



# **AGENDA**

## **PLANNING COMMITTEE MEETING**

**Tuesday 27 January 2009**

**Mayor: Cr J van Lieshout**

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



THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

**ITEMS FOR CONSIDERATION OF THE COMMITTEE:**

<b>ITEM</b>	<b>PRECIS</b>	<b>PAGE</b>
	<b>REPORTS THROUGH GENERAL MANAGER</b>	<b>5</b>
<b>P1</b>	<b>[PR-PC] Development Application DA07/1399 for a two lot subdivision including a special purpose allotment and associated telecommunications facilities and tower at Lot 3 DP 1000385, Fraser Drive, Tweed Heads South</b>	<b>7</b>
<b>P2</b>	<b>[PR-PC] Development Application DA08/0611 for Development of Seven (7) Manufactured Home Sites within an existing Manufactured Home Estate at Lot 1 DP 860569, No. 192 Piggabeen Road, Tweed Heads West</b>	<b>43</b>
<b>P3</b>	<b>[PR-PC] Development Application DA08/0975 for a Dwelling &amp; Swimming pool at Lot 8 Section 1 DP 31209, No. 2 Cypress Crescent, Cabarita Beach</b>	<b>83</b>
<b>P4</b>	<b>[PR-PC] Development Application DA08/1102 for a Storage Shed at Lot 6 DP 711121, No. 7 Dixons Road, Burringbar</b>	<b>115</b>
<b>P5</b>	<b>[PR-PC] Part V Application - PTV08/0001 for an Upgrade of the Banora Point Water Reclamation Plant &amp; the Demolition &amp; Reconstruction of the Tweed Heads West Water Reclamation Plant at Lot 482 DP 591546; Lot 2 DP 591548; Lot 1 DP 1011625, Parkes Drive, Tw</b>	<b>131</b>
<b>P6</b>	<b>[EO-PC] Proposed Changes to Section 94 Developer Contributions by NSW Government</b>	<b>143</b>
<b>P7</b>	<b>[EO-PC] Tweed Road Contribution Plan - Adoption of Version 5.1</b>	<b>159</b>
<b>P8</b>	<b>[PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards</b>	<b>163</b>
<b>P9</b>	<b>[PR-PC] Draft Local Environmental Plan 2008 - Public Exhibition</b>	<b>165</b>



THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

## REPORTS THROUGH GENERAL MANAGER

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

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

#### MATTERS FOR CONSIDERATION

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



THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

**P1 [PR-PC] Development Application DA07/1399 for a two lot subdivision including a special purpose allotment and associated telecommunications facilities and tower at Lot 3 DP 1000385, Fraser Drive, Tweed Heads South**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA07/1399 Pt3**

**SUMMARY OF REPORT:**

Council's previous Administrators requested that the application be reported to Council and the community was informed that the application would be determined at a Council meeting. The application proposes a two (2) lot subdivision to create proposed lot five (5) and proposed lot six (6). Lot five (5) (60m<sup>2</sup>) is primarily created as a service allotment for the construction of a telecommunications facility, whilst lot six (6) (73.10ha) is to remain unchanged in terms of its current use as 'Pioneer Park'. Lot five will be accessed via a 5m wide Right Of Way burdening lot 6.

The telecommunications facility consists of an equipment shelter shed approximately 3m in height and a mono pole with a total height of approximately 41m (RL78.5m AHD).

The proposal has been assessed against the requirements of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Commonwealth Telecommunications Code of Practise 1997, Australian Communications Industry Forum Industry Code, Environmental Planning and Assessment Act and all relevant Regional and Local planning documentation.

The subject application was reported to the Planning Committee meeting held on 16/ December 2008. Council unanimously resolved the following:

***“RECOMMENDED that Development Application DA07/1399 for a two lot subdivision including a special purpose allotment and associated telecommunications facilities and tower at Lot 3 DP1000385 Fraser Drive Tweed Heads South be deferred to the next Council meeting to be held 27<sup>th</sup> January 2009.”***

Council's resolution responded to a number of submissions received from local residents that they had insufficient time to prepare and respond to the officers' report to the 16 December meeting. The deferral was mainly intended to provide these residents with additional time to prepare for Council's further consideration of this matter at the upcoming Council meeting on 27 January 2009.

**RECOMMENDATION:**

**That Development Application DA07/1399 for a two lot subdivision including a special purpose allotment and associated telecommunications facilities and tower at Lot 3 DP 1000385, Fraser Drive Tweed Heads South 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 and report;**
  - **Drawing No. 16465 D prepared by B & P Surveys dated 8/11/2007,**
  - **Drawing No. Q107242. Locality Plan Sht S1 Index prepared by National Infrastructure Services dated 02/02/2007,**
  - **Drawing No. Q107242. Site Setout Plan Sht No. S2 Index prepared by National Infrastructure Services dated 02/02/07.**
  - **Drawing No. Q107242. South East Elevation Sht No. S3 Index prepared by National INfrastructure Services dated 02/02/07.**
  - **Drawing No. Q107242. Aerial Photo Locality Plan Sht No. S7 Index prepared by National Infrastructure Services dated 02/02/07.**
  - **National Standard 3.1 Shelter Sht No. E1 Index prepared by National Infrastructure Services dated 02/02/07.**
  - **Summary of estimated RF EME Levels around the proposed mobile phone base station at origin of Fixed Point Radial, Tweed Heads South West NSW. NSA Site NO. 2486007. Dated 15/1/08.**

**except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0015]

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

[GEN0115]

- 4. 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]

- 5. 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]



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

- (a) Construction of an all weather access, including bitumen sealing from the edge of the existing Frasier Drive bitumen carriageway to the property boundary in accordance with Council's Development Control Plan, Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications.

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

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

[GENNS01]

7. Erosion and Sediment Control shall be provided 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]

#### PRIOR TO COMMENCEMENT OF WORK

8. 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]

9. 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]*
10. 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]*
11. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- [PCW0255]*
12. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.
-



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

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

[PCW0985]

#### **DURING CONSTRUCTION**

13. All proposed works are to be carried out in accordance with the conditions of development consent, approved s138 Application, drawings and specifications.

[DUR0005]

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

- A. Short Term Period - 4 weeks.

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

- B. Long term period - the duration.

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

[DUR0215]

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. 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]

18. 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]
19. 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]
20. 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]
21. 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.
- [DUR0995]
22. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles
  - No material is removed from the site by wind
- [DUR1005]
23. 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]
24. 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]
-



25. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

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

[DUR1945]

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

[DUR2185]

28. Construction of an all-weather access to proposed Lot 5.

[DUR0585]

#### PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

29. 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]

30. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

[POC0805]

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

[POC1055]

#### USE

32. 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]

33. 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]



34. 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]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

35. 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]

36. 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]

37. 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]

38. 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 over ALL public services/infrastructure on private property.

(b) Right of Carriageway (min 5 wide) over the new access servicing proposed Lot 5.

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]



39. 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]

40. 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]

41. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries within the vicinity of the proposed access.

Any identified encroaching road boundary fence is to be relocated (if deemed necessary by Council) to the correct alignment by the applicant, at the applicant's expense, prior to issuing a Subdivision Certificate.

Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0945]

42. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity has been completed.

[PSC1175]

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

[PSCNS01]

#### **GOLD COAST AIRPORT CONDITIONS**

44. The building may be erected up to a maximum height of 71.2m AHD at the location described.
45. No further additions may be made to the tower, including antennae, aerials or other appurtenance which exceed the maximum height of 71.2m AHD

46. **Separate approvals must be sought for all cranes and other equipment used in the construction of the tower where any such structure would exceed the tower's maximum approved height of 71.2m AHD.**
47. **This advice refers only to the height of the tower as applicable to aircraft operations and does not relieve the proponent of the responsibility for obtaining the normal permits.**
48. **The tower is to be obstacle lit in accordance with Part 139 of the Manual of Standards (MOS) issued by CASA**  
**Under section 9.4 of the MOS Part 139, the tower must be lit with steady medium intensity obstacle lighting;**  
**The obstacle lighting is to be operational at night and during periods of low visibility;**  
**The obstacle lighting is to remain within the maximum approved height of 71.2m AHD;**  
**All obstacle lights are to be maintained in full working order by the proponent at all times.**
49. **The proponent is to notify GCA immediately upon completion of construction of the tower, and at that time must notify GCA of the finished height in AHD and the placement of obstacle lighting, so that GCA can update the relevant plans and records for the airport.**

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

1. **Access shall comply with section 4.1.3 (2) of *Planning for Bush Fire Protection 2006*.**



**REPORT:**

**Applicant:** Telstra Corporation  
**Owner:** Mr R Sullivan, Mr WH Sullivan  
**Location:** Lot 3 DP 1000385, Fraser Drive Tweed Heads South  
**Zoning:** 2(c) Urban Expansion, 2(e) Residential Tourist and 6 (b) Recreation  
**Cost:** \$200,000.00

**BACKGROUND:**

Council has received an application for the construction of a telecommunication facility and the subdivision of Lot 3 DP 1000385 to create a 60m<sup>2</sup> allotment to accommodate the construction of the facility.

The telecommunication facility is comprised of:

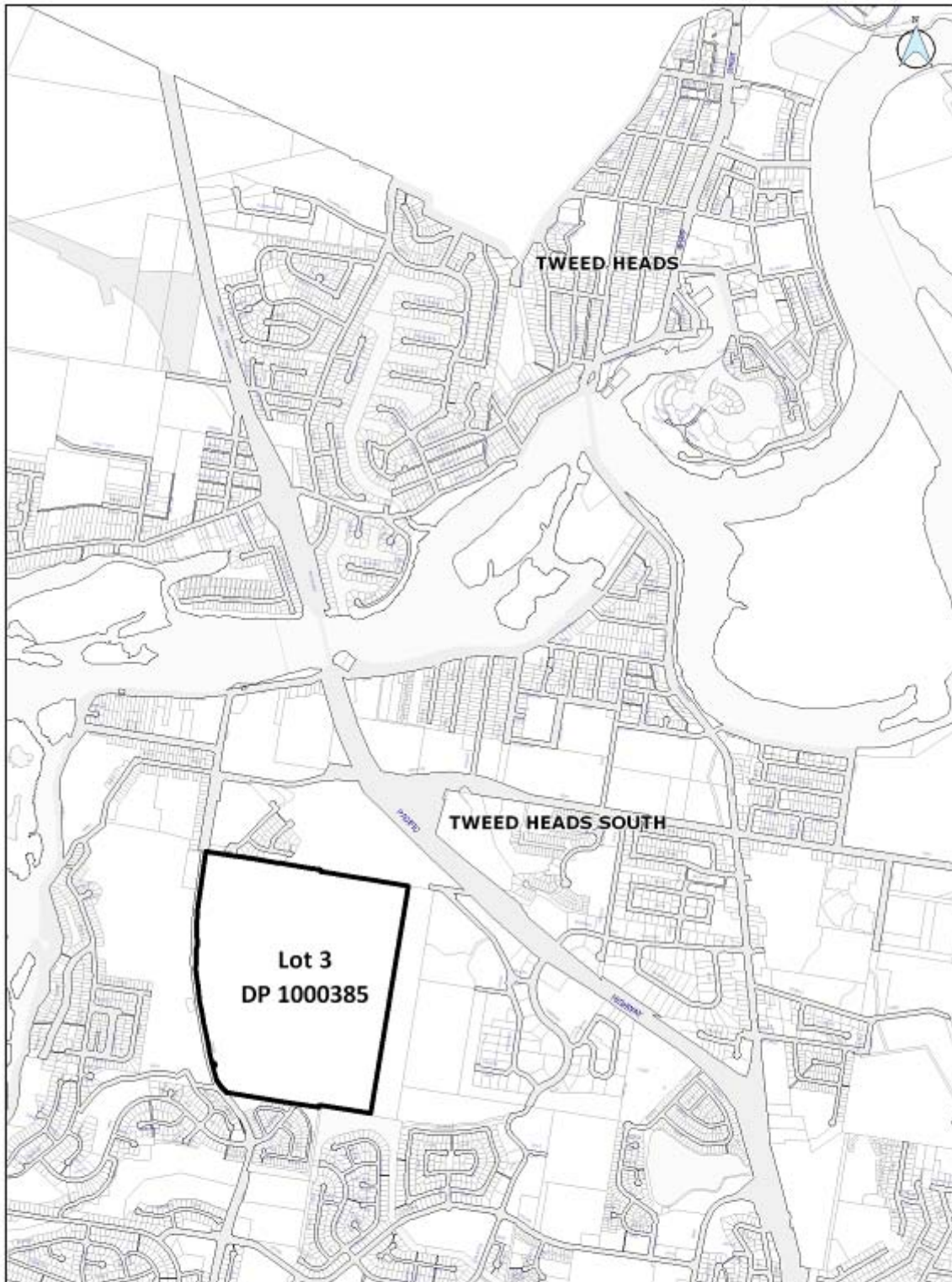
- 1 mono pole approximately 41metres
- 6 panel antennas
- 1 equipment shelter 2.28m x 3.28m x 3.0m high
- 2.4m high security fencing
- Proposed new 3m wide access from Fraser Drive to proposed Lot 5 (within a 5m wide easement)

The subdivision includes subdivision of existing allotment Lot 3 DP 1000385 (size is approximately 73.11Ha) into:

- Proposed lot 6 = 73.10ha

Proposed lot 5 = 60m<sup>2</sup> (to house the telecommunication facility)

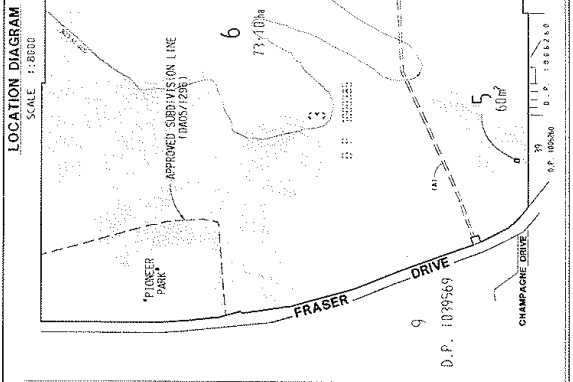
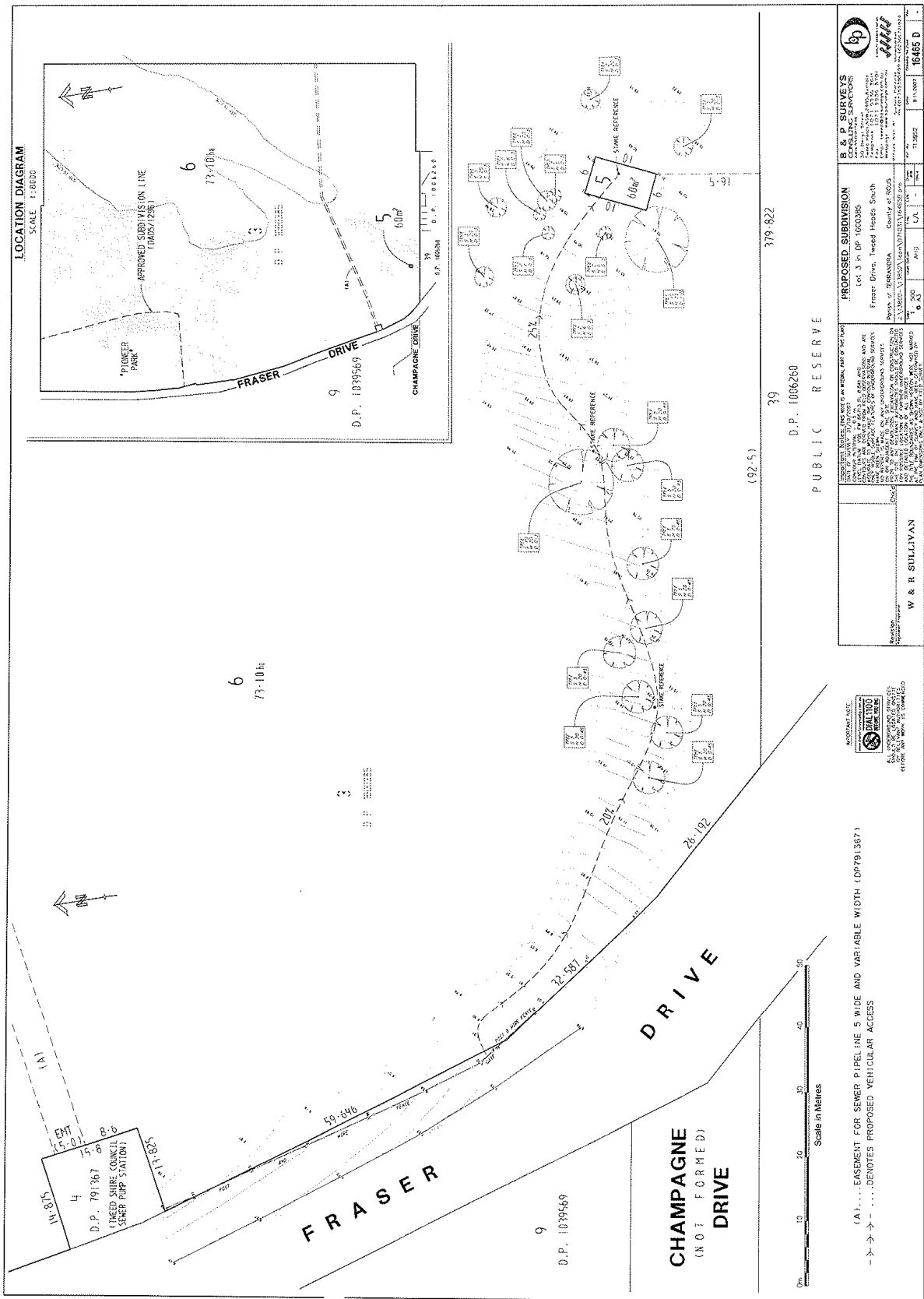
**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2008          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P.O. Box 916      Tel: (02) 6670 3488          Murwillumbah NSW 2484      Fax: (02) 6670 3483</p>	<p><i>Tweed Shire Council</i>  <b>Lot 3 DP 1000385</b>          Fraser Drive Tweed Heads South - DA07/1399</p>	<p>Site Plan</p>  <p>Scale: 1:20,000          Sheet: 1 of 1</p>
--	--	--



PLAN OF SUBDIVISION:



<b>S &amp; P SURVEYS CONSULTING SURVEYORS</b> 24 Macleay Street, Tweed Heads North, NSW 2486 Phone: (07) 5536 3100 Fax: (07) 5536 3101 Email: info@spsurveys.com.au Website: www.spsurveys.com.au	
<b>PROPOSED SUBDIVISION</b> Lot 3 in DP 1006260 Fraser Drive, Tweed Heads South Parish of TERABANDA County of RICHMOND L.A. 500 S. 43 1:1000 11/11/2007	<b>18465 D</b>

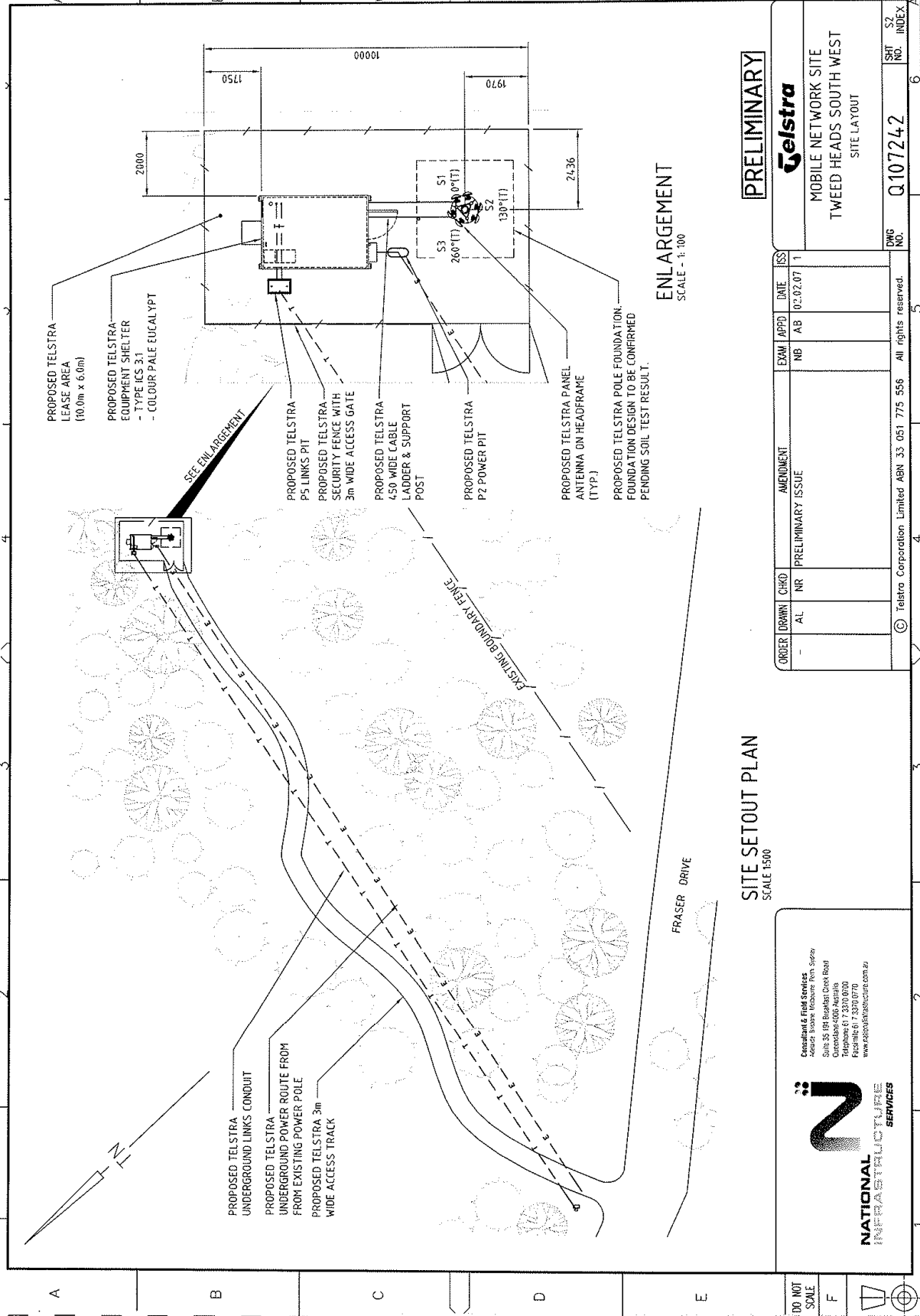
**W & R SULLIVAN**  
 PROFESSIONAL ENGINEER  
 No. 12345  
 1/1/2007

(A) ... EASEMENT FOR SEWER PIPELINE 5 WIDE AND VARIABLE WIDTH (D791367)  
 - - - - - DENOTES PROPOSED VEHICULAR ACCESS

Scale in Metres  
 0 10 20 30 40 50

D.P. 1039569  
 39  
 D.P. 1006260  
 379-822  
**PUBLIC RESERVE**

**SITE SETOUT PLAN:**



**ENLARGEMENT**  
SCALE - 1:100

**SITE SETOUT PLAN**  
SCALE 1:500

**PRELIMINARY**

ORDER	DRAWN	CHKD	AMENDMENT	EXAM	APPD	DATE	ISS
-	AL	NR	PRELIMINARY ISSUE	NB	AB	02.02.07	1

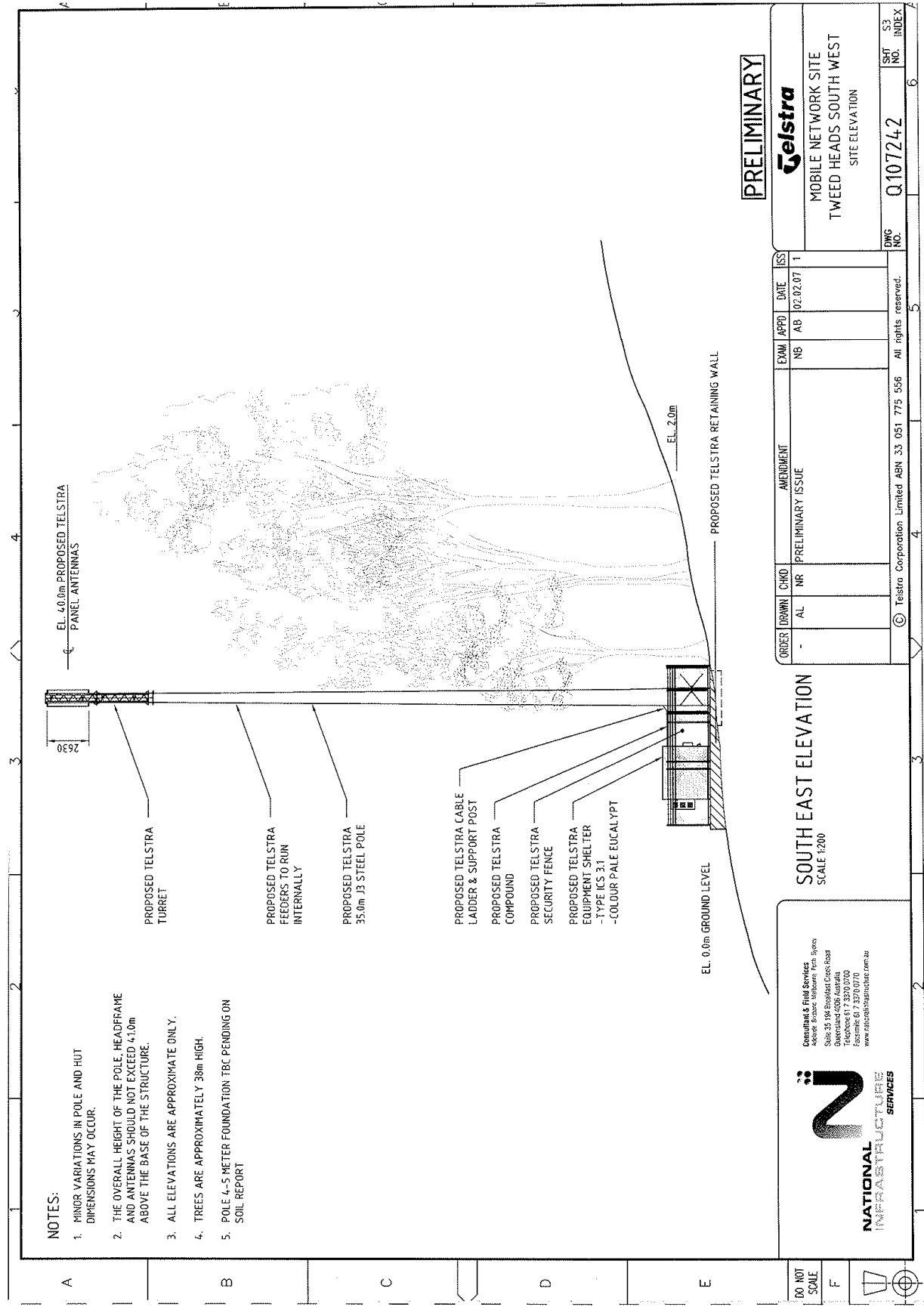
MOBILE NETWORK SITE TWEED HEADS SOUTH WEST SITE LAYOUT	
DWG NO.	SHT NO. INDEX
Q107242	S2

© Telstra Corporation Limited ABN 33 051 775 556 All rights reserved.

**Consultant & Field Services**  
 National Infrastructure Services  
 Suite 35 194 Broughton Creek Road  
 Telosvale NSW 2330 0720  
 Telephone 61 7 3370 0720  
 Facsimile 61 7 3370 0770  
 www.nationalinfrastructure.com.au

DO NOT SCALE  
 F

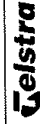
**ELEVATION:**



**NOTES:**

1. MINOR VARIATIONS IN POLE AND HUT DIMENSIONS MAY OCCUR.
2. THE OVERALL HEIGHT OF THE POLE, HEADFRAME AND ANTENNAS SHOULD NOT EXCEED 4.10m ABOVE THE BASE OF THE STRUCTURE.
3. ALL ELEVATIONS ARE APPROXIMATE ONLY.
4. TREES ARE APPROXIMATELY 30m HIGH.
5. POLE 4-5 METER FOUNDATION TBC PENDING ON SOIL REPORT

**PRELIMINARY**

		<b>MOBILE NETWORK SITE</b> <b>TWEED HEADS SOUTH WEST</b> SITE ELEVATION		DWG NO. <b>Q107242</b>	SHT NO. <b>53</b> INDEX <b>6</b>
ORDER	DRAWN	CHKD	AMENDMENT	EXAM	APPD
-	AL	NR	PRELIMINARY ISSUE	NB	AD
			DATE	ISS	
			10.02.07	1	
© Telstra Corporation Limited ABN 33 051 775 556 All rights reserved.					

**SOUTH EAST ELEVATION**  
SCALE 1:200

Consultant & Field Services  
 44-46 Brook Street, Brisbane, Queensland  
 Australia  
 Phone: 61 7 3201 0770  
 Fax: 61 7 3201 0770  
 www.natopsinstruments.com.au



DO NOT SCALE



**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 this 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 a two (2) lot subdivision and the erection of a monopole telecommunications tower and ancillary infrastructure. The proposal involves minor modification to the natural environment in the form of the removal of 3 existing trees. The remaining vegetation will not be touched. The applicant has outlined the provision of a weed removal plan of management. In regard to these proposed measures the development will have minimal impact on the natural environment.

In terms of the developed character of the area the proposal will facilitate better technological availability for people in the area which could potentially enhance economic viability in the area.

The proposed development is consistent with the aims of this plan.

Clause 5 Ecologically sustainable development

The proposed development is consistent with the four principles of ecological sustainable development by;

- a) not creating 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 Consent considerations

The subject site is zoned 6(b), 2(e) and 2 (c), with the proposed access track and facility located within the 2 (c) portion of the site.

The primary objective of the 2(c) zone is ensure optimum utilisation of urban land whilst taking into consideration any existing environmental constraints. The proposal is consistent with the primary objective of the zone by aiding technological advancement in the area which facilitates better utilisation of urban land.

The proposed telecommunication facility is consistent with the secondary objective of the 2(c) zone by providing associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents by improving telecommunications in the locality. The proposed telecommunication facility and subdivision is permissible with consent.

The other aims and objectives of this plan that are relevant have been considered and addressed within this report.

An assessment addressing relevant policies has been undertaken identifying that the development would not create an unacceptable cumulative impact on the community, locality or catchment.

#### Clause 11- Zones: 2 ( C ) Urban Expansion

##### Primary Objective

- To identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.

##### Secondary Objective

- To allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.
- To ensure that sensitive environmental areas within and outside the zone are protected from adverse impacts of development.

The subject proposal is a permissible form of development as outlined within Item 2, the proposal seeks consent for a subdivision and erection of a telecommunication facility. The proposal is considered to be a non-residential development which will aid in facilitating recreation, shopping, commercial, employment and social needs of current and future residents.

#### Clause 15 Availability of essential services

The subject site has access to all relevant services however the proposed development does not require the connection of water and sewer.

### Clause 16 Height of buildings

The proposed equipment shelter is single storey in height, with the associated tower being approximately 41m in height. Under the definition of storey within the Tweed LEP 2000 the tower can not be measured in storeys, however given the placement of the tower amongst vegetation of a comparable height and scale the proposal is considered consistent with the clause.

### Clause 22 – Development near designated roads

Council's Designated Road Map identifies Fraser Drive as being a designated road as such the objectives and clause 22 (4) are required to be addressed. The proposed development site has frontage to Fraser Drive with access to the telecommunication facility being a new access from Fraser Drive.

#### **(1) Objectives**

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

The points raised in the objective above are addressed in sub-clause 4 below.

#### **Subclause (4);**

**(4) *The consent authority may grant consent to development on land to which this clause applies only if it is satisfied that:***

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

The proposed telecommunication monopole being approximately 41m in height is likely to be visible from Fraser Drive. However, the facility is located amongst dense vegetation of a similar height.

The site/proposal gains access from Fraser Drive via a new access road/easement. The access will only be used during the construction and maintenance of the facility. Accordingly the facility is considered not to create a traffic hazard.

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



The site gains access from Fraser Drive via a proposed new access. The access will only be used during the construction and maintenance of the facility. Accordingly the facility is unlikely to impede traffic along Fraser Drive.

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

The proposed development is setback approximately 70 metres from Fraser Drive. An existing sewer pump station exists directly adjacent to Fraser Drive approximately 50m north of the proposed access. The location of the facility is unlikely to restrict any future improvements or realignments to the designated road.

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

Not applicable, the proposed location for the telecommunications tower and subdivision is zoned 2(c).

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

The proposed telecommunication facility is considered a type of development that is not sensitive to traffic noise.

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

Adequate measures in the form of setbacks and existing tall and dense vegetation on the frontage to the designated road and surrounding the facility will ameliorate any significant visual impact from the view of the road users or surrounding residential properties.

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

The means of vehicular access to the site is via Fraser Drive, no other suitable form of access can be provided to the proposed facility without significant vegetation removal.

- (h) ***in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development: ...***

- (i) ***would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and***

- (ii) would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
- (iii) would not compromise highway safety and efficiency, and*
- (iv) would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

Not applicable as proposal is for telecommunication facility in a 2(c) zone.

Clause 24 – Set backs to designated roads

N/A

Clause 33 Obstacles to aircraft

**(1)Objective**

- *to ensure that development in the vicinity of Coolangatta and Murwillumbah Airports and en route flight paths does not increase the risk of obstacles to aircraft.*

The proposal has been referred to the relevant aviation agencies;

- Ian Rigby – planning consultants for the Gold Coast Airport Pty Ltd (GCAPL)
- Gold Coast Airport Pty Ltd
- Civil Aviation Safety Authority (CASA)
- AirService Australia
- Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government.

Comment received is outlined below: -

*"At a maximum height of 71.2m above the Australian Height Datum (AHD), the tower will penetrate the inner horizontal surface of the Obstacle Limitation Surface (OLS) for the Gold Coast Airport of 23.5m AHD. The development is not a short term activity in accordance with the Regulations and therefore constitutes a "controlled activity" under Section 182 of the Airports Act 1996 (the Act). The development does not penetrate the PANS-OPS surface at the specified location. Section 183 of the act requires that controlled activities cannot be carried out without approval.*

*Under Regulation 14 of the Regulations to approve a proposal unless carrying out the proposal would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned.*

*Whilst the advice of CASA and GCA is acknowledged, this information provided is not sufficient to argue that the proposed development will interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the Gold Coast Airport. Therefore having considered all information submitted, it is concluded that the proposal be approved subject to conditions."*

The outlined conditions have been incorporated into the conditions of consent.

#### Clause 34 – Flooding

The proposal is considered to be consistent with clause 34 due to the following justification;

- The proposed structure is located on a hill which is above the flood level.
- The telecommunications facility will assist emergency services by providing telecommunications to the locality.
- The configuration of the structure and ancillary works is unlikely to increase the risk of flood for residential development due to the separation distance between the monopole and Stradbroke Lane (approximately 100m)

#### Clause 35 Acid sulphate soils

The location of the access track and facility is identified as being affected by class 5 acid sulphate soils (*Works within 500 metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent Class 1, 2, 3 or 4 land*).

It is expected that disturbance of the soil will occur during the construction of the facility and access track. The application was assessed by Councils Environmental Health Unit to which, it is considered that the works would not lower the watertable below 1 metre AHD in adjacent class land (class 2), an acid sulphate soil management plan is not required.

#### Clause 37 Electricity transmission line corridor

The proposed telecommunication facility is located outside (to the east) the transmission line corridor (clause 37 Tweed LEP 2000). (RE: Plan no. 16465 D Rev. A, dated 8.11.2007, drawn by B&P Surveys). The notification of the proposed development to the electricity carrier (Country Energy) is not required.

#### Clause 39 Remediation of contaminated land

Councils' Environmental Health Unit assessed the application to which the following comment/assessment was provided;

*The issue of contamination has been considered in the SEE. It is noted that the application also proposes a two lot subdivision with proposed lot 5 being used for the monopole and equipment shed. The SEE states that the site has been used only for grazing purposes with vegetation remaining on the ridgelines with the land owner advising that these vegetated ridgelines have not been used for any other uses. The nearest cattle dip site is estimated over 400m away and will have no likely impact on the proposed facility. An examination of the available aerial photos and topographical maps for the site do not indicate that the site was used for any potentially contaminating activity.*

This clause is considered satisfied.

#### Clause 39A – Bushfire Protection

The site is identified as being prone to bush fire. The telecommunication facility is considered to comply with the clause due to the following:

- The development will not create a significant adverse impact on the implementation on bush fire control strategies. The telecommunication facility will assist bush fire control by providing communications.
- The facility will not increase the threat to the lives of residents, visitors or emergency service personnel (the facility does not house residents or visitors).
- The facility will be constructed of non-flammable material.

#### North Coast Regional Environmental Plan 1988

##### **Clause 32B Development control—coastal lands**

The telecommunication facility and two lot subdivision does not contravene the objectives of the following policies;

- (a) the NSW Coastal Policy 1997,
- (b) the Coastline Management Manual, and
- (c) the North Coast: Design Guidelines.

The proposed development does not create any significant adverse effects to public access to the foreshore, overshadowing to beaches, waterfront open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

#### State Environmental Planning Policies

##### **STATE ENVIRONMENTAL PLANNING POLICY INFRASTRUCTURE 2007**

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates-

*'Development for the purposes of telecommunications facilities, other than development in clause 114, may be carried out by any person with consent on any land.'*

Hence the application is applying for consent to erect the telecommunications tower.

## **STATE ENVIRONMENTAL PLANNING POLICY NO 14--COASTAL WETLANDS**

### **4 Application of policy**

The proposed location of the facility and subdivision is located approximately 270m (outside/away) south west of the outer edge of the SEPP 14 line. The subject allotment is mapped as containing SEPP 14 wetland areas and is within a SEPP 71 area, the tower is unlikely to have any direct impact upon these areas as there is a physical separation distance between the tower and the area mapped as SEPP 14 and the coastal foreshore.

As such the policy does not apply to the application.

## **STATE ENVIRONMENTAL PLANNING POLICY NO 71--COASTAL PROTECTION**

### **Clause 4 - Land and development to which Policy applies**

The subject site is located within the coastal zone, the application is required to be assessed against the relevant provisions contained within this policy.

### **Clause 8 Matters for consideration**

The matters for consideration are listed below:

**(a) *the aims of this Policy set out in clause 2,***

The telecommunication facility and two lot subdivision is considered to be consistent with the aims of the policy.

**(b) *existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,***

The proposed telecommunications facility and two lot subdivision will not alter the existing public access to and along the coastal foreshore.

**(c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,***

The location of the facility is not along the coastal foreshore and will therefore not restrict any current or future plans to provide new public access.

**(d) *the suitability of development given its type, location and design and its relationship with the surrounding area,***

The proposed telecommunication monopole being 41m in height is considered not to be out character with the surrounding area. The proposed location of the facility is approximately 70m from Frazer Drive and approximately 55m from the nearest residence. The facility is located the elevated section of the site surrounded by vegetation of a comparable height and size to the proposed mono pole (see photomontage S01, S02, S03).

**(e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,***

The proposal will not create any overshadowing or view loss of the coastal foreshore, no additional impacts will be experienced on the coastal foreshore as a result of the proposal.

**(f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,***

The site is not located on the coastal foreshore, the facility is located amongst existing vegetation of a similar height providing a visual buffer from road users, visitors and residents (refer to photomontage sheet no. S01, S02 and S03).

**(g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,***

The location of the facility is within the 2(c) – Residential zoned land, the construction of the facility and access track requires the removal of 1 x Blackbutt (5m high) for the placement of the facility and 1 x Blackbutt (10m high) 1 x Pink Bloodwood for the access track. The above mentioned tree species are not listed in SEPP 44 Schedule 2- Feed Tree Species.

Protected flora or fauna is not identified on the subject site.

- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats**

N/A, no removal of marine vegetation is proposed or required.

- (i) existing wildlife corridors and the impact of development on these corridors,**

The construction of the facility and access track requires the removal of three (3) trees, the impact on the existing wildlife corridor is considered negligible.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,**

No impacts on coastal processes or coastal hazards are expected from the subject proposal.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,**

No additional conflict is likely to be created between land based and water based coastal activities.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,**

The application will not adversely impact on places of cultural significance.

- (m) likely impacts of development on the water quality of coastal waterbodies,**

No impacts are expected on the water quality of coastal waterbodies as a result of the proposal.

- (n) the conservation and preservation of items of heritage, archaeological or historic significance,**

No adverse impact on the above listed items is expected from the proposal.

- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,**

N/A

- (p) *only in cases in which a development application in relation to proposed development is determined:*
- (i) *the cumulative impacts of the proposed development on the environment, and*
  - (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

No additional impacts on the environment or increase use in water and energy are expected.

The proposal is considered to satisfy the aims and clause 8 matters for consideration.

### **Part 3 – Significant coastal development**

#### **9 Application of Part**

The development is not significant coastal development as defined in Part 3 CL. 9 (development 100metres below mean high water). The area to be developed is not located within a sensitive coastal location (100metres above mean high water).

#### **18 Master plan required before certain consents may be granted**

The application proposes the subdivision of land within a residential zone to which part of the site is a sensitive coastal location. Council can not grant consent unless either the Minister has adopted a master plan for the land or the Minister has waived the need for a master plan.

The applicant has provided a written waiver from the Department of Planning pursuant to clause 18 (2) of SEPP 71 for the requirement to create a site specific development control plan.

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

N/A

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

### **A2 – SITE ACCESS AND PARKING CODE**

The application proposes to use an existing informal access from Fraser Drive to the telecommunication facility. An easement to formalise the access is to be created burdening proposed lot 6. The access track proposed will comprise of a 3m width within 5m wide Right Of Carriage way (kept below a 25% grade). The SEE states that a service vehicle would visit the site 'from time to time' on a temporary base. There is adequate provision for the service vehicle to park within the easement adjacent to the facility.



Councils Engineers have reviewed the application and raised no objection to the access and parking.

### **Section A3 – Development Of Flood Liable Land**

The majority of the site is prone to flooding with a 1 in 100 flood level of RL2.6m AHD. The access and location of the telecommunications facility (lot 5) is not prone to flooding. No further consideration or conditions are required.

### **Section A5 – Subdivision Manual**

#### Physical or environmental constraints

The proposal is not affected by physical or environmental constraints.

#### Services

The telecommunication facility requires only the service of telecommunications and power, which are available to the site.

The proposal was reviewed by Councils Engineers, approval was recommended subject to conditions to be placed on the development consent.

### **Section A11-Public Notification Policy**

#### **B3 - Banora Point West - Tweed Heads South**

The proposed two lot subdivision (to create a service lot for the telecommunications facility) and construction of a telecommunications facility is consistent with the relevant clauses contained with the policy.

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

N/A

(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**

Noise:

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the lifespan of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated. The air conditioning units may operate during the night and contribute to background noise levels. Council's Environmental Health Department did not consider a acoustic assessment was necessary; if the development is approved appropriate conditions of consent can be utilised to address any subsequent noise issue associated with construction works and the use of the air- conditioning units.

Lighting:

The application does not make mention of any security lighting to be used at the facility. It is considered that this issue can be addressed by appropriate conditions of consent.

Contamination:

The issue of contamination has been considered in the SEE. It is noted that the application also proposes a two lot subdivision with proposed lot 5 being used for the monopole and equipment shed. The SEE states that the site has been used only for grazing purposes with vegetation remaining on the ridgelines with the land owner advising that these vegetated ridgelines have not been used for any other uses. The nearest cattle dip site is estimated over 400m away and will have no likely impact on the proposed facility. An examination of the available aerial photos and topographical maps for the site do not indicate that the site was used for any potentially contaminating activity.

RF-EME Levels:

The Australian Government and the Australian Communications and Media Authority (ACMA) (Australia's regulator for broadcasting, the internet, radio-communications and telecommunications) published a Factsheet titled Mobile phone base stations and electromagnetic radiation (EME).

The following is an extract from the fact sheet;

*"ACMA has made mandatory EME exposure limits for installations such as broadcast towers and mobile phone base stations. The exposure limits set by ACMA were determined by the **Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)** based on recent scientific findings and the world's best practice. **These limits are many times below a level of exposure to EME that is known to have adverse effects on the human body and are consistent with World Health Organisation guidelines.***

*ACMA has adopted a precautionary approach to the regulation of EME, ensuring that **exposure limits** to emissions from communications transmitters are stringent and **lower** than those levels that have been found to cause adverse health effects.*

*Public exposure to emissions from radio-communications transmitters is generally many times less than the exposure limits required by the standards. ARPANSA conducted audits of base stations between 1997 and 1999, and again in 2003. The results show low EME levels were found in areas accessible to the public."*

Radiofrequency Electro Magnetic Emissions (RF- EME) from the operation of the Base Station has been assessed and a report has been provided dated 15/01/08. This Report appears to have been prepared in accordance with the requirements of The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and indicates that the maximum cumulative EME level at 1.5m above the ground is estimated to be 0.11% of the ARPANSA Public Exposure Limit as set down in the Federal Radiation Protection Standard "Maximum Exposure Levels to Radiofrequency Fields- 3KHz to 300GHz" (Radiation Protection Series No.3). This level will be experienced at 100m to 300m distance from the facility.

Therefore the operation of the Base Station is not expected to give rise to any RF- EME issue for the public.

#### Acid Sulfate Soils:

The site has been assessed as being Class 5 ASS Council's Environmental Health Officers has determined that the subject application does not require an ASS Management Plan.

#### Visual Impact

The proposed monopole is 41m in height and located on the top of an existing hill, some level of screening is afforded to the development from existing mature tree species that are located on the hill top. The monopole structure has a relatively small circumference. The following response from the applicant was received in regards to the visual impact of the monopole-

As demonstrated in the photomontages and drawings, much of the proposed will be screened by the surrounding trees. The top of the monopole will protrude above the tree line to avoid the trees interfering with the signal from the antennas.

To reduce the prominence of the structure Telstra have selected a monopole structure rather than a bulkier lattice structure. Further measures have been taken to reduce the bulk and the potential visual impact of the top part of the telecommunications by removing the need for a headframe. The antennas have been placed one on top of another in a turret design to allow the structure to be as slim as possible.

It is proposed not to paint the pole and leave it galvanised steel in appearance. The steel weathers and this reduces the prominence of the structure. It is considered that the weather galvanised steel will have the least visual impact. Views of the top part of the site will be limited to distance views, as the topography of the area will limit the views from the nearby residential properties. The hilltop location rises steeply from Peel Circuit and therefore prevents the top of the tower being directly visible from the closest residential properties.

The response is noted and acknowledged, the proposed monopole extends approximately 2-3m above the existing tree canopy. The tree canopy will reduce the visual impact of the proposal and the existing site topography does also aid in the reduction of visual impact.

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

The existing vegetation will provide a visual screen to the subject proposal. The elevated nature of the hill top affords the desired level of coverage to the proposed telecommunication tower. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality. The site has been deemed to be suitable for the proposal.

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

One hundred and twelve (112) submissions were received during the period of advertisement, including two (2) petitions. The major objections have been outlined below, it is to be noted that the objections discussed below were common to all submitted: -

**Objection**

Environmental Issues:

- Cutting down of trees to make way for the tower.
- Disturbance to the natural bird life.
- Disturbance to the natural swamp life.

**Response**

The subject proposal has outlined the requirement to remove three (3) trees. Two Blackbutt's and one Pink Bloodwood. The applicant submitted a flora assessment for the subject site ('Telstra Corp. Flora Assessment for Fraser Drive, Tweed Heads South October 2007'). The report concluded that the flora survey of the lease area identified one vegetation community and also resulted in the recording of 58 species of flora. None of the species recorded are listed as endangered or vulnerable under the *Threatened Species Conservation Act 1995*. The mapped vegetation community is not considered to be reflective of an endangered community.

### **Objection**

Health Issues:

- Lack of knowledge of the long term effects on people in regards to electromagnetic energy (EMF).
- Links to Leukaemia and Brain Tumours/Cancer.

### **Response**

Radiofrequency Electro Magnetic Emissions (RF-EME) from the operation of the Base Station have been assessed and a report provided dated 15/01/08. This report appears to have been prepared in accordance with the requirements of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and indicates that the maximum cumulative EME level at 1.5m above the ground is estimated to be 0.11% of the ARPANSA Public Exposure Limit as set down in the Federal Radiation Protection Standard "Maximum Exposure Levels to Radiofrequency Fields-3KHz to 300GHz" (Radiation Protection Series No. 3). This level will be experienced at 100m to 300m distance from the facility.

Therefore giving regards to the testing undertaken and the EME level recorded the proposed monopole is not expected to give rise to any RF-EME issue for the public.

Impact on Child related health issues:

- There are a number of schools in the area and due to the lack of testing of towers, and how will this impact their health long term. Schools in the nearby area include Centaur Primary School, Banora Point High School, Lindisfarne Primary school, St Josephs and St James schools and Lakeside Christian College. This is not to mention the several home based Day Care Centres.

As discussed above the expected emittance level from the proposed tower is 0.11% of ARPANSA recommended Public Exposure Limit, in line with the submitted report and the proposal being conducted in accordance with the documentation. The proposal is deemed to have a minimal health and environmental impact.

The above objection was raised in the two petitions received and outlined within the 112 total petitions received.

**Objection**

Exposure of EME to the nearby Sporting Clubs:

- The fields that surround the Twin Towns Juniors Club annually registers approx 1200 children just for the summer season of Touch Football whose ages range from 5-16.
- These fields also register adults and children for Rugby League, Soccer and Cricket not to mention the many spectators.

The above objection was raised within the two (2) petitions.

Devaluation of properties in the nearby area:

- The Banora Cove Estate and north eastern side of Vintage Lakes Estate, after researching internet home values, is one of the cheapest estates to buy into in the South Tweed area. These estates consist of many low income families who are currently struggling to meet the demands of the current interest rate rises. By putting a visible tower in the proposed lot would stop future home owners from buying into the area, forcing current home owners to undervalue their homes if they want to sell.

Airport Flight Path:

It is possible that the Gold Coast Airport may be affected by the tower. Information regarding the tower has been forwarded to the Gold Coast Airport and they are to my knowledge undertaking their own investigation as to possible effects.

**Response**

As discussed above the expected emittance level from the proposed tower is 0.11% of ARPANSA recommended Public Exposure Limit, in line with the submitted report and the proposal being conducted in accordance with the documentation. The proposal is deemed to have a minimal health and environmental impact

The consideration of property prices is not a Section 79C matter for consideration.

The subject proposal was referred to the relevant authorities for comment in regards to the potential conflict with flight activities.

The people below were asked to provide comment:

Ian Rigby – planning consultants for the Gold Coast Airport Pty Ltd (GCAPL)

- Gold Coast Airport Pty Ltd
- Civil Aviation Safety Authority (CASA)
- AirService Australia Secretary of the Department of

**Objection**

Limited timeframe in which to dispute:

- I feel that the amount of time allocated has not been sufficient to enable people of the wider community the ability to gain knowledge and application of such an application request.

Will harm the environment not to say peoples living and going to school within close proximity to the proposed development. The Board (Tweed Aboriginal Co-operative Society LTD) feel that this kind of development should be situated in less populated area to minimise any harmful effects this will have.

With frequent storms, this will attract lightning which could affect many people and homes directly under it.

**Response**

Infrastructure, Transport, Regional Development and Local Government.

The proposal was deemed to be acceptable subject to these conditions:

- The proponent to provide evidence of having obtained approval under then Airports Act and Airports (Protection of Airspace) Regulation to exceed the airport's Obstacle Limitation Surface, prior to commencement of construction; and
- The proponent to comply with any conditions imposed on that approval.

The timeframe for the notification period for the development was conducted in accordance with the Environmental Planning and Assessment Act 1979.

As discussed above the expected emittance level from the proposed tower is 0.11% of ARPANSA recommended Public Exposure Limit, in line with the submitted report and the proposal being conducted in accordance with the documentation received the proposal is deemed to have a minimal health and environmental impact.

The proposed location of the monopole is physically separated by approximately 100m from the nearest residential development. Telstra have advised that the monopole installations are designed in accordance with Australian/New Zealand Standards for Lightning Protection AS/NS 1768. Typically the antenna support structure (pole, mast, tower etc) is earthed by means of an earth electrode or electrode system in close proximity to the structure. Any lightning that strikes the structure will thus be dissipated to earth by the most direct means.

**Objection**

Visual impacts

**Response**

The proposed monopole is a 41m high structure. The proposed location features mature tree species that will surround the tower with approximately 2-3m of the pole being visible above the tree canopy.

The structure is described as being a 'slimline pole measuring 860mm at base and 520mm at the top of the pole'.

Photomontages submitted by the applicant show that the tower will be visible above the existing tree canopy. The proposed height of the structure combined with the elevated location of the proposed monopole means there will be a degree of visibility to the structure. The circumference of the pole is relatively small comparative to the circumference of a sports field light pole.

In scale with existing landscape features the structure does not appear to dominate the area. The existing mature tree species provide screening to the development. The structure is consistent with other existing monopole structures located in the area.

**(e) Public interest**

The submissions that have been received are noted, Council currently has no specific policies in relation to telecommunication tower development. The proposal is a permissible form of development in the 2 (c) zone and therefore can be assessed by Council.

The concerns in regard to health risks are acknowledged and have been considered; current research indicates that the potential for health implications from EME levels is minimal. In this instance Council relies on the relevant standards from ARPANSA and other authorities. Council's Environmental Health Officers deemed the submitted information and reporting on the potential health risks of the monopole to be consistent with outlined Australian standards. The proposed development is consistent with all relevant guidelines and proposed to be conducted in accordance with outlined Australian standards. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality.



**OPTIONS:**

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

**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 proposed telecommunication facility will enhance telecommunications services in the locality. The location and design of the proposal is considered suitable without any significant adverse impacts on the natural and built environments, the communications facility will create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Aerial Photo Locality Plan (DW 1947572)
  2. Photomontage (DW 1947581)
-



THIS  
PAGE  
IS  
BLANK

**P2 [PR-PC] Development Application DA08/0611 for Development of Seven (7) Manufactured Home Sites within an existing Manufactured Home Estate at Lot 1 DP 860569, No. 192 Piggabeen Road, Tweed Heads West**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/0611 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a development application for 192 Piggabeen Road, Tweed Heads West for seven (7) manufactured home sites within an existing approved caravan park that consists of 335 dwelling sites. The area of the development is a total of 1796m<sup>2</sup> in size. The proposed site within the caravan park is cleared land within the designated road setback.

The application has a SEPP 1 objection that has greater than 10% variation and therefore is required to be referred to Council for determination as per Department of Planning issued circular dated 14 November 2008.

The original development on the site was approved under D90/0101 for the establishment and erection of a caravan park comprising of 320 sites. Further approval was provided under D95/294 for additional 15 sites. D0696/2000 approved manager's residence, maintenance shed, swimming pool and change existing manager's residence to a community building. The two later approvals allowed the SEPP 1 objection for a variation to the designated road setback requirement.

The subject allotment is bushfire prone land and flood prone land and has SEPP 14 wetlands within the site it adjoins Piggabeen Creek and is in close proximity to the Cobaki Broadwater.

The proposed development attracted four (4) objections. The objections raised concerns in regard to traffic, visitor parking, property prices, reduction in green areas and further burden on recreational facilities.

The subject development requests a SEPP 1 objection to clause 24 of the LEP which requires a 50 metre road setback for caravan parks. The application was assessed in regards to the objectives of clause 22, where the SEPP 1 objection was considered acceptable. The proposed development will not have a visual impact on the designated road due to an existing vegetation buffer.

The application was assessed under SEPP 21 Caravan Parks and Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 where it was found that the proposed development complies with the lot size requirements, recreational facilities and access requirements.

The proposed development is considered to demonstrate compliance with Tweed Local Environmental Plan, the North Coast Regional Environmental Plan and the relevant State Environmental Planning Policies and associated regulations and is considered to be compliant with the Environmental Planning and Assessment Act 1979. Therefore the application is recommended for conditional approval.

### **RECOMMENDATION:**

**That: -**

- A. State Environmental Planning Policy No. 1 objection to the 50m setback to designated roads provision of Clause 24 of the Tweed LEP 2000 be approved and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA08/0611 for a development of seven (7) manufactured home sites within an existing manufactured home estate at Lot 1 DP 860569, No. 192 Piggabeen Road Tweed Heads West be approved subject to the following conditions: -**

### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1.0 Locality and Site Plan and Plan No. 3 Proposed Development Layout prepared by Opus Qantec McWilliam and dated May 2008, 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. 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 development is to be carried out in accordance with Councils Development Design and Construction Specifications.**  
[GEN0265]
- 5. The sites are not to be less than 130m<sup>2</sup> in area.**  
[GENNS01]
- 6. A new community map is to be supplied at the conclusion of the project reflecting the additional sites.**  
[GENNS02]



7. All Sites are to be clearly delineated and numbered.

[GENNS03]

8. That the development is carried out in accordance with Part 2, Division 3 of the Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings Regulation 2005.

[GENNS04]

9. 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.

[GENNS05]

10. The existing vegetation along the frontage of the site is to be maintained to screen the development.

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

11. 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 owner 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]

12. 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, 3<sup>rd</sup> 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]

13. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill nature of material, proposed use of material and confirmation further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.



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

[PCW0375]

14. 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.

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]

15. 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]

16. 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 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 DSP3: 5.6 ET @ \$10346.9 \$57,942.60

Sewer Banora: 7 ET @ \$4972.1 \$34,804.70

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.**

[PCWNS02]

#### **17. 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.**

**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.**

<b>(a) Tweed Road Contribution Plan:</b>	
27.3 Trips @ \$1797	<b>\$49,058</b>
S94 Plan No. 4	
Sector4_4	
<b>(b) Open Space (Casual):</b>	
4.5808 ET @ \$570	<b>\$2,611</b>
S94 Plan No. 5	
<b>(c) Open Space (Structured):</b>	
5.467 ET @ \$653	<b>\$3,570</b>
S94 Plan No. 5	
<b>(d) Shirewide Library Facilities:</b>	
4.5787 ET @ \$688	<b>\$3,150</b>
S94 Plan No. 11	
<b>(e) Bus Shelters:</b>	
4.3078 ET @ \$26	<b>\$112</b>
S94 Plan No. 12	

(f) Eviron Cemetery:		
4.3078 ET @ \$131		\$564
S94 Plan No. 13		
(g) Emergency Facilities (Surf Lifesaving):		
4.585 ET @ \$200		\$917
S94 Plan No. 16		
(h) Extensions to Council Administration Offices & Technical Support Facilities		
4.5766 ET @ \$1996.8		\$9,138.55
S94 Plan No. 18		
(i) Regional Open Space (Casual)		
4.5766 ET @ \$855		\$3,913
S94 Plan No. 26		
(j) Regional Open Space (Structured):		
4.5752 ET @ \$2327		\$10,646
S94 Plan No. 26		

[PCWNS03]

18. All imported fill material shall be from an approved source. Prior to the issue of any Section 68 approval by Council, details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval.

Separate approval of Council is required 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.

19. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filing on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.
20. Erosion and Sediment Control shall be provided in accordance with the following:
-



- (a) The Section 68 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".

[PCWNS04]

#### **DURING CONSTRUCTION**

- 21. All proposed works are to be carried out in accordance with the conditions of development consent, any Section 68 approval(s) issued by Council, drawings and specifications.

[DUR0005]

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

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

- A. Short Term Period - 4 weeks.

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

- B. Long term period - the duration.

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

[DUR0215]

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

[DUR0445]

25. 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]

26. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- All fill and cut batters shall be contained wholly within the subject land.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 – Subdivision Manual and Development Control Plan, Part A14 – Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

27. 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 Council upon completion.

[DUR0795]

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

[DUR0815]

29. 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]

30. 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]
31. 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]
32. If excavations extend below the depth of fill material, then all works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.
- [DUR1075]
33. The habitable floor area of any future building is to be at a level not less than RL 3.1m AHD.
- [DUR1435]
34. 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 any use or occupation of the site.
- [DUR1875]
35. 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]
36. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
- [DUR2185]
37. 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]

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

- (a) internal drainage, and external drainage prior to backfilling.
- (b) completion of work and prior to occupation of the building.

[DUR2485]

39. 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]

40. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

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

[DUR2515]

42. 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]

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

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

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

[DUR2555]

44. Should operations uncover evidence of Aboriginal heritage of the site all work is to cease immediately and the National Parks and Wildlife Service and the Local Aboriginal Land Council are to be contacted. No work is to recommence until the National Parks and Wildlife Service permits such works to continue. In the event the site is subject to a Native Title Claim the relevant claimant must also be contacted.

[DURNS02]

45. The land is to be filled to a level no less than the design flood level of RL 2.6m AHD.

[DURNS03]

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

46. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.

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

**Reason: Mandatory condition, clause 34 of the Local Government (General) Regulation 2005.**

[POC1025]

47. Prior to the occupation of any building a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

48. Landscape works shall be completed in accordance with the landscape plan.

[POCNS01]

49. Prior to issue of occupation certificate all dwelling site shall be clearly numbered.

[POCNS02]

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

1. At the commencement of building works the property around the building shall be managed as follows:
- a) East for a distance of 20 metres as an inner protection area; and
  - b) South for a distance of 20 metres as an inner protection area, as outlined within section 4.1.3 and appendix 5 of Planning for bushfire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

2. **Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bushfire Protection 2006* for the existing and proposed development.**
3. **New construction shall comply with Australian Standard AS3959-1999 '*Construction of buildings in bushfire-prone areas*' Level 1 for proposed future buildings.**
4. **Landscaping to the site is to comply with the principles of Appendix 5 of *Planning for Bushfire Protection 2006* for the existing and proposed development. In this regard the following landscaping principles are to be incorporated into the development:**
  - a) **Suitable impervious areas being provided immediately surrounding the building such as courtyards, paths and driveways.**
  - b) **Grassed areas/mowed lawns/or ground cover plantings being provided in close proximity to the building.**
  - c) **Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come into contact with the building.**

**REPORT:**

**Applicant:** Mr H Kucko  
**Owner:** Cobaki Broadwater Village Pty Ltd  
**Location:** Lot 1 DP 860569 No. 192 Piggabeen Road, Tweed Heads West  
**Zoning:** 1(a) Rural and 7(a) Environmental Protection (Wetlands and Littoral Rainforest)  
**Cost:** \$100,000

**BACKGROUND:**

The application has a SEPP 1 objection that has greater than 10% variation and therefore is required to be referred to Council for determination as per Department of Planning issued circular dated 14 November 2008.

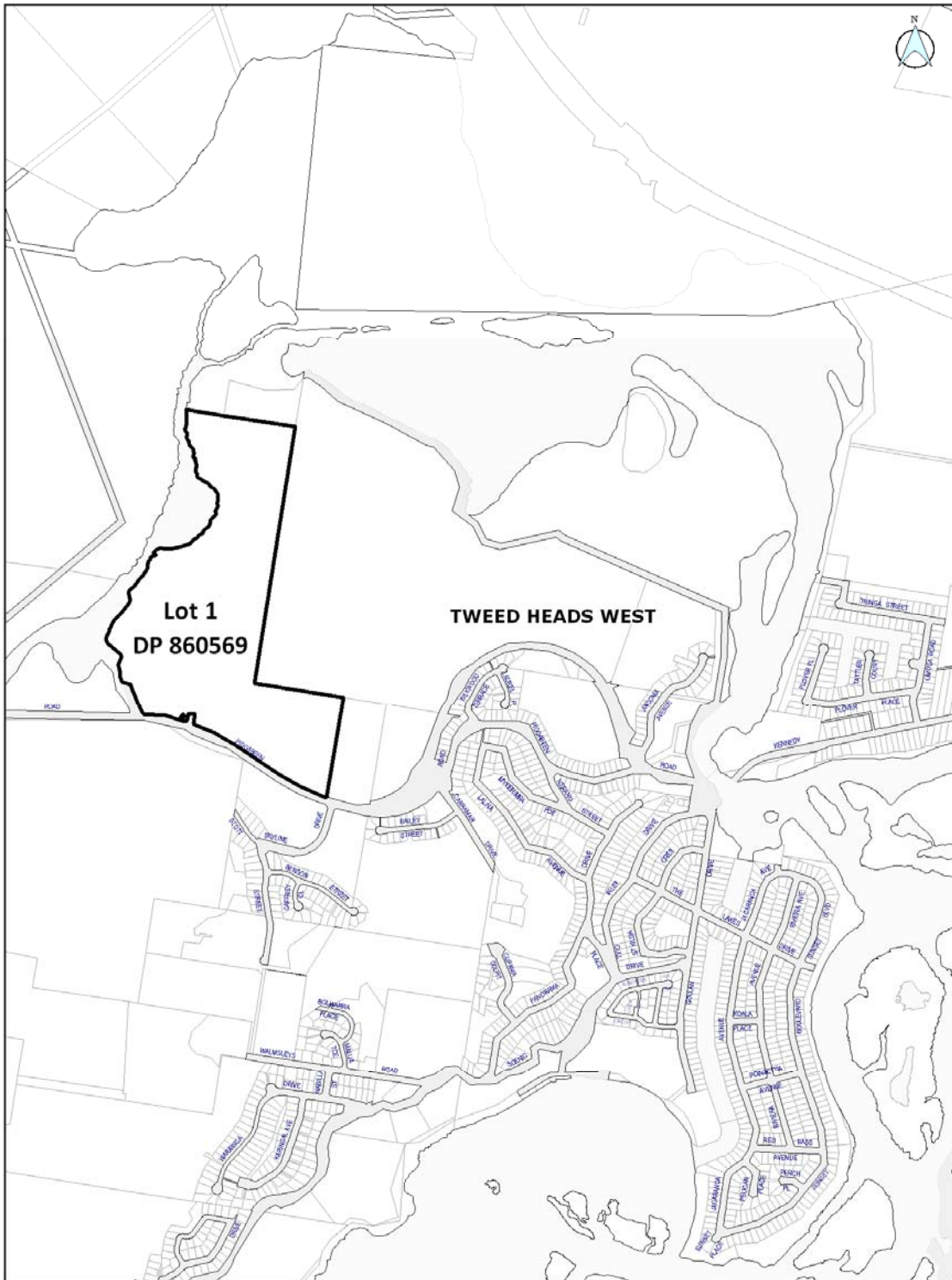
The subject application is for an additional seven (7) manufactured home sites within an existing manufactured home estate on Piggabeen Road, Tweed Heads West. The original development on the site was approved under D90/0101 for the establishment and erection of a caravan park comprising of 320 sites and associated facilities and amenities to be erected over eight (8) stages granted on 24/9/90.



Further approval on the site consisted of approval under D92/85 for earth works in conjunction with D90/101 that was approved on 14/5/92. Further approval was provided under D95/294 Proposed additional 14 sites for Cobaki Broadwater Village Manufactured Home Estate on 7/3/96. This application was located west of the existing lake. A further amendment to that consent was approved on 12 September 1996 to provide an additional site. An approval was granted under D0696/2000 for manager's residence, maintenance shed, swimming pool and change existing manager's residence to a community building on 30/8/00.

The site of the proposed development was marked on the original approved plans as complying with 50m designated road setback. Further the area was identified as open space area for the on-site residences.

Therefore, there is currently 335 home sites plus a manager's residence on the site. The site is 97.15 acres of land, the area to the north and to the south east is heavily vegetated. The proposed site of the subject development is a cleared strip of land. The recreation facilities consist of community building, swimming pool and open grassed areas.

**SITE DIAGRAM:**

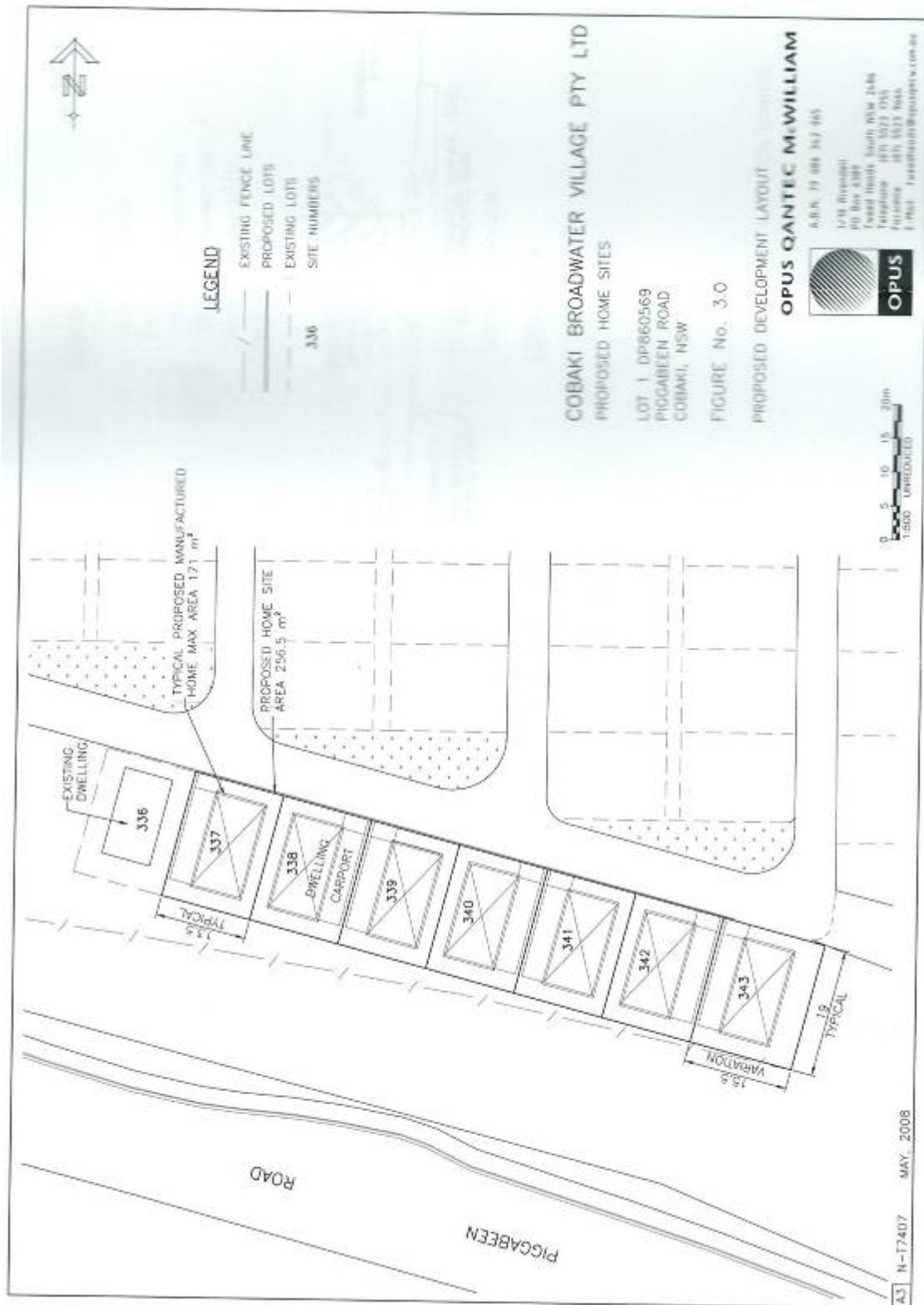


<p>© TWEED SHIRE COUNCIL 2009          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b></p>	<p><i>Tweed Shire Council</i>  <b>Lot 1 DP 860569</b>  <b>No. 192 Piggabeen Road, Tweed Heads West</b></p>	<p><b>Site Plan</b>    </p>
<p>P.O. Box 816          Murwillumbah, NSW, 2484          Tel: (02) 6670 2409          Fax: (02) 6670 2483</p>	<p>File: Z:\GIS_Jobs\Site Plan.Wor          Author: J. Batchelor          Date: 19/Jan/2009          Scale: 1:15,000</p>	<p>Sheet: 1 of 1</p>



**DEVELOPMENT PLANS:**





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

The proposed development is considered consistent with the aims of the Tweed Local Environmental Plan. The proposed development is considered consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed shire is retained.” The proposed development is for an additional seven home sites within an existing caravan park. The proposed seven site are not visible from the road and therefore will not impact on the visual locality.

The proposed development is considered to be in keeping with the aim of the plan to encourage sustainable economic development of the area while having regard to the area’s environmental and residential amenity qualities. The proposed development is an extension to an existing approved development and contained within cleared land. Therefore will have minimal impact on the surrounding environmentally sensitive land.

**Clause 5 - Ecologically Sustainable Development**

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

**Clause 8(c) - Cumulative Impact**

Clause 8(1)(c) Cumulative Impact: The proposed development is not considered to create a cumulative impact in the locality. The proposed development is to be contained within an existing caravan park, on cleared land and will provide additional low cost housing choice in the locality. Therefore, the proposed development is not considered to create a cumulative impact in the locality.

**Clause 11 - Zone objectives**

The subject site is zoned 1(a) Rural and 7(a) Environmental Protection (Wetlands and Littoral Rainforest). The proposed development is contained within the 1(a) zoning. The original development was approved as caravan park under DA90/0101 and has a caravan park licence under the Local Government Act 1919. Under the current LEP a caravan park that is connected to a reticulated sewerage system is permissible with consent.

---

A caravan park is defined under the Tweed Local Environmental Plan as “*land including a camping ground on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed*”.

The primary zone objectives are to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilization purposes and associated development. The proposed development is for an additional seven home sites within a caravan park that utilizes the surrounding natural environment for amenity of the existing residential development. The proposed development does not interfere with the other primary objective of protecting the rural character and amenity of the locality.

The secondary objectives of the zone are to allow for other types of development that rely on the rural or natural values of the land, The existing caravan park relies on the natural values of the land for the peaceful amenity for the residents of the caravan park. Therefore, the proposed development is consistent with the existing approved development on the site and therefore complies with the zone objectives.

#### Clause 15 - Essential Services

There are existing services available to the site.

#### Clause 16 - Height of Building

The proposed development complies with the building height requirements.

#### Clause 17 - Social Impact Assessment

The application is for seven manufactured home sites and therefore is not considered to require a social impact assessment to be carried out.

#### Clause 22 – Development near designated roads

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

The proposed development was referred to Council's traffic engineer who advised that the application was not required to be referred to DTAG. There is a vegetation buffer along the designated road and therefore the proposed development would not be visible and therefore the development will not detract from the attractiveness of the area of Tweed.

The proposed development will be reduced at the greatest point to 22 metres from the designated road. The application was assessed by Council's environmental health officer who raised no concerns with regards to noise from the proposed development. There is a dense vegetation strip along the designated road which would create a buffer to noise from the designated road.

### Clause 24 Setbacks to Designated Roads

This clause is to control development along designated roads. Clause 24 (3) states that a building must not be erected on land to which this clause applies if the distance between the proposed building and the road would be less than the distance referred to in column 2 of the table. Caravan parks are to have a 50 metre distance from a designated road, the original development plans demonstrated that a 50m designated buffer was provided. The proposed development seeks to carryout development within the designated buffer and therefore a SEPP 1 objection has been provided to request a variation to this development control.

### Clause 25 Development in Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The objective of the clause is to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of Tweed. Consent must not be granted to the carrying out of development on land within 7 (a) zone or adjacent unless Council has considered the likely affects of the development on flora and fauna found in the wetland, the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearance.

No clearing of wetlands is proposed with the application however, the proposed development is in close proximity wetlands. The application was assessed by Council's ecologist/ specialist planner provided that the adjacent wetland appears to be in good condition, while in close proximity to 335 home sites.

The application is only for seven (7) more home sites that do not require the removal of any vegetation and there is sufficient open space on site to ensure the residence do not utilize the adjoining SEPP 14 wetland area.

Clause 25 (4) requires representation from NSW Fisheries (Department of Primary Industries) who responded that the application would be captured by SEPP62 provisions that seek to protect Priority Oyster Aquaculture Areas, however, as the proposed development is to be connected to existing sewer mains and contingent upon effective sediment and erosion control and ASS management, the DPI has no concerns with the proposal.

Clause 25 (4) requires representation from the Department of Environment and Conservation the response provided that Council should consider the following legislation in their assessment: Environment Protection and Biodiversity Conservation Act 1999, Protection of the Environment Operations Act, threatened species provisions of the Environmental Planning and Assessment Act 1979, Native Vegetation Act 2003, SEPP 71 and SEPP 44 Koala Habitat. The proposed development is contained within a clear strip of land and therefore is not considered to affect threatened species and therefore the proposed development is considered generally compliant with the legislation.

The Department stated that Council should consider whether the proposed development would impact on DECC estates, wilderness areas, as there are no wilderness areas or DECC estates in close proximity to the development the proposed development not considered to have an impact.

The Department stated that Council should consider that the proposal is not likely to cause significant impacts on areas of native vegetation, with reference to the 7(a) zone and to recognise areas of high conservation value. The proposed development is on land that is split zoned 1(a) and 7(a) land. The proposed development is contained within the 1(a) land however, the site is located in area dedicated for open space for the caravan park. The adjoining area to the proposed development is identified as having high ecological status, however, given the current development of 335 homes co-existing with the vegetation community it is considered that an additional seven homes will have minimal impact.

#### Clause 31 Development Adjoining waterbodies

The subject site is adjacent to Piggabeen Creek, therefore clause 31 applies to the proposed development. The objectives of the clause are to protect and enhance the scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat. Further, the clause states that public access to waterways is to be maintained and to minimize the impact of development from known biting midge and mosquito breeding areas.

The site of the proposed development is over 400 metres to the creek and therefore would be considered to have minimal impact on the ecosystem of the creek. The proposed development will not affect public access to a waterway.

#### Clause 34 Flooding

The objective of this clause is to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land. The application was referred to Council's development engineer who assessed that flooding would have minimal impact on the additional seven dwelling sites, as the site could be filled by 0.5m and the section of Piggabeen road allows for evacuation from the site to higher ground during times of flood. Therefore, the proposed development is considered to comply with this clause. The issued of flood prone land is further assessed in accordance with Council Development Control Plan A3 Development of Flood Liable Land.

#### Clause 35 - Acid Sulfate Soils

Clause 35 of the Tweed Local Environmental Plan relates to the management of acid sulfate soils. Council's Acid Sulfate Soils Planning Map indicates that parts of the site are mapped as having class 2 acid sulfate soils. The application was assessed by Council's Environmental Health Officer who stated provided compliance with conditions of consent the application is considered to comply with this clause.

### Clause 39A Bushfire protection

Clause 39A of the Tweed Local Environmental Plan relates to land identified as bushfire prone. The proposed development is considered to be a “Special Purpose” pursuant to Section 100B of the Rural Fires Act 1997. The application is subsequently considered to be “Integrated Development” and has been referred to the RFS for approval. The RFS provided suitable conditions of consent should the application be approved. Therefore the proposed development complies with this clause.

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

#### Clause 12: Impact on agricultural activities

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The subject site is recognised as regionally significant farmland however, the majority of the site has already been developed as a caravan park. The proposed development is for an additional seven home sites that covers an area of 1796m<sup>2</sup>. Therefore the subject development is not likely to affect agricultural land. The adjoining site to the west is recognised as regionally significant farmland, however the proposed development for seven home sites is not likely to affect any potential agricultural pursuits on the adjoining land, as the subject area of the proposed development is over 500 metres from the adjoining agricultural land.

#### Clause 15: Rivers, streams and wetlands

The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area. The subject site is adjoining Piggabeen Creek, however, the proposed development is over 260m to the creek and is located on the south eastern corner. Therefore, the proposed development is considered to have minimal impact on the adjoining creek and therefore complies with this clause.

#### Clause 32B: Coastal Lands

- (1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies. The proposed development does not affect shadowing on adjoining public land or affect public access to foreshore and therefore the proposed development complies with this clause.

### Clause 43: Residential development

The proposed development is contained within cleared land and therefore will not have an impact on the adjoining vegetation community on the site. The proposed development is within an existing caravan park where there are existing services available to the site, the site of the proposed development is considered suitable as it is cleared land well screened from the road.

### Clause 81: Development adjacent to the ocean or a waterway

The subject site adjoins the Piggabeen Creek, however, the development the subject of this application is over 260m to the creek. Therefore the proposed development will not detract from the waterway or affect foreshore open space. Therefore the proposed development complies with this clause.

### **State Environmental Planning Policies**

#### 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.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

The original application was not provided with a SEPP 1 objection, the applicant was requested to provide a SEPP 1 objection to clause 24 Setbacks to a designated road.

In accordance with the new 5 part test 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 that the requirement of the distance of 50 metres from a designated road under clause 24 is closely linked to the objectives under clause 22 Development near Designated roads. The applicant provided a written objection on the following grounds:



*“The variation in the setback distance of 50m being reduced to 22m;*

*The fact the home sites with future homes erected on them will be nearly completely screened from view to traffic on the designated road;*

*The minimal increase in traffic brought about by the proposal will not impede traffic flow on the designated road.*

*Given the minimal impact on traffic movement on the Piggabeen Road and the mitigation of impacts on noise to potential residents and visual amenity to road users, strict compliance with the standard in this instance is considered both unreasonable and unnecessary”.*

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 on cleared land. The proposed development is considered to be an orderly and economic use of the land, by providing more affordable housing in the Tweed locality.

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.*

The proposed non-compliance does not raise any matters for state or regional planning, further as the non-compliance complies with the overall objectives there is not considered any public benefit to maintain the planning controls. As the proposed development will provide affordable housing and housing choice in the Tweed locality.

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 judgement 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 22 the development will not constitute a traffic hazard, will not affect access on the designated road, the development will not prejudice any future improvements of the road, Further the development will not detract from the scenic values of the locality. Therefore the development standards are considered unreasonable and unnecessary and the development complies with the objectives.

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

This is not the case, as the purpose and objective of the standard is relevant to this development.

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

Again, this is not the case, as the purpose would be upheld if compliance was carried out.

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;*

Council previously approved Manager's residence and an additional 14 manufactured home sites within the 50 metre designated road setback on the site. Under DA95/294 for 14 additional sites that reduced 50 metre setback to 30m and supported the setback as it would not have a visual impact or affect the access or functioning of the road. The 0696/2000DA for manager's residence, maintenance shed and swimming pool. The manager's residence was supported with a 36 metre setback due to the landscaping in front of the dwelling will ensure the manager's residence will not have a visual affect on the road. The development standard has not been destroyed, but in regards to the subject site on two previous occasions a SEPP 1 objection has been supported to the development standard.

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 as the zoning is considered appropriate.

The SEPP 1 objection is considered acceptable as the development standard is considered unreasonable and unacceptable for the proposed development.

#### SEPP No. 14 - Coastal Wetlands

A portion of the subject site is contained within the black line identified as SEPP 14 Wetlands habitat. However, the proposed works are contained outside that area. Therefore no filling, clearing or draining works will be carried out in the SEPP 14 wetland area. Therefore the SEPP 14 does not apply to the subject development.

#### SEPP No. 21 - Caravan Parks

The original application approved under D90/0101 was defined as a caravan park. Therefore the following SEPP applies to the subject development. A caravan park is defined under the SEPP as:

*"land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed"*.

A moveable dwelling is defined under the Local Government Act as:

- "(a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or*
- (b) a manufactured home, or*
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition"*.

Therefore a caravan park can include a moveable dwelling which is included in the definition of a manufactured home.

The relevant aims of SEPP 21 as outlined in clause 3 are to encourage:

- (a) *the orderly and economic use and development of land used or intended to be used as a caravan park*

**Comment:** The subject site is currently operating as a caravan park with manufactured homes for long term sites. Therefore the subject site complies with this objective to encourage the orderly and economic use and development of land.

- (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community...*

The social and economic welfare is protected by ensuring that proposed development provides housing that has provided amenity and economic affordability. The proposed development provides for further affordable housing choices in the Tweed locality.

- (c) *the provision of community facilities for land so used.*

The original approval provided a ring land area around the entire caravan park for open space purposes. Under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 clause 84 Community amenities states that the total land area of a caravan park or camping ground is to have at least 10 per cent reserved for recreation or other communal activities, a lesser proportion, but not less than 6 % may be allowed.

The subject site has 13.43 % of recreational space for community facilities. An area of 39,3156.5292m<sup>2</sup> area of recreational space is provided (excluding the lake). The proposed development covers an area of approximately 1796m<sup>2</sup> that will reduce the recreational open space further to 12.5%, however, the proposed development will still result in the required recreational space being provided to the residence of the park.

Therefore it is considered that the proposed development will still allow for the required area of community facilities to be provided for the site.

- (d) *the protection of the environment of, and in the vicinity of, land so used.*

The aim of this clause is to encourage the protection of the environment and land so used. The proposed development is contained within cleared land of the existing caravan park and therefore is considered to have minimal impact on the environment.

Clause 10 of SEPP 21 outlines matters to be taken into consideration by Councils in assessing applications for caravan parks and states that:

*A Council may grant a development consent required by this Policy only after it has considered the following:*

*(a) whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,*

The site is an existing caravan park and therefore consideration of whether the site is suitable for a caravan park would have been determined by previous approval.

*(b) whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,*

The application is for long term sites and does not propose to displace any sites currently used for the purposes of tourist accommodation. This matter therefore requires no further consideration.

*(c) whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,.*

There is a justifiable argument for a community need for affordable housing options across the Shire. In particular, the provision of mobile home sites are an alternative housing choice to a unit or apartment in the locality. Therefore, there are limited choices of available mobile home sites in the locality. Therefore, the proposed development provides affordable housing choice in the locality.

*(d) whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,*

As mentioned above the proposed development still allows for the caravan park to provide over 10% of the site for recreational and community facilities. Further the location of the site, provides for access to Tweed Heads and South Tweed shopping areas where a bus service is provided in the locality to access these services.

*(e) any relevant guidelines issued by the Director, and*

There are no relevant guidelines issued by the Director.

- (f) *the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.*

The Regulation, now cited as the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (“the Regulation”) is designed to generally regulate the provision of opportunities for affordable alternatives in short-term and long-term accommodation in the form of manufactured home estates, caravan parks and camping grounds. It provides detailed controls on the structure and management of caravan parks, including controls for access and car parking that would normally be assessed against Council’s own DCP controls.

The application is for the seven manufactured home sites it is within an approved caravan park. Therefore, the application has been assessed under SEPP 21 - Caravan Parks and subsequently the controls outlined in Part 3 of the Regulation pertaining to caravan parks, not manufactured home estates, apply.

*Part 3 Caravan parks, camping grounds and moveable dwellings*

*Division 1 Application of Part*

*Subdivision 1 Operation of caravan parks and camping grounds*

*71 Factors for consideration before approval is granted*

- (1) *The council must not grant an approval to operate a caravan park or camping ground unless it is satisfied that it will be designed, constructed, maintained and operated:*
- (a) *in accordance with the relevant requirements of Subdivisions 1–8 of Division 3, or*

The subject application is for an additional seven (7) sites within an existing caravan park and therefore is an already operating caravan park.

- (2) *In deciding whether or not the approval for a caravan park or camping ground should allow the installation of a relocatable home, rigid annexe or associated structure on flood liable land, the council must have regard to the principles contained in the Floodplain Development Manual.*

The application is for an additional seven home sites in an existing caravan park and therefore there are an existing 335 homes on the site. However, the application has been addressed in accordance with Council’s flood policy by Council’s development assessment engineer and is address under the DCP below.

*85 Size of dwelling sites and camp sites*

The proposal is to cover an area of 1796m<sup>2</sup>, that will equate to approximately 256.57m<sup>2</sup> per site. Therefore the proposed development complies with the 130m<sup>2</sup> size requirements

*86 Site identification*

A condition is recommended to be placed on this approval to ensure sites are clearly identifiable to comply with this clause.

*87 Dwelling sites to have road frontage*

The proposed sites will have direct access to an access road, as required by this clause.

*89 Setbacks of dwelling sites and camp sites from road frontages*

The subject development complies with this clause as it is located 22 metres from the road which complies with 10 metre public road setback and the proposed development is suitably screened from the road.

*96 Resident parking*

One space is to be provided per dwelling site, this can be provided on the dwelling site or clearly marked within the caravan park off the site. The Statement of Environmental Effects proposes that the sites have the availability of parking on the dwelling sites, and a condition of approval for the development to be in accordance with the plans and Statement of Environmental Effects.

*97 Visitor parking*

One (1) space should be provided per 10 long term sites. The proposed development generates the need for one additional visitor's parking space.

The subject site has 335 dwelling sites which therefore requires 33.5 spaces, rounded up to 34 spaces. The subject site has provided 36 spaces, therefore the development has existing excess of two (2) visitor parking sites, therefore the subject development can utilise the excess visitor parking space provided.

*124 Use of caravan parks and camping grounds*

*(1) A caravan park or camping ground must not be used:*

*(a) for any commercial purpose other than a caravan park or camping ground or an associated purpose, or*

*(b) for the manufacture, construction or reconstruction of moveable dwellings.*

The subject site is only to be utilized as a caravan park and is not proposing to manufacture, construct or reconstruct moveable dwellings. Therefore, the proposed development complies with this clause.

Therefore, the proposed development is considered to comply with the regulations and therefore comply with the SEPP requirements.

#### SEPP 36 - Manufactured Home Estates

The application has been assessed under SEPP 21 - Caravan Parks as the original approval was defined as a caravan park and as such SEPP 36 – Manufactured Home Estates does not apply. It is pertinent to note that should SEPP 36 apply the application would not be permissible pursuant to clause 6 of this SEPP which excludes development of manufactured home estates on land that is zoned rural and not adjacent to or adjoining land zoned for urban use.

#### SEPP No. 44 - Koala Habitat Protection

The proposed development is contained within cleared land on subject site currently operating as a permanent site caravan park. On Council's GIS the land is identified as secondary koala habitat, however, the subject development is contained within cleared grassland and therefore, the area of the subject development is not considered potential koala habitat, as potential koala habitat is defined as: "**potential koala habitat** means areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component".

As there are no koala trees in the location of the subject development no further assessment under the SEPP is required.

#### SEPP No.62 Sustainable Aquaculture

Department of Primary Industry advised that works would be captured by the SEPP, as there are priority oyster aquaculture areas in Birds Bay, Terranorra.

The proposed houses site are to be connected to existing sewer mains and conditions will be placed on the approval for sediment and erosion controls and acid sulphate soils controls therefore it is not considered that the proposed development will have an impact on oyster aquaculture areas in the vicinity of the proposed development.



### SEPP No 71 – Coastal Protection

The subject site is located on land to which the above policy applies. The proposal is considered to generally comply with the provisions of SEPP 71 including Matters for Consideration listed at Clause 8 of the SEPP. The proposed development will not alter public access to foreshore and will not impact on coastal processes.

### State Environmental Planning Policy (Major Projects) 2005

The site is identified as sensitive coastal location, the proposed development is not a type of development that is listed under schedule 1, 2 or 3 and is not identified as being a major project. Therefore the SEPP does not apply.

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

There are no draft EPI relevant to the subject development.

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

##### Tweed Development Control Plan Section A2-Site Access and Parking Code

The parking requirements under the DCP refers to the Local Government regulation and has been assessed previously in this report. The subject development has the required parking and therefore complies with these requirements.

##### Tweed Development Control Plan Section A3-Development of Flood Liable Land

The current DCP was adopted on 12 August 2008 after the lodgement of the current development application on 5 June 2008. However, there were no savings provisions for the current DCP and therefore an assessment is required under the current DCP.

The application is assessed under A3.10 Rural areas for the proposed development. The application was assessed by Council development assessment engineer who provided the following comments:

*“The site is considered flood liable and is subject to inundation to RL 2.6m AHD. The housing area itself has existing levels varying from RL 2.6 along the frontage, down to RL 2.1 across the middle, and back up to RL’s 2.4 / 3.2 across the rear. The housing area is not in a nominated high flow area”.*

*A3.10.1 Flood Levels requires all residential development to have a floor level that is a minimum of 0.5m above the design flood level. This is recommended as a condition of consent.*

*A3.10.2 Residential Development on Flood Liable Land (Moveable Dwelling Parks) states: "Movable dwelling parks will not be approved unless it can be demonstrated that the land can be filled to a level of not less than the adopted design flood level for the locality without adversely affecting the current flood levels and patterns in the area.*

*This development application complies, as there is only a maximum of 0.5m of fill required to attain the adopted flood level, and the small volume of fill required is considered to be inconsequential (even in any cumulative considerations) regarding any affect on the current flood levels and patterns in the area".*

In regards to clause A3.10.4 Inappropriate Development in Floodway & High Hazard Flood Storage Areas further addresses Movable Dwelling Parks Council's development engineer advised.

*"As this site falls under the DCP definition of "Caravan Parks" which includes all movable dwellings. This application complies with this requirement as the site is not considered to be in a floodway or high hazard storage area."*

The current version of the DCP introduces a Flood Mitigation Strategy which is *"to minimise future flood potential damage both by structural protection and by planning controls to ensure that only appropriate compatible development occurs on floodplains in the future".* Therefore under the current DCP an assessment is carried out in regards to emergency response provisions for habitable development. An assessment was carried out by Council's development assessment engineer who provided the following comments:

*"In this regard the development controls tabled in Sub-section A3.2.5(b): Habitable Development apply, and are reiterated as follows; "No expansion of existing facilities permitted, unless permanent high level road evacuation route to high land external to the site can be accessed by the additional sites via road and/or pedestrian routes."*

This proposal is compliant, since the site has adequate evacuation route via road and / or pedestrian access to high land above the PMF (probable maximum flood). The site has direct access to a section of Piggabeen Road that is above the design flood level and immediately intersects with Skyline Drive which the top of that road is above the PMF. Therefore, the proposed development complies with the DCP and Council's development engineer advised "Flood Response Assessment Plan" is not required to be provided.

### Tweed Development Control Plan Section A6-Biting Midge and Mosquito Control

The subject site is identified as being subject to saltmarsh mosquitoes breeding area. As the caravan park of 335 sites is existing on the site, therefore an additional seven housing site is not considered a significant increase in numbers. Further there is an existing buffer from the adjoining identified mosquito breeding area and the subject caravan park. The proposed development is over 400 metres to the creek and provides the greatest distance of a dwelling from the creek in the caravan park. Therefore further consideration of this DCP is not required in this instance.

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

##### The NSW Coastal Policy 1997

The 1997 Coastal Policy is based on the four principles of ESD. These principles are the Conservation of biological diversity and ecological integrity, inter-generational equity, improved valuation, pricing and incentive mechanisms and the precautionary principle. These principles are included in the Tweed Local Environmental Plan clause 5 ecological sustainable development and therefore have been addressed above.

Table 2 contains in Appendix C a list of the provisions of the policy which are most relevant to development control. In regards to the proposed development strategic action 2.1.3 is relevant to Council's assessment process. It states that physical and ecological processes are to be considered when assessing development application. The subject development is within an existing approved caravan park, the site of the proposed development is within a cleared area on the site. Therefore, while the subject site is in close proximity to wetlands, the proposed development is contained to the cleared land. Therefore the proposed development is considered to comply with the NSW Coastal Policy.

##### Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

The matters prescribed by this regulation have been addressed in the section of this report addressing the clause 10 consent considerations to SEPP 21 - Caravan Parks above.

**(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 site of the proposed development is within an existing approved caravan park. The proposed development is to be located on cleared grass area that has direct access to the proposed sites. While the subject caravan park is on a designated road, the proposed development is well screened by vegetation from the road.

Site Design and Internal Design

The proposed home sites of the development will be accessed from an existing internal access road. Further, there is an existing home site that the proposed dwellings will be located adjoining. Therefore the proposed house sites are in keeping with the internal design of the caravan park. The proposed development will have adequate access to the community facilities. Therefore, the proposed development is considered in keeping with the site design and internal design of the caravan park.

Access, Transport and Traffic

The application was assessed by Council's development engineer who had no objections to the access in regards to the driveway location and levels.

In regards to the traffic of the proposed development, the site falls within the Kennedy Drive / Cobaki bridge traffic catchment which has a limited capacity. The proposed development is considered to generate 27 trips per day and therefore the Kennedy Drive catchment was able to accommodate the small increase in traffic. Therefore, the proposed development was considered to not have an impact on traffic and access in the locality.

Farmland of State and Regional significance

The subject site and the adjoining site is identified as regionally significant farmland. The subject development is an extension of housing within an existing caravan park and therefore the site is not likely to be utilised for farming purposes. The adjoining site does not appear to be currently utilised for farming purposes. However, if farming practices were to be carried out on the site, the subject development is over 250 metres from the boundary and an additional seven house sites is not likely to have an impact on any adjoining farming practices. Therefore the proposed development is not likely to impact on regionally significant farmland. Further a circular from Department of Planning advised that the Department does not wish to be referred development application in regards to lands identified as regionally significant farmland.

### Impact on Oyster Industry

As mentioned previously the subject site is in proximity to priority oyster leases. The application was referred to Department of Primary Industries, who commented that SEPP 62 was relevant to the subject development. It was concluded that as the proposed development is connected to town sewer and conditions of consent for erosion and sediment control and acid sulphate soil management will ensure the proposed development does not impact on the priority oyster leases. The subject development is for seven additional home sites that will have minimal soil disturbance as the sites will be utilized for relocated manufactured homes and the site is approximately 1.5km from the priority oyster lease. Therefore, the proposed development is considered to have minimal impact on the locality priority oyster leases.

### Flora and Fauna

The subject site of Coraki Broadwater Village is in an environmentally sensitive location, it adjoins Piggabeen Creek, part of the site and adjoining land is identified as SEPP 14 Coastal Wetlands. Further the vegetation on the site is considered to have a very high ecological status and is identified as secondary koala habitat.

The proposed development however, does not require the removal of any vegetation. On site inspection, while there is 335 existing home sites, it was recognized by Council's ecologist to be in good condition. Therefore, an additional seven sites is considered not to impact on the surrounding sensitive environment. As mentioned previously the park has provided adequate community facilities and recreational space and therefore, it is considered the residence and the proposed new residence will not interfere with the adjoining wetland. Therefore, the proposed development is not considered to have a detrimental impact on the adjoining flora and fauna.

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

### Site Characteristics

The site of the proposed residential development is cleared, relatively flat land and there is a vegetation buffer along the road to screen the development. The land slopes up to the road with a mound adjoining the site and therefore the site is considered suitable for the proposed development.

### Flooding

The subject site is flood prone land, however, the development proposes 0.5m of fill of the site. Further the application was assessed by Council's development engineer in accordance with DCP A3 Development of Flood Liable Land and the application complies with the DCP in regards to an adequate evacuation route. The proposed development is not considered to impact on flood prone land.

### Landscaping

There is an existing vegetation buffer within the site parallel to Piggabeen Road. There is further landscaping along the entrance of the site, which screens the site of the proposed development at the entrance of the site. No further landscaping has been proposed for the development. A condition is proposed to require the existing vegetation to be maintained as a screen.

### Recreational Open Space

The proposed development is to be carried out in area originally designated as part of the designated road setback and an area for recreational open space. The proposed development footprint is only 1796m<sup>2</sup> that will reduce the recreational open space by 1.0%. The subject site will still have 12.5% recreation facilities for the residents of the caravan park which complies with the Local Government regulations. Therefore, the caravan park still complies with the required amount of recreational space under the regulations.

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

### **Public Authority Submissions Comment**

#### Rural Fire Service

The application required referral to the RFS under section 100B of Rural Fires Act 1997. The Rural Fire Service provided that the proposed development is considered acceptable provided the recommended conditions are included in the approval.

#### Department of Environment and Conservation

The application was referred to DEC as required by clause 25 Tweed Local Environmental Plan 2000. The Department responded that the application was not reviewed in detail but it recommended legislation and issues that Council should consider in its assessment. An assessment in this regard has been carried out throughout this report and under site suitability, flora and fauna.

#### Department of Primary Industries (Fisheries)

The application was referred to Department of Primary Industries as required by clause 25 Tweed Local Environmental Plan 2000. The application was assessed in accordance with the *Fisheries Management Act* 1994 and the policies that underpin them. DPI submitted that the works would be captured by SEPP 62 provision, which have been addressed above. DPI stated that as the dwellings are to be connected to the existing sewer mains and provided there is appropriate and effective sediment and erosion controls and ASS management during construction the matters raise no concerns for DPI.

**Public Submissions Comment**

The application was advertised for two weeks from Wednesday 2 July 2008 to Wednesday 16 July 2008 for a two week period. Four submissions were received during the advertising period. The issues raised in the submissions are addressed in the following table.

Issue	Comment
Proposed development block view from existing homes	The proposed development is located with grassed strip of land parallel to Piggabeen Road, while the park has views from the internal roads of the surrounding native vegetation, the dwellings facing the proposed site would have minimal views from inside the dwelling. Therefore, the proposed development is considered to have minimal impact on the existing and adjoining manufactured home views. The view of the native vegetation in the direction of the proposed development is from the other side of Piggabeen Road and therefore the proposed manufactured homes would be at a lower level and would have minimal impact on the view.
Devalue property prices	The Environmental Planning and Assessment Act 1979 does not require an assessment of development's affect on property prices. Therefore this issue is not relevant to the proposed development.
Lack of visitor parking	The existing caravan park has provided 36 parking and was required to provide 34 spaces therefore the proposed development only requires one car park space. Therefore, the proposed development complies with the visitor parking requirements and is considered sufficient.
Increase risk to road safety	The proposed development is for an additional seven home sites, the application has been assessed by Council's development engineer who had no concerns with the traffic implications of the proposed development. Further the Council's roads and traffic engineer advised that the application did not warrant referral to DTAG (Developmental Traffic Advisory Group) and therefore road safety is not considered an issue.

Issue	Comment
Reduction in green areas	The proposed development will reduce the recreational open space areas, however, the area of the proposed development is only 1796m <sup>2</sup> . Therefore, the proposed development will reduce the recreational open space by less than 1%. As the recreational open space provided is 12.5% it complies with the requirement of 10% recreational open space areas as required under the Local Government Regulations. Therefore the proposed development is only a minor reduction in green areas and complies with the 10% requirement.
Residents informed site would never been built on	The Environmental Planning and Assessment Act 1979 does not allow an assessment of discussions between prospective buyers and the owner's of the caravan park. Therefore this issue is not relevant to the proposed development. Whether, the proposed development affects the amenity and recreational space has been assessed for the proposed development.
Existing community facilities will be burdened by additional residents	The regulations require the provision at least 10% of the total land area of the caravan park to be reserved for recreation or other communal activities. The proposed development complies with the regulations.

**(e) Public interest**

The proposed development is for an additional seven manufactured home sites within an existing approved caravan park. The subject development is not visible from the public road and is contained within cleared land. The proposed development will provide seven additional affordable housing sites in the locality. Therefore the proposed development is not considered contrary to public interest.

**OPTIONS:**

1. Approve the application in accordance with the recommendations in this report.
2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be unsatisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.



**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The subject application is considered to generally comply with statutory and policy requirements. The development standard clause 22 designated road setbacks was considered unreasonable and unnecessary in this instance and therefore the SEPP 1 objection is concurred with. The proposed development is generally compliant with SEPP 21 Caravan Parks and *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*. The proposed development is considered to not have a significant impact on flora and fauna, recreational facilities or flooding. The site is well screened from the designated road and therefore is considered suitable for the subject site. Therefore the proposed development is recommended for approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---



THIS  
PAGE  
IS  
BLANK

**P3 [PR-PC] Development Application DA08/0975 for a Dwelling & Swimming pool at Lot 8 Section 1 DP 31209, No. 2 Cypress Crescent, Cabarita Beach**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/0975 Pt1**

**SUMMARY OF REPORT:**

The proposal is to demolish the existing single storey dwelling and in-ground swimming pool on the property, and to construct a new two storey dwelling and in-ground swimming pool in a similar location. The demolition of the existing dwelling and pool is to be the subject of a separate development application to Council.

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

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

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

**RECOMMENDATION:**

**That: -**

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA08/0975 for a dwelling & swimming pool at Lot 8 Section 1 DP 31209, No. 2 Cypress Crescent, Cabarita Beach be approved subject to the following conditions: -**

**GENERAL**

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.  
[GEN0015]
2. The proposed future demolition of the existing dwelling and pool must be the subject of a separate development consent.  
[GEN0035]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. New construction is to comply with Appendix 3 – Site Bush Fire Attack Assessment of *Planning for Bush Fire Protection 2006*. In this regard the following design standards for construction are to be incorporated into the development:
  - (a) New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 2. New construction of the southern facade shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 1.
5. Roofing shall be gutterless or have leafless guttering and valleys to prevent the build up of flammable material. Any materials used shall have a Flammability Index no greater than 5.
6. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.
7. All fencing shall be constructed from non-combustible materials.
8. At the commencement of building works the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.
9. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
10. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.
11. The proposed rendered concrete block fence within Council Building line, western and eastern side boundaries is to have a maximum height of 1.5metres.  
[GENNS02]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

12. 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]

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

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

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

[PCC1145]

14. Prior to issue of the construction certificate engineering details and certification are to be provided to the satisfaction of Principal Certifying Authority confirming that the footings for the dwelling and pool have been designed to withstand the likely impacts of coastal erosion and associated reduced bearing capacities for the 50 year erosion escarpment line as identified in the "Tweed Shire Coastline Hazard Definition Study" prepared by WBM Oceanics Australia dated 6<sup>th</sup> September 2001 and on Tweed Shire Council coastal erosion hazard maps.

[PCCNS01]

**PRIOR TO COMMENCEMENT OF WORK**

15. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and



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

[PCW0215]

16. 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]

17. 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]

18. 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]

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

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

[PCW0255]

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

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

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

[PCW0985]

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

[PCW1005]

#### DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

24. 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]

25. 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]





26. 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]

27. 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]

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

[DUR0445]

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

Please note timber retaining walls are not permitted.

[DUR0835]

30. 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]

31. 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]

32. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

33. 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]
34. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.
- [DUR1945]
35. **Swimming Pools (Building)**
- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.
- [DUR2075]
36. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.
- [DUR2085]
37. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
- [DUR2185]
38. 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]



**39. 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]

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

[DUR2515]

**41. 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]

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

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

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

[DUR2555]

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

[DUR2705]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**44. 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]

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

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

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

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

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

[POC0265]

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

[POC0435]

## USE

47. 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]

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

[USE0505]

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

[USE1245]

**50. 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]*

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

*[USE1305]*



**REPORT:**

**Applicant:** Mr D Richardson  
**Owner:** Mr TA Miller & Mrs RM Miller  
**Location:** Lot 8 Section 1 DP 31209 No. 2 Cypress Crescent, Cabarita Beach  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$600,000

**BACKGROUND:**

The property is zoned 2(a) Low Density Residential under Tweed Local Environmental Plan 2000 and is located on the northern side of Cypress Crescent, Cabarita Beach. The property is bounded by a property to the west containing a two storey dwelling house, Cypress Crescent to the south, to the north a nature reserve and to the east a coastal reserve (waterfront open space).

A single storey brick and tile dwelling and in ground swimming pool currently exists on the property. This application is for the construction of a new two storey dwelling and swimming pool on the site in a similar position to the existing dwelling. A separate development Application is proposed for the demolition of the existing dwelling and swimming pool on the property.

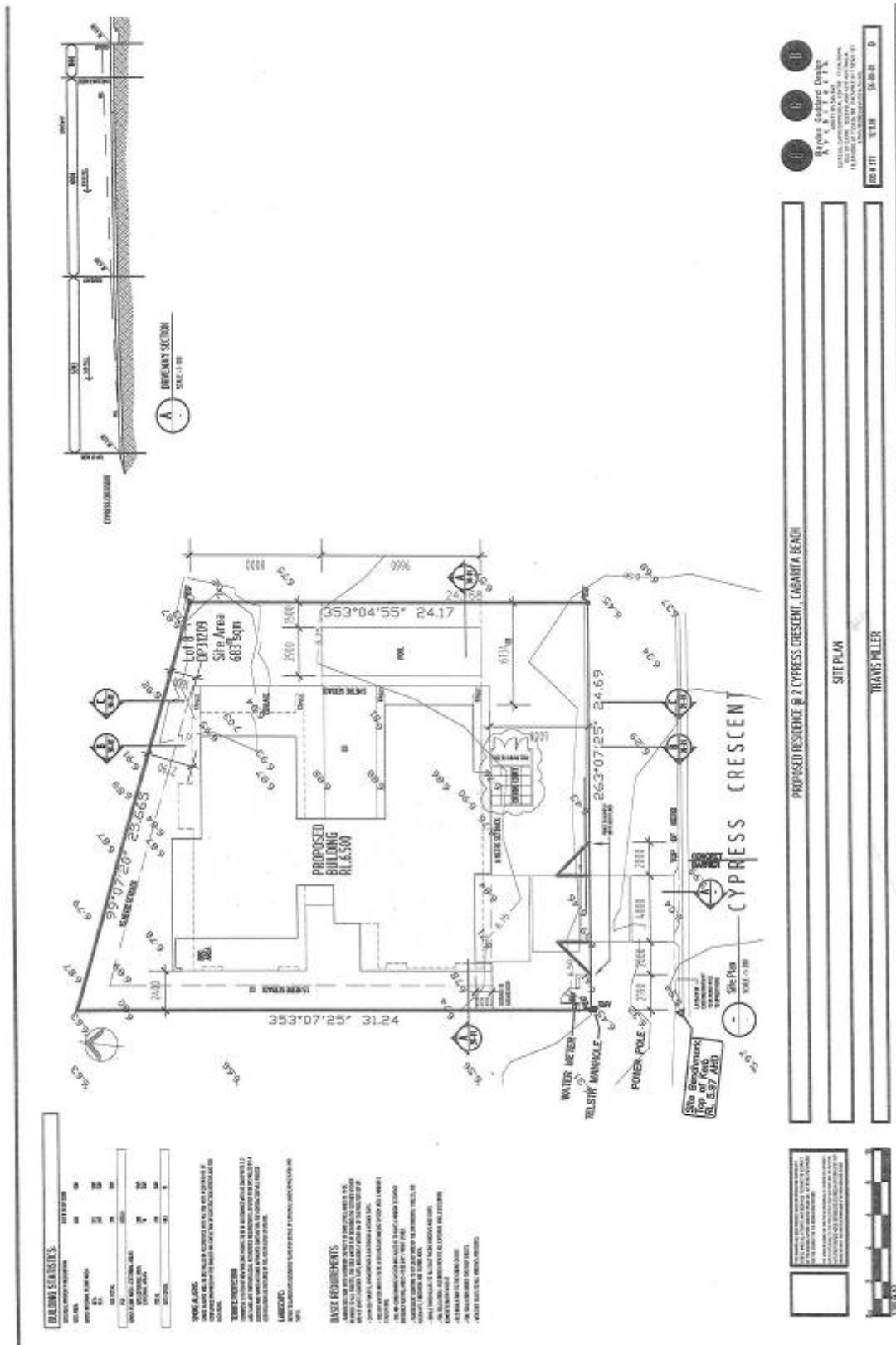
A SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

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

**SITE DIAGRAM:**



**DEVELOPMENT PLANS:**



**RUBBING STANDARDS**

100% COPIES	0
95% COPIES	1
90% COPIES	2
85% COPIES	3
80% COPIES	4
75% COPIES	5
70% COPIES	6
65% COPIES	7
60% COPIES	8
55% COPIES	9
50% COPIES	10

**SITE ASKS**  
I AM A REGISTERED ARCHITECT AND I HAVE DRAWN THIS PLAN IN ACCORDANCE WITH THE REQUIREMENTS OF THE LOCAL GOVERNMENT ACT 2009 AND THE LOCAL GOVERNMENT (PLANNING) REGULATIONS 2009. I AM NOT PROVIDING ANY SERVICES TO YOU IN CONNECTION WITH THIS PLAN.

**LANDSCAPE**  
THE LANDSCAPE DESIGN IS A GENERAL INDICATION OF THE DESIRED LANDSCAPE AND DOES NOT CONSTITUTE A COMMITMENT TO PROVIDE LANDSCAPE SERVICES.

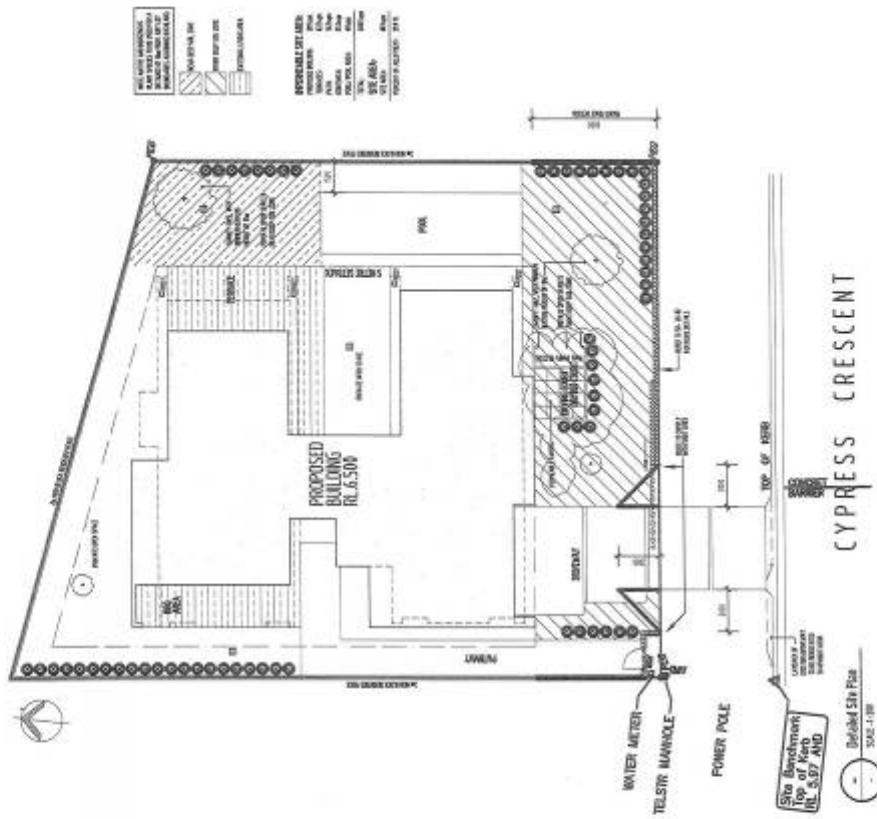
**NOTE:**  
THIS PLAN IS A GENERAL INDICATION OF THE PROPOSED DEVELOPMENT AND DOES NOT CONSTITUTE A COMMITMENT TO PROVIDE ARCHITECTURAL SERVICES.

**PLANNING REQUIREMENTS**  
THE DEVELOPER MUST OBTAIN APPROVAL FROM THE PLANNING COMMITTEE BEFORE COMMENCING DEVELOPMENT.

**CONDITIONS**  
THE DEVELOPER MUST OBTAIN APPROVAL FROM THE PLANNING COMMITTEE BEFORE COMMENCING DEVELOPMENT.

**LANDSCAPE**  
THE LANDSCAPE DESIGN IS A GENERAL INDICATION OF THE DESIRED LANDSCAPE AND DOES NOT CONSTITUTE A COMMITMENT TO PROVIDE LANDSCAPE SERVICES.





**PROPOSED SITE AREA:**

PROPOSED BUILDING	100.00
DRIVEWAY	100.00
PARKING	100.00
LANDSCAPE	100.00
<b>TOTAL</b>	<b>400.00</b>

**PROPOSED SITE AREA:**

PROPOSED BUILDING	100.00
DRIVEWAY	100.00
PARKING	100.00
LANDSCAPE	100.00
<b>TOTAL</b>	<b>400.00</b>

**CYPRESS CRESCENT**

PROPOSED RESIDENCE @ 2 CYPRESS CRESCENT, CABARITA BEACH

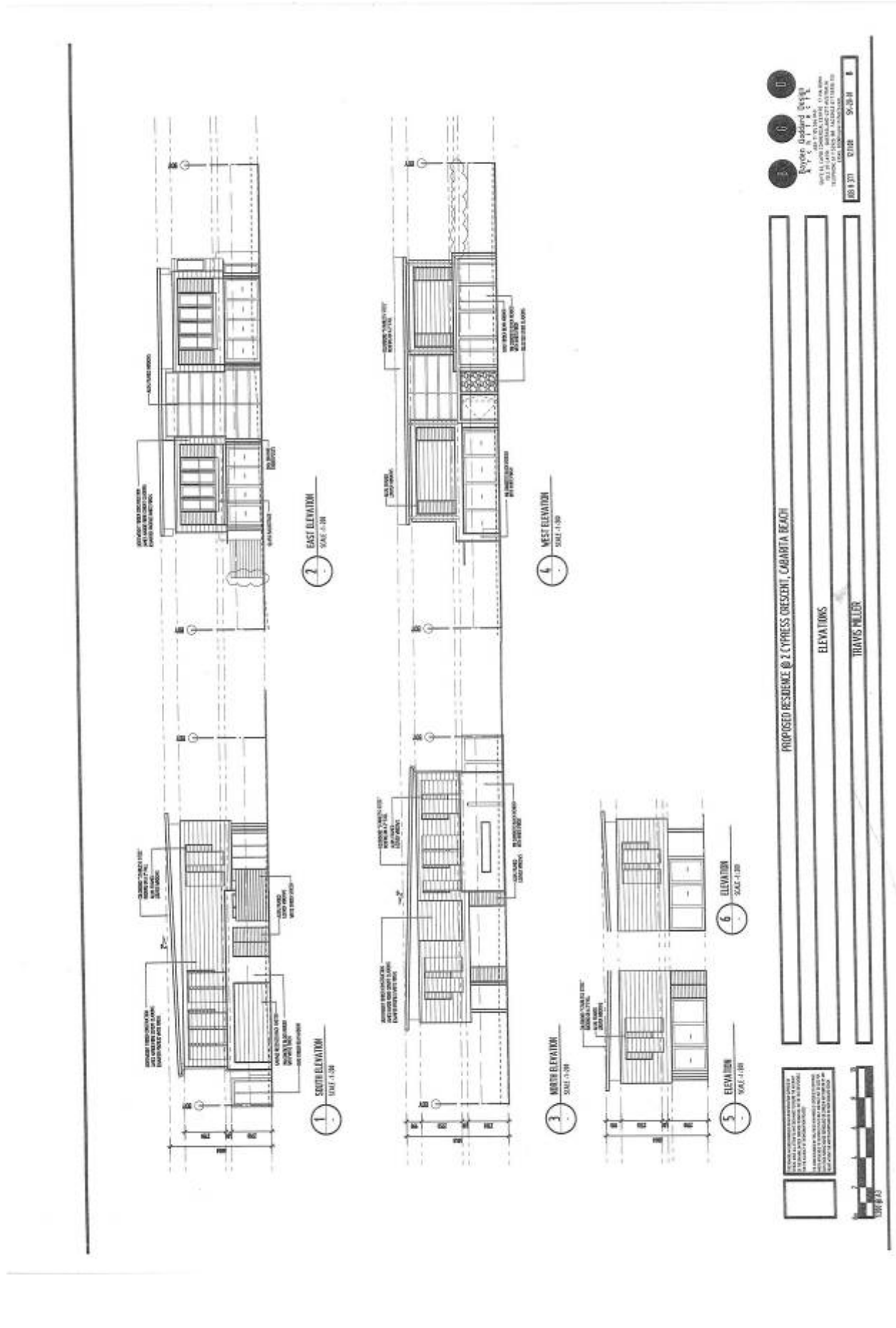
DETAILED SITE PLAN

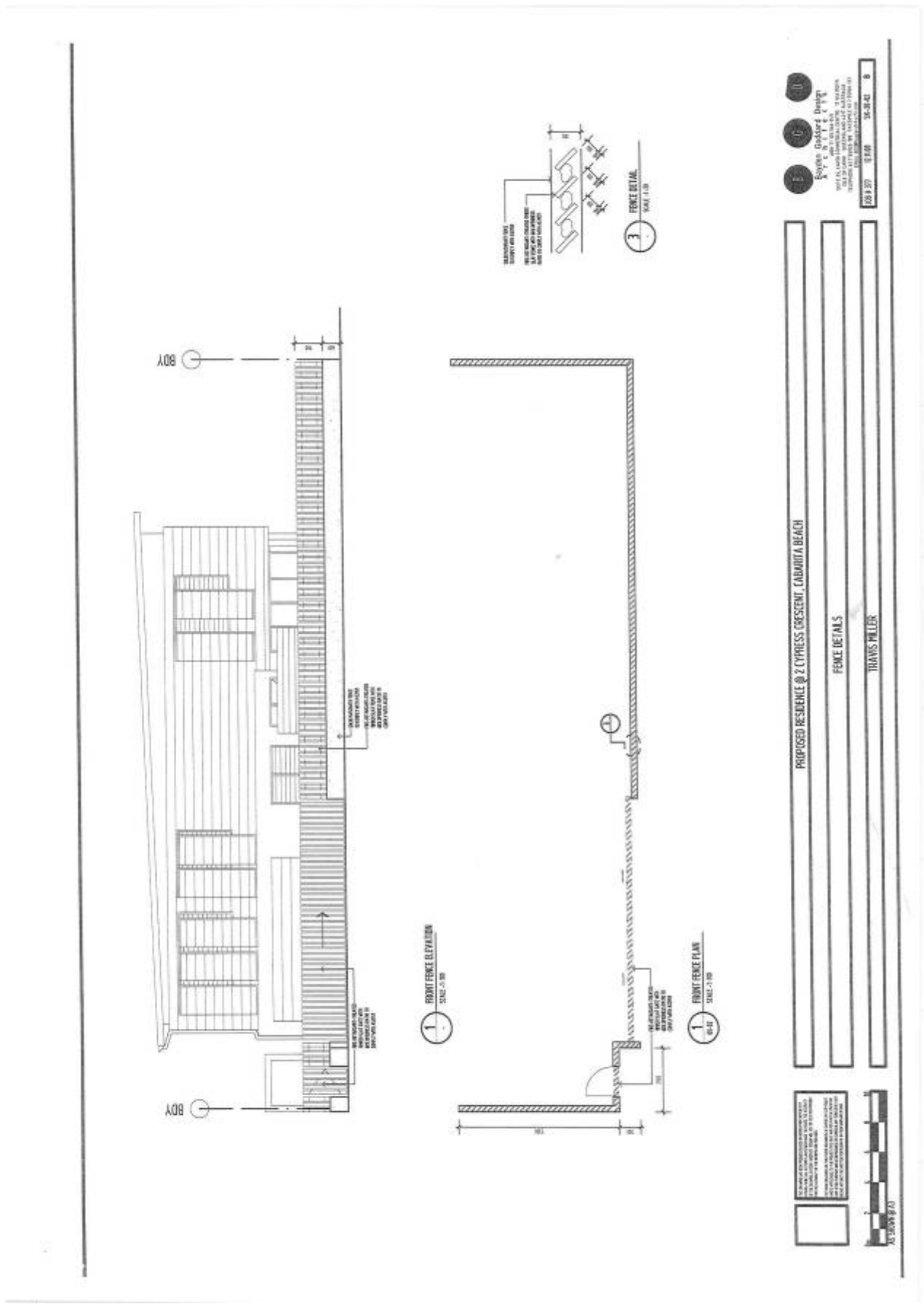
TRAVIS WILLEN

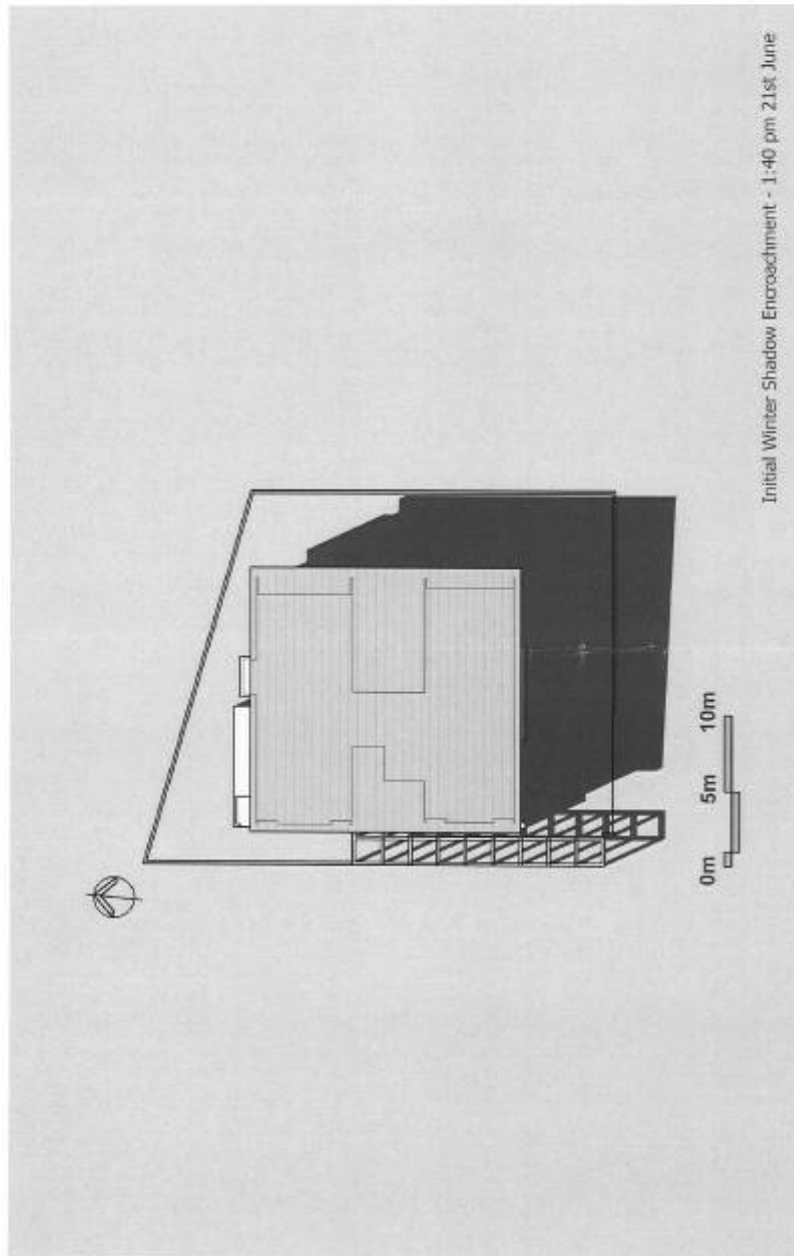



**Keytek Graded Design**  
 A.P. & S. P. Engineers  
 11/11/08  
 11/11/08  
 11/11/08

11/11/08 11/11/08 11/11/08







- A
  - B
  - C
  - D
- Legends  
 1:40 PM 21st JUNE  
 INITIAL WINTER SHADOW ENCROACHMENT TO ADJACENT RESERVE - 21st JUNE (SUMMER)  
 1:40 PM 21st JUNE  
 INITIAL WINTER SHADOW ENCROACHMENT TO ADJACENT RESERVE - 21st JUNE (SUMMER)

PROPOSED RESIDENCE @ 2 CYPRESS ORIENT, LABARITA BENCH

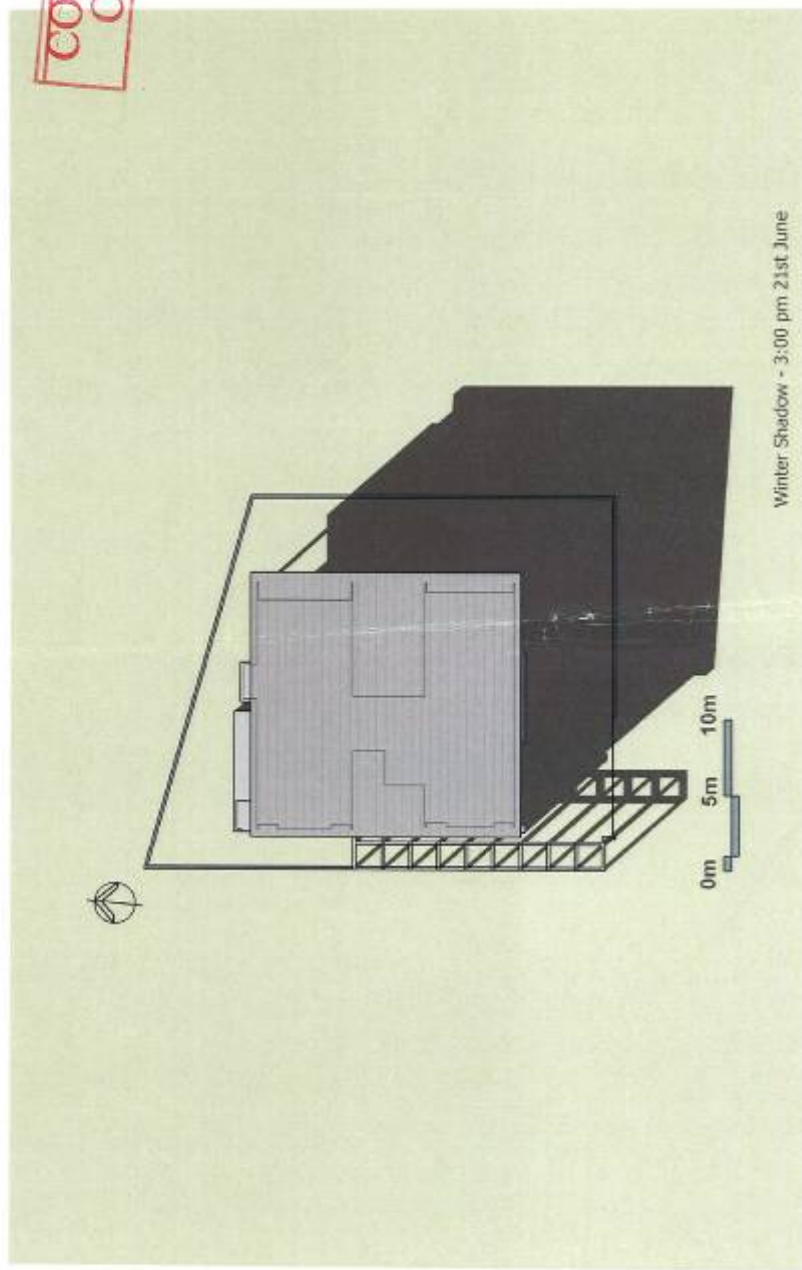
SHADOW DIAGRAM - INITIAL SHADOW ENCROACHMENT TO ADJACENT RESERVE - 21st JUNE (SUMMER)

TRAVIS MILLER

ILLUSTRATION OF THE PROPOSED DEVELOPMENT AND ITS SHADOW ENCROACHMENT TO ADJACENT RESERVE - 21st JUNE (SUMMER) AT 1:40 PM ON 21st JUNE (SUMMER). THE SHADOW ENCROACHMENT IS SHOWN IN BLACK. THE PROPOSED DEVELOPMENT IS SHOWN IN GREY. THE ADJACENT RESERVE IS SHOWN IN WHITE. THE SHADOW ENCROACHMENT IS SHOWN TO BE WITHIN THE ADJACENT RESERVE.



**COUNCIL COPY**



Winter Shadow - 3:00 pm 21st June

- A
- B
- C
- D

Design: Landscape Design  
 A, B, C, D  
 10/10/08  
 10/10/08  
 10/10/08  
 10/10/08  
 10/10/08  
 10/10/08

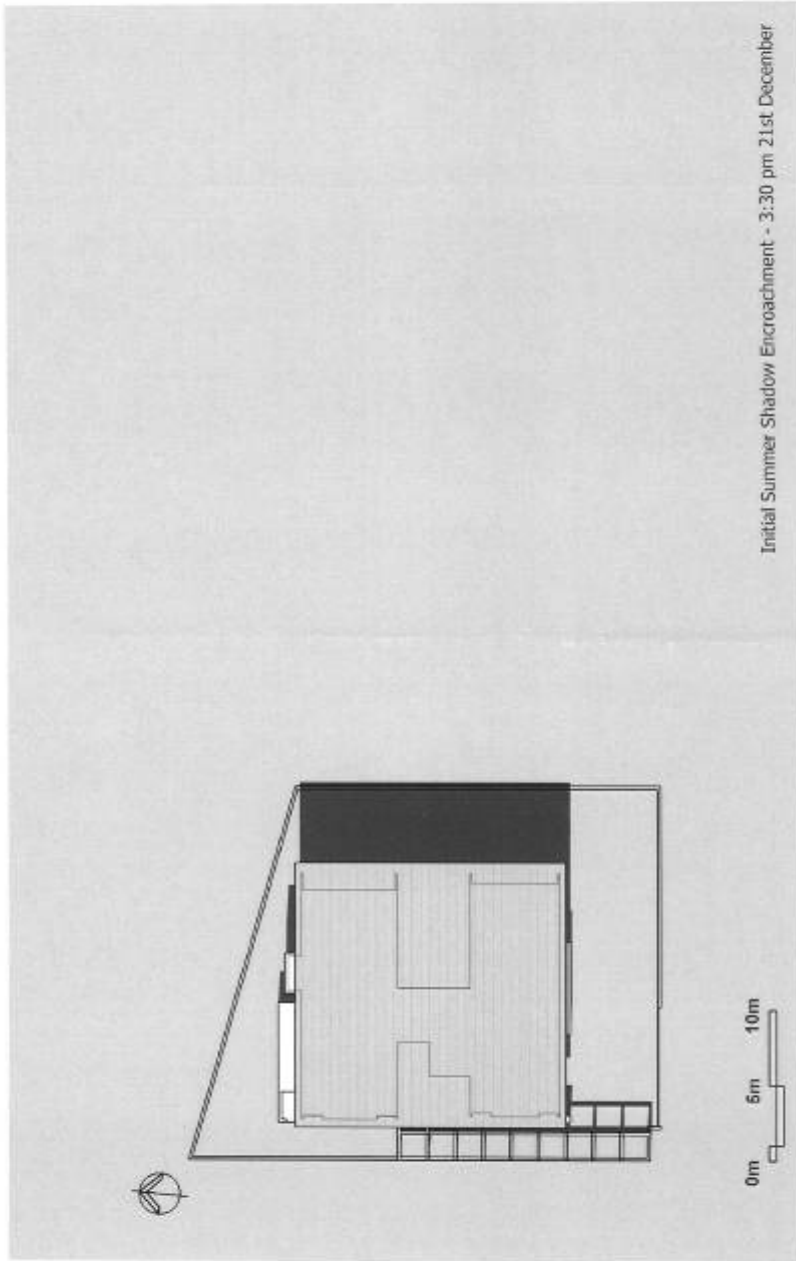
10/10/08 10/10/08 A

PROPOSED RESIDENCE @ 2 CYPRESS CRESCENT, CABARITA BEACH

SHADON DINGHAM - 31/06/2008 JUNE WINTER

TRAVIS MULLER



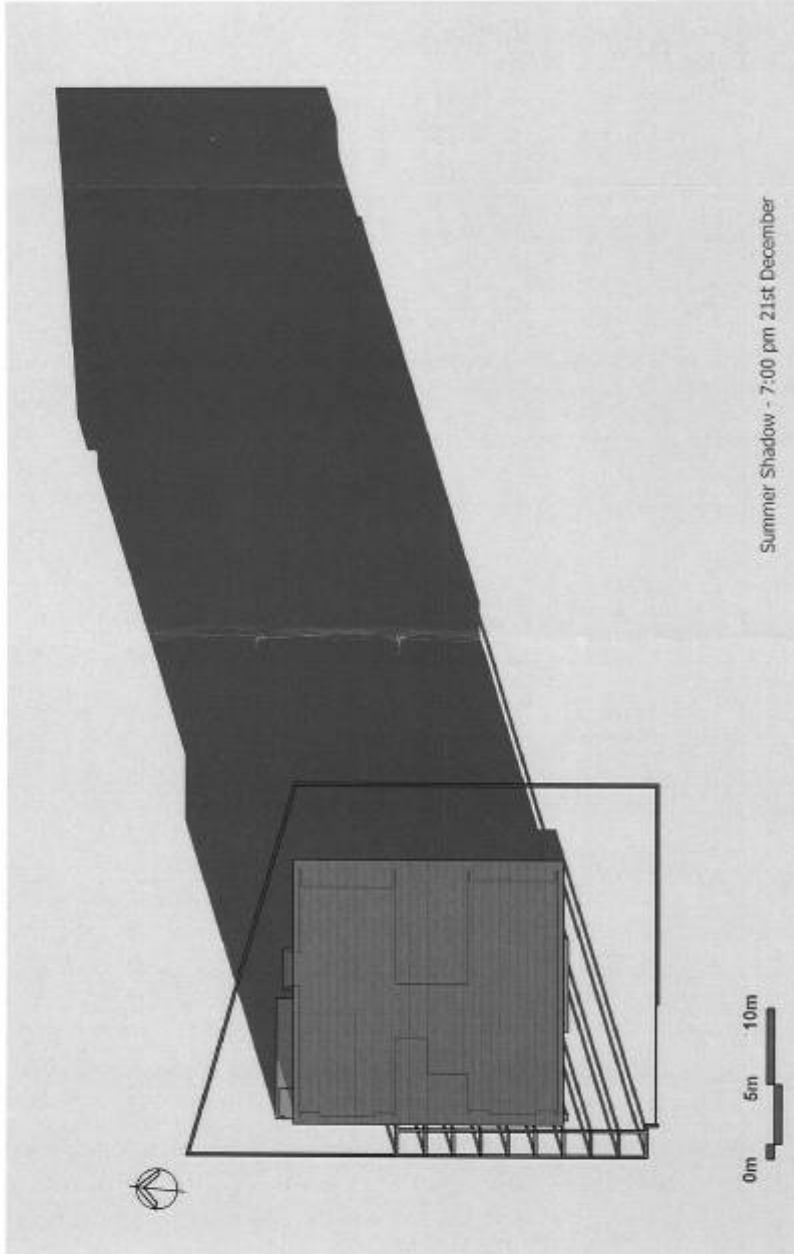


b  c  d  
 Mr. John George O'Neil  
 11/11/08 10:00 AM  
 11/11/08 10:00 AM  
 11/11/08 10:00 AM  
 11/11/08 10:00 AM  
 11/11/08 10:00 AM  
 11/11/08 10:00 AM

PROPOSED RESIDENCE @ 2 CYPRESS CRESCENT, CABARITA BEACH  
 SHADOW DIAGRAM - INITIAL SHADOW ENCROACHMENT TO ADJACENT RESERVE - 21st DECEMBER (SUMMER)  
 TRAVIS MILLER

THIS PLAN IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.  
 THE ARCHITECT'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED IN THIS AGREEMENT.  
 THE ARCHITECT'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED IN THIS AGREEMENT.  
 THE ARCHITECT'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED IN THIS AGREEMENT.





- A
- B
- C
- D

Kevin Cooper & Partners  
 ARCHITECTS  
 11/15 JAMES STREET, CAULFIELD EAST VIC 3146  
 TEL: 03 9526 0400 FAX: 03 9526 0401  
 WWW.KCOPPER.COM.AU

DDP 311 13/08 94-08-05 A

PROPOSED RESIDENCE @ 2 LYPRESS TRESENT, CABARITA BEACH

SHADOW DIAGRAM - 1:00pm AEDT 21ST DECEMBER (SUMMER)

TRANS MILLER

THIS SHADOW DIAGRAM IS A GUIDE ONLY AND DOES NOT REPRESENT THE FINAL DESIGN. THE FINAL DESIGN IS SUBJECT TO THE PLANNING AUTHORITY'S APPROVAL AND THE FINAL DESIGN IS SUBJECT TO THE PLANNING AUTHORITY'S APPROVAL AND THE FINAL DESIGN IS SUBJECT TO THE PLANNING AUTHORITY'S APPROVAL.



**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****(a) (i) The provisions of any environmental planning instrument****Tweed Local Environmental Plan 2000****Clause 4 - Aims of the Plan, Clause 5 - Ecologically Sustainable Development and Clause 8 - Zone objectives**

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

**Clause 15 - Essential Services**

All essential services are available within the area.

**Clause 16 - Height of Building**

The proposed height of the development (6.8m) complies with the 3 storey and 9m maximum height limitation affecting the subject site.

**Clause 17 - Social Impact Assessment**

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

**Clause 35 - Acid Sulfate Soils**

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2 metres below surface level. Minor disturbance of these soils may occur during the construction of the dwelling and in ground pool, therefore an Acid Sulfate Minor Works Plan has been submitted with the application to treat any disturbed acid sulfate soils.

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

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



Council's mapping records indicate the subject site is affected by the 50 and 100 year hazard line.

The Department of Environment and Climate Change (DECC) was consulted during the assessment of the proposal. The DECC advised Council that they should enforce the development within hazard zones through adoption of revised draft DCP No. 8 for the coastline including, the need for deep pile foundations for development approvals within the maximum 100 year hazard line, and limiting the intensity of development within the maximum 100 year hazard line. The proposal will need to be consistent with these requirements and the development has been conditioned accordingly.

#### Clause 39A – Bushfire Protection

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

#### North Coast Regional Environmental Plan 1988

##### Clause 32B: Coastal Lands

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

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

The proposal will not impede public access to the foreshore.

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

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

##### Clause 33: Coastal hazard areas

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

## **State Environmental Planning Policies**

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

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

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

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7.00 pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

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

Whilst the dwelling will overshadow the coastal reserve the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The actual beach is over 100 metres from the rear of the property.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration.

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

### SEPP No 71 – Coastal Protection

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

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

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

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

None apparent

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

### Tweed Development Control Plan

#### A1-Residential and Tourist Development Code

The development is generally consistent with the objectives of section A1 as demonstrated in the design controls identified below.

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

#### Public Domain Amenity

##### **Streetscape**

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

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

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

The proposal will not result in an unreasonable view loss of the beach and foreshore given the 3 storey limitation as specified in the Tweed Local Environmental Plan 2000. The proposed dwelling provides view corridors over the front and rear setbacks of the site for the adjoining western property.

#### Site Configuration

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

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

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

The second deep soil zone is adjacent to the eastern side boundary and is not in the location required by this control.

The deep soil zone should be located at the rear of the dwelling adjacent to the rear property boundary and is intend to provide a significant landscape area between adjoining properties that back onto each other.

In this instance the property to the north is zoned 8(a) National Parks and Nature Reserve and the property to the east is zoned 6(a) open space, so the location of the rear deep soil zone adjacent to the eastern side boundary is generally consistent with objectives of the control as significant open space surrounds the property.

### **Impermeable Site Area**

The area of the site is 679m<sup>2</sup> subsequently the maximum impermeable site area permitted at the completion of the development will be 65%. From the landscaping plans submitted the development will create an impermeable area of 63% and will comply with the design control.

### **External Living Areas**

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

### **Landscaping**

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

The proposal is generally consistent with this design control.

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

The site is basically flat with no cut of fill proposed with the development.

### **Setbacks**

The proposal is consistent with the 6 metre front setback and the 1.5 metre side boundary setback controls with the dwelling being sited 2.4 metres from the western side boundary and 5 metres from the eastern side boundary.

The rear northern boundary of the property runs at an angle of 74 degrees to the western side boundary and as a result the northern wall of the dwelling is sited 4.2 metres to 3 metres from the rear boundary of the property.

Due to the irregular shape of the property the applicant has proposed the required rear deep soil zone along the eastern side boundary to optimize open space between the dwelling and coastal reserve , which has been previously discussed in this report.

#### Car Parking and Access

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

#### Height

##### **Building Height**

The maximum height of the dwelling is 6.8 metres which is below the maximum design control of 9 metres.

##### **Ceiling Height**

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 2.75m which is consistent with this design control.

#### Building Amenity

##### **Sunlight Access**

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

The proposed dwelling will increase overshadowing to the dwelling on the western side of the property as the proposed dwelling will now be two storey, one storey higher than the existing dwelling on the property. Given the northern orientation of No. 2 and the adjoining No. 4 Cypress Crescent, overshadowing will only impact on No. 4 during the morning period with ample solar access to the property throughout the remainder of the day.

A shadow diagram submitted with the application shows winter shadows (1.40pm 21<sup>st</sup> June) well clear of the western side property during the afternoon period.

The increase in overshadowing as a result of the proposed development is not unreasonable as the dwelling will be a similar bulk and scale to existing dwellings in the area. It should also be noted the proposed two storey dwelling will have an overall height of 6.8 metres, well below the permitted 9 metre height limit in section A1.

### **Visual Privacy**

Overlooking into the adjoining properties primary living areas and windows of the adjoining dwelling at No. 4 Cypress Crescent has been avoided in the development's design with only aluminium louvered windows being provided at the first floor level, facing the adjoining property, and the screening of living areas at the ground floor.

### **Acoustic Privacy**

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

### **View Sharing**

This matter has been discussed previously in this report.

### **Natural Ventilation**

The design of the dwelling provides for adequate ventilation.

### **Building Orientation**

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

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

The proposal incorporates a 1.5m high brick and timber slatted front fence. The design and use of materials is consistent with the design of the dwellings.

The side fences as evident on the architectural plans detail a 2m high rendered concrete block fence which is consistent with the design control. A condition of consent has been recommended limiting the height of all fencing within Council's Building line to a maximum height of 1.5 metres.

A 1.8 metres high and 3.4 metres long privacy screen is also proposed 3.2 metres from the front property boundary within Council's Building line. The screen is to provide an enclosed drying court off the laundry which is situated at the front of the dwelling. Landscaping is also proposed in front of the screen to assist in reducing the impact of the screen on the streetscape. It is considered that fence and screen is generally consistent with the objectives of this design control.

### **Roof**

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

### Building Performance

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

### Swimming Pools

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

### Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.65:1 for the dwelling. The proposed dwelling is consistent with this design control having an FSR of approximately 0.58:1.

### A2-Site Access and Parking Code

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

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

### Clause 92(a) Government Coastal Policy

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

### Clause 92(b) Applications for demolition

The proposed demolition of the existing dwelling on the site is to be the subject of a separate development application to Council and the subject development application will be conditioned accordingly.

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

Context and Setting

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

Access, Transport and Traffic

Impacts are considered minimal and no additional impact is envisaged than that which currently exists with the existing dwelling.

Flora and Fauna

Minimal impact is envisaged on the flora and fauna in the locality as the proposed development is only the redevelopment of the site with a new two storey dwelling.

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

Surrounding Land uses/Development

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

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

Topography

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

Site Orientation

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



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

The proposal was notified to the adjoining property owners for 14 days from the 28 October to 11 November 2008. To date no submissions have been received.

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---



THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

**P4 [PR-PC] Development Application DA08/1102 for a Storage Shed at Lot 6 DP 711121, No. 7 Dixons Road, Burringbar**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/1102 Pt1**

**SUMMARY OF REPORT:**

The proposed shed is to be constructed within the 30m building line of the designated road Tweed Valley Way. The applicant has provided a written statement requesting a 12m building line relaxation under SEPP 1 guidelines. The proposal is considered reasonable and will not compromise the relevant objectives of the Tweed Local Environment Plan 2000 and is recommended for approval.

The application has been submitted to Council for their determination in accordance with a Planning Circular PS08-014 issued by the Director-General, NSW Department of Planning, dated 14 November 2008, requiring referral of variation to SEPP1 development standards which exceed 10%.

**RECOMMENDATION:**

**That:**

- 1. Council assumes the concurrence of the Director General of the Department of Planning for the approval of the State Environmental Planning Policy No. 1 objection to vary the 30 metre setback requirement.**
- 2. Development Application DA08/11102 for a dwelling at Lot 6 DP 711121 No. 7 Dixons Road, Burringbar be approved subject to the following conditions:**

**GENERAL**

- 1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.**  
[GEN0015]
- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**  
[GEN0115]

**PRIOR TO COMMENCEMENT OF WORK**

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

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

[PCW0215]

4. 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]

5. 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]

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

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

[PCW0255]

#### **DURING CONSTRUCTION**

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

[DUR0005]

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

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

[DUR0245]

- 10. 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]

- 11. 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]

- 12. 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]

- 13. 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]

- 14. 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]

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

[DUR2185]



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

[DUR2335]

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

17. 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]

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

[POC1055]

Council approved landscaping shall be completed prior to the release of the occupation certificate. Landscaping shall aim to achieve a privacy buffer between the shed and Tweed Valley Way and must be maintained at all times to the satisfaction of the General Manager or delegate.

[POCNS01]

#### **USE**

19. The building is not to be used for any habitable commercial or industrial purpose.

[USE0455]

**REPORT:**

**Applicant:** Mr MA Jennings  
**Owner:** Mr MA Jennings and Mrs CM Jennings  
**Location:** Lot 6 DP 711121, No. 7 Dixons Road, Burringbar  
**Zoning:** 1(a) Rural  
**Cost:** \$9,700

**BACKGROUND:**

The proposed shed is to be constructed within the 30m building line of the designated road Tweed Valley Way. The applicant has provided a written statement requesting a 12m building line relaxation under SEPP 1 guidelines. The primary and secondary objectives of the TLEP for a 1(a) rural zone have been addressed in the SEPP 1 objection attached to the development application.

Council records show the property is Conservation Bushland with site inspection and aerial photos confirming ninety percent of the property is endemic rainforest species with the exception of only the front yard area of the existing dwelling facing Dixons Rd and the site area for the proposed shed.

The storage shed construction and location will not disturb the natural bushland and the natural water courses that traverse the allotment are not impacted by its proposed location. The small size of the shed will not adversely affect the amenity of Tweed Valley Way with vehicular access being provided to the shed from Dixons Rd via an existing gate. The vehicular access will not interfere with traffic flow to Tweed Valley Way and Councils roads Engineer has confirmed a driveway application is not required due to the existing gateway.



The applicant has lodged a request under State Environmental Planning Policy No. 1 to vary the 30 metre building setback requirement to Tweed Valley Way. This report recommends support of this variation for a 12m setback and this represents a 60% variation.

The application has been submitted to Council for their determination in accordance with a Planning Circular PS08-014 issued by the Director-General, NSW Department of Planning, dated 14 November 2008, requiring referral of variation to SEPP1 development standards which exceed 10%.

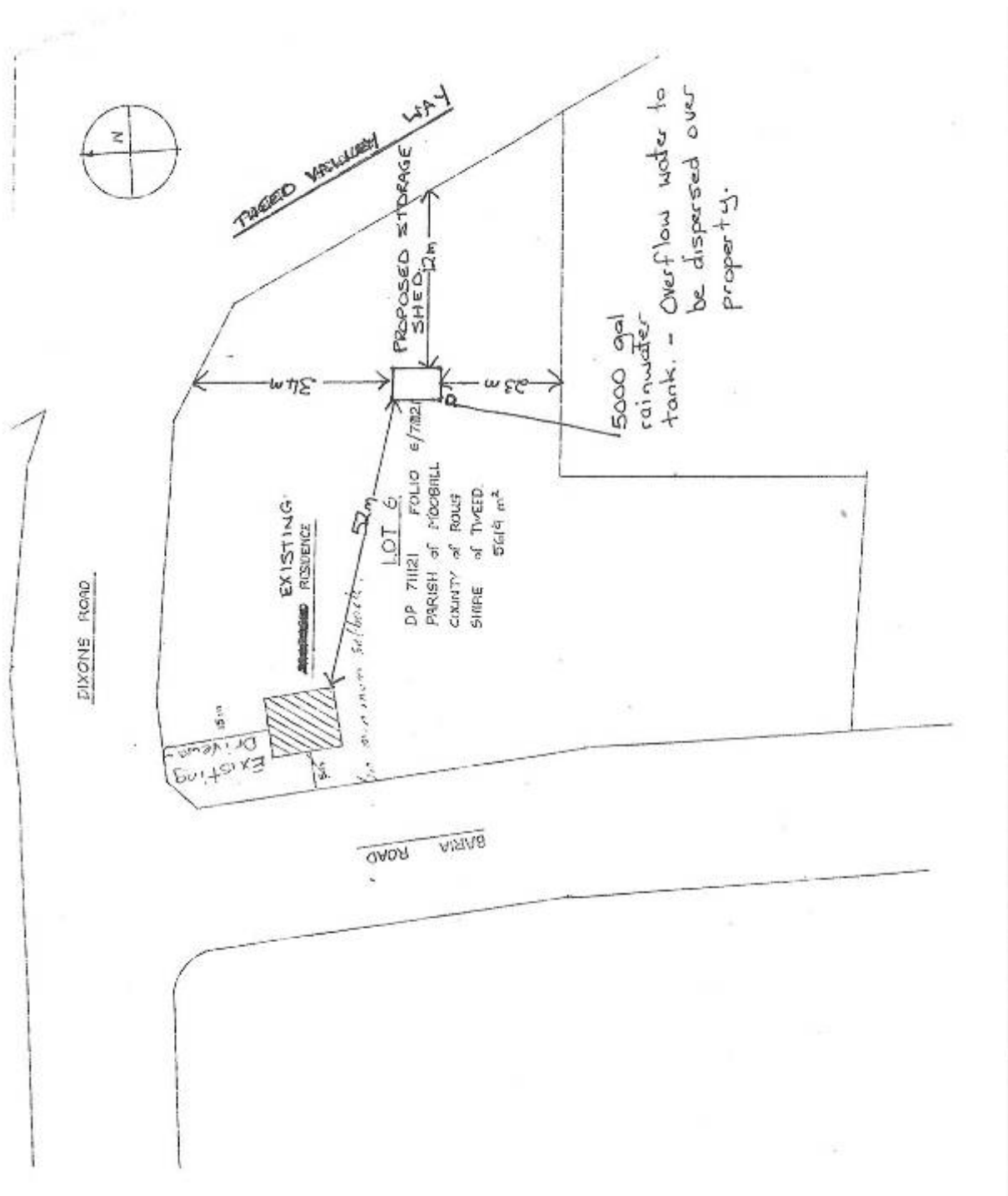


**SITE DIAGRAM:**

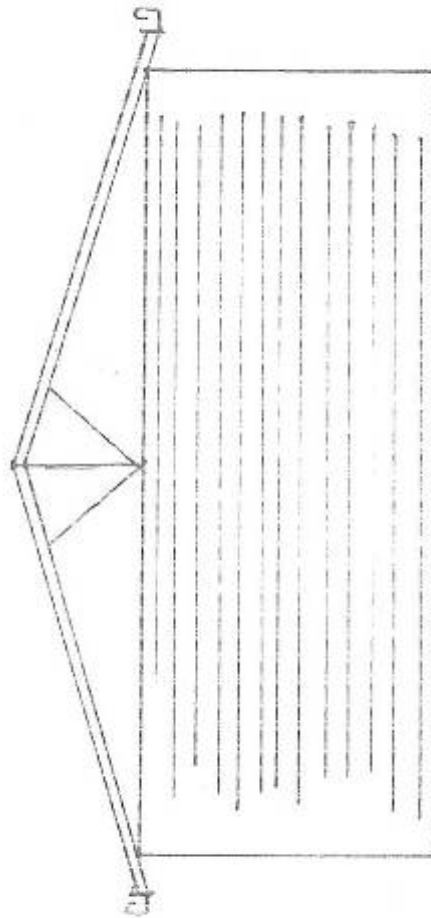


<p>© TWEED SHIRE COUNCIL 2008          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>Lot 6 DP 711121</b>  <b>No. 7 Dixons Road, Burringbar</b></p>	<p>Site Plan              Sheet: 1 of 1</p>
---	---	---

DEVELOPMENT PLANS:



STORAGE  
PROPOSED A SHED  
7 DIXONS RD  
BURRINGBAR.



SOUTH VIEW

← N

STORAGE  
PROPOSED SHED FOR M A JENNINGS  
7 DIXONS RD BARRINGBAR.



WEST VIEW

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

The subject land is zoned 1(a) Rural and under the provisions of the TLEP2000, sheds are permissible in this zone subject to the consent from council.

**Clause 4 - Aims of the Plan**

The proposed rural storage shed development on the site is consistent with the aims of the plan.

**Clause 5 - Ecologically Sustainable Development**

It is envisaged no adverse impact will result to the ecological sustainability of the area if the application is approved. The chosen site is on level ground, and the construction process will not impact on the natural watercourses that traverse the property. There is no removal of natural vegetation and the proposal does not interfere with the wildlife habitats or the scenic attractiveness of Tweed Valley Way.

**Clause 8 - Zone objectives**

It is considered that the proposal is consistent with the objectives of the zone.

**Clause 15 - Essential Services**

All essential services are available and appear adequate for the site.

**Clause 16 - Height of Building**

The proposal is consistent with the objectives of this clause.

**Clause 17 - Social Impact Assessment**

It is not considered that the proposed development will result in any adverse social impact.

**Clause 35 - Acid Sulfate Soils**

Council records show the subject site is not affected by ASS.

### Clause 22 – Development near designated roads

The proposal incorporates the construction of a storage shed with a building line of 12 metres. The TLEP 2000 requires a building line of 30 metres to the designated road of Tweed Valley Way.

The objectives of Clause 22 are:

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

### **Comment**

As the chosen site is relatively flat and due to natural restraints on the property it is considered reasonable that a 12m building line to Tweed Valley Way will achieve compliance with the above objectives as detailed in Clause 22 of the TLEP 2000. Confirmation from Council's roads Engineer advises a section 138 driveway application is not required due to existing gate and vehicle access in Dixons Rd. To ensure the scenic attractiveness of the Tweed is achieved a buffer of approved landscaping shall be completed in the open area between the shed and Tweed Valley Way as a condition of this approval.

### **State Environmental Planning Policies**

#### SEPP No. 1 - Development Standards

A SEPP 1 objection has been received from the applicant in relation to the 30 metre setback required to Kyogle Road, which is a Designated Road. This setback is required by Clause 22 of the TLEP 2000. The objection states that the required setback is unreasonable and unnecessary given the site circumstances.

#### SEPP (Rural Lands) 2008

The proposal is considered to be consistent with the objectives as detailed in this SEPP and the proposed construction of a shed will be consistent with adjacent Rural land uses. The proposal will not have a significant impact on the Rural land uses in the vicinity.

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

The proposal is consistent with the provisions as detailed in Local Environmental Plan 21.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposal is consistent with the objectives of this development control plan.

A2-Site Access and Parking Code

Ample car parking is available on this rural property.

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

Clause 92(a) Government Coastal Policy

Not Applicable.

Clause 92(b) Applications for demolition

Not Applicable.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

**(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

It is considered that the proposal will be appropriately sited if the 12m building line is approved. The decreased building line is envisaged not to detract from the amenity of the rural environment and will not impact on the scenic nature of Tweed Valley Way.

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

Surrounding Land uses/Development

The site is rural and the proposal will be consistent with land uses and development within the area. The site location is considered the most suitable location.

### Flora and Fauna

The proposed site location is in an existing cleared area and the construction of a storage shed in this area will not adversely impact on flora or fauna.

### Topography

The shed pad is relatively flat and is positioned below the level of Tweed Valley Way.

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

Not applicable.

#### **(e) Public interest**

The proposal will not prejudice the public interest.

#### **OPTIONS:**

1. Approve the storage shed in its proposed location subject to conditions requiring a building line of 12 metres to Tweed Valley Way.
2. Refuse the storage shed subject to conditions requiring a building line greater than 30 metres as required by the Tweed Local Environmental Plan 2000 to a designated road.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If approved, it is not considered that this proposal will have any adverse implications in relation to legal, resource or financial matters.

#### **POLICY IMPLICATIONS:**

Due to the nature and position of the site it is not considered that the proposal will set an unreasonable precedent in the area if it is approved subject to conditions of consent.

#### **CONCLUSION:**

The construction of a storage shed on the site is permissible under the Tweed Local Environmental Plan 2000. It is considered appropriate that the location of the storage shed be determined by Council after consideration of the recommendations contained within the report. It is recommended that option 1 be adopted by Council.





**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---



THIS  
PAGE  
IS  
BLANK

**P5 [PR-PC] Part V Application - PTV08/0001 for an Upgrade of the Banora Point Water Reclamation Plant & the Demolition & Reconstruction of the Tweed Heads West Water Reclamation Plant at Lot 482 DP 591546; Lot 2 DP 591548; Lot 1 DP 1011625, Parkes Drive, Tw**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF2150/610 Pt2**

**SUMMARY OF REPORT:**

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

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

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

**RECOMMENDATION:**

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

- 1. The development shall be completed in accordance with the *Banora Point and Tweed Heads West WRP Reclaimed Water Management Strategy Environmental Impact Statement* prepared by GHD and dated August 2005, except where varied by the conditions of this consent.**

[GEN0005]



2. Prior to commencement of work, separate construction approvals shall be obtained for the works proposed by this approval at the Banora Point site and the Tweed Heads West site .

[GEN0185]

3. Within 12 months of the date of this approval, Council's water and sewer fund will allocate funds sufficient to commence a program of works towards Terranora and Cobaki catchment rehabilitation, including riparian buffer and stormwater works, as detailed in the EIS.

[GENNS01]

4. No excavation or works shall be undertaken within the area marked as "Grit Burial Waste" on Figure 6.2 *Existing Layout Site Map of Banora Point WRP* of the Environmental Impact Statement until such time as a Site Contamination Assessment has been undertaken by a suitably qualified person and a Remediation Strategy, if appropriate, has been formulated and approved by the Director of Planning & Regulation.

[GENNS02]

5. Environmental Management Plans are to be prepared for the construction and operational phases of the development. In this regard the Environmental Management Plans are to be prepared in accordance with the Environmental Impact Statement and are to detail the proposed mitigation measures, modelling and monitoring programs.

[GENNS03]

6. Council shall continue to investigate options for effluent reuse and shall implement identified viable options.

[GENNS04]

7. Where practical, all critical facilities or equipment susceptible to water damage should be located at or above RL 3.1m AHD to provide 0.5m freeboard, as required for habitable development in the area.

[GENNS05]

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

[PCC0865]

9. Prior to the issue of Construction Approval the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
  - roadworks/furnishings
  - stormwater drainage

- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

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

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

[PCC1065]

11. Permanent stormwater quality treatment shall be provided to treat runoff from new carparking, driveway and similar hardstand areas exposed to gross pollutants, sediments and nutrients in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
  - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]



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

[PCC1155]
  13. Non-structural (effluent and sludge storage ponds) and structural infrastructure shall be constructed so as to prevent groundwater inflows to those structures or discharges/infiltration to groundwater.

[PCCNS01]
  14. All imported fill material shall be from an approved source and free of contaminants.

[PCW0375]
  15. Prior to the excavation of soils on the site an Acid Sulfate Soils and/or Dewatering Management Plan, if applicable, shall be submitted to the Director Planning & Regulation for approval.

[PCWNS01]
  16. Prior to the commencement of work, detailed site investigation shall be carried to determine whether acid sulfate soils are present on the site and whether groundwater will be intercepted as a result of the proposed redevelopment.

[PCWNS02]
  17. A detailed environmental management plan shall be submitted to and approved by Council prior to the commencement of any decommissioning works on the existing Tweed Heads West Waste Water treatment Plant. All works shall comply with the approved plan.

[PCWNS03]
  18. Should any decontamination or remediation works be necessary on the existing Tweed Heads West Waste Water Treatment Plant site, then those works shall not be commenced without the separate prior approval of Council.

[PCWNS04]
  19. Irrigation of effluent shall not occur without the prior written approval of Council.

[PCWNS05]
  20. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]
  21. The roof cladding is to be of a non-reflective nature. Colorbond shades classed as "very light" by the BCA are not approved.

[DUR0245]
-



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

[DURNS02]

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

[DURNS03]

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

[POCNS01]

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

[PTV0030]

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

[PTV0050]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[PTV0060]

**REPORT:**

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

**BACKGROUND:**

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

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

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

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

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

**Scope of Works**

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

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



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

### Banora Point WRP

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

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

### Tweed Heads West WWTP

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

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

### **Need for the development**

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

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

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

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

### **Impacts**

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

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

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

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

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

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

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

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

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

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

### **Statutory Context**

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

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

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

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

### **General Matters**

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



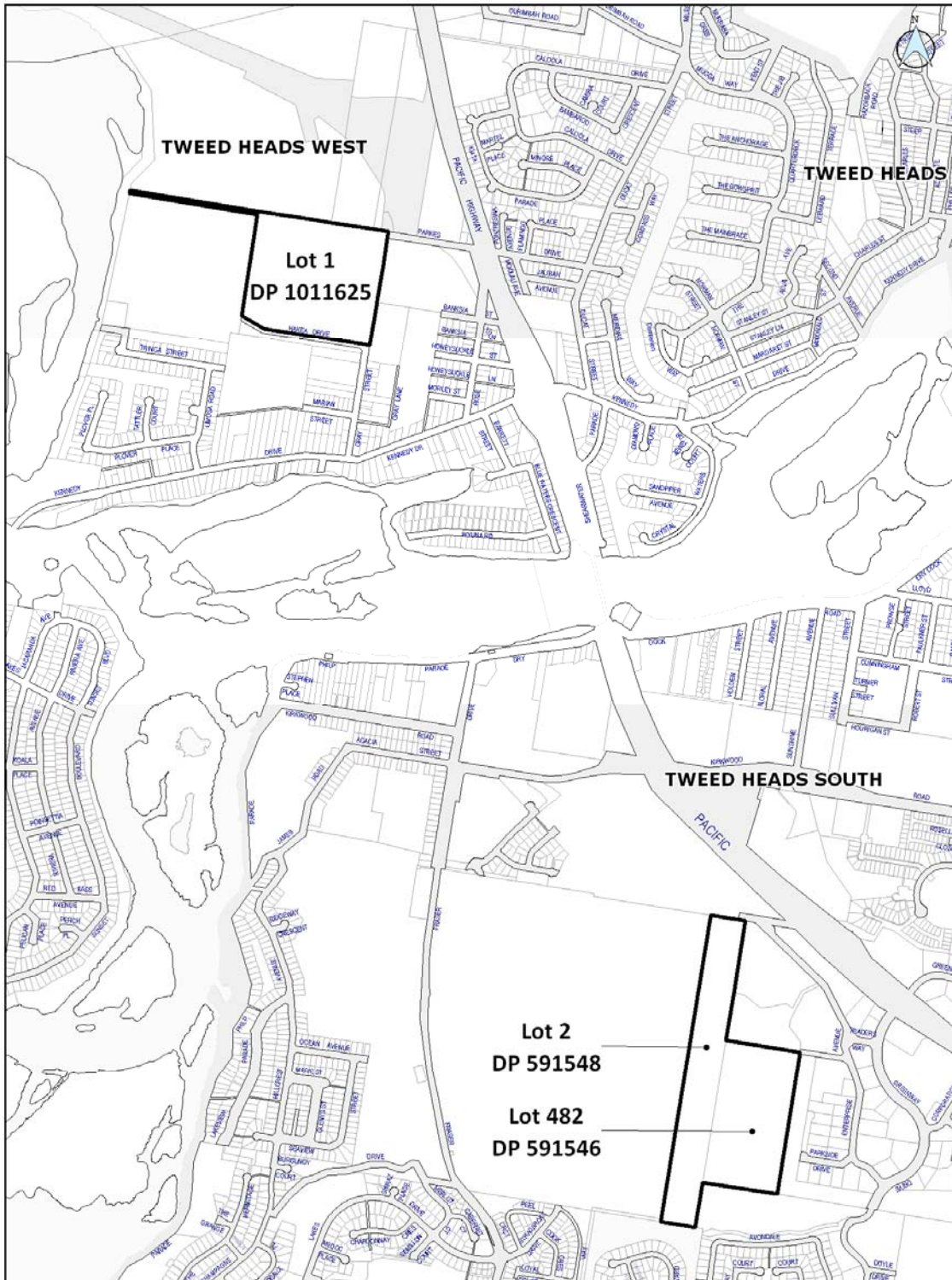
Further assessment and approvals will also be required for remediation of the existing Tweed Heads West site should site contamination investigations reveal issue of concern. Construction approvals will be required prior to any construction works.


### **Public Submissions**

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

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

**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2009          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>          COPY ONLY - NOT CERTIFIED          P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>Lot 1 DP 1011625, Parkes Drive, Tweed Heads West</b>  <b>Lot 482 DP 591546 &amp; Lot 2 DP 591548, Enterprise Avenue, Tweed Heads South</b></p>	<p><b>Site Plan</b>             Scale: 1:15,000 Sheet: 1 of 1</p>
<p>File: Z:\GIS_Jobs\Site Plan.Wor Author: J. Batchelor Date: 19/Jan/2009</p>		

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

See Statutory Context section above.

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

**POLICY IMPLICATIONS:**

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

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

**CONCLUSION:**

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

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Banora Point and Tweed Heads West WRPs Reclaimed Water Management Strategy EIS Representation Report. (DW 1967600)
-

**P6 [EO-PC] Proposed Changes to Section 94 Developer Contributions by NSW Government**

**ORIGIN:**

**Director Engineering & Operations**

**SUMMARY OF REPORT:**

The NSW Department of Planning issued Circular PS08-017 Review of Infrastructure Contributions, 23 December 2008 advising of "reforms" to infrastructure levies announced by the NSW Government. The principal impact is a \$20,000 cap on s94 Contributions per residence, however there is a mechanism for gaining approvals where exceeding the cap can be justified. There is provision for Councils to apply for an exemption to the cap if it can be demonstrated the higher contributions are reasonable and affordable.

Tweed Shire is planned to grow from 80,000 to 120,000 persons over the next 20 years. For many years, Council has implemented a user pays s94 developer contribution system, in accordance with NSW Government policy and legislation, that will finance several hundreds of million dollars of infrastructure to enable this population growth to proceed and provide the growth areas with a reasonable level of amenities. It is not practical or equitable to obtain this level of finance from existing ratepayers.

The NSW Government unilaterally introduced s94 "reforms" in October 2007. After acrimonious exchanges with the Local Government and Shires Association these "reforms" were modified and became legislation in June 2008. This legislation had not yet been proclaimed in December 2008 when the NSW Government introduced this latest round of s94 "reforms". The continual ongoing "reform" process, being conducted without any meaningful consultation may undermine Local Government's confidence to make the long term investment decisions to provide necessary upfront infrastructure that is needed for "greenfield" development to proceed.

The Government's objective is to stimulate development of affordable vacant lots for prospective home owners by capping developer charges. There may be a reverse impact however, as a loss of confidence in the s94 developer contributions system, may cause councils to cease providing necessary finance to build key upfront infrastructure. This may cause large scale "greenfield" developments that provide vacant lots to be stalled. No evidence has been provided, that in the demand driven Tweed real estate market, that purchase prices of allotments would drop if s94 contributions were lower.

**RECOMMENDATION:**

**That:-**

- 1. In accordance with NSW Department of Planning Circular PS08-017, prior to 1 February 2009, Council provide its Section 94 Plans to the NSW Department of Planning for evaluation by the Review Panel to determine if they are reasonable and affordable.**
  
- 2. Council, through the Local Government and Shires Association:-**
  - (a) Seeks a commitment from the NSW Government to support the s94 user pays system for financing infrastructure required by new development and**
  
  - (b) Seeks a further commitment from the NSW Government to cease undermining the s94 Contributions system with ongoing and continuous "reform" proposals, so that councils will have the confidence to make long term investment decisions to provide the essential up front infrastructure that is necessary to enable "greenfields" development to proceed.**
  
- 3. (a) Council advises the Local Government and Shires Association that Tweed Shire Council is impacted by the \$20,000 contributions cap and wishes to register for attendance at a meeting in this regard to be arranged by the Association.**
  - (b) Council authorises attendance of Council representatives at the above meeting.**



**REPORT:****1. Proposed "Reforms" to Section 94 Developer Contributions**

The NSW Department of Planning issued Circular PS08\_017 Review of Infrastructure Contributions, 23 December 2008 advising of "reforms" to infrastructure levies announced by the NSW Government.

The circular argues that infrastructure levies can be a significant cost for providing vacant serviced blocks of land and can have an indirect impact on house prices. Given the current state of the development industry in NSW, the Government considered a review was necessary to ensure the contribution framework was supporting the State's housing and employment targets.

The review identified a \$20,000 threshold per residential dwelling as the point above which a local (Council section 94) contribution may be unaffordable. The circular advises councils will be limited to charging a maximum of \$20,000 for a typical residential dwelling unless they have received the approval of the Minister for Planning following a detailed evaluation of the contribution and council's broader infrastructure and asset management strategy.

The NSW Government previously announced reforms to the contribution system in October 2007, and these reforms were enacted in the Environmental Planning and Assessment Amendment Act 2008 (Amending Act) which was assented in mid 2008. These amendments limited the scope of infrastructure that could be the subject of Council s94 contribution plans to that defined in the amending act as "key community infrastructure". The 2008 reforms were the subject of sometimes acrimonious exchanges between the NSW Government and representatives of the NSW Local Government and Shires Association as the 2008 reforms as originally drafted would have eliminated essential infrastructure from the contribution system (see Attachment 3, Report to Planning Committee 12 February 2008). The final 2008 amending Act as passed by parliament however responded in part to the submissions of Local Government and whilst it restricted some forms of infrastructure from contributions schemes (eg Civic Buildings) the overall scheme remained intact. There is now another set of "reforms" to deal with and the 2008 amendments have not yet been proclaimed or enacted. Given the controversy the 2008 amendments caused it is surprising that the current reforms were announced without prior consultation with Local Government. It is understood that the Local Government and Shires Association is now making strong representations to the Government on behalf of constituent Councils.

**2. How Does Tweed Shire Use S94 Contributions**

Tweed Shire is planned to grow from 80,000 to 120,000 persons over the next 20 years. Some of this growth is in existing "brownfield" areas, but much is in designated urban release "greenfield" areas (Cobaki, Kings Forest, Bilambil Heights, West Kingscliff etc).

The development of greenfield areas cannot take place without essential key infrastructure (water sewerage, arterial road network connections) which generally must be in place prior to release of the first lots, (although some infrastructure can be staged as population builds up). Greenfield development can physically proceed without community infrastructure (open space, community buildings, libraries etc), but it is inequitable to deny these amenities to new populations in growth areas. In brownfield areas the increased population places increasing loads on existing community infrastructure which becomes overloaded unless there are additional/expanded facilities to cater for the extra population.

Tweed Shire Council, The NSW LGSA and indeed the NSW Government (since the commencement of the Environmental Planning & Assessment Act in 1980), has supported the principle of user pays for amenities needed by new populations. The s94 system has been established for many years to deliver this outcome. In this system the cost of amenities needed to service the new population is calculated and divided by the number of lots that benefit to determine the s94 contribution per net lot. This contribution is then payable by the subdivider before the lots are released for sale. The cost of the new amenities is part of the cost structure for buyers of new vacant lots. There are similar mechanisms for units, commercial and industrial development, but the essential principal is user (being the new population or development) pays for the extra amenities they need.

An alternative financing model is for the existing ratepayers to provide the additional amenities required by the future population. This is widely seen to be inequitable and impractical, particularly for councils with rapid and substantial growth. In slow growth areas, the increase in population may be so low that the incremental expansion of consequent amenities may easily be absorbed into annual budgets. This however is not the case in Tweed and most other high growth coastal areas. If Tweed did not have access to the s94 infrastructure financing model, it is unlikely there would be the political will to substantially raise rates in advance to enable development of greenfield urban release areas to proceed. Consequently the development of these areas would be stalled. Brownfield development could continue, but in the absence of s94, existing amenities would rapidly become overused with corresponding loss of level of service and amenity to existing and new residents.

Current legislation requires that S94 contributions cannot be levied unless there is a s94 Plan that justifies and quantifies the contribution. These plans are subject to strict rules that limit the infrastructure that may be included in plans and require a "nexus" to be established between the amenity needed and contribution to be paid by developers. These plans must be publically exhibited and Council must consider submissions before approving any s94 Plan. The major Plans in Tweed Shire at the moment are detailed in the next part of this report.

### 3. Section 94 Developer Contribution Plans in Tweed Shire

The following table summarises the contributions payable under current s94 plans.

Section 94 Plan	Scope	Typical Contribution per Residential Block \$
1. Banora Point West/ Tweed Heads South - Open Space	local	\$4,004
2. Banora Point Drainage (Western Drainage Scheme)	local	\$8,805 per hectare
4. Tweed Road Contribution Plan (TRCP)	shire wide	Varies by sector. Tweed Heads \$4,154, Cobaki \$6,325, Kings Forest \$ 8,554, Bilambil Hts \$11,681, Area E \$13,169, Nightcap \$14,976, Kingscliff \$5,447
5. Shire Wide Open Space	shire wide but excludes urban release areas	\$1,223
6. Street Trees	shire wide	\$297
7. West Kingscliff - drainage, open space, community facilities, footpath/cycleways	local	\$2,600 per lot + drainage \$32,708 per hectare
10. Cobaki Lakes	local	Community Facilities \$391, Open Space - dedicate & embellish 2.83 hectares per 1,000 persons
11. Library Facilities	shire wide	\$688
12. Bus Shelters	shire wide	\$26
13. Eviron Cemetery	shire wide	\$131
15. Community Facilities - Tweed Coast	Tweed Coast	North Coast \$492, South Coast \$584
16. Emergency Facilities - Surf Life Saving	shire wide	\$200
18. Council Admin Office & Support Facilities	shire wide	\$1,997
19. Casuarina Beach/Kings Forest - open space, community facilities, foot/cycleways	local	Community facilities \$1,443, Open Space \$1,554

Section 94 Plan	Scope	Typical Contribution per Residential Block \$
22. Cycleways	shire wide urban areas	\$352
23. Offsite Parking	CBD areas	Only applies to development that does not provide parking on site.
25. SALT	local	\$1,531
26. Shirewide Regional Open Space	shire wide	\$3,182
27. Tweed Heads Master Plan - Local Open Space, Streetscaping	local	\$1,047
28. Seaside City	local	\$48,226 <i>Note 1</i>

*Note 1. Local infrastructure (local roads, drainage, water, sewerage etc) is usually provided by the subdivider as part of the subdivision works prior to release of a subdivision certificate and s94 contributions are mostly for more external or district infrastructure. Seaside City was subdivided 80 years ago with no local infrastructure. This has now been provided by the majority landowner and the local s94 contribution reflects the cost of this local infrastructure (usually provided outside the s94 system), to be paid by minority landowners back to the majority landowner.*

The above table excludes water and sewerage s64 contributions which are around \$16,000 per lot. It is advised that these contributions are not affected by the current government reforms to developer infrastructure contributions.

#### **4. Tweed Shire Council's Infrastructure Strategy**

Strategic Landuse and Infrastructure Planning in Tweed Shire has been in progress and been progressively implemented since the first Strategic Plan in the early 1970s.

A suite of s94 Plans and s64 Water & Sewerage Developer Servicing Plans have been developed to deliver capital infrastructure works estimated to cost in excess of a billion dollars to facilitate further development that includes:-

- Cobaki Lakes
- Kings Forest
- West Kingscliff
- Bilambil Heights
- West Murwillumbah
- Greater Pottsville (Seabreeze, Dunloe Park)
- Employment land at Murwillumbah
- Redevelopment of Tweed Heads

For greenfield development, the majority of contributions are incrementally payable at release of subdivision plan. Whilst some infrastructure provision can be staged to align with or lag this cash flow, other infrastructure must be provided ahead of land release (particularly water, sewerage and key arterial road connections).

Where infrastructure is needed prior to land release, Council has sometimes taken on the risk of raising loans to be paid off by future contributions. Where infrastructure can wait, contributions are generally accumulated until there is sufficient capital available to commit to construction.

There are major risks for Council which include:-

- Council cannot control the rate of release of subdivision lots and receipt of associated contributions.
- the timing of infrastructure construction and necessary contribution cash flows must be estimated based on best available information.
- Staged release of development is subject to constant change by the developer and this is outside Council control.
- where loans are raised, future contribution cash flows may be less than estimated and insufficient to service infrastructure debt repayments.
- forward estimates of infrastructure costs and land purchase in contribution plans become dated and contribution amounts and cash flows are often insufficient to cover actual costs.
- infrastructure items are often large and expensive, requiring extensive lead times for planning & environmental approvals. Expenditure of this nature is lumpy and difficult to align with contribution cash flow.
- large infrastructure projects may be required ahead of development and require hefty loan finance ahead of contribution cash flow.
- State Government may change the contribution system after Council has already borrowed or committed works.

Nevertheless for planned urban growth to take place, Council has taken on these risks and projects are timed and staged as much as possible to align with contribution cash flows.

Changes to the s94 system as announced by the Premier in October 2007, in the absence of any meaningful consultation with Local Government, have the effect of undermining Councils confidence in the s94 system. This confidence is likely to be further undermined by the Government's latest reforms announcement in December 2008.

If councils do not have confidence that the contribution cash flow from future development will cover the cost of essential infrastructure, then councils may be reluctant to provide key infrastructure in advance when it is most often required. For key infrastructure this is often needed before the contribution cash flow from subdivision of lots begins. An example is the Boyd Street Overpass over the Tugun Bypass. This overpass bridge is currently the only suitable access into the Cobaki Lakes release area, estimated to provide for 5,300 dwellings. Council provided \$6.4M to the Qld Department of Main Roads for the overpass to be constructed in 2007/08 prior to the opening of the Tugun Bypass. This was done because construction would have been prohibitively expensive and disruptive once the Tugun Bypass was open to traffic. Council made this payment in anticipation that funds would be recovered from future s94 contributions from Cobaki Lakes once development got underway. If Council had not made this commitment the necessary infrastructure to enable development of Cobaki Lakes to proceed would not have been in place. If the s94 system is continually undermined, councils may be reluctant to take such risks in the future. If councils are unwilling to provide key infrastructure, then projects such as Cobaki that provide vacant home lots that the NSW Government is eager to see developed, may be unable to proceed.

#### **5. Impact of "Reforms"**

The Circular establish a \$20,000 threshold per residential lot and states that councils will only be able to charge above the threshold if they have the approval of the Minister for Planning. It further states that:-

*"In the case of existing contributions plans, councils will be required to provide any contributions plans to Department of Planning by 1 February 2009 that allow for a contribution for a residential dwelling that is more than the \$20,000 threshold. This includes plans which, when applied in conjunction with other applicable contribution plans, would result in a contribution of greater than \$20,000 per dwelling.*

*These plans will be evaluated by a review panel to determine whether the contribution, if imposed, would be reasonable and affordable. The review Panel will be required to report to the Minister for Planning by 30 April 2009. The Minister will then give councils directions on whether their plan(s), and consequently the contribution, needs to be amended.*

*The evaluation of council plans will have regard to the 'key considerations for contributions' (see section 116D of the Part 5B to the EP&A Act, which will come into effect on commencement of the relevant provisions of the Amending Act) to focus on the infrastructure needs of new development, how the infrastructure fits within an overall asset management strategy for the council, the cost estimates for the infrastructure and implications for affordability of development. If a council does not provide its existing plan to the Department for evaluation, it will be limited to charging the \$20,000 per residential dwelling from 30 April 2009 onwards."*

In regard to Council's existing plans, the following table identifies the sum of existing s94 contributions in a number of key areas:-



Urban Release Area	Existing sum of all S94 Contribution per Residential Lot	Estimated Lot Yield	Cap	Above Cap?	Potential Aggregate Loss if Cap Inflexible
Cobaki Lakes	\$13,588 + value of 2.83ha/1000 persons for open space	4,500	\$20,000	Unlikely, but depends on valuation of Open space	Nil at this stage, but is likely to be triggered in longer term by automatic indexation of some contributions
Kings Forest	\$17,816	4,500	\$20,000	Not yet.	Nil at this stage, but will be triggered in medium term by automatic indexation of some contributions
Bilambil Heights	\$19,777	4,000	\$20,000	Automatic indexation of some contributions will cause cap to be exceeded soon	Nil at this stage, but will be triggered in 2009 by automatic indexation of some contributions
Area E (Terranora)	\$21,208	2,500	\$20,000	Currently exceeds cap by \$1,208 per lot	\$3,019,000
Nightcap Village	\$23,072	400	\$20,000	Currently exceeds cap by \$3,072 per lot	\$1,228,800
West Kingscliff	\$16,083	1,000	\$20,000	No.	Nil at this stage, but is likely to be triggered in longer term by automatic indexation of some contributions nil
Seaside City (minority landowners)	\$62,951	30	\$20,000	Currently exceeds cap by \$42,951 per lot	\$1,288,530. Loss to both Council and majority landowner

The above table has only explored total s94 contributions in a number of key areas. A more extensive search will be carried out to identify if there are any other localities where the proposed \$20,000 cap may be exceeded.

Of the areas that have been investigated, Seaside City, Area E and Nightcap Village would currently exceed the cap. Bilambil Heights is very close and the next round of indexation rises in Plan 4 (TRCP) will push this sector through the cap. Cobaki Lakes only has a monetary value of \$13,588 at present, but it is understood that the value of the open space would need to be added for the purpose of demonstrating its compliance or otherwise with the cap.

There are a number of reasons that the identified areas have higher contributions than others.

Seaside City is a unique case because local infrastructure has been provided by the majority landowner and s94 has been used as a mechanism for the cost of this, where it benefits minority landowners, to be repaid back to the majority landowner. If the "cap" remains it will be the developer (majority landowner) that bears most of the cost in this instance thereby increasing the cost of producing vacant lots, which is contrary to the Government's objectives.

Area E is inflated by a large local road component for the "Terranora Parkway" which is the internal road servicing Area E. This local road contribution is a mechanism to enable the cost of this road to be apportioned between the various developing landowners in Area E. If this caused problems with the cap the local road contribution could be deleted and the task of financing and apportioning costs put back to the landowners group.

Nightcap Village exceeds the cap because of high road contributions. This is caused by its distance from the rest of the arterial road network and relatively low numbers of lots to share the costs of necessary road upgradings.

Bilambil Heights is high due to road costs, in particular its share of Cobaki Parkway, Boyd St overpass/interchange and the considerable cost of the Scenic Drive /McAllisters Road Diversion which is the principal access for Bilambil Heights to the north (and through Cobaki Lakes).

## **6. Impact on Housing Land Costs**

Whilst Council contributions are a significant input cost to developers, the price of housing land to consumers is set by the market and not developer cost inputs. The Tweed Shire housing land market is a small part of the South East Queensland market, and prices are generally determined by how the land product supplied interacts with the demand in the South East Queensland market.

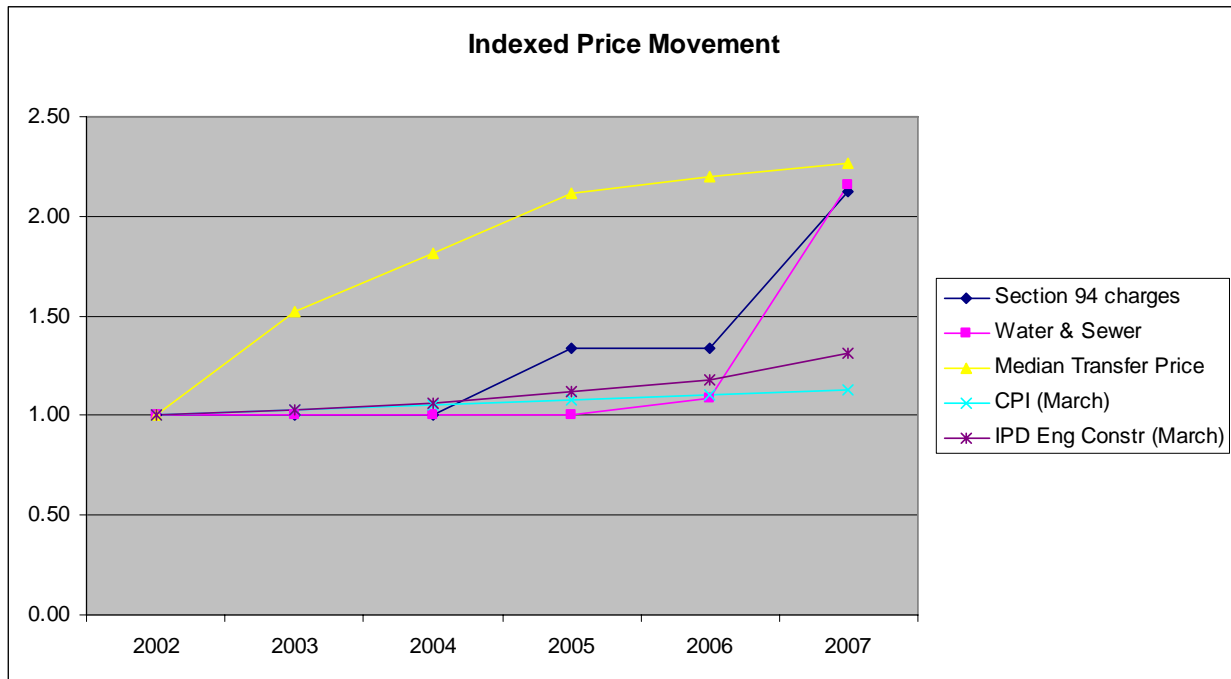
The cost of developer contributions has risen significantly in past years, mainly due to large increases in the cost of civil engineering contract construction caused by high demand for labour, plant and materials in the booming SEQ infrastructure industry.

In general contributions costs are only keeping pace with construction costs and market prices for housing land.



It is acknowledged that if development costs, which include s94 contributions, are excessive, then the developer of "greenfields" land may choose to defer or abandon development. There is no evidence that contribution costs are causing this to occur in Tweed Shire.

The following is an example of the movement of land prices and Council contribution costs at the "Seabreeze" estate west of Pottsville in Tweed Shire.



In 2002 the average (transfer) price of land in this estate was \$95,500 and the cost of s94 contributions was \$7,017. In 2007 the price of land was \$216,250 and cost of s94 contributions \$14,886. In the same period s64 water & sewer contributions rose from \$6,864 to \$14,801. In summary the price of land has more than doubled and the amount of Council contributions has risen at a similar rate. More details are attached at the end of this report.

The Circular justifies the cap on contributions by arguing:-

*"The imposition of levies can have an indirect impact on house prices. For example, if a developer is not able to sell a house for a price that is sufficient to cover development costs as well as providing an adequate return, they may elect not to develop. This would result in a reduction in the supply of houses, which can then translate into higher prices".*

It is acknowledged that input prices may have an impact on a developers decision on whether to proceed and this in turn would impact on the rate of supply of vacant lots. However if confidence is lost in the s94 system because of continual "reforms" of the system, the reduction in supply may be far greater. In the absence of councils providing key infrastructure upfront, large scale development will be stalled, drastically reducing the supply of new vacant lots.

There has not been any general opposition to S94 levies by the major developers in Tweed Shire. In general their main concerns are that the contributions are equitably levied and they have the certainty that the infrastructure (funded by contributions) will be in place so that their development plans will not needlessly be held up.

## **7. Conclusion**

The impact of the proposed "reforms" to infrastructure contributions, in particular the \$20,000 cap will have an immediate impact on Council's s94 Plans and cash flows in some areas unless Council applies for and obtains an exemption as detailed in the Circular PA 08-017 of 23 December 2008.

The impact will increase over time as indexation of contribution plans and plan amendments with updated costs come on line. This impact could be mitigated if there was adequate indexation of the \$20,000 cap, but this is not foreshadowed in the circular. In any case price escalation of heavy infrastructure in the South East Queensland area (in which Tweed competes) is substantially higher than the CPI in Sydney, so it would be desirable for any indexation of the cap to relate to the economy of our area and not to Sydney.

It is essential that Tweed submit its contribution plans to the NSW Department of Planning by the 1 February deadline designated in the Circular to preserve Council's right in the short term to levy some areas in excess of the \$20,000 cap.

In the longer term it would be desirable to get some long term commitment from the State Government to the structure of the s94 process. The continual policy change by the Government is creating such a climate of financial uncertainty for councils that, the Government's actions instead of providing more development and affordable housing, may have the reverse impact of causing councils to cease taking the risk of providing upfront essential infrastructure and result in development of greenfield areas to stall.

The Local Government and Shires Association Circular dated 16 January 2009, Item 9 (reproduced below) advises that:-

*"The Associations are holding a meeting with councils in late January/early February to discuss the extent and likely impacts of the latest changes to infrastructure contributions - particularly the threshold of \$20,000 per residential dwelling. Councils should contact the LGSA to register interest in attending this meeting".*

It is recommended that Council participates in this process.

## Planning and Environment

### Item 9: Infrastructure contribution changes to be implemented

**The Associations would like to hear from councils affected by changes to infrastructure contributions including limiting Local Government development contribution charges to \$20,000 per residential dwelling. Ministerial approval is now required for contributions exceeding \$20,000.**

These changes were announced by the State Government in December 2008. The Department of Planning has provided additional information on the implementation of the changes to infrastructure contributions. See [Circular PS 08-017](#) dated 23 December 2008.

#### Key changes

**Limit of \$20,000** – councils will be limited to charging a maximum of \$20,000 for a typical residential dwelling unless they have received the approval of the Minister for Planning. The Department will issue a direction under the *Environmental Planning and Assessment Act* in mid/late January 2009 to give effect to these changes.

**New contributions plans** – the threshold of \$20,000 for new contributions plans will be effective from the issue date of the direction.

#### Existing contributions plans

- Where contributions for residential dwellings exceed \$20,000 in existing plans, councils will be required to submit these contributions plans to the Department by 1 February 2009. The plans are to be evaluated by a review panel which will report to the Minister for Planning by 30 April 2009.
- Councils that do not submit their plans for review will be limited to charging \$20,000 per residential dwelling from 30 April 2009 onwards.

**Introduction of new Part 5B** – the changes to the infrastructure contributions framework enacted by Parliament in June 2008 will be progressively introduced in the first quarter of 2009. The Department of Planning is preparing a new contributions manual and is also looking at new reporting requirements.

**Deferral of payment to point of sale** - local infrastructure contributions will not be subject to the deferral of payments to point of sale as is intended for State levies. However, councils will be encouraged to adopt this practice when the State Government provides a suitable security mechanism linked to the title of the land.

**Voluntary Planning Agreements (VPAs)** – councils can continue to negotiate VPAs, however the Government will keep a 'watching brief' to ensure that the \$20,000 threshold is respected.

**Contributions from commercial development** will continue subject to meeting reasonableness and affordability criteria.

The Associations are holding a meeting with councils in late January/early February to discuss the extent and likely impacts of the latest changes to infrastructure contributions - particularly the threshold of \$20,000 per residential dwelling. Councils should contact the LGSA to register interest in attending this meeting.

#### Contact

For more information, please contact Judy Birrell, Policy and Communications: 02 9242 4093 or [judy.birrell@lgsa.org.au](mailto:judy.birrell@lgsa.org.au).

R90/0538: JB

**Movements in water & sewer and S94 charges (per lot) at Seabreeze, Tweed Shire Compared to Median Land Price (Seabreeze); CPI & IPD (Constr) 2-Nov-07**

Charges	2002	2003	2004	2005	2006	2007
Total Water	\$ 6,864.00	\$ 6,864.00	\$ 6,864.00	\$ 6,864.00	\$ 7,461.00	\$ 14,801.00
Total S94	\$ 7,017.70	\$ 7,017.70	\$ 7,017.70	\$ 9,365.79	\$ 9,365.79	\$ 14,885.80
<b>Total Infrastructure</b>	<b>\$ 13,881.70</b>	<b>\$ 13,881.70</b>	<b>\$ 13,881.70</b>	<b>\$ 16,229.79</b>	<b>\$ 16,826.79</b>	<b>\$ 29,686.80</b>

Cost	2002	2003	2004	2005	2006	2007
Total S94	\$ 7,017.70	\$ 7,017.70	\$ 7,017.70	\$ 9,365.79	\$ 9,365.79	\$ 14,885.80
Total Water	\$ 6,864.00	\$ 6,864.00	\$ 6,864.00	\$ 6,864.00	\$ 7,461.00	\$ 14,801.00
Median Land price	\$ 95,500.00	\$ 145,000.00	\$ 173,500.00	\$ 202,000.00	\$ 210,000.00	\$ 216,250.00
CPI (March)	137.9	142.1	145	148.2	152.2	155.6
IPD Engineering Constr (March)	89.7	92.31	95.11	100.53	105.39	117.88

Percentage Increase	2002	2003	2004	2005	2006	2007
Section 94		0%	0%	33%	33%	112%
Water & Sewer		0%	0%	0%	9%	116%
Median Transfer Price		52%	82%	112%	120%	126%
CPI (March)		3%	5%	7%	10%	13%
IPD Eng Constr (March)		3%	6%	12%	17%	31%

Indexed movement	2002	2003	2004	2005	2006	2007
Section 94 charges	1.00	1.00	1.00	1.33	1.33	2.12
Water & Sewer	1.00	1.00	1.00	1.00	1.09	2.16
Median Transfer Price	1.00	1.52	1.82	2.12	2.20	2.26
CPI (March)	1.00	1.03	1.05	1.07	1.10	1.13
IPD Eng Constr (March)	1.00	1.03	1.06	1.12	1.17	1.31

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Substantial financial and resource implications. See body of report

**POLICY IMPLICATIONS:**

Substantial impacts on strategic land use planning. See body of report.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. NSW Government, Department of Planning - Planning Circular PS08\_017 Review of Infrastructure Contributions, 23 December 2008 (DW 1967519).
  2. NSW Government, Department of Planning - Infrastructure Levies - Questions and Answers, December 2008 (DW 1967517).
  3. Resolution on Report to Planning Committee, [EO-PC] S94 Developer Infrastructure Contributions Proposed Changes by NSW Government, 12 February 2008. Resolution and Report (DW1967505).
-



THIS  
PAGE  
IS  
BLANK

**P7 [EO-PC] Tweed Road Contribution Plan - Adoption of Version 5.1****ORIGIN:****Planning & Infrastructure****SUMMARY OF REPORT:**

Council at its meeting on 16 December 2008 resolved to exhibit Draft Version 5.1 of Contribution Plan No. 4 - Tweed Road Contribution Plan. The amendment proposed general housekeeping, the correction of typographical errors, and the inclusion in the works schedule of the upgrading of Kennedy Drive between Rose Street and the Cobaki Creek Bridge valued at \$3,222,000.

The plan was exhibited from 22 December 2008 to 22 January 2009 and at the close of business paper no submissions had been received. If any further submissions are received, a late amended report will be tabled.

It is recommended that Version 5.1 of Contribution Plan No 4 (CP4) be adopted by Council.

**RECOMMENDATION:****That Council:-**

1. **In accordance with Clause 31 of the Environmental Planning & Assessment Regulations 2000, approves Draft Version 5.1 of Section 94 Contribution Plan No. 4 Tweed Road Contribution Plan amended as shown in the attached addendum to this report, to:-**
  - (a) **repeal and replace the existing version; and**
  - (b) **amend the Works Schedule at Schedule 5 by adding an additional item, 29a: being:-**  
***29a. Kennedy Drive Four-laning, Total Cost \$3,222,000***
2. **Gives Public Notice in the Tweed Link of Council's decision specifying that Version 5.1 of the Plan (CP 4) comes into effect on the date of the notice.**

## REPORT:

Council at its meeting on 16 December 2008 resolved to exhibit Draft Version 5.1 of Contribution Plan No. 4 - Tweed Road Contribution Plan. The amendment proposed:

- "1. Inclusion of upgrading of Kennedy Drive between Rose Street and the Cobaki Creek Bridge valued at \$3,222,000 in the works schedule.*
- 2. Corrections to typographical errors in the rates tables resulting in a decrease for Sector 4 rates of \$16 per trip and an increase in Sector 8 rates of \$29 per trip.*
- 3. References to the 'adjustment factor' applied at the time of adoption of Version 5 of this Plan have been moved to a new schedule, Schedule 6.*
- 4. Equations required to calculate the modification factor for a shop (Table 7.2) have been inserted to assist with calculations.*
- 5. Items 9, 10 and 11 of Table 7.1 have been amended to allow for a shop with GLA 100m<sup>2</sup>, 6,000m<sup>2</sup> and 10,000m<sup>2</sup>."*

Council after considering the report resolved the following:-

- "1. Council adopts the draft Tweed Road Contributions Plan (Contributions Plan No 4 - Version 5.1) as a basis for exhibition and community discussion/consultation.*
- 2. The draft plan Version 5.1 be exhibited as required by the Environmental Planning and Assessment Regulations to repeal and replace Version 5.0."*

The Plan was exhibited in the Tweed Link and on Council's website from 22 December 2008 to 22 January 2009.

At the close of business, no submissions were received. If any submissions are received between close of business and 22 January 2009, a late amended report will be tabled.

It is recommended that Version 5.1 of CP 4 be adopted by Council.

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The amendment will enable the four-laning of Kennedy Drive to be financed.

## POLICY IMPLICATIONS:

This report implements some of the Policy changes adopted by Council 22 April 2008.





**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Tweed Road Contribution Plan CP No. 4 - Version 5.1 January 2009 (DW 1968129).
  2. Council resolution and report from meeting held 22 April 2008 (DW 1967543).
-



THIS  
PAGE  
IS  
BLANK



**P8 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning & Regulation**

**FILE NO: Development Reports; Planning Department Circulars; State Environmental Planning Policy - SEPP**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That Council notes the 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, the following Development Applications have been supported where a variation in standards under SEPP1 has occurred: -

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/0268	Boundary adjustment	Lot 140 DP 755696 & Lot 175 DP 755696 Settlement Road, Numinbah	5/12/2008	Clause 20 of the Tweed LEP 2000 (40ha minimum allotment size)	Part 7(l), 7(d) and 1(a)	Does not create any additional lots; proposed Lot 2 contains a recently completed dwelling and; both proposed lots retain areas that are compatible with the rural character of the area; the proposal does not involve works or uses likely to be prejudicial	The proposed variation (SEPP 1) to Council's 40ha requirement equates to a 6.65% variation (less than 10%)	Council under assumed concurrence
DA08/1094	dwelling additions (verandah & carport)	Lot 23 DP 212092 No. 321 Terranora Road, Terranora	19/12/2008	Clause 22 - setback to designated roads	1(c) Rural Living	Due to the existing dwelling on the site which is currently located at 22m from Terranora Road	Approximately 30%	Council under assumed concurrence

**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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

**P9 [PR-PC] Draft Local Environmental Plan 2008 - Public Exhibition**

**ORIGIN:**

**Planning Reforms**

**SUMMARY OF REPORT:**

Draft Tweed Local Environmental Plan 2008 (Stage 1) has been in preparation since 2006 and it has now reached a stage where it is ready for public exhibition.

Council's Administrators resolved on the 11 March 2008 to publicly exhibit the Stage 1 draft Local Environmental Plan (LEP) on receipt of the Section 65 Certificate from the NSW Department of Planning (DoP). The DoP issued a Section 65 Certificate on 7 August 2008, conditional on the rectification of a number of LEP text and mapping issues in accordance with the DoP's Standard LEP Template. Since the issue of the Section 65 Certificate, Council officers have been working closely with the DoP Grafton Regional Office to resolve the issues of their conditional approval. To date, the majority of these issues have been resolved.

There are two outstanding matters that require determination prior to exhibition. One of those matters is the more straight forward exercise of re-drafting of certain land use tables and definitions which is currently being rectified by the Department of Planning. The other relates to a request made by Gales Holdings to defer and/or amend the Draft LEP as it applies to their land in Kingscliff, Cudgen and Chinderah.

In considering the Gales request, it was recognised that whilst there is a need to resolve a number of complex and outstanding planning issues affecting the Gales land, this action would also be likely to result in substantial delays to the public exhibition of Council's Draft Stage 1 LEP. The possible ramifications of delaying the exhibition is that the Minister for Planning may decide to act on previous directions to NSW Councils, which allow for the DoP to take over Council's LEP process, which is not considered to be in the best interests of the Tweed Council and its community.

It is therefore recommended that Council proceed with the public exhibition of the Draft LEP (Stage 1), and an extension to the statutory public exhibition period be granted to enable the community to properly review and comprehend the draft LEP, and to permit Council's Officer sufficient time to carry out public information sessions at key locations around the Shire.



**RECOMMENDATION:**

**That:-**

- 1. Council endorses the public exhibition of the Stage 1 draft Tweed Local Environmental Plan 2008, as conditionally certified by the Department of Planning, for a period of 60 days; and**
- 2. A report be submitted back to Council following the completion of the public exhibition which responds to any submissions.**

## **REPORT:**

### **Report Objective**

The objectives of this report are to:

1. advise Council about the progress of the draft Shire-wide LEP 2008;
2. provide Council with a summary of the format and contents of the 'Standard Instrument' LEP;
3. advise Council of any outstanding issues; and
4. seek Council's endorsement of the plan for public exhibition purposes.

### **Background**

At the Planning Committee Meeting of 29 October 2005 Council resolved in accordance with Section 54 of the Environmental Planning and Assessment Act 1979 ("the Act") to prepare a Shire-wide LEP.

As agreed to by the Department of Planning in their letter of 16 August 2006 the Tweed LEP is to be prepared in two stages. The first stage of the LEP review (Stage 1) is intended to rationalise existing LEP provisions into the format of the standard template provided by the Department of Planning (DoP), taking into consideration current State and Regional Planning Policy. Stage 1 is also intended to implement draft LEP Amendment No 21 (Tweed Vegetation Management Plan) as well as including current LEP Amendments arising through Council's on-going strategic planning program and Council's overarching Strategic Vision; Tweed Futures.

Stage 2 of the Tweed LEP is running concurrently with Stage 1 by way of preparation of background studies, such as the Urban Land and Employment Land Release Strategies, and drafting is scheduled to commence in April 2009, following adoption of the studies.

Tweed Council is required to have a comprehensive LEP substantially completed by March 2009. Council remains on target with Stage 1 of the LEP to meet the March deadline, and the Department's North Coast Regional Director has informally advised of there being no need for Tweed to seek an extension.

Drafting of the draft LEP was commenced in 2006 with the first draft being forwarded to the Department of Planning in September 2007 seeking a Section 65 Certificate to allow for the LEP's public exhibition. Following the gazetted amendments to the standard instrument in January 2008 the draft Plan was rewritten to conform with the amended template.

Council's Administrators resolved at the meeting of 11 March 2008 to publicly exhibit the Stage 1 draft LEP on receipt of the s 65 Certificate, which was issued on 7 August 2008. The Certificate included conditions that needed to be met prior any exhibition, and all but two matters have been finalised. The two remaining issues are addressed further in this report under the heading 'Outstanding Matters'.

The detailed preparation of the draft LEP and the need for a strong focus on community engagement during the exhibition of the Stage 1 LEP highlight it as being the most critical of the two stages, particularly as Stage 1 will introduce the new standardised format, land-use zones, and controls on which the later Stage 2 will also be based. The rollover of the current Tweed LEP provisions and the implementation of the Council adopted Tweed Vegetation Management Strategy, Murwillumbah and Cabarita Locality Plans, and the height and exempt and complying controls under the Tweed Development Control Plan also point to Stage 1 as comprising the 'comprehensive' LEP, with Stage 2 providing additional refinements.

Councillors should note that Stage 1 does not include the areas of Tweed Heads CBD or Kings Forest release area. In the former case the Department of Planning (DoP) is preparing a standalone LEP for the CBD which will be concurrently exhibited as an amendment to Stage 1. The latter area of Kings Forest is listed in State Environmental Planning Policy (Major Projects) 2005 and is the subject of a Concept Plan approval, which will override the LEP. The DoP requested that this site be omitted from the draft LEP process as any amendments brought about by the approvals process will take immediate effect in the LEP.

The introduction of the new format of the standardised LEP and the way in which it operates is likely to cause some short-term implementation and operational difficulties whilst the Council, development industry, and public alike transition and adjust between the 'old' and the 'new' Plans. To assist in this process a series of public information sessions will be held both externally during the Plan's public exhibition and internally for staff. Information sessions will be run at Tweed Heads, Kingscliff, Pottsville, Murwillumbah, Tyalgum and Uki.

### NSW Planning Reforms - LEPs

On 30 September 2004, the Minister for Planning announced a major overhaul of the NSW planning system. The reforms included amendments to the way planning instruments, such as LEPs, are made and relevantly included a focus on strategic planning for new growth areas, simplification of planning controls, and improvements to development assessment processes.

**Standard Instrument** - On 31 March 2006 the Standard Instrument Order (Local Environmental Plans) 2006 ("the Order") took effect, and it was to be later amended on 1 September 2006 and 14 December 2007. The Order specifies the 'standardised' format and content of comprehensive LEPs applying to all NSW councils. The Order is part of a package of local planning reforms, which also includes:

- changes to the Environmental Planning and Assessment Act 1979 ("the Act") in 2005 aimed at reducing the number of plans and improving consistency in planning instruments;



- gazettal of revised ministerial directions under s 117 of the Act;
- introduction of an LEP Review Panel to provide early advice from the Department on the preparation of new LEPs and reduce the overall number of LEP amendments;
- Environmental Planning and Assessment Bill 2006, which proposes further reforms aimed at improving local planning in NSW.

The new planning reforms have also included a requirement that all comprehensive LEPs be reviewed every five years.

A failure by a council to either prepare or review a comprehensive LEP within the specified timeframe provides opportunity for the Minister for planning to take control of that process, prepare the LEP, and recover the cost of doing so.

#### Format of the Standard Instrument and Draft LEP 2008

**Format** - The standard instrument provides a consistent format for all new principal LEPs in NSW. It is also designed to enable the Department of Planning to update the mandatory and optional provisions of the plan consistently and simultaneously in all LEPs.

**Flexibility** - There are certain matters that a council can and cannot do with the provisions of the standard instrument, they include:

A council can:

- Prepare additional local provisions that address local planning issues.
- Add local objectives to the core zone objectives.
- Add additional permitted or prohibited land uses for each zone in the land use table.
- Specify what may be exempt or complying development.
- Prepare maps and specify lot sizes, heights, and floor space ratios.

A council cannot:

- Add new zones.
- Prohibit uses that are mandated as permissible.
- Add local provisions that are inconsistent with the mandatory provisions.
- Change the format.
- Change the wording of provisions.

**Parts** - The Draft LEP is made up of seven parts, comprising:

- Part 1 Preliminary
- Part 2 Permitted or Prohibited Development  
Land-Use Tables
- Part 3 Exempt and Complying Development
- Part 4 Principle Development Standards
- Part 5 Miscellaneous Provisions
- Part 6 Urban Release Areas
- Part 7 Additional Local Provisions

**Zones** – The draft LEP uses twenty four (24) out of a total thirty four (34) standard instrument zones: 6 rural, 5 residential, 7 business, 4 industrial, 3 special use, 2 recreation, 4 environmental protection, and 3 waterway. The zones include standard zone objectives and mandated permitted and prohibited uses, which councils may add to. The table provided below shows the general transition from the Tweed LEP 2000 to the new standardised draft LEP.

It should however be noted that the standard zones are not a complete replacement for the existing LEP 2000 zones. In some cases multiple zones have been used to replace a single zone, these decisions were directed by the differing zone objectives and the types of development both permissible and prohibited in each zone table.

**Table 1 – land-use table: zone transfer between Tweed LEP 2000 and draft Tweed LEP 2008.**

Tweed LEP 2000	Draft Tweed LEP 2008
1(a) Rural	RU2 Rural Landscape
1(b) Agricultural protection	RU1 Primary Production
1(c) Rural Living	R5 Large Lot Residential
2(a) Low Density Residential	R2 Low Density Residential
2(b) Medium Density Residential	R3 Medium Density Residential
2(c) Urban Expansion	R1 General Residential
2(d) Village	RU5 Village
2(e) Residential Tourist	R1 General Residential SP3 Tourist
2(f) Tourism	SP3 Tourist
3(a) Sub-regional Business	B3 Commercial Core B4 Mixed Use
3(b) General Business	B3 Commercial Core B4 Mixed Use
3(c) Trade and Commerce	B5 Business Development



Tweed LEP 2000	Draft Tweed LEP 2008
3(d) Waterfront Enterprise	B4 Mixed Use RE2 Private Recreation IN1 General Industrial IN4 Working Waterfront
3(e) Special Tourist (Jack Evans Boatharbour)	B4 Mixed Use SP1 Special Activity
4(a) Industrial	IN1 General Industrial
5(a) Special Uses	SP1 Special Activity SP2 Infrastructure
6(a) Open Space	RE1 Public Recreation
6(b) Recreation	RE2 Private Recreation
7(a) Environmental Protection (Wetlands and Littoral Rainforest)	E2 Environmental Conservation
7(d) Environmental Protection (Scenic/Escarpment)	
7(f) Environmental Protection (Coastal lands)	
7(l) Environmental Protection (Habitat)	
8(a) National Parks and Nature Reserves	E1 National Parks and Nature Reserves

**Clauses** - There are three (3) types of clauses provided in the template LEP comprising 'compulsory', 'optional' and 'local'. Compulsory clauses are mandated and cannot be changed. Optional clauses are discretionary and can therefore be used or not used depending on their relevance to the local government area, however, in accordance with Standard Instrument (Local Environmental Plans) Order 2006 - Regulation 4 they are taken to be a mandatory clause if used. Local clauses are those inserted by a council in response to a localised matter, such as, Acid Sulfate Soils.

### Local Provisions

In addition to the mandatory and optional clauses Council has the discretion to include local provisions, subject to the support of the Department of Planning's Planning Reforms technical assessment panel, the Regional Director, LEP Review Panel, Legal branch and Parliamentary Counsel.

Local provisions in the draft Tweed LEP include;

- subdivision standards on R5 (large lot residential) zoned lands
- restrictions on strata and community title subdivision in certain rural and environmental zones
- Acid Sulfate Soils
- flood planning land
- development in flight paths

- development in areas subject to airport noise
- erection of rural workers' dwellings
- environmentally sensitive land – bushland
- sex services premises.

Due to the large number of councils requiring similar clauses the DoP provided a list of 'model' clauses that had been approved by Parliamentary Counsel. On the advice of the Regional Office, Tweed has adopted the model local clauses where required.

**Schedules** - The LEP contains five (5) schedules. The schedules relate to specific clauses in the main body of the report and include the following matters:

- Schedule 1 - Additional permitted uses
- Schedule 2 - Exempt development
- Schedule 3 - Complying development
- Schedule 4 - Classification and reclassification of public land
- Schedule 5 - Environmental heritage

**Definitions** - The standard instrument includes a dictionary of 283 standard terms relating to land uses and other matters relevant to the interpretation of the LEP. Council cannot add to the dictionary. However, where appropriate, a council can define terms that are used in a local provision. These are set out within the relevant (local) clause and would only apply for the purposes of that clause.

Unlike the existing Tweed LEP the new LEP format operates with a system of 'Parent' and 'Child' definitions. For example:

Agriculture is a Parent definition to the following:

- animal boarding or training establishments
- aquaculture
- extensive agriculture
- farm forestry
- intensive livestock agriculture
- intensive plant agriculture

Some of the 'Child' definitions may also be a 'Parent' definition, for example; from the above:

Aquaculture is a Parent definition to the following:

- pond-based aquaculture
- natural water based aquaculture
- tank-based aquaculture

This system is quite complex and may cause some initial difficulty, however, in the longer-term it provides a more descriptive and relevant way of proscribing permitted and prohibited development within the LEP.

**Additional Permitted Land-uses (Schedule 1)** – this schedule allows a council to insert a list of additional permitted uses for particular land. This schedule replaces Schedule 3 – Development of Specific Sites, under Tweed LEP 2000. Each of the items listed in this schedule have been the subject of a prior separate rezoning LEP amendment.

**Mapping** – in addition to the mapping presently available under the Tweed LEP 2000 new maps will be introduced for:

- floor space ratios (FSR)
- height of buildings map in metres RL – Shire-wide
- lot size map – all land
- bushland map
- heritage listings map
- land reservations acquisition map
- urban release area map
- infrastructure map

**Other Key Changes** –

**Exempt and Complying Development** – these provisions are currently contained in the Tweed Development Control Plan Section A10 – Exempt and Complying Development, however, under the standard instrument they are to be contained in Schedules 2 and 3 respectively. Under the Government’s planning reforms exempt and complying development has also been contained in a State Environmental Planning Policy and will override the provisions of the LEP.

**Building Heights** – height is referred to under the Tweed LEP by reference to the number of storeys across the Shire, with exception to Tweed Heads CBD which is measured in metres AHD, that is, a measurement from the top down. Under the standard instrument height is measured by reference to metres (RL), that is, from natural ground level up.

The reference to building height under the standardised system therefore reverses the roles under the current LEP and DCP. Height, as measured in metres, is shown on the LEP maps, whereas, the reference to storeys (within a building) is referred to in the DCP. The heights nominated in the draft LEP are derived from the Tweed DCP Section A1 – Residential and Tourist Code, as adopted April 2008, the Murwillumbah and Cabarita Locality Plans, and on advice from the Department of Planning.

**Outstanding Matters**

There are two matters that need to be determined prior to the draft LEP being exhibited, they are:

1. Land-use definitions in the zone tables, and
2. Request by Gales Holdings to defer and/or amend the Draft LEP as it applies to their land at Kingscliff, Chinderah and Cudgen.

1. Land-use definitions in the zone tables

The standard template LEP has been amended on several occasions and interpretations about its operational aspects, particularly how the Parent / Child definition relationship works within the land-use table, has also changed over the course of the drafting of the draft LEP, including when the Plan was with the Department of Planning from September 2007 until August 2008.

During this period amendments were made to the land-use tables that resulted in errors and omissions of both permissible and prohibited land-uses within some zone tables. Council's Planning Reforms Unit has prepared a revised land-use matrix for the zone tables that has highlighted the necessary corrections to the Department. Both the Department and Council agree that the changes need to be made prior exhibition of the Plan and as such the Regional Office is seeking the Director General's authorisation.

This matter will be rectified and the draft Plan amended prior to public exhibition.

2. Request by Gales Holdings to defer and/or amend the Draft LEP as it applies to their land at Kingscliff, Chinderah and Cudgen

Gales Holdings own over 220 hectares of undeveloped land at Kingscliff, Chinderah and Cudgen. Following various meetings with Council staff and Councillors in recent months, Gales Holdings has made a submission requesting that Council defer and/or amend the Draft LEP 2008 (Stage 1), to enable resolution of a range of significant planning, environmental and legal issues.

An extract of the Draft LEP zoning map applying to Gales land, which is proposed to be publicly exhibited, is contained in this report.

The main submission is through correspondence and accompanying documents dated 19 December 2008 from Gales' Consultants, Darren Gibson Planning, which is attached to this report (see Attachment 1). A further submission was received from Darren Gibson Planning on 19 January 2009 (see Attachment 4). This submission refers to a forthcoming, accompanying report from Gales ecology experts Smith Elks Kendall. At the time of finalising Council's Business Papers this report had not been received. An email was received from Gales on 20 January 2009 which summarised the main points raised in this report:

- "1) *The current proposed environmental zoning changes are problematic for a number of reasons and do not reflect vegetation on the ground.*
- 2) *A Method for Environmental Conservation Zoning is proposed and applied to Gales land, taking into account a recent ground survey - January 2009.*
- 3) *Gales strategic approach to Environmental Conservation Zoning is recommended, which is to create a major north-south corridor linking the large habitat areas at Fingal to the north and Cudgen to the south. This has been Gales objective since 2001.*

- 4) *The proposed spot environmental zoning changes should be abandoned in favour of a strategic approach."*

The Gales' request through their submission of 19 December 2008 can be best addressed through the following major headings:-

#### Broader Strategic Planning Investigations

Gales has been liaising with Council for over the last decade on various property transactions and strategic planning investigations, with the major objective of facilitating a re-development proposal for a "District Shopping Centre" for a major part of their land at Chinderah.

From recent information provided by Gales, the "District Shopping Centre" proposal will include:

- up to 30,000m<sup>2</sup> of retail floor space, including 1-2 full line supermarkets, 1-2 discount department stores and other speciality retailing;
- up to 40,000m<sup>2</sup> of bulky goods/showroom retailing;
- civic and community facilities, including library, Council/Government offices, Police and Emergency Service providers, public transport facilities;
- entertainment and recreation facilities, including cinema, integrated open space linking civic or public spaces;
- medical services and facilities, including specialist medical suites and medical centre; and
- integrated medium density and mixed density housing.

In essence, Gales has described the scale of their proposed Centre would be similar to the existing Robina retail/commercial centre on the Gold Coast.

The progress of the Gales proposal has always been constrained by the prevailing zoning applying to their Chinderah properties, as contained in the current Tweed Local Environmental Plan 2000, which contains a mix of Rural, Special Use, Residential and Industrial zones, which do not fully permit the proposed development. A rezoning of the land is therefore required.

Their re-development plans have been further complicated by the fact that Gales and Tweed Council have commercial contracted property transactions for a land swap that has enabled the relocation of the former Kingscliff Sewerage Treatment Plant. The final settlement of these transactions are still to be completed.

Gales contend that Council's corresponding strategic planning investigations for their properties and the wider Kingscliff region have been flawed, and that a more effective strategic plan for the region should be resolved before moving forward on any new LEP controls for their properties.

Gales' dissatisfaction with Council's actions greatly derives from the fact that an earlier retail strategy and Kingscliff Locality Plan, (since formalised through the planning controls of the Tweed Development Control Plan - Section B9 - Tweed Coast Strategy, Section B4 - West Kingscliff) identified clear support for a district shopping centre to be located in the Kingscliff area, with the Gales Chinderah site being one of the preferred locations.

Council's subsequent adoption of a retail strategy position for the entire Tweed Shire in late 2005 superseded Council's earlier support for a Kingscliff district shopping centre, by reinforcing a retail hierarchy based on Tweed Heads and Tweed Heads South as the major shopping districts, with other townships to accommodate local shopping needs only.

In June 2007 the Council wrote to the Minister for Planning, seeking the Department's assistance in respect of achieving more orderly planning for both Gales land and the broader Kingscliff region.

In December 2007 the Department of Planning agreed to consider the Gales land as a potential State Significant Site and accordingly published this intention in the NSW Government Gazette. As part of this action, the DoP required Council to undertake a State Significant Site Study of the land to determine the appropriate zoning and development controls for the site.

To ensure solid strategic planning for the whole area it has been Council's preference to undertake a Locality Plan for Kingscliff that would comprise of a study area that encompassed not only the land owned by Gales-Kingscliff but also the remaining land in Kingscliff. This approach was considered necessary to ensure that Kingscliff as a whole is developed strategically within the interests of the whole community being represented.

Such Locality Plan could have the effect of superseding relevant parts of the Tweed DCP including parts of Sections B4 - West Kingscliff, B9 - Tweed Coast Strategy, B16 - Kingscliff, and B18 - Tweed Coast Building Heights.

Council did progress this approach in April 2007 by calling for Tenders to undertake the Kingscliff Locality Plan, with eleven companies expressing an interest in undertaking the project on Council's behalf. Based on Council's evaluation of these tenders the contract was recommended to be awarded to a major urban design firm.

In mid 2007 Council resolved to defer the awarding of the contract pending the outcome of the Court Actions involving Gales-Kingscliff. Furthermore, the 2007/2008 and 2008/2009 budget did not have sufficient funds to accommodate this project.

In March 2008 Council approached the Department of Planning with details of intended approach for the Locality Plan and sought funding assistance to fulfil this project. However in July 2008 the Department of Planning advised that:



*"With regard to Council's proposal for a Locality Plan for Kingscliff now be prepared instead of the State Significant Study, the Departments view is that this is a local planning issue for the Tweed Council and that it goes beyond the ambit of the proposed State Significant Site Study process for the proposed site...."*

*Notwithstanding this, the Department is willing to assist Council with the preparation of the State Significant Study by managing the consultancy process for the study. Council would however be expected to fund the Study costs."*

Various Land and Environment Court appeals and judgements in the last several years, particularly the Court approval of DA05/0004, an application to fill Gales land in Turnock Street, Kingscliff, have resolved a number of important planning issues for the area, which has raised doubts as to the need to continue to seek the listing of Gales land as a State Significant Site.

In various briefings and reports to the new Council, it has been highlighted that Council will need to determine a series of priorities among its' major strategic projects, including a new Locality Plan for the Kingscliff area. The funding and timing of such a Plan are key elements that Council will need to consider. Any advancement of a new Kingscliff Locality Plan and subsequent update of new LEP and DCP controls could take up to 12-18 months to complete.

As an alternative to the Locality Plan process, and in respect of their District Shopping Centre proposal, Gales could circumvent the constraints of Tweed Council's local controls by applying to the State Government as a State Significant Site, or under Part 3A of the Environmental Planning and Assessment Act, 1979.

In fact, in a meeting held in late 2008 between Gales representatives, the Mayor and Deputy Mayor, Councillor Skinner and the Director of Planning and Regulation, Gales provided Council with copies of correspondence from their solicitors Woolf Associates (please refer to Attachment 2) sent to both the Minister for Planning and Minister for Local Government, indicating that they had little confidence in Council to produce appropriate planning controls for the Kingscliff area, and requested assistance and support for the engagement of an independent specialists to prepare new planning controls for the area. The response to the Gales correspondence has yet to be made available.

#### Proposed Zoning of Former Kingscliff Sewerage Treatment Plant

As previously pointed out, the sale and swap of this site by Gales to Council is still the subject of a contractual agreement, which is yet to be finalised. The site was zoned Special Purposes 5(a) under Tweed Local Environmental Plan 2000. Following the initial contractual arrangements in 2002, Council undertook an amending LEP process rezoned this site to Industrial 4(a) zone. Gales Holdings successfully challenged the validity of this rezoning through subsequent legal action, and through a Court of Appeal decision, the rezoning was declared invalid. This had the effect of the land being reverted back to its original Special Purposes 5(a) zoning.

In the process of preparing the Draft Tweed LEP (Stage 1), the Department of Planning proceeded on LEP Practice Note (PN08-002 Issued 7 March 2008) stipulates that when rezoning existing special use zones, Council's should seek to rezone these areas the same as adjacent land. In terms of the above site, the only adjacent zones are rural or industrial. Based on relevant considerations such as the Far North Coast Regional Strategy, and the logic of the prevailing land use pattern, Council officers considered that the most appropriate zoning for Draft LEP 2008 was industrial.

In the recent correspondence of Gales' consultants, Darren Gibson Planning, Council's proposed industrial zoning is contended on the following basis:

*"Although not discussed in detail at the meeting, we take this opportunity to raise concerns with regard to the Sewerage Treatment Plant land, part of which is owned by Council and part by Gales. Despite the views expressed in the letter from Iain Lonsdale dated 27 November 2008, it is our view that Department of Planning Practice Note PN08-0022 is not applicable as the significant part of the land is not public infrastructure land. Moreover, Council was and is obliged to use its' best endeavours to effect a rezoning of the land under option agreements with Gales which involves a spot rezoning which is contrary to the intent of the PN08-002.*

*The Court of Appeal has determined that Council's process was flawed in the failure by the Council officer to provide Council with the then latest economic report. Moreover, the environmental study for the land recommended a higher zoning for the land. At the time while acting belatedly Council made out to the Department that it required to proceed with the rezoning without full consideration of the issues because of the road to exercise one of the options with Gales. On this basis the Department acceded to Council's request but with the rider that the proper zoning of the land could be reconsidered. Council has failed to carry out that reconsideration."*

In responding to the contention of Gales, the Council officers believe that they have made a correct interpretation of the Department of Planning's Circular in respect of the proposed industrial zoning of the subject site, which has been supported by the DoP in their Section 65 certification of the Draft LEP 2008 (Stage 1). Any further legal investigation of this approach is not considered to be sufficient enough reason to seek deferral of this parcel of land from the exhibition of Draft Stage 1 LEP.

*Proposed Environmental protection zoning over land owned by Gales Holdings located in Kingscliff*

The Tweed Vegetation Management Strategy (TVMS)(Vols 1 to 3), which was initiated in 1998, has been an ongoing Study which audited, quantified and qualified the vegetation areas including an analysis of slope and topography within the Shire. The findings of this report have been used to inform most zoning of environmental land in Stage 1 of draft LEP 2008. It was previously being pursued through draft LEP amendment No.21.

The purpose of the draft LEP 21 was:

- To integrate the Tweed Local Environmental Plan 2000 with the New South Wales Natural Resource Management Reforms introduced by the State Government in 2003;
- To adopt a holistic and equitable approach for managing ecological process and significant natural areas in Tweed Shire that seeks to achieve environmental protection, economic development and improved social or cultural conditions;
- To conserve, and enhance biological diversity, scenic quality and ecological integrity of the natural areas of Tweed Shire;
- To implement the Tweed Vegetation Management Strategy 2003.

The Objectives of the draft LEP 21 were:

- to compliment clearing controls and provisions contained in the Native Vegetation Act 2003 and acknowledge the role of the Northern Rivers Catchment Management Authority and Natural Resource Commission in managing natural resources in Tweed Shire;
- to identify potentially significant natural areas and steep land in Tweed Shire and introduce planning controls to avoid potential adverse environmental impacts from inappropriate development;
- to identify and protect natural areas with high ecological, scenic or cultural value;
- to assist in improving the condition of Tweed Shire's natural assets;
- to streamline the ability for land managers to undertake routine land management practices that are likely to have minimal adverse

The purpose and objective of the draft LEP 21 amendment, which is still current, are equally applicable to draft Tweed LEP 2008.

### **Contention**

Planning and ecology expert representations from both Council and Gales met on 12 December 2008 to re-visit previous and more recent point of contention regarding Council's proposed environmental zones affecting Gales land in the Draft LEP 2008.

Gales' representatives reiterated their previous contention that the environmental mapping in the TVMS and draft LEP 21 is erroneous and the findings inconsistent with those of their own environmental experts. The letter of Darren Gibson Planning dated 19 December 2008 describes the proposed environmental zoning changes as *based on inadequate and inaccurate information* and inconsistent with 'Councils' objective of only consolidating the existing zonings under the current Tweed LEP 2000.

The main thrust of the recent contentions seems to centre on disputes regarding the ecological significance of the sites vegetation dependant upon their listing as an endangered ecological community (EEC) under the State legislation. Reference has also been made to recent Land and Environment Court proceedings, relating to development applications (DA) for the filling of land in the vicinity of Turnock Street Kingscliff, where the Court held that certain sites within the scope of the DA was not in fact EEC. It is clear from these contentions and the findings of the Court that further investigation into the lands flora and fauna significance, from the stand point of being listed or meeting criteria for endangered or threatened species or communities under State or Federal legislation, is needed.

Aside from the status of ecological significance the TVMS and ultimately the draft LEP 21 originally identified the land for environmental protection purposes based on other criteria, this included the "scenic" value of the land, as referred to in both the purpose and objective statements in the draft LEP 21, as reproduced above.

Of relevance to the this issued is the the North Coast Regional Environmental Plan, in particular Clause 29 which states:

**29 Plan preparation-natural areas and water catchments**

*A draft local environmental plan should:*

- (a) *retain existing provisions allowing the making of tree preservation orders,*
- (b) *not alter or remove existing environmental protection, scenic protection or escarpment preservation zonings or controls within them, without undertaking a detailed analysis to determine whether there will be adverse environmental effects resulting from such action,*
- (c) **include significant areas of natural vegetation including rainforest and littoral rainforest, riparian vegetation, wetlands, wildlife habitat, scenic areas and potential wildlife corridors in environmental protection zones,**
- (d) *contain provisions which require that development in domestic water catchment areas or on land overlying important groundwater resources does not adversely affect water quality, and*
- (e) *require consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones.*

The TVMS and the draft LEP 21 seem to be consistent with the provisions of the NCREP in so far as the vegetation mapping for scenic purposes on Gales Holdings land. This is supported by the Gales Holding submission to the environmental protection zoning proposed under draft LEP 21 dated March 2005, prepared by:

Dr Andrew Smith  
Mr Greg Elks  
Mr Keith Kendall  
Dr John Stanisic  
Dr Stephen Segal  
Mr Darren Gibson (ed.)

A copy of this submission is provided in Attachment 3 of this report.

With exception to an area of the site referred to as 'Area 2', which was contended to be degraded and weed infested and therefore not suitably meeting the criteria specified in Clause 29 of the NCREP, there is no other objection to the remaining lands suitability in meeting the criteria of Clause 29. A copy of the submission is attached to this report.

In respect of alleged inconsistency with Council's objective of only consolidating the existing zonings under the current Tweed LEP 2000, it should be noted that the intention from the outset, and one that the Department of Planning raised no objection to, was to consolidate any current draft LEP amendments that were reasonably advanced in their preparation into the draft LEP 2008 so as to reduce the impact on Council's resources and to simplify the rezoning process.

The Department was advised that Gales Holdings land would be excluded from the draft LEP on the understanding that the draft LEP would precede the finalisation of court proceedings that were underway over parts of the land and that those proceedings had the potential to impact on the proposed zonings.

The Court proceedings were finished and judgements made in 2008. Council's Planning Reforms Unit sourced digital copies of the court approved plans and used them to overlay over the land in order to more accurately redefine the environmental protection boundaries so as to minimise any unnecessary conflict with areas approved by the Court for urban development. The Department of Planning was sent a copy of the amended LEP zoning map and requested to facilitate the necessary amendments to the draft LEP prior to exhibition. Gales was also provided with a copy of the proposed zonings.

The standard LEP template provides the following three (3) environmental based zonings:

1. Environmental Conservation (E2)
2. Environmental Management (E3)
3. Environmental Living (E4)

Of the three the E2 zone provides the highest level of environmental protection and correspondingly so the least amount of development opportunities, the opposite can be said of the E4 zone.

The draft LEP 2008 utilises the E2 zone only. The decision to use one zone in the draft LEP was based on revisiting the zoning where required in Stage 2 of the process, which was intended to introduce either one or both of the remaining zones.

The areas of Gales Holdings land that were the subject of the recent court proceedings have been mapped having regard to the areas of approved development and are regarded as areas not only having scenic value, but, of environmental significance. This is represented not least by the covenants on the lands property Title and in the courts recognition by exclusion from development. The remaining lands environmental significance and status remains in contention, however, their relevance under Clause 29 of the NCREP remains uncontested as having significant scenic value.

In light of the issues surrounding this land it seems appropriate to adopt a precautionary principle in dealing with them under the draft LEP 2008, however, it needs to be recognised that further investigation into the lands suitability for inclusion under one of the other environmental based zones needs to be undertaken prior to making any further amendments in Stage 2 of the LEP.

Despite Council's efforts to update the Draft LEP 2008 environmental protection zonings applying to Gales land, as part of correspondence sent to Council in December 2008, the DoP Regional Grafton Office has advised that they did not support any revision of the Gales Land zonings at this stage, and that Council should proceed with the public exhibition of those zonings previously endorsed through the Section 65 Certificate in August.

### **CONCLUSION:**

The draft Tweed LEP 2008 has been made in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*, the *Best Practice Guidelines for LEPs & Council Land* January 1997, and on the best available information.

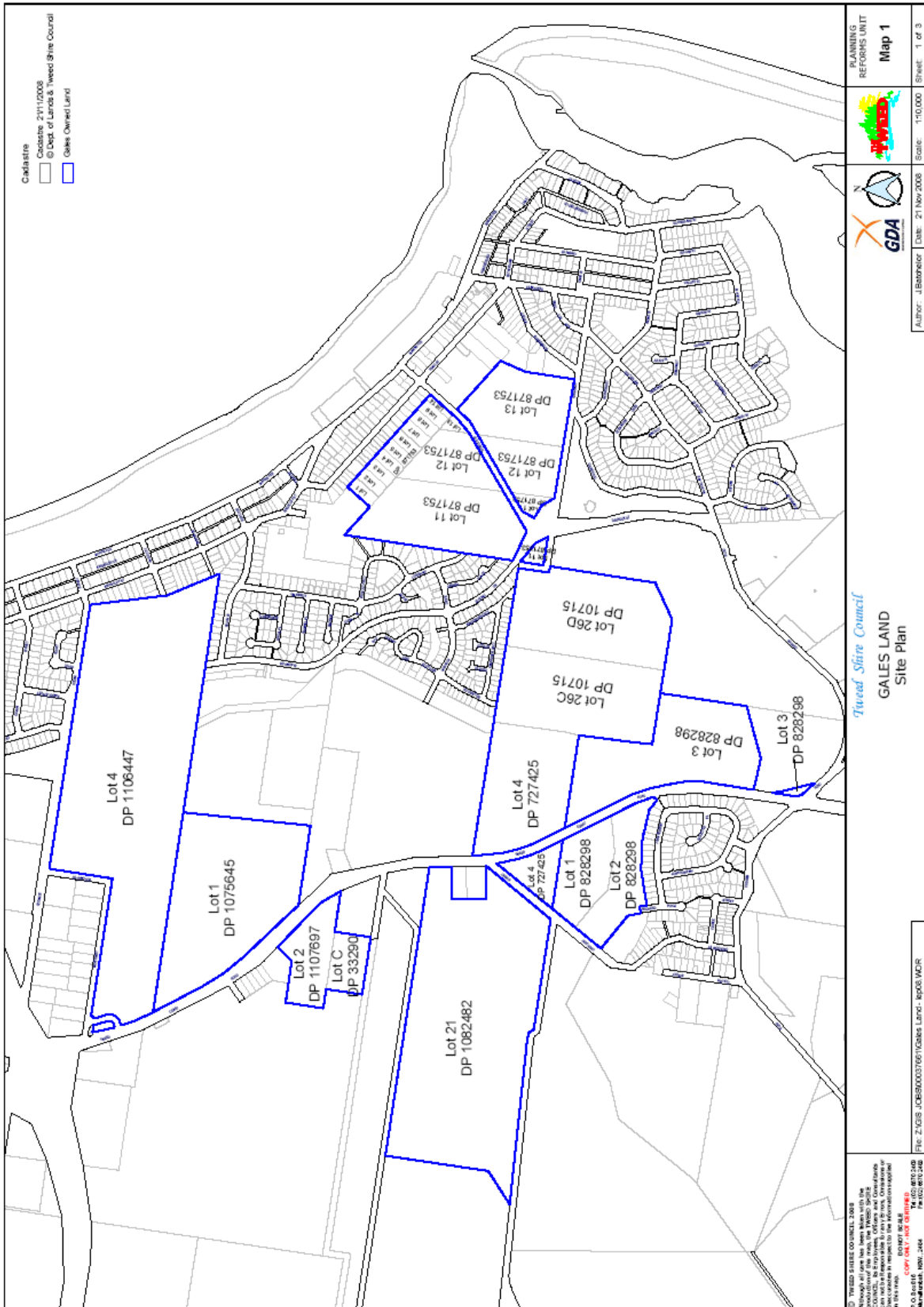
There are two outstanding matters, one of which (land-use definitions) is reconcilable through normal processes with the Department of Planning, and the other relating to a request made by Gales Holdings to defer and/or amend the Draft LEP as it applies to their land in Kingscliff, Chinderah and Cudgen.

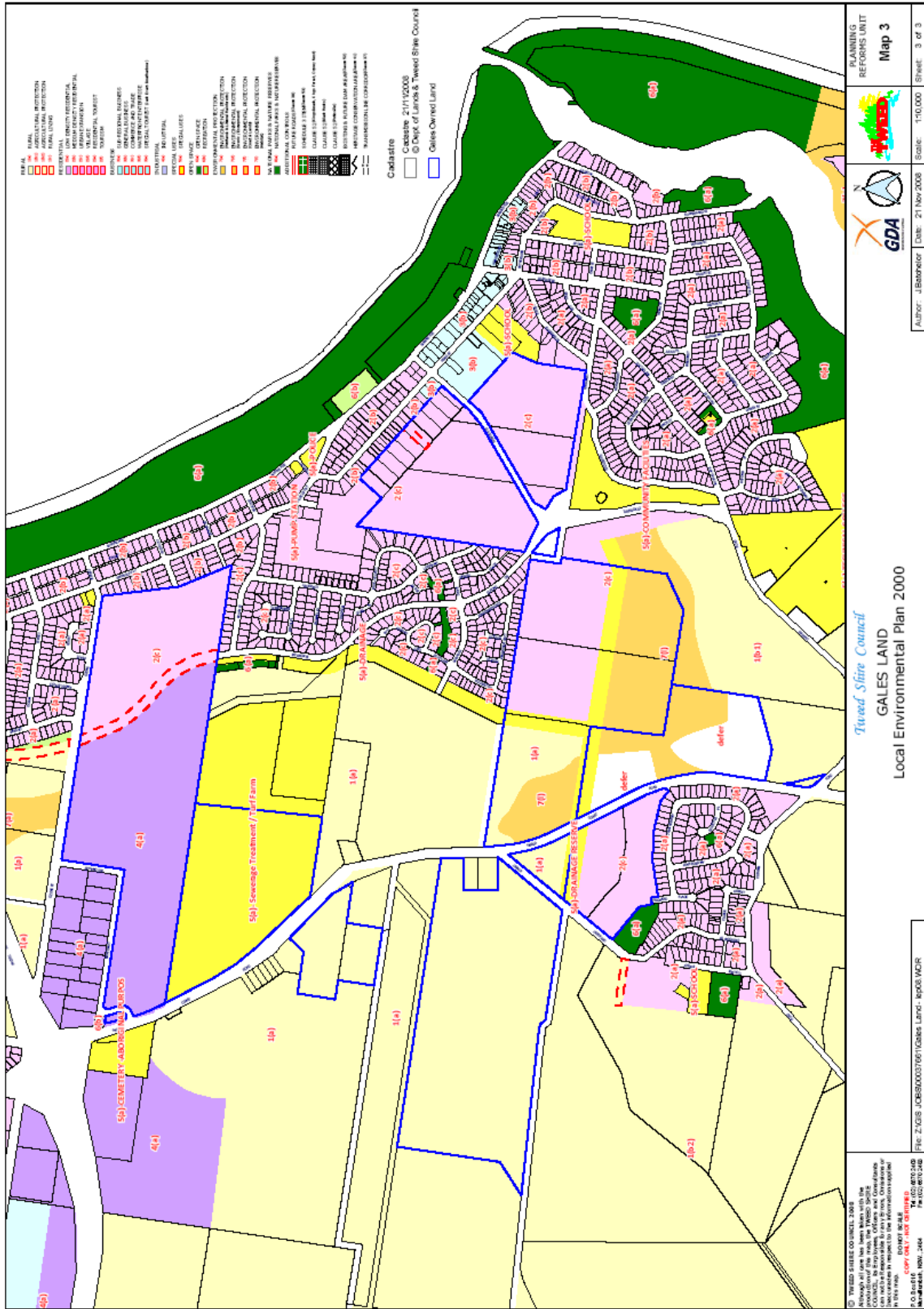
Each of these matters have been addressed in detail within earlier sections of this report.

The Gales request would require further approval from the DoP, and likely to take a number of months to resolve, thereby pushing back the exhibition of the Draft LEP. In considering this request, Council officers are mindful of the pressures and demand of the broader community to advance the Draft LEP, as well as the DoP's previous directions that if Tweed Council does not substantially complete its draft LEP by March 2009, the Minister for Planning may take control of Council's LEP process, and recover the cost of doing so. The DoP's Grafton Office has also written to Council in December 2008 that they do not favour Council seeking further zoning changes to Gales land prior to exhibition of the Stage 1 Draft LEP.

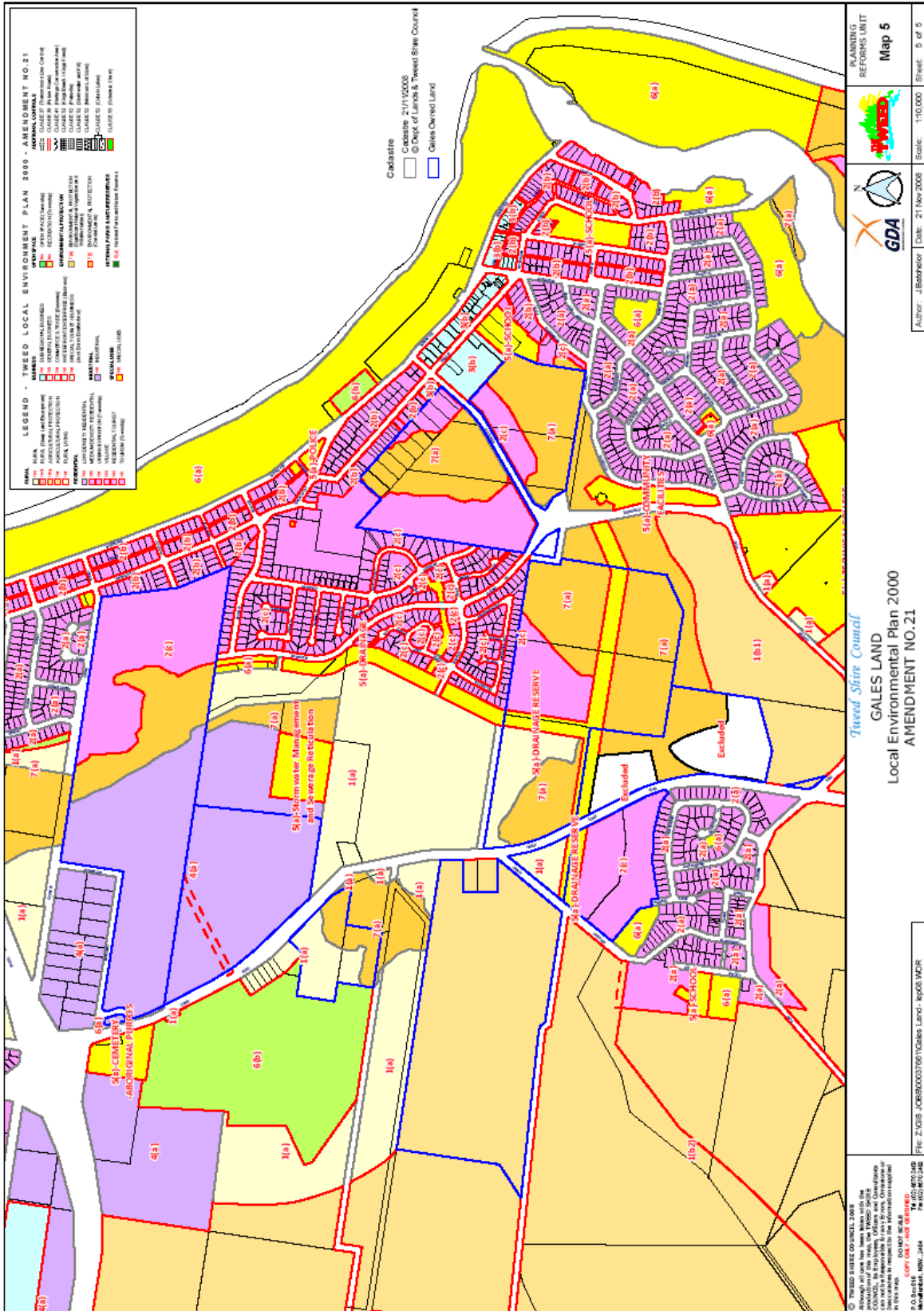
On the balance of this assessment, it is considered that it is in the best interests of Tweed Council and its' community , that officers proceed with the public exhibition of the Stage 1 Draft LEP, without further amendment to the proposed zoning controls affecting Gales land, and that Council officers continue to work with Gales representatives on resolving any disagreements on the technical justification behind these zonings. It is also considered appropriate for Council officers to continue to liaise with Councillors on the most appropriate broader strategic planning processes required for the Kingscliff area.

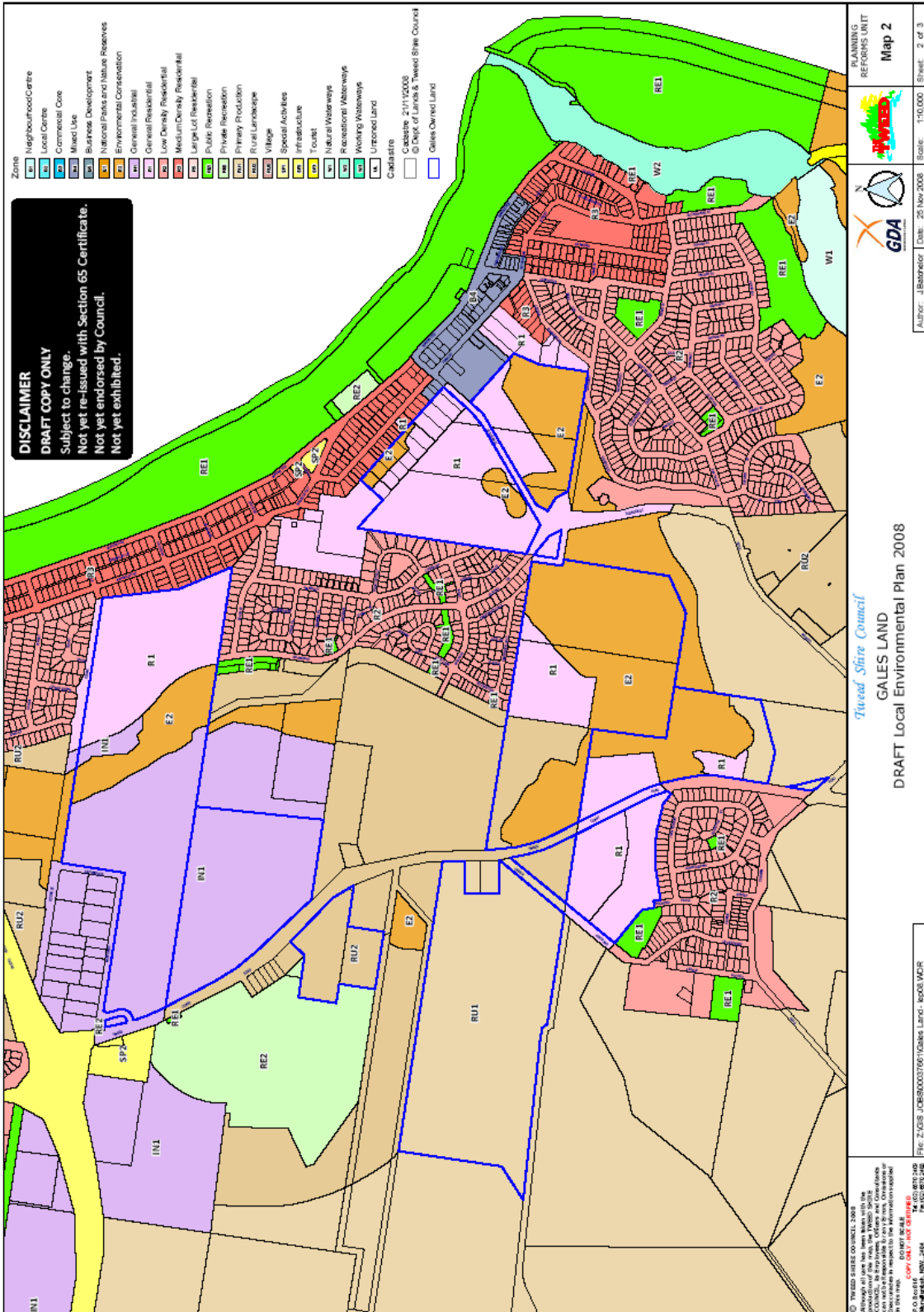
Given the importance of the Draft LEP, it is recommended that the minimum 28 day statutory period of public exhibition be extended to a period of 60 days, to enable the community to properly review and understand the Draft LEP, and to permit Council officers sufficient time to carry out public information sessions at key locations across the Shire.











**OPTIONS:**

1. Council endorses the public exhibition of Draft LEP 2008 (Stage 1).
2. Council resolves to defer the public exhibition of Draft LEP 2008 (Stage 1) to seek the Department of Plannings' approval to defer, amend, or exclude those draft LEP controls applying to Gales Holdings land at Kingscliff, Chinderah and Cudgen, prior to the public exhibition of the Draft LEP.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Gales Holdings currently has a contractual arrangement with Tweed Shire Council in regard to the transfer of ownership of land in respect of the former Kingscliff Sewerage Treatment Plant. Council has an obligation to this arrangement to work towards an appropriate rezoning of this site.

**POLICY IMPLICATIONS:**

The draft LEP 2008 represents a policy shift in the way that the Tweed LEP is constructed, its format and its operation. It is not foreshadowed that any long-term operational difficulties will arise as a result of the LEPs implementation.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Darren Gibson Planning - letter of 19 December 2008 (DW 1968722)
  2. Woolf Associates, Solicitors - letters of 28 August 2008 (DW 1968684)
  3. Public Submission - Gales Holdings March 2005 (DW 1968675)
  4. Darren Gibson Planning - letter of 19 January 2009 (DW 1969237)
-



THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

