees (item 29 & 32 of the 2009/2010 Draft Fees and Charges Construction Certificate Fees (building) is inadequate, especially when compared to the fees levied by other North Coast Councils for that same building approval and inspection service.

Council's proposed Construction Certification and building inspection fees for a typical \$260,000 home, in comparison to the same construction certificate service and building inspection fees for a \$260,000 home in other Council areas in the North Coast of New South Wales are as follows:

Comparison of Construction Certification & Total Building inspection Fees for a typical \$2601000 home in various local Government Areas North Coast NSW

<i>Byron Shire Council</i>	<i>\$2060 Construction Certificate and inspection fee</i>
<i>Ballina Shire Council</i>	<i>\$1360 Construction Certificate and inspection fee</i>
<i>Lismore Shire Council</i>	<i>\$1289.10 Construction Certificate and inspection fee</i>
<i>Clarence Valley Council</i>	<i>\$1606 construction certificate and inspection fee</i>
Average Council Fee	\$1578
Tweed Shire Council	\$895 proposed 2009/2010 Construction Certificate and inspection fee
Difference in \$ value Tweed Shire Council to other Council areas = minus	
\$683	

If you were to take the average of the four adjacent North Coast Council Construction Certification and inspection rates (2008/2009) year, it can be seen Tweed Shire Council is well below current market rate. The average charge for the four Councils is \$1578. Tweed Council is effectively undercharging \$683 per job for an average house. If Council were to issue 500 such house approvals in one year, Council is forgoing approximately \$341,000 in a financial year.

I have also attached the recommended fee schedule prepared in 2004 by the Australian Institute of Building Surveyors in which they recommend a fee for a Construction Certificate and inspections for a dwelling be a minimum of \$2,000.00.

Given that Council is budgeting for a \$710,000 shortfall in the general fund in the next financial year, Council can reduce this shortfall by almost 50% just by charging market rates similar to those charged by other Councils on the North Coast of NSW.

As Tweed Shire residents and ratepayers, we recognize the extraordinary growth and subsequent demands placed upon Council to provide infrastructure and services to meet the needs of its residents. To this end, we understand the need for Council to seek a variation to the rate capping regime levied on Council by the NSW Government.

However, we are concerned Council is seeking these additional rate charges, for all ratepayers, while not charging standard market rates for its existing services.

By not charging the existing market rates for its current Construction Certification services, I estimate Council is foregoing approximately \$400,000 per year.

Should you wish to discuss my submission in more detail feel free to contact me at your convenience."

The matter was briefly reported to Councils meeting of 28 May 2009 with a recommendation that no change be made to the proposed fees and charges at that time however that a review of the fees structure would be undertaken and a report made back to Council on the matter as part of the September 2009 quarterly budget review.

To give some background Coastline Building Certification Group Pty Ltd is a company that is involved in the private certification and inspection of buildings. This particular company has made a number of similar submissions which date back to around the introduction of private certification in 1998. Each submission has suggested that Council should increase its charges for the certification process. In March 1999 a letter was also received from the Australian Competition and Consumer Commission advising that a complaint had been received from Mark Stapleton and Associates (MSA), which now trades as Coastline, relating to possible contraventions of the Trade Practises Act 1974. Council responded back to the Commission in writing in relation to the letter and in September 1999 the Commission replied to Council advising that it had considered the matter in relation to Councils response and found that there appeared to be no contravention of the Trade Practises Act.

In June 2004 a report was made to Council in relation to a similar submission by Coastline on the Draft Management Plans proposed fees and charges for building

certification. The report resulted in the Council at that time concluding that the fees and charges proposed in the 2004/05 Management Plan Budget by the Building Services Unit were equitable and reflect Councils costs for providing these services.

The most recent submission essentially targets Councils proposed charges for Construction Certificates and building inspection fees, being items 30 and 33 although in paragraph 4 of the letter it specifically identifies items 29 and 32 however item 29 relates to a "Building Advisory Service" (a charge that was introduced last year in the 08/09 budget to charge on an hourly rate of \$120.00 for preliminary Building Code compliance assessments which was to mainly target larger developments) and item 32 relates to "Complying Development Certificates".

Unlike Development Applications the assessment fees applied to a Construction Certificate are not statutorily bound. While Council typically applies a sliding scale of fees based on the estimated cost of the proposed development a flat rate was initially introduced for Construction Certificate applications which related to single dwellings only and alterations or additions to single dwellings. The flat rate applied to these applications is where the proposed works have a value exceeding \$100,000. The reasoning behind a flat rate being charged was due to the cost effective manner in which the applications for single dwellings were able to be assessed by the Building Unit which gave the ability to provide a more competitive rate.

With respect to the current flat rate it should be noted that the 2009/10 fees and charges were revised and resulted in the introduction of a two tiered flat rate for Construction Certificates relating to single dwellings and alterations and additions associated with single dwellings, the first being for works with a value of more than \$100,000 but less than or equal to \$1,000,000 (which is \$235.00) and the second being similar works with a value more than \$1,000,000 (which is \$280.00). Again this flat rate is for the Construction Certificate approval only and only applies to single dwellings and does not apply to any other types of development such as dual occupancies, residential flat buildings, commercial or industrial buildings as the development assessment process is not undertaken by the Building Unit.

With the implementation of private certification in 1998 the owner of a property now has the ability to choose either Council or a privately accredited person to carry out the assessment and approval process in relation to Construction Certificates and Complying Development Certificates together with any mandatory inspections required during construction. The choice in respect of this service would obviously be driven by the level of service available from the provider and the cost for such a service. In the event that the owner of the property chooses to utilise Council in the Construction Certificate process for the erection of a single dwelling the applicant has the ability to have both the Development Application and the application for the Construction Certificate lodged and assessed concurrently as a result of the approval process implemented by the Building Unit.

In comparison, assessing applications separately or having approvals done by different officers for the same development site results in a large amount of duplication during each of the processes however as Tweed Shire Councils Building Surveyors undertake the assessment of both the Development Application and Construction Certificate both processes are undertaken at the same time by a single assessing officer. Furthermore Councils Building Surveyors also assess applications to connect to Councils sewer as

part of this process. With this process there is only a necessity for a single site visit by the assessing officer for all three processes and once each of the assessments have been satisfactorily completed the Building Unit has the ability to prepare and issue the Development Consent, Construction Certificate and sewer approval together which provides a better utilisation of resource for the overall process. It should also be noted that Councils Building Unit receives a substantial amount of income from Development Applications as well as the fees from Construction Certificates, Sewer Applications and the required inspections relating to these applications.

In regard to the flat rate available for the issue of a Construction Certificate for single dwellings a review of Councils fees and charges relating to these approvals which includes those relating to inspection fees has been undertaken from the date that the matter was previously reported to Council in 2004. These figures have been set out below for Councils information.

2004/05: Flat Rate - \$110.00 – Inspection Fee \$80.00 ea. – Minimum 4 inspections.

2005/06: Flat Rate - \$110.00 – Inspection Fee \$85.00 ea. – Minimum 4 Inspections.

2006/07: Flat Rate - \$200.00 – Inspection Fee \$95.00 ea. – Minimum 4 inspections

2007/08: Flat Rate - \$210.00 – Inspection Fee \$100.00 ea. – Minimum 6 inspections

2008/09: Flat Rate - \$225.00 – Inspection Fee \$105.00ea. – Minimum 6 inspections.

2009/10: Flat Rate - \$235.00 and \$280.00 – Inspection Fee \$110.00 ea.– Minimum 6 inspections

As can be identified from the information provided above, from the 2006/07 period Councils Building Services have increased its annual flat rate in excess of the recommended annual increase in Councils fees and charges and while it may be appropriate to now review this particular charge Council needs to be mindful of its current ability to provide a cost effective and streamlined process with respect to the processing of applications for single dwellings and consider the added financial impact on property owners if Council were to have an unjustified increase to this particular charge.

In regard to the inspection fees Council has, as an organisation, not had a consistent inspection fee charge and in fact the fees charged by the Building Unit have been greater than that charged by other units within Council for similar services. However a recent review of this charge has seen a more consistent approach in the development of inspection fees throughout Council with several other areas now increasing the inspection fee charged for the 2009/10 budget to be consistent with that charged by the Building Unit. These inspections include stormwater inspections carried out by Planning and Infrastructure Unit, Compliance Certificate inspections undertaken by the Subdivisions Unit and food premises inspections undertaken by the Environmental Health Unit. It is therefore considered that the inspection fee proposed for the 2009/10 period is appropriate as the current fee has become more widely accepted throughout the organisation for this service and the fee is seen to adequately cover the cost involved in providing this service. Furthermore as Councils Building Surveyors also carry out plumbing and drainage inspections the officer has the ability to look at both areas on a single site visit, for example a final inspection on the building work can also incorporate a

final inspection of the plumbing and drainage work. It should also be noted that Councils Building Unit is currently in the process of undertaking stormwater approvals and inspections for single dwelling which again will provide a more streamlined approval and inspection process and a more efficient utilisation of resource.

The claim made in the May 2009 submission that Council could reduce its budgetary shortfall by almost 50% if Council raised its Construction Certificate and inspection fees is not supported and certainly the shortfall in predicted income is directly the result of the economic downturn during that period which unquestionably effected local building approvals. To give an example of this a check on the number of Development applications lodged with Council during the January 1 to June 30 periods over the last four years identified the following figures:

2006 - approximately 723 applications.

2007 – approximately 670 applications

2008 – approximately 880 applications

2009 – approximately 400 applications

While raising Councils charges for approvals to a certain level could be justified and certainly provide an ability to gain further income the main purpose of the introduction of private certification was to provide competition and therefore too large an increase in fees could have the reverse effect upon Council in that Council may not be engaged to carry out the certification work and therefore reduce its income in this area.

Currently the ratio of certification work done by Council in comparison to the private sector is approximately fifty percent and therefore it is considered that any dramatic increase in certification fee would see Council loose a greater percentage of this work to the private sector and also drive the cost of certification work up which would be to the detriment of the consumer. Furthermore Councils fees and charges are both advertised and fixed unlike the private sector which does not have to advertise its fees and therefore has the ability to under cut Councils fees and charges.

To look at the comparisons given in the May submission, if Tweed were not to have the current flat rate the Construction Certificate and building inspection fees for the referenced \$260,000 home the charge for a Construction Certificate and mandatory inspections would be \$1086.00. When broken down this amounts to \$426.00 for the Construction Certificate component and \$660.00 for inspections. In comparison the flat rate for a \$260,000 home is \$235.00 for the Construction Certificate plus the \$660.00 for inspections which totals \$895.00.

Therefore in determining any increase to the current fees and charges for a Construction Certificate it is considered that Council is justified in charging a reduced fee for dwellings and alterations and additions to dwellings due to the cost effective manner in which these applications are able to be assessed, determined and issued however given the figures identified in the submission there does appear to be some justification to propose a marginal increase in the overall cost of the Construction Certificate process.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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15 [PR-CM] Alcohol Free Zones

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

Alcohol-free zones were previously established by Council in 2006 over specified public roads, footpaths and public carparks for the Murwillumbah Town Centre, Tweed Heads and Kingscliff for a period of 3 years. The declaration of these zones has expired.

This report provides for the re-establishment and expansion of the previous alcohol-free zones following appropriate public consultation in accordance with the provisions of *Section 644, 644A and 646 of the Local Government Act 1993*.

RECOMMENDATION:

That Council:

1. Approves the establishment and timeframes of alcohol-free zones in accordance with section 644B of the Local Government Act 1993, within the Tweed Heads, Tweed Heads South, Kingscliff, Salt, Cabarita Beach and Murwillumbah areas over roads, footpaths and public carparks for a maximum period of four (4) years expiring no later than 1 December 2013 as follows:

TWEED HEADS

- Wharf Street between Bay Street and the Queensland border
- Bay Street, east of Wharf Street to John Follent Park
- Chris Cunningham Park public carpark

24 hours per day, all days

TWEED HEADS SOUTH

- Public car park adjoining South Tweed Swimming Pool, Home and Community Care (HACC) and skate park

24 hours per day, all days

KINGSCLIFF

- Marine Parade between Turnock Street and Cudgen Creek
- Turnock Street between Marine Parade and Pearl Street
- Pearl Street between Turnock Street and Seaview Street
- Seaview Street between Pearl Street and Marine Parade

- Lions Park and Faulks Park public car parks and the public carpark adjoining Kingscliff Memorial Park

24 hours per day, all days

SALT

- Bells Boulevard

Between the hours of 4pm December 31 to 10am January 1

CABARITA BEACH

- Pandanus Parade
- Public carpark between Palm Avenue and Pandanus Parade

24 hours per day, all days

MURWILLUMBAH

- Queensland Road between 'Harry Williams Gate' of the Murwillumbah Showgrounds and Murwillumbah Street
- Public car park area near Mount Saint Patricks School on Queensland Road
- Bent Street between Queensland Road and Church Street
- Church Street between Bent Street and Queen Street
- Alice Street between Queen Street and Church Street
- Church Lane
- Police Lane
- Bruce Lane
- Queen Street between Murwillumbah Street and Church Street
- Murwillumbah Street between Nullum Street and Queen Street
- Wharf Street between Queen Street and Tumbulgum Road
- Proudfoots Lane
- Public car parks between Wollumbin Street and Proudfoots Lane
- Commercial Road between Wharf Street and King Street
- King Street between Commercial Road and Brisbane Street
- Public carpark between Lavender Lane and King Street
- Lavender Lane
- Brisbane Street between Murwillumbah Street and Condong Street
- Condong Street between Brisbane Street and Nullum Street
- Nullum Street between Condong Street and Murwillumbah Street
- Wollumbin Street between Nullum Lane and Commercial Road
- Nullum Lane between Wollumbin Street and Byangum Road

- **Byangum Road between Nullum Lane and Muwillumbah Street**
- **Alma Street between Commercial Road and Tweed Valley Road**
- **Tumbulgum Road between Wharf Street and Racecourse Road**
- **Public carparks adjoining Tweed Shire Council civic centre and swimming pool**
- **Sunnyside Lane**
- **Factory Lane between King Street and Wollumbin Street**
- **Budd Park public carpark**
- **Knox Park public carpark**
- **Red Cross Hall public carpark**

24 hours per day, all days

Excluding those businesses approved by Council for the purposes of footpath dining whilst those businesses are trading.

- 2. Delegates to the General Manager authority to vary or suspend the zones for special circumstances.**

REPORT:

The object of alcohol-free zones is an early intervention measure to prevent the escalation of irresponsible street drinking to incidents involving serious crime.

The drinking of alcohol is prohibited in an alcohol-free zone that has been established by a council. Public places that are public roads, footpaths or public car parks may be included in a zone. Alcohol-free zones promote the use of these roads, footpaths and car parks in safety and without interference from irresponsible street drinkers.

Council approved footpath alfresco dining areas are not included within the alcohol-free zones. These areas are clearly delineated by Council placed footpath markers. However businesses operating outside of these markers will expose their patrons to the regulatory provisions.

To validly establish an alcohol-free zone a council must comply with the procedures in sections 644 to 644C of the *Local Government Act 1993* (the *Act*) and the *Ministerial Guidelines on Alcohol-Free Zones (Guidelines), 2009*.

In June 2006 Council resolved to establish specified streets and public car parks within Tweed Heads, Murwillumbah and Kingscliff as alcohol-free zones. The resolution was for a period of 3 years only in accordance with the then maximum period specified within the *Act*. Whilst the *Act* prevents an extension of time for the operation of an alcohol-free zone, a zone can be re-established after a phase of public consultation and advertising.

The preparation of a proposal expanding on the areas established in 2006 was prepared, (See Attachment 1 for public exhibition material), and a public consultation period of thirty (30) days was undertaken to satisfy the requirements of Sections 644 and 644A of the *Act*. As a result of this consultation, 9 written submissions were received and a number of telephone enquiries taken. All submissions and enquiries were supportive of the proposal with the NSW Police Force requesting further consideration of other areas as outlined below:

1. Bay Street, east of Wharf Street to John Follent Park, including Chris Cunningham Park public carpark TWEED HEADS
2. Pandanus Parade and public carpark between Palm Avenue and Pandanus Parade CABARITA BEACH
3. Lions Park and Faulks Park public car parks and the public carpark adjoining Kingscliff Memorial Park KINGSCLIFF

Following proper consideration of the submissions as set out under the *Guidelines* these requests appear valid therefore the locations have been included.

The nominated areas, inclusive of the new areas arising from the exhibition submissions, are as follows:

TWEED HEADS

- Wharf Street between Bay Street and the Queensland border
- Bay Street, east of Wharf Street to John Follent Park
- Chris Cunningham Park public carpark

24 hours per day, all days

TWEED HEADS SOUTH

- Public car park adjoining South Tweed Swimming Pool, HACC and skate park

24 hours per day, all days

KINGSCLIFF

- Marine Parade between Turnock Street and Cudgen Creek
- Turnock Street between Marine Parade and Pearl Street
- Pearl Street between Turnock Street and Seaview Street
- Seaview Street between Pearl Street and Marine Parade
- Lions Park and Faulks Park public carparks and the public carpark adjoining Kingscliff Memorial Park

24 hours per day, all days

SALT

- Bells Boulevard

Between the hours of 4pm December 31 to 10am January 1

CABARITA BEACH

- Pandanus Parade
- Public carpark between Palm Avenue and Pandanus Parade

24 hours per day, all days

MURWILLUMBAH

- Queensland Road between 'Harry Williams Gate' of the Murwillumbah Showgrounds and Murwillumbah Street
- Public car park area near Mount Saint Patricks School on Queensland Road
- Bent Street between Queensland Road and Church Street
- Church Street between Bent Street and Queen Street
- Alice Street between Queen Street and Church Street
- Church Lane
- Police Lane
- Bruce Lane
- Queen Street between Murwillumbah Street and Church Street
- Murwillumbah Street between Nullum Street and Queen Street
- Wharf Street between Queen Street and Tumbulgum Road
- Proudfoots Lane
- Public carparks between Wollumbin Street and Proudfoots Lane
- Commercial Road between Wharf Street and King Street
- King Street between Commercial Road and Brisbane Street

- Public carpark between Lavender Lane and King Street
- Lavender Lane
- Brisbane Street between Murwillumbah Street and Condong Street
- Condong Street between Brisbane Street and Nullum Street
- Nullum Street between Condong Street and Murwillumbah Street
- Wollumbin Street between Nullum Lane and Commercial Road
- Nullum Lane between Wollumbin Street and Byangum Road
- Byangum Road between Nullum Lane and Muwillumbah Street
- Alma Street between Commercial Road and Tweed Valley Road
- Tumbulgum Road between Wharf Street and Racecourse Road
- Public carparks adjoining Tweed Shire Council civic centre and swimming pool
- Sunnyside Lane
- Factory Lane between King Street and Wollumbin Street
- Budd Park public carpark
- Knox Park public carpark
- Red Cross Hall public carpark

24 hours per day, all days

Within Tweed Shire the enforcement of alcohol-free zones is the responsibility of the NSW Police Force. The power to seize and tip out or otherwise dispose of alcohol without the need to issue a warning applies within an alcohol-free zone. The re-establishment of Alcohol-free Zones will provide the NSW Police Force with options beyond their existing 'move on' powers including the confiscation of alcohol or the issue of Penalty Infringement Notices in problem cases.

In accordance with the *Guidelines* maps of all established areas will be provided on Council's Website and publicly advertised by notice through the Tweed Link newspaper. All established alcohol-free zones will not operate until seven (7) days after publication of the notice AND until the roads, footpaths and public carparks affected are adequately signposted.

OPTIONS:

Nil

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Proposals for the Establishment of Alcohol-Free Zones 2009 – Public Exhibition Material (ECM 7019147)
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16 [PR-CM] Progress Report for the 2009/10 Planning Reform Unit Work Program

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt10

SUMMARY OF REPORT:

The purpose of this report is to provide Council with advice on the progress of the adopted 2009/10 Planning Reform Unit Work Program.

The report highlights the substantial demands currently being placed upon Council to advance a number of significant Council-wide and locality based planning policy projects, as well as facilitating the rezoning of a number of privately owned sites for the future redevelopment.

RECOMMENDATION:

That Council receives and notes the Progress Report for the 2009/10 Planning Reform Unit Work Program.

REPORT:

Following an extensive consultative process with Councillors, a detailed, three year work program for Council's Planning Reform Unit (PRU) was endorsed by Council at its meeting of 16 June, 2009. A copy of the 2009/12 program is provided in Attachment 1 of this report.

Given the high degree of community and developer based interest in the current range of strategic projects and rezoning proposals, it was considered timely for Council to be provided with an update on the progress of the 2009/10 PRU Work Program.

PROJECT CATEGORY	PROJECT TITLE	STATUS
High order strategic Plans	Draft Stage 1 LEP 2010	Awaiting updated s.65 Certificate from Department of Planning (DoP) – recent delays arose through inter-State Government Department policy conflicts on flooding policy. PRU Resources currently engaged in preparing public exhibition, which is now likely to commence in November 2009. Extensive support material and staff / community workshops currently being prepared.
	Draft Tweed Heads LEP	Body of work prepared by Tweed City Centre Taskforce and currently being finalised by DoP in consultation with PRU. Seeking to co-ordinate a joint public exhibition with the Stage 1 Draft LEP 2010, due to commence in November 2009.
Locality Based Plans	Draft Tweed Heads "Cities Taskforce" Masterplan & DCP	Related to Draft Tweed Heads LEP.
	Draft South Tweed DCP	Related to Draft Tweed Heads LEP.
	Draft Pottsville Locality Plan and Development Control Plan	Extensive review has been undertaken by the PRU since early March 2009 working with key TSC stakeholders. Following Council endorsement at its September Meeting, the Draft Plans are currently on public exhibition.

PROJECT CATEGORY	PROJECT TITLE	STATUS
	Draft Hastings Point Locality Plan and Development Control Plan.	Extensive work has been undertaken on the Hastings Point Locality plan by the PRU and Council's consultant Ruker and Associates. Two workshops have been held by Council to workshop issues with the general public. It is anticipated that a report will be submitted to Council's November Meeting, seeking endorsement for public exhibition of a draft plan.
Development Control Plans	New Draft DCP – Tree Preservation Orders	Work has commenced on this Draft DCP within the PRU.
	New Draft DCP – Rural Tourism	Work on the Draft DCP is expected to commence in early 2010.
	New Telecommunications Infrastructure DCP	Draft DCP has been prepared and tabled for preliminary comment at Council's Infrastructure Coordination Committee. It is anticipated the document will be finalised for exhibition in February 2010.
	New Draft DCP - Biodiversity	Council's NRM and PR Units are currently working together in the preparation of this Draft DCP, and a report is expected to be submitted to Council in early 2010.
	Draft DCP - A1 (Hastings Point) Amendment Nos 2 & 3	Amendments 2 and 3 to DCP A1 have been finalised and adopted by Council and are now operational.
	New Draft DCP – Area E (Terranora)	Council officers have regularly liaised with the land owners and consultants, seeking to resolve major environmental, planning and engineering issues, to inform the preparation of a draft DCP and Section 94 Plan. Once these matters are resolved, a report will be submitted to Council.
	Draft DCP (Master-planning)	Due to be commenced in first half of 2010.
	Draft DCP (Urban Design)	Due to be commenced in first half of 2010.

PROJECT CATEGORY	PROJECT TITLE	STATUS
Draft LEPs (Major)	Draft LEP 69 – Seabreeze Estate (Stage 2 rezoning)	Awaiting the final draft of the Local Environmental Scheme from the Consultant (Land Partners). A report is expected to be submitted to Council by late 2009, prior to request for a s.65 Certificate from DoP
	Draft LEP 85 – Pottsville Industrial Lands	PRU has been allocating resources to this project since May 2009. Rezoning submission reviewed by PRU and other Council officers, comments reported back to proponent. Currently working with the proponent to resolve major planning, environmental and engineering issues. A progress report on this rezoning proposal is expected to be submitted to Council's November Meeting.
Draft LEP (Minor)	Draft LEP 35 – Billabong caravan Park (expansion of existing site)	The PRU has given priority to this rezoning proposal in recent months, and has regularly met with the owners and consultants, providing them guidance on the need to address outstanding planning, environmental and engineering issues. Currently awaiting a response.
Review of existing policy documents	Tweed Development Control Plan (TDCP) – All sections	Work on this project is expected to commence in early 2010, subject to progress on other major projects.
	TDCP – s A1 – Residential and Tourist Code	Work on this project is expected to commence in early 2010, subject to progress on other major projects.
	TDCP s A11 – Public Notification	No advancement to date – not a major priority at this stage.
	TDCP s A10 – Exempt and Complying Development	The requirement for review and amendment of this DCP has been superseded by NSW State Government Policy and the Exempt and Complying Development Provisions included within Draft LEP 2010.
	TDCP s B11 – Seaside City	DCP was to be proponent led however works done to date have seen an alternative proposal for the development of Seaside City, thereby negating the need for any PRU input at this stage.

PROJECT CATEGORY	PROJECT TITLE	STATUS
Ongoing commitments	Implementation of the Tweed Urban and Employment Land Release Strategies	Policy operational for approximately 6 months. Regular requests received by private development proponents to seek amendments to the Strategy.
	Bilambil Heights ("Rise"), Cobaki Lakes and Kings Forest release areas	Continued PRU resources provided to assist DAU on matters of these proposals.
	Hastings Point – Young St appeal	Continued PRU resources provided to assist DAU on matters of these proposals.
	S 149 Certificates	Continued GIS resources provided to assist on matters of s.149 certificates.
	Cartography / GIS	Ongoing
	NSW Government Land (Housing and Industrial) Monitor	Ongoing development of Monitoring system in accordance with DoP Monitoring Requirements.
	Strategic Planning Policy	Ongoing
	Development applications	Continued PRU resources provided to assist DAU on matters of these proposals.

CONCLUSION:

Council's Planning Reform Unit is currently attempting to balance the competing demands of necessary strategic policy processes, as well as private, development based rezoning proposals. Apart from the projects identified in this report, the Unit regularly receives requests to consider additional private rezoning proposals, and for reviews to the recently adopted Tweed Urban and Employment Lands Release Strategy 2009. For example, Council has received a request from the owners of the Boyd's Bay Garden World site, to revise the timing of any rezoning of the site in the adopted Strategy from a medium to short term timeframe. In response to this request, Council officers have advised the proponents of the rezoning that they will be seeking a peer review of the proposal from the firm GHD, who were the authors of the Strategy. These requests place an additional resource burden on the Unit, which is forcing consideration of a further "user pays" fees approach to advance those projects outside of the adopted 2009/10 Work Program. The officers will keep Council informed on its progress on these matters.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The Planning Reform Unit Work Program is advancing a significant review of Council's current planning controls and policies.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. 2009/2012 Planning Reform Unit Work Program - Adopted by Council on 16 June 2009 (ECM 7021262)
-

17 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported.

RECOMMENDATION:

That Council notes for the month of September 2009 that there are no Variations to Development Standards under State Environmental Planning Policy No 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported where a variation in standards under SEPP1 has occurred.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

18 [PR-CM] Development Application DA09/0006 for a Four (4) Lot Industrial Subdivision, Construction of Part of Ozone Street and Associated Drainage at Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA09/0006 Pt2

SUMMARY OF REPORT:

Council is in receipt of an application for a four (4) lot industrial subdivision at 16 -18 Ozone St, Chinderah. The application includes the construction of 630m of Ozone Street which is presently unformed. The subject site is zoned 4(a) Industrial and has an area of 20,000m². The application seeks consent to subdivide the parent lot into 4 lots with approximate areas of 5000m² each (each with frontage to Ozone St of approximately 38.5m). Future built form is not known at this stage and consent is sought for subdivision and associated road works only.

The site is located along an unformed section of Ozone Street, with access presently provided via a gravel track from Anne Lane. The subdivision therefore requires the construction of approximately 630m of new road (in the designated road reserve), to an urban wider access street standard. The proposed road would be accessed via Chinderah Bay Drive.

The Ozone Street road reserve has a width of 30.18m and an existing open drain is located on its southern side that supports an Endangered Ecological Community (EEC) of Swamp Oak. To accommodate the required road widths (9m wide pavement within 17m wide road reserve), approximately 4500m² (at least half) of the EEC is proposed to be cleared.

In addition, the application proposes to clear all vegetation on the subject site as a result of filling requirements in a flood prone area.

Following public notification, one (1) submission was received, which focused on potential amenity impacts arising from the proposal and queried the number of vehicle trips/day specified by the applicant. These issues have been considered in the assessment of this application as detailed in the following report.

It is noted that the open drainage line is classified as a natural waterway for the purposes of the Water Management Act 2000 (WMA 2000) and the Fisheries Management Act 1994 (FMA 1994). A Controlled Activity Approval (under the WMA 2000) and a Fisheries permit (under the FMA 1994) are therefore required. Neither of these permits have been obtained to date as the proposal was not nominated as integrated development.

Council has been served with a Deemed Refusal Class 1 Appeal in the Land & Environment Court NSW, in relation to this application. However, should this application

be approved (by way of a deferred commencement to allow for a suitable compensatory package to be negotiated and the provision of an aboriginal heritage assessment) it is envisaged that this appeal will be withdrawn. Should the application be refused Council's solicitors will be instructed to defend the appeal commencing with the first call over on 26 October 2009.

It is considered that the application is suitable for a deferred commencement approval to enable environmental and Aboriginal Cultural Heritage to be suitably addressed before any development consent is activated.

RECOMMENDATION:

That Development Application DA09/0006 for a four (4) lot industrial subdivision at Lot 1 DP 102255, No. 16-18 Ozone Street Chinderah be approved subject to the following conditions: -

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 2 for 1 basis of the Swamp Oak Floodplain Forest impacted by the proposed development. The Habitat Restoration Plan must include:**
- a schedule and timing of works to be undertaken**
 - a statement of commitment by the consent holder to funding the proposed works**
 - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.**
- B. An Aboriginal archaeological heritage assessment shall be prepared by a suitably qualified and experienced consultant to the satisfaction of Council's General Manager or his delegate to determine the impact of the proposed subdivision and road works. The assessment shall include**

consultation with the Tweed Byron Local Aboriginal Land Council and any other related stakeholders. The assessment shall also include any mitigation and management measures where required.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: SK20090604 (9m wide road) and SK20090610 (road layout) prepared by Opus Qantec McWilliam and dated June 2009, Figure 6.0 (9m wide road option 2) as amended in red, prepared by Opus Qantec McWilliam and dated November 2008, DWG 00926-01 (Proposed Subdivision Plan) prepared by Planit Consulting and dated October 2008, and the Habitat Restoration Plan approved under Schedule A of this consent, except where varied by the conditions of this consent.

[GEN0005]

2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications.

[GEN0125]

3. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

4. The level of fill placed on the site shall not exceed RL 2.0m AHD.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,552).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision Certificate is issued.

[PCC0275]

6. 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]

7. **All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.**

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

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. **The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications.**

URBAN ROAD

- (a) **Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.**

INTERSECTION

- (b) **Construction of an intersection layout for a basic left turn treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.**

[PCC0875]

10. **Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.**

- (a) **copies of compliance certificates relied upon**

- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans 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]

11. Permanent stormwater quality treatment shall be provided 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. 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]

13. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.
- (b) Construction phase erosion and sediment control 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]

14. Where water is to be drawn from Councils reticulated system, the proponent shall: -

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

15. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management

system (private sewage ejection pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

[PCC1285]

16. Engineering plans and specifications lodged with an application for a construction certificate are to provide detail for the following works: -
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
 - The pump stations are to be designed within a small compound that includes the control box and concrete slab.
 - A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
 - The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.

[PCCNS01]

17. Prior to issue of a construction certificate a Sediment & Erosion Control Management Plan relating to the access road and open drain shall be provided to Council to the satisfaction of Council's General Manager or delegate.

[PCCNS02]

18. Prior to issue of a construction certificate a Water Quality Monitoring Program shall be provided to Council to the satisfaction of Council's General Manager or delegate.

[PCCNS02]

19. Adequate transverse drainage shall be provided to connect existing stormwater runoff discharge points from the north of Ozone Street through to the open drain on the southern side of the new carriageway. Details of the transverse drainage shall be submitted with the s68 Stormwater Application for separate Council approval prior to the issue of a construction certificate.

20. Roadworks in Ozone Street shall maintain the integrity of the earth bund along the southern boundary of the road reserve.

21. Any works associated with the Ozone Street road construction that encroach on private land require the written consent of the affected landholder(s). A copy of the consent(s) shall be submitted to the PCA prior to the works being undertaken.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

22. 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]

23. 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]

24. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction

Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and

- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.**

[PCW0815]

- 25. 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]

- 26. All imported fill material shall be from an approved source. Prior to the commencement of work details of the source of fill, description of material and documentary evidence that the fill material is free from any contaminants shall be submitted to Tweed Shire Council for approval.**

[PCWNS01]

- 27. Prior to the commencement of works on the access road and open drain an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009 is undertaken.**

[PCWNS02]

- 28. Prior to the commencement of any demolition works on the site a development application for demolition is to be submitted to and approved by Council.**

[PCWNS03]

- 29. Commencement of works in accordance with the approved Habitat Restoration Plan must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation.**

- 30. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained prior to commencement of the works.**

- 31. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be obtained prior to commencement of the works.**

32. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.

[PCWNS04]

33. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

[PCWNS05]

34. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

DURING CONSTRUCTION

35. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

36. 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 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

37. 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.**

LA eq 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.

LA eq noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

- 38. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.**

[DUR0225]

- 39. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.**

[DUR0745]

- 40. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

- 41. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.**

[DUR0815]

- 42. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[DUR0985]

- 43. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**

[DUR0995]

- 44. 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]

45. 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]

46. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire length of the Ozone Street upgrade in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

47. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

48. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

49. 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]

50. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 – Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections – on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

Sewer Pump Station

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

51. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

52. Inter allotment drainage shall be provided to all lots where roof water for future structures cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

53. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.

[DUR2355]

54. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

55. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

56. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

57. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

58. All works associated with the access road and open drain are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009.

[DURNS01]

59. The approved water quality monitoring program is to be implemented during any earthworks or construction activity for any runoff from the site, and is to continue until stabilisation of any exposed areas.

[DURNS02]

60. Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

61. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.

62. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.

[DURNS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

63. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

64. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Councils contributions sheet and Certificate of Compliance signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP5:	4.8 ET @ \$10709 per ET	\$51403.20
Sewer Kingscliff:	15.5041 ET @ \$5146 per ET	\$79784.10

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

[PSC0165]

65. **Section 94 Contributions**

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979, a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

(a) Tweed Road Contribution Plan:

19.5 Trips @ \$861 per Trips \$16790

(\$782 base rate + \$79 indexation)

S94 Plan No. 4

Sector6_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities

0.6001 ET @ \$1996.8 per ET \$1198.28

(\$1996.8 base rate + \$0 indexation)

S94 Plan No. 18

[PSC0175]

66. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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.

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road

Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

67. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

68. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

69. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[PSC0735]

70. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

71. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

72. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

73. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

74. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

75. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

76. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

77. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and

sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

78. Prior to issuing a Subdivision Certificate, reticulated water supply and sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.
79. The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.

[PSC1115]

80. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

[PSC1165]

81. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity has been completed; and
- (b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

[PSC1185]

82. Prior to the issue of a subdivision certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[PSCNS01]

83. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plan prior to issue of subdivision certificate

[PSCNS02]

84. Prior to the issue of a Subdivision Certificate, a positive covenant under Section 88B of the Conveyancing Act is to be placed on the title of the

proposed allotments to the satisfaction of Council's General Manager or his delegate. The covenant shall inform future owners that Tweed Shire Council will maintain the pressure pump station and delivery pipe system and require access to install and maintain the pressure pump station. The pump station will remain the property of Council. The 88B Instrument shall benefit Tweed Shire Council and contain a provision enabling the easement or right of access to be revoked, varied or modified only with the consent of Council.

[PSCNS03]

REPORT:

Applicant: CMF Property Services Ltd
Owner: Wareemba Investments Pty Ltd
Location: Lot 1 DP 102255 No. 16-18 Ozone Street, Chinderah
Zoning: 4(a) Industrial
Cost: \$650

BACKGROUND:

The subject site is located on the eastern side of the Pacific Highway and is thus severed/isolated from the existing industrial estate in Morton/Rotumah Streets at Chinderah. The site is one of only four (4) remaining industrial zoned allotments on the western side of the highway.

Surrounding sites are zoned 2(a) Low Density Residential to the north and 3(d) Waterfront Enterprise, with the predominant built form being residential development (including two caravan/holiday parks) to the north west of the subject site. The Action Sands property adjoins the subject site to the west and vacant RTA owned land is located between the subject site and the highway to the east and south.

The site is presently occupied by two (2) dwellings, two (2) sheds, a concrete driveway and a gravel track. All structures are proposed to be demolished, should the application receive approval. The site has been previously used as a nursery and contains both natural and planted areas of vegetation, including an established windrow of eucalypts on the site's eastern boundary.

The existing drain running along the unformed road reserve connects directly with the Tweed River to the west. A tidal floodgate has recently been installed within the larger existing floodgate to allow direct tidal passage between the drainage line and the Tweed River to improve fish passage, reduce mosquito and midge breeding and balance acidity issues. The drain is classified as a natural waterbody for the purposes of the Water Management Act 2000 and the Fisheries Management Act, and therefore requires a Controlled Activity Approval from the Department of Environment, Climate Change and Water and a Fisheries Permit for dredging of 'waterland' from NSW Fisheries. Advice and permits from such agencies has not been sought to date as the application has not been nominated as integrated development. Should the application be favourably supported, the abovementioned permits will be required to be obtained prior to any works commencing.

Construction of Ozone Street is required for approximately 630m to an "urban wider access street" standard. The application originally proposed two options with respect to road design: a 13m wide pavement (within 20m wide road reserve); or a 9m wide pavement (within a 17m wide road reserve). After consideration, the 9m wide pavement option is considered to be the most appropriate for the proposed development, which will cater for a 129 vehicles per day whilst resulting in the least amount of impact on the existing drain and EEC.

The subject site is identified as containing Class 3 Acid Sulphate Soils (ASS), and the applicant has submitted an ASS Management Plan to the satisfaction of Council's Environmental Health Officer.

PROPOSAL

The proposal involves the subdivision of the parent allotment into four (4) allotments of similar size (5000m²), each with a direct frontage of 38.5m to the proposed new road pavement along Ozone Street.

The proposal incorporates construction of Ozone Street, concrete lining of the drainage channel and filling of the subject site to meet flooding requirements.

The future uses of the lots are not known at this stage.

SITE DIAGRAM:



LEGEND

Lot 1 DP 10225
No. 16-18 Ozone Street, Chinderah

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 13 October, 2009

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Cadastre 13 October, 2009
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Coordinate System - MGA Zone 56
 Datum - GDA 94

DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

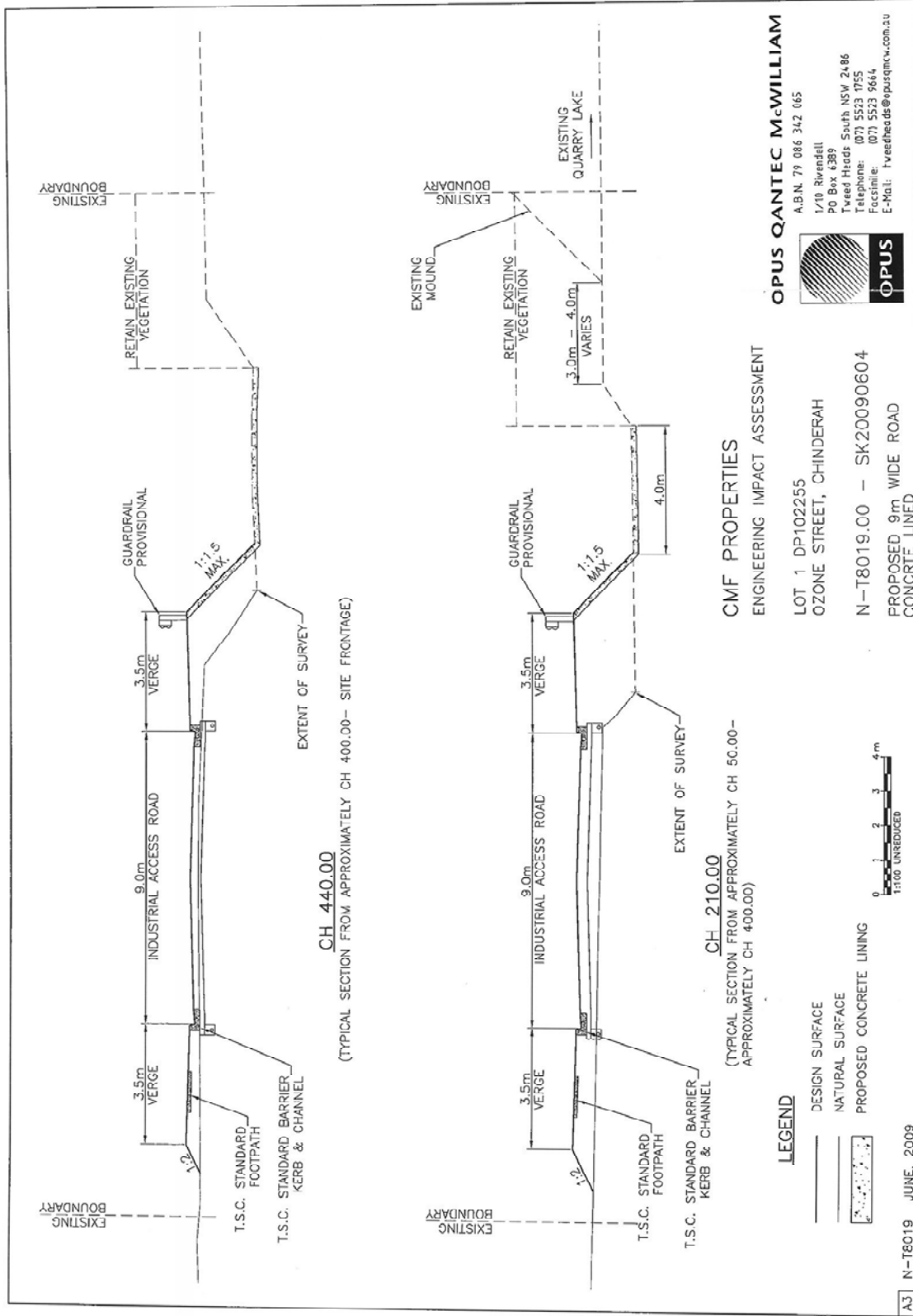


Tweed Shire Council

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 Murwillumbah
 NSW 2484

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DEVELOPMENT PLANS:

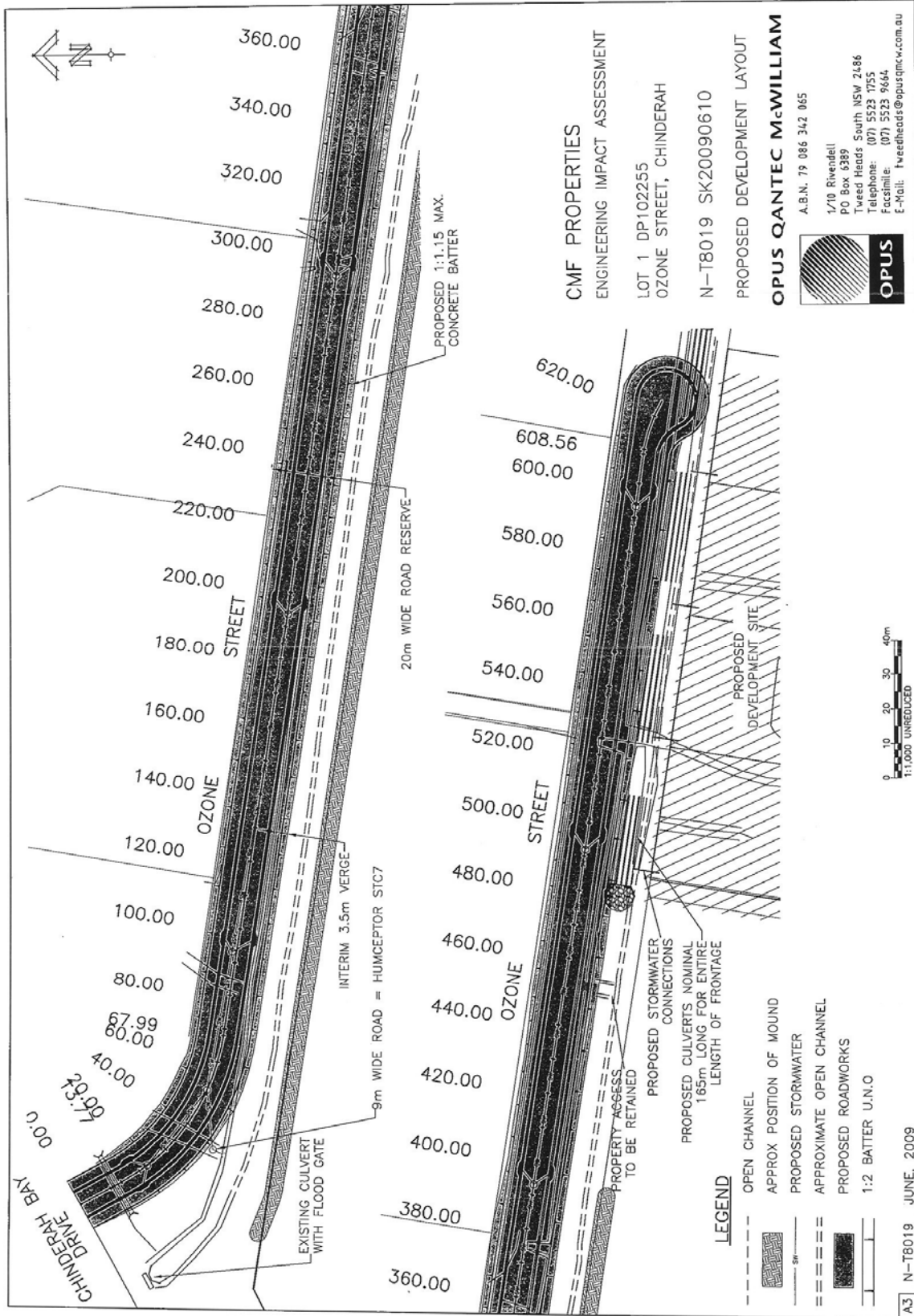


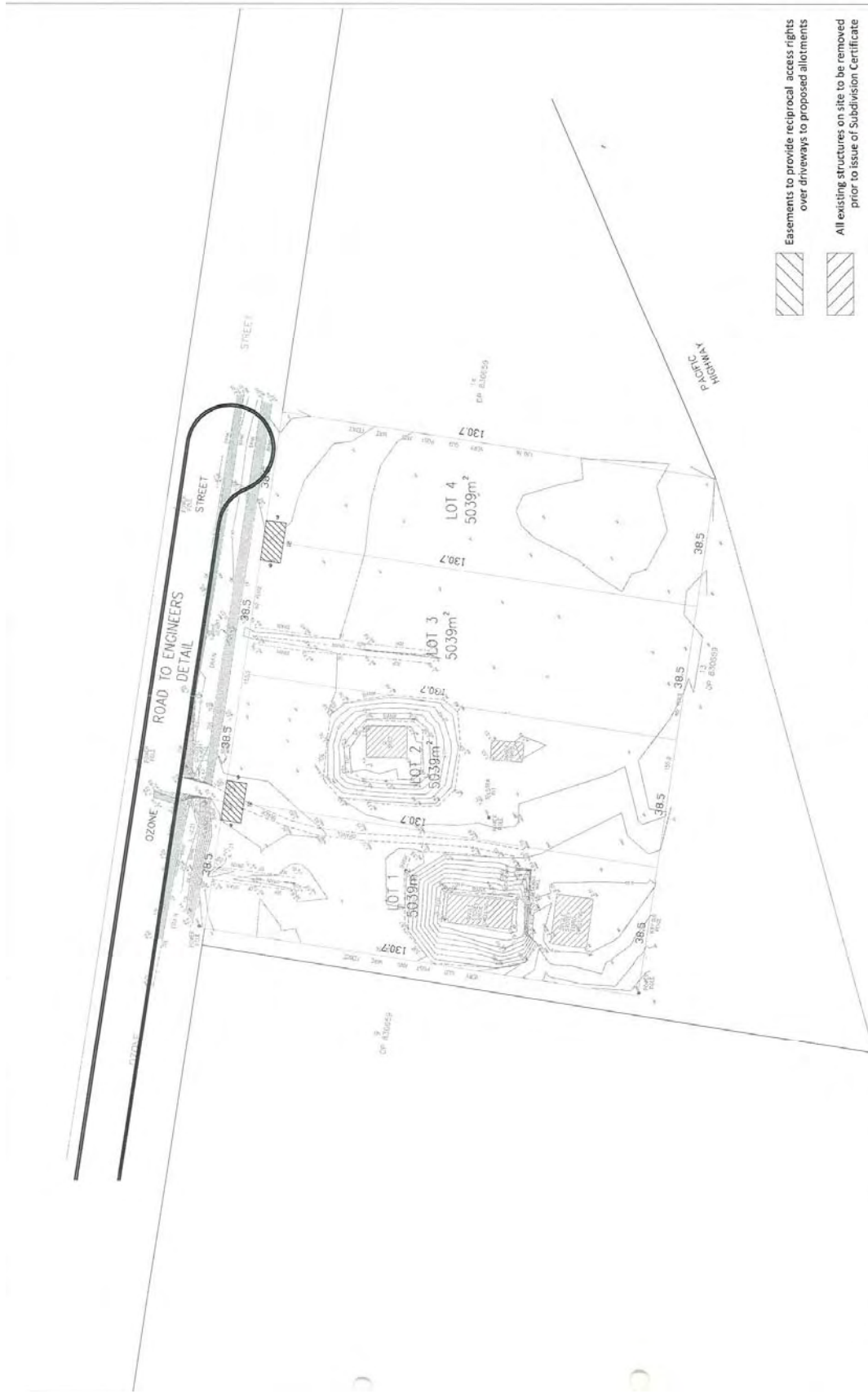
CMF PROPERTIES
ENGINEERING IMPACT ASSESSMENT



OPUS QANTEC McWILLIAM
 A.B.N. 79 086 342 665
 1/10 Rivendell
 PO Box 6389
 Tweed Heads South NSW 2486
 Telephone: (07) 5523 1755
 Facsimile: (07) 5523 9664
 E-Mail: tveefheads@opusqntec.com.au



LOT 1 DP102255
 OZONE STREET, CHINDERAH
 N-T8019.00 - SK20090604
 PROPOSED 9m WIDE ROAD
 CONCRETE LINED





 Easements to provide reciprocal access rights over driveways to proposed allotments
 All existing structures on site to be removed prior to issue of Subdivision Certificate



Level 2247 Gold Coast Highway
 Nobby Beach
 PO Box 205 QLD 4218
 Telephone: 07 5526 1500
 Fax: 07 5526 1502
 Email: admin@planitconsulting.com.au



SCALE	1:500 @ A1
DATE	October 2008
REV	
DRAWN	JP
DRAW No.	01
PROJ No.	400924

CLIENT
CMF Properties

DRAWING TITLE
Proposed Subdivision Plan
Re-Subdivision of Lot 1 in DP 102255
Ozone Street, Chinderah

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

Subject to a suitable compensatory offset package, the proposal is considered to be consistent with Clause 4, including Clause 4(d) which relates to sustainable economic development compatible with the environmental and residential amenity qualities of the Tweed.

Clause 5 - Ecologically Sustainable Development

The proposal (with a suitable compensatory offset for the loss of an EEC) is considered to be consistent with Clause 5 as the road to be constructed is a dedicated road reserve and opportunities exist for off-site compensation for vegetation loss.

Clause 8 - Zone objectives

The subject site is zoned 4(a) Industrial pursuant to the provisions of the TLEP 2000. The primary objectives of this zone are:

- *To provide land primarily for industrial development and*
- *To facilitate economic activity and employment generation.*

The proposal is consistent with both primary objectives as it seeks to capitalise on the site's land use zoning to provide for future industrial development (under separate development consent). This would in turn facilitate future economic activity and employment generation during both the construction and operational phases of the project.

Clause 15 - Essential Services

All essential services are available to the site, including connection to Council's reticulated water and sewer. Council's Water and Sewer Systems Engineer has indicated that the proposed method of water supply is satisfactory and that Council is prepared to accept a common sewer rising main in Council ownership, with each individual lot to have a private pressure sewer pump station. Separate S68 applications will be required to this effect.

Clause 17 - Social Impact Assessment

The proposal is not anticipated to generate significant social impacts aside from the potential future generation of employment opportunities, subject to development consent for future built form on the site.

Clause 19 – General (Subdivision)

This clause allows for the proposed subdivision of land zoned 4(a) Industrial with consent.

Clause 22 – Development Near Designated Roads

The site is located in proximity to the Pacific Highway which is an RTA classified road, however access to or from the highway is neither currently available or sought by the applicant. The proposed development is anticipated to have negligible impacts in terms of traffic safety on the classified road.

Clause 31 – Development Adjoining Waterbodies

Although the subject site is not located directly adjacent to the Tweed River, the existence of the stormwater drain (which experiences tidal flows) within the road reserve has prompted Council to assess the application against Clause 31.

Subject to the issuing of the required permits by NSW Fisheries and the Department of Environment, Climate Change and Water, and the recommended conditions of consent detailed in this report, the proposed development is considered to satisfy the provisions of Clause 31 in terms of adverse impact on the water quality or scenic quality of the Tweed River.

Clause 34 – Flooding

The subject site is flood prone, with a design flood level of 3.3m AHD. It is also identified as having a 'low' flood velocity. It is proposed to fill the site by approximately 0.5m (to RL2.0m AHD). This issue is discussed in further detail later in this report.

Clause 35 - Acid Sulfate Soils

The subject site (and road reserve) exhibits class 3 Acid Sulphate Soils (ASS) as per Council's GIS System. The applicant has submitted an Acid Sulphate Soils Management Plan, prepared by HMC Environmental Consulting. Council's Environmental Health Officer has reviewed this plan and concerns have been raised that there is not adequate site area to apply the proposed treatment method (neutralisation with agricultural lime) outlined in the plan. Conditions have been applied requiring the on-site contractor to liaise with Council's Environmental Health Officer prior to the commencement of work on the proposed road or drain, and requiring the preparation of a Water Quality Monitoring Program prior to commencement of work.

It is considered that the recommended conditions represent an appropriate solution in this regard.

Clause 39 – Remediation of Contaminated Land

The subject property is currently used for residential purposes, and has previously been used as a nursery and for cattle grazing. Council's Environmental Health Officer has indicated that no further consideration with regard to contaminated land is required.

Clause 44 – Development of Land Within Likely or Known Archaeological Sites

Clause 44 (1) permits consent to be granted for development on a site that has Aboriginal heritage significance or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance if an assessment of how the development will affect the conservation of that site has been considered.

The applicant has stated the following:

"We are confident that the site is not within proximity to any known sites, furthermore, given that the matter is not a Part 3A project, a condition requiring cessation of works if any item is disturbed is considered acceptable. We will also accept a condition that requires us to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council".

Such conditions have been applied. The applicant has also advised that they are in the process of obtaining an assessment from a local archaeologist which has not been supplied to Council to date.

As such, Council has applied a deferred commencement condition to ensure that Aboriginal heritage significance issues are appropriately addressed which will in turn satisfy Clause 44.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

Inclusive of compensatory habitat works to the satisfaction of Council (deferred commencement of consent to enable this to occur) the proposal is considered to be consistent with Clause 15.

Clause 32B: Coastal Lands

The NSW Coastal Policy applies to the subject site and Council must therefore take into consideration the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

Broadly, the proposal does not contravene the provisions of the above documents, should a suitable compensatory package be provided.

The proposal will not impede public access to the foreshore and will not overshadow the foreshore.

Clause 47: Principles for Commercial and Industrial Development

Clause 47 (2) specifies that before granting consent for industrial development, Council must consider that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. At this stage, consent is sought for subdivision only, with industrial development to occur under separate application in the future. The subject site is not adequately served by the transport system at present for the purposes of this application, hence construction of the proposed road to the required 9m minimum standard.

However, if the proposal is favourably supported, the new road will provide adequate access for large vehicles in Ozone Street, Chinderah Bay Drive and Chinderah Road onto the existing highway interchange, which is considered to meet the provisions of Clause 47 (2).

Clause 81: Development adjacent to the ocean or a waterway

This clause specifies that Council must not consent to an application for development on land within 100m of the ocean or any substantial waterway unless satisfied the development does not limit access to available open space, does not detract from the amenity of the waterway and is consistent with any foreshore management plan applying to the area.

In this instance, the proposed subdivision does not limit access to open space (whilst it does propose to create a road in a road reserve area presently utilised by residents as open space). Without a suitable compensatory offset, the proposal is considered to have the potential to detract from the amenity of the waterway by removing a stand of established vegetation (the EEC) and clearing all site vegetation. However, the applicant has provided general agreement to the provision of a habitat compensation plan to offset the vegetation loss and the proposal is therefore considered to be consistent with Clause 81. There is no foreshore management plan applying to the area.

SEPP No. 14 - Coastal Wetlands

The existing drain terminates into an area of the Tweed River identified under SEPP 14 (and also classified as a sensitive coastal location under SEPP 71) and part of the proposed road works (in particular, upgrading of the Chinderah Bay Drive/Ozone Street intersection) are located within 50m of SEPP 14 wetlands.

Consideration of SEPP 14 only occurs if the subject site is covered by the policy, which in this case it is not. Subject to conditions to prevent sediment/runoff impacts into the Tweed River, the proposed development is considered to generally accord with SEPP 14.

SEPP No 71 – Coastal Protection

The subject site is covered by SEPP 71, although the site is not identified as a sensitive coastal location under the Policy.

Subject to the provision of compensatory habitat for the significant vegetation to be lost from the site and protection in perpetuity of such, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

In particular the proposal is considered to be consistent with the aims of the policy, will not affect access to any coastal foreshore areas and is considered to be suitable for the subject locality due to the site's industrial zoning and proximity to the Pacific Highway and other industrial development. The proposal is not considered to impact adversely on the coastal foreshore, will not create overshadowing and is not considered to detract from the scenic qualities of the New South Wales coast.

The applicant has demonstrated (via the 7-Part Test) that the proposed vegetation clearing will not impact significantly on threatened flora or fauna species and has indicated their intention to engage in compensatory works to offset the vegetation loss at the rate of 2:1. No wildlife corridors are mapped on the subject site or along the Ozone Street road reserve. The subject site is located outside of the coastal erosion zones under the NSW Coastal Policy and coastal processes will not impact on the proposed development. The proposal does not have the potential to create conflict between land based and water based activities.

With regard to Clause 8(l), the applicant has noted that they are confident that the site is not within proximity to any known archaeological sites. Applicable conditions of consent have been applied in this regard, including the requirement to cease works if any item is disturbed and the need to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council. More importantly, a deferred commencement condition has been incorporated to ensure that the applicant has adequately addressed all issues related to the potential impact of the proposed subdivision and associated road works. The deferred commencement condition incorporates the requirement to consult with the Tweed Byron Local Aboriginal Land Council and associated stakeholders and include appropriate mitigation/management measures.

In terms of cumulative impact, it is considered that the development will no longer pose a significant impact to the EEC community due to damage being compensated on a 2:1 (two (unit areas) gained for one lost basis).

If the above mentioned deferred commencement conditions can be satisfied, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

There are no draft EPI's pertaining to the subject site.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

A2 - Site Access and Parking Code

At the subdivision stage, the provision of car parking is not required. The applicant will be required to demonstrate compliance with DCP A2 at the time of lodgement of an application for the future development of each site.

As the proposal meets the minimum lot size and lot frontage (width) controls for industrial subdivision, it is considered that future development will be able to demonstrate compliance with parking/access/manoeuvrability requirements under this DCP.

A3 - Development of Flood Liable Land

The subject site is flood prone to a design level of RL 3.3m AHD. Ground levels on the site range from RL1.42m to RL1.82m. Approximately 0.5m of fill is proposed to be imported onto the site.

Council's Planning and Infrastructure Engineer has provided the following comment in this regard:

"The site is flood liable, with ground levels ranging from RL 1.42m - 1.82m AHD. Design flood level in this part of Chinderah is RL 3.3m AHD.

Approximately 0.5m of fill is intended to be imported onto the site, to achieve levels of approximately RL 2.0m AHD, which is generally consistent with the level intended for Ozone St. This filling is necessary to regrade the site and to provide surface and sub-surface drainage to the future Ozone St drainage system. The filling is therefore acceptable under DCP- A3.

DCP-A3 states that "structures and permanent improvements within the industrial zoned land are to be restricted in site coverage to retain a minimum of 50% of the area available for flood flow". No structures are proposed for the subject subdivision DA, however an 88B restriction should be placed on the title for each lot so that future development will comply".

Appropriate conditions of consent have been applied, including the requirement for a Section 88B restriction to user over each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow for future development.

Therefore, the proposal is considered to be consistent with DCP A3.

A5-Subdivision Manual

This policy contains guidelines for subdivision development. Relevant to this application, the policy specifies that subdivided land in the 4(a) Industrial zone must meet the following criteria:

- Have a minimum lot size of 2000m²;
- Be capable of containing a 10m x 15m building platform; and
- Have a minimum of 30m road frontage.

The proposal is consistent with the above criteria.

In addition, consideration is required of the physical and environmental constraints of the site, the degree of landforming, stormwater and drainage and buffers as follows:

Physical constraints

The subject site is relatively unconstrained in physical terms with the exception of the unformed section of Ozone Street which has hindered access. The site is relatively flat and does not contain any waterways (besides the adjacent open drain) and the proposal does not necessitate significant changes to the natural landform.

Environmental constraints

The site contains established native vegetation and the open drain within the Ozone Street road reserve supports an Endangered Ecological Community. The site is unlikely to be contaminated based on historical landuses, is not at risk of land slip or subsidence and is not bushfire prone. The site does exhibit class 3 ASS and appropriate conditions have been applied in this regard by Council's Environmental Health Officer.

A 7-Part Test has been carried out by the applicant which has indicated that the proposed vegetation clearing will not have a significant effect on threatened species or their habitat. Notwithstanding, the applicant has acknowledged the presence of EEC vegetation and appropriate compensation measures will be undertaken as discussed below.

The proposal is considered to be consistent with the NSW Coastal Policy.

Significant Vegetation

As mentioned, the site and the road reserve both support significant vegetation. The need for compensatory works to offset the loss of this vegetation has been acknowledged by the applicant and negotiations have commenced between the applicant and Council as to the development of a plan for compensatory habitat works for an off-site area of the same or like vegetation communities. The plan will require a minimum 2:1 compensation outcome, i.e. at least 1ha of the same vegetation community to be provided in

an area set aside for conservation as an offset for loss of around 0.5ha of habitat. Appropriate deferred commencement conditions have been applied in this regard.

This is considered to satisfy this section of DCP A5.

Aboriginal Heritage or Cultural Items

The applicant has noted that they are confident the site is not within proximity to any known sites and are presently preparing an assessment in this regard (not received by Council to date).

A deferred commencement condition has been applied in this regard to ensure that Aboriginal heritage significance issues are appropriately addressed.

Should the applicant satisfy the deferred commencement condition, this section of DCP A5 is considered to be satisfied.

Landforming

The application proposes minor earthworks to fill the site to RL 2.0m AHD. The site at present is relatively flat with two dwellings existing on raised earth pads. Apart from the removal of the existing vegetation, the proposed filling works will not significantly alter the natural landform and is not considered to impact upon any nearby properties in this regard.

Issues relating to access, stormwater, drainage, waterways and flooding are detailed further later in this report.

The proposed development, inclusive of the compensatory habitat plan and protection in perpetuity of such land is considered to be generally consistent with DCP A5.

A11-Public Notification of Development Proposals

The proposed development was notified for a period of two weeks from 21 January 2009 to 5 February 2009. During this time, one (1) submission was received, which raised issues such as increased traffic generation, amenity impacts and the issuing of orders by Council for the removal of unlawful structures constructed by residents of the Caravan Park over the road reserve. These issues will be addressed later in this report.

A13-Socio-Economic Impact Assessment

The proposal is not considered to create significant social or economic impacts

(a) (iv) Any Matters Prescribed by the Regulations

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. However, the site is not located within the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes and the proposal will not overshadow any foreshore reserves or restrict public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

Clause 92(b) Applications for demolition

The proposal requires the demolition of all existing site structures. The applicant has not submitted a demolition plan and subsequently it is recommended that demolition form part of separate development consent. Appropriate conditions of consent have been recommended to control demolition activities.

(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

Inclusive of the compensatory habitat scheme, the proposal is considered to be generally consistent with the context of the subject locality which exhibits mixed zoning, including residential, waterfront enterprise and industrial. The site is located in proximity to the established Chinderah industrial area, the Pacific Highway and nearby industrial developments including Action Sands (sand mining) and a recently approved warehouse for boat manufacture and sales in Chinderah Bay Drive.

The proposal is considered to be an appropriate development to occur in the context and setting of the subject site.

Access, Transport and Traffic

Council's Development Assessment Engineer has provided the following comment pertaining to the proposed access arrangements for the development:

“Access to the proposed subdivision is from Chinderah Bay Drive and via new road construction through the existing Ozone Street road reserve. Ozone Street is currently a partial gravel track with the Tweed Heritage Park adjoining the length of the road reserve.

It is noted that a number of fences, gates, furniture and vehicles are located within the Ozone Street road reserve, blocking access through the reserve. These structures will be required to be removed to physically construct the road.

Chinderah Bay Drive and Ozone Street both have flat vertical and horizontal alignments. Chinderah Bay Drive has a 10m wide pavement in good condition with no kerb & gutter.

A formalised intersection will be created with the proposed upgrade of Ozone Street. The intersection of Ozone Street is located towards the end of Chinderah Bay Drive. Sight distance at the intersection is considered adequate.

Current access to the property is via a gravel track, approximately 3m wide and 90m in length. Access to the gravel track is from Anne Lane.

Proposed access to the 4 lot subdivision is via a new road approximately 630m in length constructed to an urban wider access street standard. The proposed road will be accessed via Chinderah Bay Drive, following the Ozone Street road reserve alignment and terminating in a cul-de-sac.

The application has lodged two options in relation to the road standard. The options are as follows:

- 13m wide pavement within a 20m wide road reserve with kerb & gutter (industrial type road standard designed for a maximum of up to 8000 vehicles per day)*
- 9m wide pavement within a 17m wide road reserve with kerb & gutter (access street bus route road standard designed for a maximum of up to 3000 vehicles per day)*

The rationale for the 9m wide pavement is that a reduced width will require less construction works to create a level platform for the road and associated drainage. A 9m wide pavement within a 17m wide road reserve is considered adequate to service the 4 lot industrial subdivision.

An existing drain is located on the southern side of the road reserve and earthworks for both road widths will be required.

The actual width for the Ozone Street road reserve is 30.18m.

Council's road design specifications for a cul-de-sac specify that the maximum length is 120m. Due to site constraints which include the location of the Pacific Highway roundabout to the east of the site, it is considered that the 630m road is acceptable".

Notwithstanding the environmental issues associated with the loss of an EEC (and the proposed method of compensation for such), the proposed 9m wide road (within a 17m reserve) is considered to be appropriate for the proposed development and suitable conditions of consent have been applied in this regard.

Traffic Generation

Council's Development Assessment Engineer and Traffic Engineer have provided the following comment:

The 4 lot industrial subdivision will not affect the surrounding road network.

The construction of Ozone Street to an urban wider access street provides a level of road standard capable of supporting a high vehicle volume.

Please note the following comments from Council's Traffic Engineer: "Some 680m of Ozone Street will need to be constructed to Council's standards of 9.0m rather than 13.0m is acceptable for this construction.

I calculate proposed traffic generation at about 129 vpd (56 vpd is stated in the report) and peak hour at about 23 vph. The traffic volume can be accommodated within the existing road capacity of Chinderah Bay Drive. Only BAL intersection treatment will be required at the proposed Ozone Street/ Chinderah Bay Drive intersection."

The proposed development is considered to be appropriate from a traffic generation perspective, subject to the imposition of a condition requiring BAL intersection treatment (as above) and notwithstanding potential amenity impacts for nearby residents as is addressed further in this report.

Flora and Fauna

The applicant's flora and fauna survey has specified the following:

"Whilst the roadway upgrade proposal is considered unlikely to significantly affect native vegetation communities, fauna and associated habitat it will result in the minor loss of local habitat for native species through tree removal, alteration to the existing drainage channel and construction of the new roadway and associated trunk infrastructure (i.e.: communications, sewer, stormwater etc). In this regard recommendations have been included in this report regarding the construction management, water quality controls and offsite revegetation to offset loss of vegetation".

Council's Ecologist has noted the following:

"Negotiations have commenced with the developer in relation to provision of compensatory habitat for the significant vegetation to be lost from the site. Agreement in principle has been reached that restoration and protection in perpetuity of an off-site area of the same or like vegetation communities will be undertaken to provide a minimum of 2:1 outcome, i.e. at least 1ha of the same vegetation community to be provided in an area set aside for conservation as an offset for loss of around 0.5ha of habitat.

The vegetation is presently contained along a linear drainage line and thus is long and narrow in shape, leaving it subject to degradation through a long edge to area ratio and contained within road reserve and land zoned for development, thus a conservation benefit is likely upon completion of the restoration and protection of the offset site. Sites for compensation will be chosen based on larger overall reserve size and rounder shape to reduce degradation arising from edge effects, thus chance of long-term survival.

A number of suitable sites are under discussion, in relation to suitable public land parcels (applicable because the road reserve is public land) but agreement has yet to be reached on particulars”.

It is considered that the matter can be approached through the application of a deferred commencement condition. Additional conditions have also been applied relating to construction management and water quality controls as identified by the applicant in the flora and fauna study above.

(c) Suitability of the site for the development

Department of Climate Change and Water and NSW Fisheries Permits

In accordance with the definitions relating to watercourses within the Water Management Act 2000, the Fisheries Management Act 1994 and Tweed LEP 2000, the drainage line must be assessed in the same way as a natural watercourse, thus the proposed development requires permits under both the Water Management Act 2000 and the Fisheries Management Act 1994. Neither of these have been obtained to date as the applicant did not choose to nominate the application as integrated development in this regard. Should the application be favourably supported, the applicant will be required to obtain both required permits/approvals prior to the commencement of any works. It is noted that as neither Department has yet had the opportunity to review the proposal, there is no guarantee that the required permits would be issued.

Stormwater Drainage

Council’s Planning and Infrastructure Engineer has provided the following comment pertaining to drainage from the site:

“The proposed construction of Ozone St from Chinderah Bay Drive, particularly the cul-de-sac head, will encroach into the existing drainage channel that runs along the road reserve to the Tweed River. It is also intended to replace the open drain with 4 x 1200mm diameter pipes for the full frontage of the site, to facilitate access to the subdivided lots.

The road design shows that drain realignment works to accommodate the standard road cross section may impact on an existing earth bund along the southern edge of the road reserve. It is assumed that this bund is in place to protect the caravan park residents to the north from noise from the sand quarry to the south of the road reserve. This bund must be

maintained, and may involve works on the quarry site, therefore requiring owners consent.

No transverse drainage is shown in the design of Ozone St. There are a number of minor open drains that currently discharge runoff from properties to the north to the main Ozone St drain, which will need to be catered for in detailed design”.

Appropriate conditions of consent have been applied, including the submission of a S68 Stormwater application, a requirement for the maintenance of the earth bund and owners consent for any works encroaching into adjacent private land.

Earth Bund

The existing earth bund along the southern boundary of the road reserve serves as an acoustic barrier between nearby caravan parks and the Action Sands development. Conditions will be applied so as to maintain the integrity of the bund during road construction.

Surrounding Landuses/Development

Considering the industrial zoning of the subject site and the fact that development of the site for any purpose would facilitate the upgrade of Ozone Street, the proposal is considered to be appropriate in the context of the wider Chinderah locality.

Water

Council’s Water and Sewer Systems Engineer has reviewed the proposal in regard to water supply. The following comment has been received:

“The application proposes the construction of a 150mm diameter water main to service this development. It is connected to an existing 150mm main at the intersection of Chinderah Road, Walsh Street and the Pacific Highway. The calculation in the application relates to a potential consumption on the basis of an average demand scenario, but has not included an assessment of the fire flow that may be necessary.

The proposed main complies with the minimum requirement for size servicing industrial properties and is likely to be able to deliver the required fire flows although no calculation has been carried out to demonstrate this.

The water supply proposed is therefore considered satisfactory”

Appropriate conditions have been applied in this regard.

Sewer

Council’s Water and Sewer Systems Engineer has reviewed the proposal in regard to sewer and indicated that the Rutile Street Pump Station is capable

of handling the extra loading generated by the proposal. In terms of connection to the pump station, Council is prepared to accept a suitably sized common sewer rising main in Council ownership with each individual lot to have a private pressure sewer pump station installed in the front of each lot.

For each lot serviced by the pressure sewer system, a capital contribution of \$14, 800 shall be paid by the applicant to Council to enable installation of each pump station and a positive covenant will be placed on each lot that will permit Council access for the installation, maintenance and replacement of the pump station, the provision of electricity by the landholder and the placement of the control box and alarm system on an exterior wall of the future structure.

The above has been applied as a condition of development consent (via an 88B restriction to benefit Council) and the \$14, 800 fee per lot incorporated within the total sewer S64 contribution charge.

The developer will be required to obtain s68 approval to install and operate each of the pump stations from Council's Environmental Health section. Subsequent owners will then have 60 days under the Act to lodge an application to transfer the approval to operate the pump station.

Appropriate conditions have been applied in this regard.

(d) Any submissions made in accordance with the Act or Regulations

The proposal was notified under DCP A11 for a period of 14 days. With one (1) submission was received. The submission raised the following issues:

Issue	Response
<p><u>Vehicle count too low</u></p> <ul style="list-style-type: none"> • Application states 56 vehicle trips/day based on 28 employees per hectare, the number of daily trips would be higher given the nature of the subdivision (industrial) and vehicles would be of an industrial/commercial nature rather than passenger vehicles; • Will create increased dust, noise, vibration and visual pollution. 	<p>Council's Traffic Engineer has reviewed the proposal in this regard and confirmed that the submitted 56 trips/day is too low: <i>I calculate proposed traffic generation at about 129 vpd (56 vpd is stated in the report) and peak hour at about 23 vph. The traffic volume can be accommodated within the existing road capacity of Chinderah Bay Drive. The proposed road is to be constructed to the correct standard to enable use by large vehicles.</i></p> <p>It is acknowledged that dust and noise are potential temporary outcomes of this proposal, however these issues are considered adequately resolved via conditions of consent.</p> <p>This issue is considered to be adequately resolved.</p>

<p><u>Proposed road too narrow</u></p> <ul style="list-style-type: none"> • 9m is too narrow to account for size of vehicles to and from subdivision (ie: semi-trailers). 	<p>Council's Development Assessment Engineer has reviewed the application in this regard and confirmed that a 9m road (within a 17m wide reserve) is appropriate for the proposed development.</p> <p>This issue is considered to be adequately resolved.</p>
<p><u>Presence of structures in road reserve</u></p> <ul style="list-style-type: none"> • Construction of road doesn't consider existing structures built by Caravan Park residents that encroach into the road reserve • Council must initiate orders to have such structures removed; • Removal of structures/disturbance of residents' homes would affect their amenity and enjoyment of life. 	<p>Site inspection has indicated a number of unlawful structures encroaching onto the road reserve. The construction of the road will necessitate the removal of these unlawful structures on Council owned land.</p> <p>As such, Council's Compliance Officer will likely be involved with initiating the removal of them. Although unfortunate, the unlawful structures will need to be removed, despite any potential impacts to the amenity of residents.</p>
<p><u>Traffic management would be improved via access immediately off roundabout</u></p> <ul style="list-style-type: none"> • Road access from roundabout could terminate in a cul-de-sac in front of subject property; • This would obviate noise and amenity disturbances to Caravan Park residences. 	<p>Access off roundabout is not proposed and it is unlikely that the RTA would support such a proposal given the close location of the site to the roundabout and highway.</p> <p>It is not possible to know the potential of noise and amenity impacts at this stage as the end uses of each of the allotments is not known. Until this point it is not possible to theorise as to what volume of traffic may use the new road, with the exception of applying conditions relating to the development being conducted in a manner so as not to cause disruption to the amenity of the locality by way of the emission of noise, dust and odours or the like.</p>
<p><u>Socio-economic characteristics of Caravan Park residents</u></p> <ul style="list-style-type: none"> • Large majority of residents are elderly; • Large majority if residents' sole source of income is a social security payment and most have limited financial resources to be able to relocate. 	<p>Council officers are not of the opinion that the proposal will result in residents of the caravan park needing to relocate. The proposal is not considered to impact on the ability of residents to enjoy their own homes.</p>

(e) Public interest

Subject to the applicant satisfying the deferred commencement conditions, the proposed development is considered to be in the public's interest.

OPTIONS:

1. Approve the application in accordance with the recommended conditions for deferred commencement.
2. Refuse the application and defend the appeal in the Land & Environment Court. Any resolution for refusal needs to be supported by valid reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has lodged a Deemed Refusal Class 1 Appeal with the Land and Environment Court. Should Council approve the application it is anticipated that the appeal would be withdrawn.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is located on a site zoned for industrial development and appropriate conditions of consent have been applied to ensure that the proposal meets all applicable legislative requirements, subject to the deferred commencement conditions (Habitat Restoration Plan on suitable compensatory site and Aboriginal cultural heritage significance assessment) being satisfied.

Subject to satisfaction of the deferred commencement conditions, the proposal is considered to warrant 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 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.
