



TWEED
SHIRE COUNCIL

Mayor: Cr Warren Polglase

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

Agenda

Planning Reports

Ordinary Council Meeting

Tuesday 15 December 2009

held at Murwillumbah Cultural & Civic Centre
commencing at 4.30pm

COUNCIL'S CHARTER

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 4 [PR-CM] Development Application DA08/0752 for a Three Storey Dwelling with Double Garage, Double Carport, In Ground Swimming Pool & Courtyard Fencing at Lot 920 DP 880612, No. 12 The Hermitage, Tweed Heads South**

ORIGIN:

Building & Environmental Health

FILE NO: DA08/0752 Pt1

SUMMARY OF REPORT:

An application has been received to erect a new three storey dwelling with double garage, double carport, in ground swimming pool & courtyard fencing on the subject property. It is to be noted that this application was submitted prior to the adoption of DCP A1 Part A. Whilst the applicant is not obligated to fully comply with DCP A1 Part A the consent authority has to consider the requirements of Part A in its assessment.

The subject allotment is located on the western end of the cul-de-sac to The Hermitage and is subject to a three storey height limit under Tweed LEP 2000.

The allotment is vacant and has a fall to the rear of approximately 8 to 18 degrees.

The proposal also includes a variation to the six metre building alignment to permit the erection of a double carport, and courtyard fencing.

The proposal was notified and objections were received which were taken into consideration in the assessment of this application.

After a comprehensive assessment of the application and taking into consideration the objections it is considered that the variations to DCP Section A1 Part A are minor and justifiable for the reasons outlined in this report.

A response to the objections is included later in this report.

It is considered that the application is worthy of approval.

RECOMMENDATION:

That Development Application DA08/0752 for a three storey dwelling with double garage, double carport, in ground swimming pool & courtyard fencing at Lot 920 DP 880612, No. 12 The Hermitage Tweed Heads South be approved subject to the following conditions: -

GENERAL

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

[GEN0015]

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

[GEN0115]

- 3. The sill height of the windows in the southern elevation of the rumpus and theatre are to be increased to be a minimum height of 1.5m above finished floor level or alternatively, fixed frosted glazing is to be provided where permitted by the Building Code of Australia.**

[GENNS01]

- 4. The courtyard fencing and gate is to have a minimum openness ratio of 60%.**

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

(a) Vehicular access

[PCC0895]

- 6. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.**

[PCC0945]

- 7. 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**

will not be approved until prior separate approval to do so has been granted by Council under S68 of the Local Government Act.

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

[PCC1145]

8. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

9. Prior to the release of the construction certificate amended plans are to be submitted to the PCA indicating the sill height of the windows in the southern elevation of the rumpus and theatre are to be increased to be a minimum height of 1.5m above finished floor level or alternatively, fixed frosted glazing is to be provided where permitted by the Building Code of Australia.

[PCCNS01]

10. Prior to the release of the construction certificate detailed plans are to be submitted to the PCA indicating the courtyard fencing and gate will have a minimum openness ratio of 60%.

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 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]

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

- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

14. Residential building work:

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

[PCW0235]

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

[PCW0245]

16. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

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

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

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

[PCW0985]

18. All roof waters are to be disposed of through properly jointed pipes to the 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

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

22. 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]

23. 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]

24. 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]

25. 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]

26. Excavation

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

27. 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]

28. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
[DUR1045]
29. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
[DUR2015]
30. Swimming Pools (Building)
- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 & AS 1926.3 - 2003. (Refer Council's web site www.tweed.nsw.gov.au)
 - (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
 - (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
 - (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.
[DUR2075]
31. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.
[DUR2085]
32. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.
[DUR2185]
33. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
[DUR2245]
34. 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]
35. 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]

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

[DUR2515]

37. 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]

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

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

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

[DUR2555]

39. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

40. 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]

41. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

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

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

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

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

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

[POC0265]

43. 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]

44. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[POC0475]

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

[POC1045]

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

[POC1055]

USE

47. 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]

48. 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]

49. **Swimming Pools (Building)**

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

- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

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

[USE1305]

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

1. 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 fully comply with Australian Standard AS3959-1999 '*Construction of buildings in bush fire-prone areas*' Level 3 with the exception that any external materials within 19 metres of the western boundary are to be non combustible.
2. 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.
3. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.
4. All fencing shall be constructed from non-combustible materials.
5. Glazing within 19 metres of the western boundary shall comply with the following;

Bush fire shutters

Where fitted, bush fire shutters shall —

- (a) be fixed to the building and be non-removable,
- (b) when in the closed position, have no gap between the shutter and the wall, the sill or the head greater than 2mm,
- (c) be readily manually operable from either inside or outside,
- (d) protect the entire window or door assembly,
- (e) be made from non-combustible material,
- (f) where perforated, have—
 - (i) uniformly distributed perforations with a maximum aperture of 2mm,
and
 - (ii) a perforated area no greater than 20% of the shutter.

Windows

Windows, including frames, shall have;

- (a) the openable portions screened using a mesh with a maximum aperture of 2mm made of corrosion resistant steel or bronze, and
 - (b) the window assemblies protected by a complying bush fire shutter or;
 - (c) where window assemblies are not protected by a complying bush fire shutter -
 - (i) Window frames, window joinery and hardware shall be metal.
 - (ii) Hardware fitted externally that supports the sash in its functions of opening and closing shall be metal.
 - (iii) Glazing shall be toughened glass minimum 5mm.
 - (iv) Seals to stiles, head and sills or thresholds shall be manufactured from materials having a Flammability Index no greater than 5.
6. 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*'.
7. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
8. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.

REPORT:

Applicant: Peyton Properties Pty Ltd
Owner: Peyton Properties Pty Ltd
Location: Lot 920 DP 880612 No. 12 The Hermitage, Tweed Heads South
Zoning: 2(c) Urban Expansion
Cost: \$530,000

BACKGROUND:

The subject site encompasses an area of 715m² and is located on the western end of the cul-de-sac to The Hermitage and slopes down from the street at approximately 8 to 18 degrees.

The site is vacant and is triangular in shape with a narrow curved frontage of 9.755m, rear boundary length of 34.845m, southern side boundary of 36m and northern side boundary of 33.87m. Adjoining the site to the north is an established two storey dwelling at number 13 and to the south and separated by an unformed 4m wide pathway is a two storey dwelling currently under construction at number 11.

There are no Council services on the allotment which will be affected by the proposed development. It is to be noted that the site is affected by two easements; one is 2.5m wide which is to drain water located parallel with the rear boundary and the other is of variable width which is located in the south-eastern corner of the subject allotment.

The site slopes down from the street and has a change of level of about 7.5 m from the front boundary to rear boundary.

The subject site is zoned 2 (c) Urban Expansion and is located within a designated 3 storey area as per clause 16 of the Tweed Local Environmental Plan (LEP) 2000.

The primary objective of this zoning is :-

“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.”

This Development Application was lodged on 25 June 2008; being prior to 1 July 2008 compliance with DCPA1 Part A is not mandatory but is to be considered.

The plans submitted disclosed a three storey dwelling with an undercroft area having a subfloor height exceeding 1.5m. Since this constitutes a storey as defined in the Tweed Shire Council LEP the development application was notified as a four storey dwelling with double garage, double carport, inground pool and courtyard fencing.

Notification was required in accordance with the provisions of DCP Section A11 (Public Notification of Development Proposals) and in response five written objections to the proposal have been received including a petition with 21 signatures. This resulted in discussions with the applicant and their building designer. It was resolved that the plans would be modified in response to the concerns raised. Correspondence was sent to the applicant in confirmation to this and also advising of the bushfire requirements from the Rural Fire Service.

Amended plans and supporting documentation was submitted to Council on the 31 March 2009. The plans submitted included the following changes:

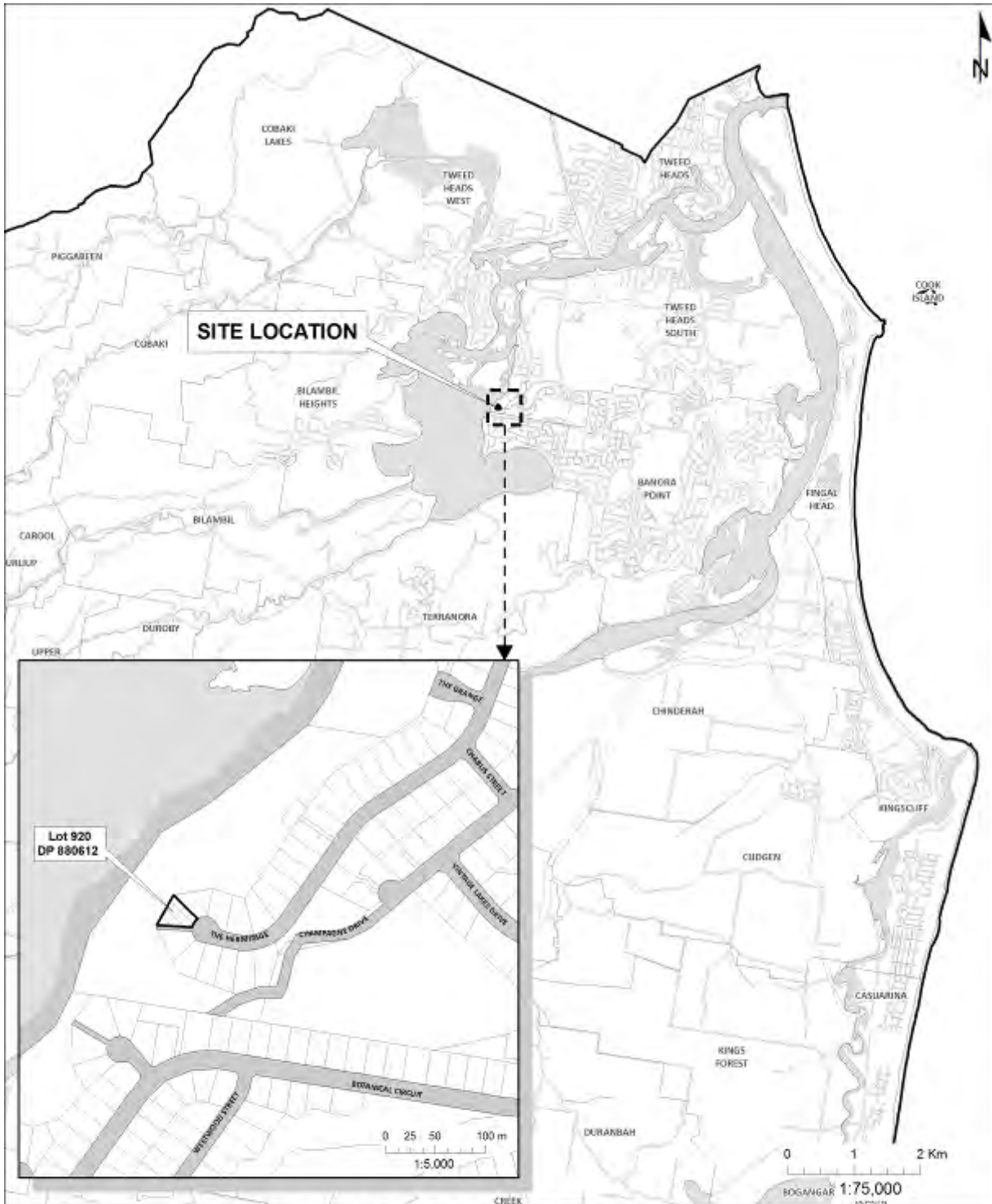
- i) The carport design was amended by locating the posts outside the two metre by two metre sight triangles.
- ii) The carport was reduced in area.
- iii) The roller door to the carport as originally proposed has been replaced by an electric roller gate having a transparency of 60%.
- iv) The undercroft area to the rumpus room (lowest level) which previously constituted a storey as it exceeded 1.5m has been amended by retained fill which has resulted in area of level usable outdoor space.
- v) Shadow diagrams have been submitted.
- vi) The applicant has provided a submission in support of their application.
- vii) The applicants building designer has provided a statement of environmental effects.

It is to be noted that the floor levels, setbacks, and heights of the proposal remain virtually the same as indicated on the plans submitted in June 2008 and March 2009.

The application was renotified to the same residents on the 7 April 2009 and in response two written objections were received one of which includes an architect's submission.

During assessment of these amended plans it was revealed that the proposal by definition is still considered to be a four storey dwelling and discussions with the Manager of Building and Environmental Health concluded that the proposal could not be recommended for approval. The applicant and their building designer were notified of this decision which resulted in a meeting on 4 August 2009 with the owners and their building consultant. At this meeting the Manager of Building and Environmental Health advised the applicant to submit amended plans incorporating the following changes; a minimum 1.5m setback off the north-eastern side boundary, a three storey dwelling complying with LEP2000 and a reduction in the overall length of the dwelling. On 15 October 2009 amended plans were received from Parameter Design Pty Ltd in respect of the recommended changes. These plans were not renotified as a result to the similarity of the proposal and as it was considered that the objections are still current and will be taken into account during the assessment of the application.

SITE DIAGRAM:

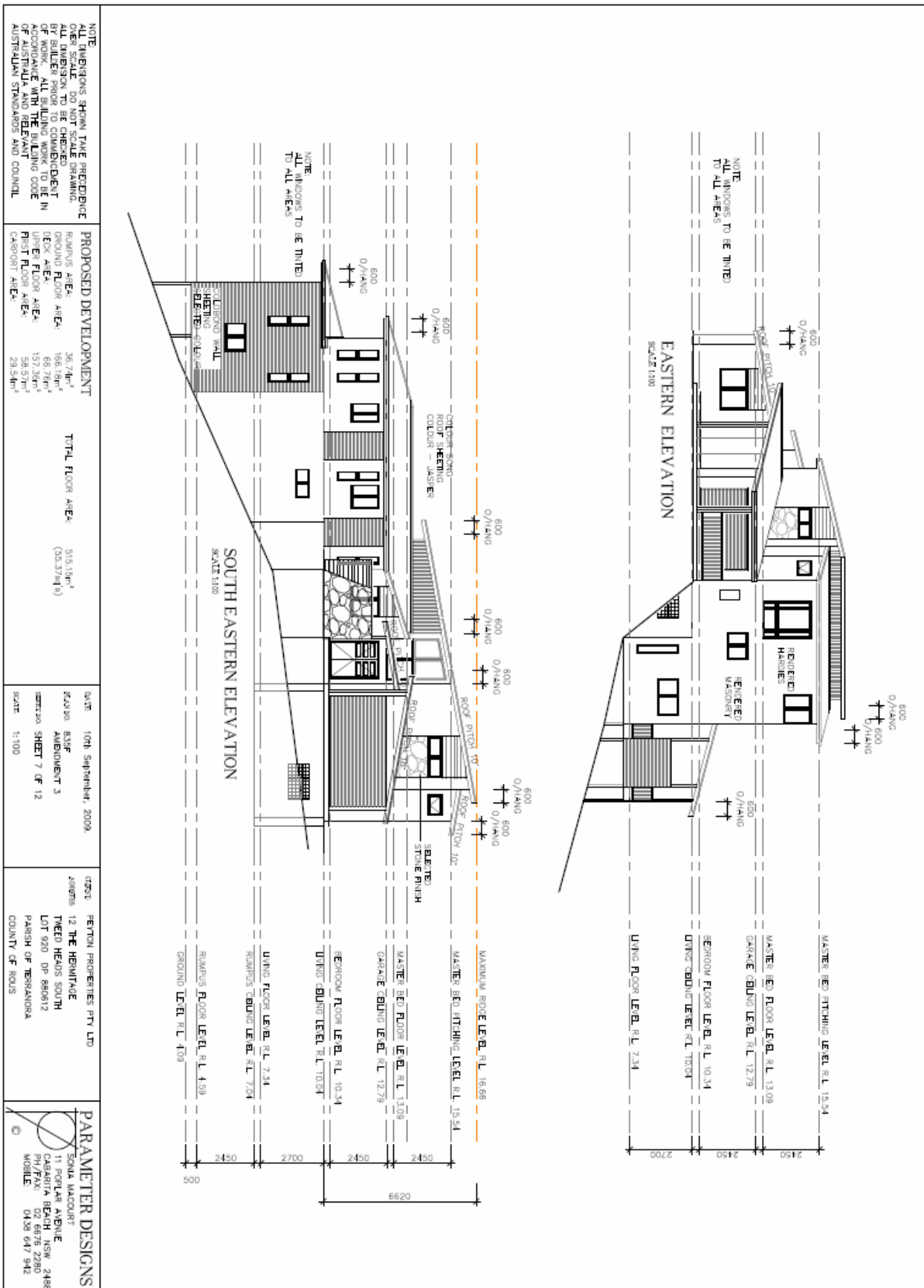


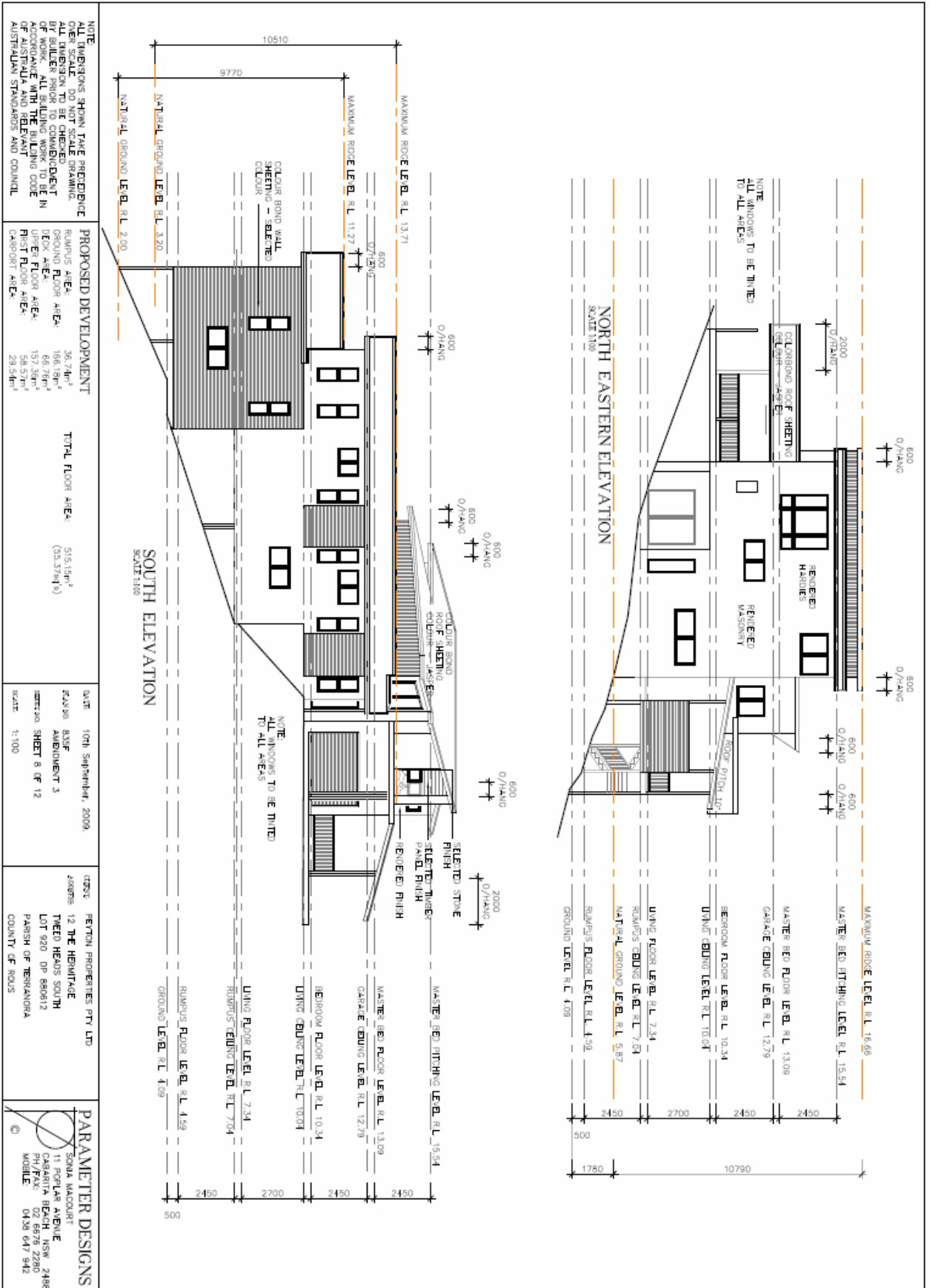
LOCALITY PLAN
Lot 920 DP 880612
No.12 The Hermitage, Tweed Heads South

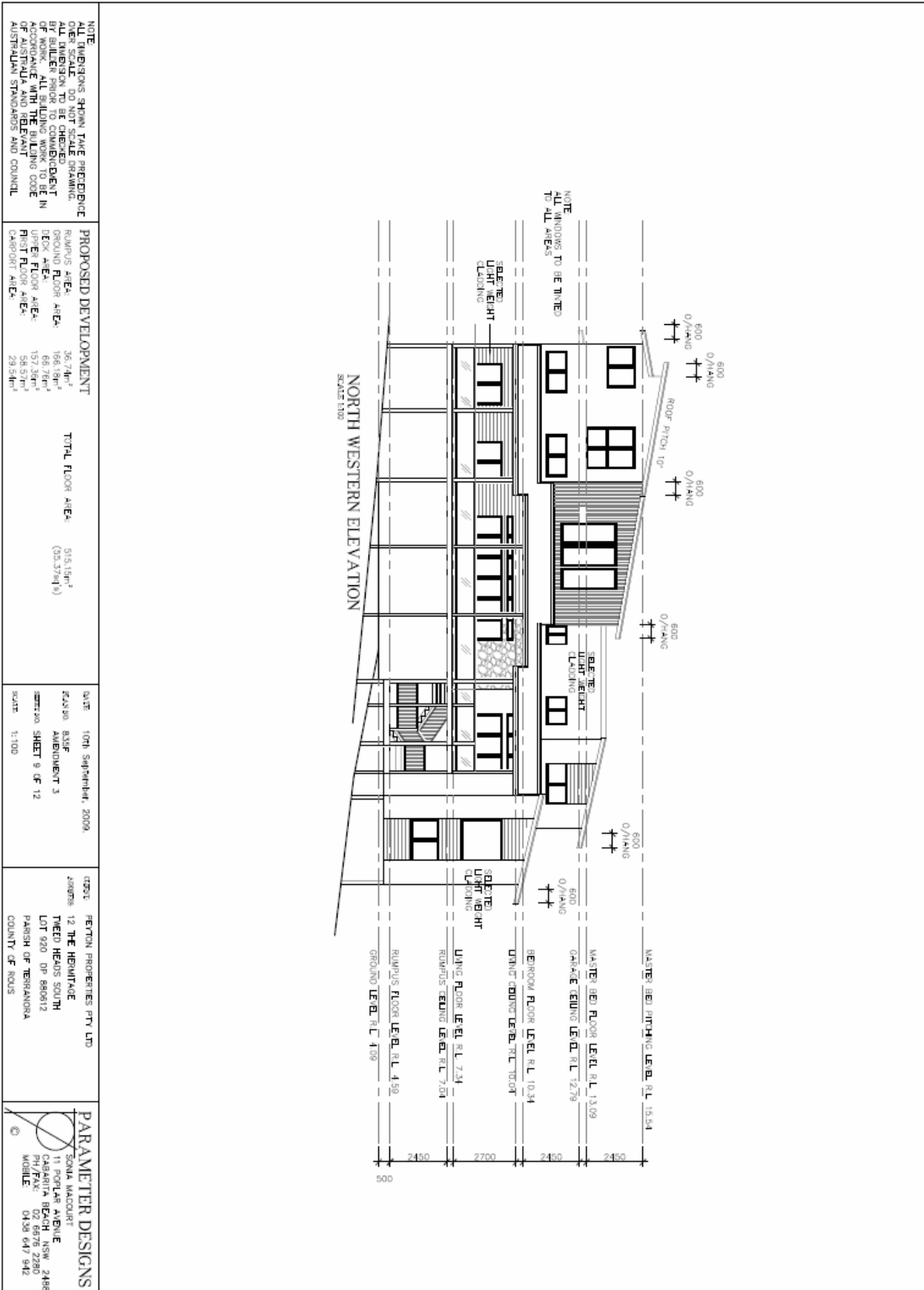
Filename: z:\work\planning\mxd\AAP_BB&W_SitePlan.mxd Author: J.Gatchalor - Planning Reforms Unit		Date Printed: 1 December, 2009
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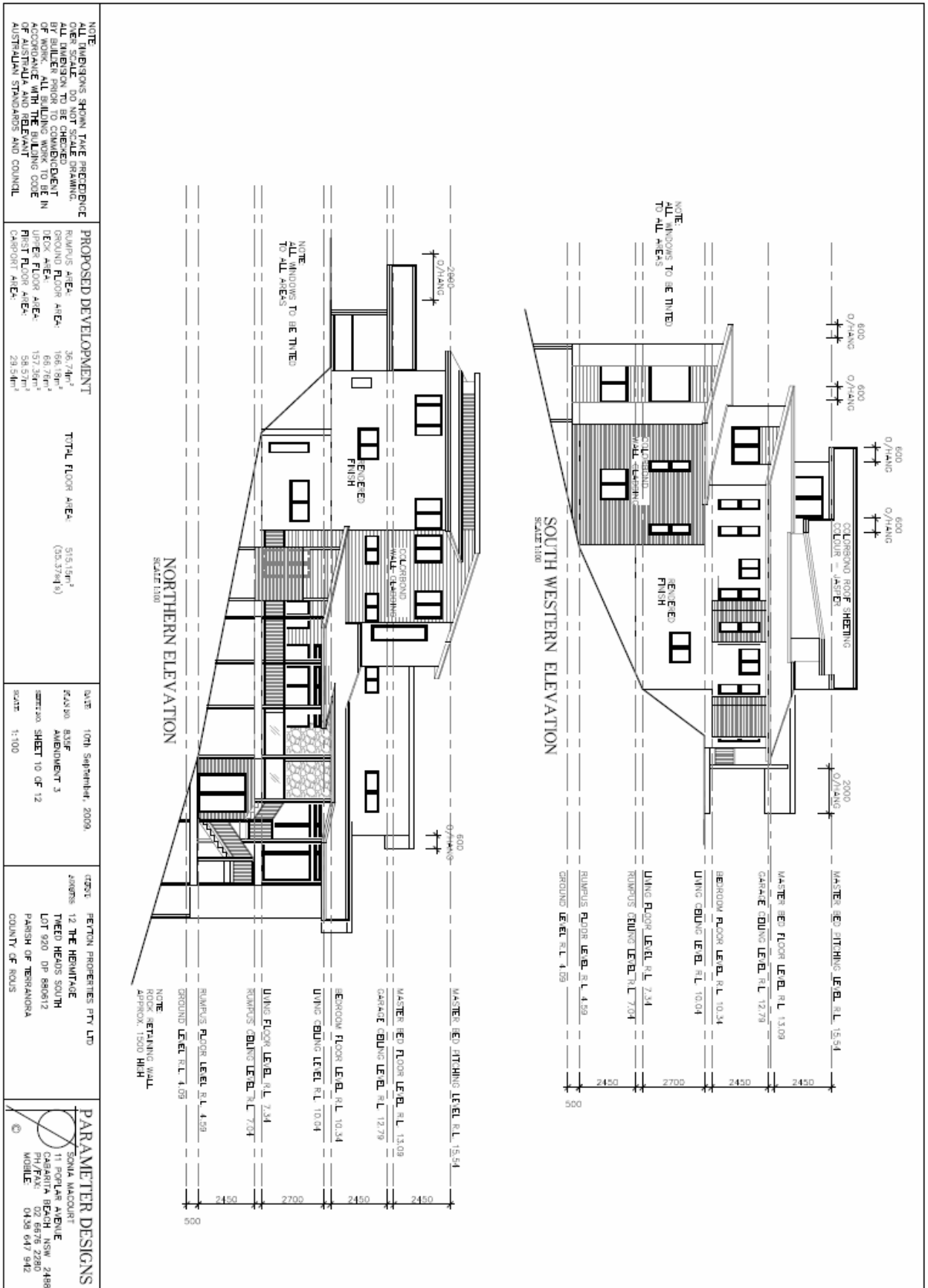
DEVELOPMENT PLANS:











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

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process numerous site visits by Council's assessing officer have been undertaken to all of the surrounding properties. Impacts have been discussed with the applicant, their building designer and several of the objectors. The applicant was advised of Council's concerns and the likely modifications that would be necessary to allow reasonable compromise.

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

Part 1 Clause 4 - Aims of the Plan

The proposal satisfies the aims of the Tweed LEP in relation to the desired outcomes of the plan namely the management of growth in a responsible manner.

Clause 5 - Ecologically Sustainable Development

The proposal satisfies the principles of this clause as there will be no anticipated serious or irreversible environmental damage likely as a result of the proposed development.

Clause 8 Consent considerations

Zone Objectives

The subject site is zoned 2(c) Urban Expansion. The primary objective of the zone zoning is :-

“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.

This 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 allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objectives. The proposed development is consistent with the primary objective of the zone.

Cumulative Impacts

The proposed building at three storeys is a response to the site conditions and the applicant's requirements. The proposed dwelling is unlikely to dominate the immediate streetscape. The proposal is unlikely to have an unacceptable cumulative impact on the community, locality or area of the Tweed as a whole.

The cumulative weight of objections of several surrounding properties was considered to be relevant and it is considered that the final design has addressed reasonably the main collective concerns of bulk and scale and privacy by increasing the north-eastern setback, reducing the length of the proposed dwelling house, reducing the dwelling house to a maximum of three stories and providing privacy screening.

Clause 11 - Zone

The subject site is zoned 2 (c) Urban Expansion and the proposed development being a single dwelling house will be consistent with the approved use of the site.

The immediate locality predominantly contains single dwelling houses and there is some dual occupancy in the neighbouring streets.

Clause 15 - Essential Services

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

Clause 16 - Height of Building

The proposed development consists of a three storey dwelling which is permissible given that the subject site has a maximum three storey height limitation under clause 16 under the TLEP 2000. Also the applicant has lodged amended plans which propose a maximum overall height of 10.79 metres. The overall heights of the proposed development will be as follows:

- Dining/Rumpus 9.77m @ RL 11.27m
- Bedroom Four 10.51m @ RL 13.71m
- Master Bed/Garage 10.79m @ RL 16.66m

All of the above heights are measured from natural ground line and it is also to be noted that the planning controls which were in force at the time of lodgement prescribed a three storey height limit and did not set a maximum height. It is to be noted this application was lodged prior to the adoption of DCP A1 Part A which currently prescribes a maximum height of 9m. A response to this requirement is contained later in this report.

Clause 17 - Social Impact Assessment

Normal domestic impacts can be anticipated from the proposed development. These impacts are not anticipated to have any significant impact on the existing amenity of the area or the existing streetscape other than what could be reasonably expected.

Sloping sites always present challenges to privacy and overlooking of adjoining lots due to the slope of the allotments. However the design of the dwelling incorporates a deck to the rear which includes a privacy screen on the north-eastern side in order to minimise impact upon No. 13 The Hermitage.

Clause 35 - Acid Sulfate Soils

The allotment is not located in an area which is affected by acid sulphate soils.

Clause 39A – Bushfire Protection

The site is identified as being in a bushfire prone area. The application was referred to the Rural Fire Service for comments. Extra conditions have been added to the conditions of approval to help protect the dwelling from bushfire attack as recommended by the Rural Fire Service.

Other Specific Clauses

There are no other relevant clauses which are applicable to this proposal.

State Environmental Planning Policies

SEPP No 71 – Coastal Protection

The subject site falls within the coastal zone as identified under SEPP 71, however referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from any sensitive coastal locations. The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

The Applicant has provided a valid BASIX certificate for the proposed development in accordance with the legislation and the latest amended plans.

It is considered that the requirements if this SEPP have been satisfied.

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

There are no draft environmental planning instruments on exhibition that are a relevant matter for consideration in the assessment of this application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code Part A

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

- The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30 June 2008 and this decision was notified in the Tweed Link.

In this instance the development application was lodged with Council on 25 June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

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

It should be noted that the most recent amended plans and supporting information were received by Council on 15 October 2009 and these plans were the result of information requested during the assessment of the application.

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

Section A1 of the DCP is divided into two chapters.

Chapter 1 Building Types

The Building Type proposed is 'Housing'.

The DCP describes that housing developments generally contain up to two storeys and goes on to set the minimum and maximum standards required for this Building Type.

The DCP envisages primarily up to two storeys but does not prohibit three storeys, although it follows, that they demonstrate compliance with the mandatory controls of the DCP and must be permissible by the number of storeys permitted by the Local Environment Plan 2000 for the locality.

The proposal meets generally the mandatory controls of the DCP and specifically for chapter 1 as outlined below.

Objectives:

- To be well designed and attractive.
- To be of an appropriate scale relative to the existing or desired future pattern of development.
- To provide landscaped and deep soil areas on the lot.
- To provide amenity for residents without compromising the amenity of neighbouring properties.
- To address the street and to make a positive contribution to its established or envisaged streetscape character.
- To maximise the sustainability of the building during its lifecycle.

- To minimise the impact on the natural environment.
- To minimise the impact on the natural landscape through inappropriate or unnecessary cut and fill.

Controls

- a. Dwelling houses in existing urban areas must be consistent with the scale and character of surrounding dwelling houses or as envisaged through an adopted concept plan, locality plan, design statement or the like.
- b. In new subdivision areas dwelling houses are to be designed to conserve any natural landscape features of the site and surrounding area.
- c. In new subdivision areas dwellings must be consistent with any design scheme adopted for that subdivision.
- d. Deep soil areas are to be provided to the front and rear of sites in accordance with this Part.
- e. Entrances are to be clearly visible from the street, where the allotment has a street frontage, and there is to be a clear line of access to the building from the street.
- f. Dwelling houses are to meet the controls as set out in this Part A: Site and Building Design Controls.
- g. Dwelling houses on non urban zoned land shall not, for the purpose of this Plan, be restricted to the deep soil zone, setback and carport, garages and outbuildings controls where it is demonstrated that compliance with a particular control would be unreasonable in the circumstances.

The proposed building in its original form attracted many submissions objecting to the proposal particularly relating to the bulk and scale of the proposed dwelling, loss of views and loss of privacy. The final plans the subject of this report have addressed reasonably the concerns and are now considered to satisfy the objectives and controls of chapter 1 above.

Various amendments have been requested throughout the DA process in order to satisfy the objectives of the Design Controls of Chapter 2 of DCP A1 Part A, including the dwelling house and carport height, carport width, front deep soil zone, landscaping, garage setback and southern side boundary setback.

Further detail on the assessment of these issues is provided in the latter sections of this report.

Chapter 2- Site and Building Design Controls

Design Control 1-Public Domain Amenity

The proposed development whilst containing three stories will present to the immediate streetscape as a two storey dwelling house. However, the side elevations which consist of two and three stories will dominant more on the neighbouring properties than upon the street. The near triangular shape of the allotment having a radial frontage of 13 metres has resulted in the double carport occupying much of the 6.0 metre setback. The impact of this has been lessened to a degree by the front courtyard fencing being offset a maximum of 3.0 metres off the front boundary. The plans submitted indicate that this setback is to be landscaped which would provide physical relief to the streetscape. Also it is to be noted that the proposed double carport, courtyard fencing and transparent sliding fence all located within the six(6) metre primary building line will contribute to the streetscape. The proposed dwelling house incorporates a high degree of articulation and variety of form due to the façade, a varied roofline due in part to the double carport, different setbacks of the building form, the use of stone cladding and the timber detailing. Also the double entry doors of the proposed dwelling house will be visible from the public domain as required by the controls relating to streetscape and the design of the dwelling has been designed in sympathy with the topography of the site.

There has been a number of submissions received objecting to the location of the double carport within the six (6) metre primary building setback. This encroachment it is considered reasonable that the proposal will not be inconsistent with the established character of the street and public domain when the relationship of the buildings to the topography and the subject property being located towards the end of the cul-de-sac is taken into consideration. It should also be noted that many examples of variations to the building line within cul-de-sacs can be found throughout the Shire.

Streetscape and Public Views and Vistas

No public views or vistas will be affected by the proposal. Also there is a viewing corridor located between Number 11 and 12 due to the existence of the 4.0m wide pathway between both properties.

Design Control 2 -Site Configuration

Deep soil zones (DSZs)

The subject site has an area of 715m² and the proposed impermeable area of the site will be approximately 53.53% which satisfies the provisions of the DCP.

This will result in 56.47% of the site being permeable and available for rainwater infiltration. While the front deep soil area does not comply with the current DCP provisions adequate area will be available for deep soil zones at the rear of the site.

The rear deep soil zone which will be available after construction of the development will comprise an area having a minimum depth of 7.2m and minimum width of 29m which exceeds the minimum requirements of this section. There will be only 5.6m² available within the front setback available as a deep soil zone, however it is considered that the excess size of the rear deep soil zone will offset the shortfall of the front deep soil zone. It is to be noted that the triangular shape of the front 6.0m setback limits the area available as a deep soil zone. Much of this setback has been utilised as a driveway and suspended deck. Whilst the deck has reduced the size of the front deep soil zone it has created usable open private space instead of leaving natural ground which would be difficult to maintain and use due to its grade. Variation to this control is also permitted within the DCP by way of the development being constrained by the existing site conditions, the allotment is within a subdivision created prior to the year 2000, the proposal is considered to be infill development, and the triangular shape of the primary front building setback. Furthermore the utilisation of the rear setback as a deep soil zone maximises the use of this area as private open space which has optimum solar access.

Impermeable Site Area

The area of the site is 715m² subsequently the maximum impermeable site area permitted by the controls is 65%. From the plans submitted the development will create an impermeable area of approximately 53.53% which will comply with the design control. This will allow adequate area to enable water to infiltrate the site.

External Living Areas

The proposed three storey dwelling contains kitchen, internal living areas comprising of; theatre, family and dining rooms located on the lower floor level which have direct interconnection to the rear deck which has north-western orientation, an area of 66.76m² and adjoins the proposed swimming pool. This deck has a privacy screen on the north-eastern side which reduces the privacy impact upon No. 13 The Hermitage.

On the lowest level there is a rumpus room which has an area of 36.74m² which is connected to the private open space via a deck and flight of stairs. These two external living areas satisfy the DCP requirement as they do not face the side boundaries, are of a design which minimises privacy impact and maximises solar access.

Landscaping

A landscaping plan compliant with the objectives for the landscaping component of Design Control 2 has been submitted which will soften the building in respect of its impact upon the immediate streetscape. The controls require at least the front garden to have at least one canopy tree with a minimum height of 10 metres. A variation in this regard is required to disregard this requirement due to the triangular shape of the allotment, the lack of adequate space for a 10m high tree and the potential damage that a tree of this size could have on the proposed development

Topography, Cut and Fill

The allotment is vacant and has a fall to the rear of approximately 8 to 18 degrees.

The design of the proposed development has responded to the site conditions by minimising cut and fill. It is to be noted that the proposed double carport and front courtyard decking are supported on suspended concrete slabs which provides near level vehicular access and a courtyard that can be utilised as usable open space. The proposal also includes a maximum of 500mm of cut which is permissible under the controls, in a small area of the lower ground floor being partially located under the garage, study and bedroom 2. Also the remainder of the lower levels are supported on suspended timber elements thus eliminating the need for cut and fill. This contrasts to the previous amended plans which detailed the rumpus room being supported on consolidated fill exceeding 1.5m in height.

Design Control 3 -Setbacks

The DCP contains the following requirements relating to building setback:

- a. Dwelling Houses are to be setback 6 metres from the street boundary.
- b. On corner allotments the setback along the secondary street (the street to dwelling has its secondary frontage) is 3m.
- c. In older established areas and on infill sites Dwelling Houses are to be consistent with the setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings on either side. This setback can be varied up to plus or minus 1m.
- d. Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front facade.
- e. Council may approve the erection of a dwelling or garage, which does not comply with the required building line setback in circumstances, outlined elsewhere within this document, or where –
 1. The levels, depth and shape of the allotment, or
 2. The exceptional conditions of the site such as excessive grades or slope, make it necessary or expedient to do so, and:
 - the proposal will not affect the amenity of adjoining properties,
 - no valid objections are received from adjoining property owners,
 - the proposal will not create an unwanted precedent to the vicinity,
 - the structure is located a minimum of 900mm from the side boundary of the property,
 - the proposal will not impede on the required pedestrian and traffic sight lines.

The subject development proposes a double carport, and 2.0m high courtyard fencing which are to be located within the six (6m) primary setback. The double garage is proposed to stand 6.17m off the front boundary and does not stand 1.0m behind the facade of the remainder of the dwelling. Therefore in this regard a variation to the controls would be considered on the basis that; the proposal is infill development, the surrounding dwelling houses do not reflect this setback, approval would not affect the amenity of adjoining properties and an unwanted precedent would not be created.

The proposed dwelling house on the latest amended plans now stands a minimum of 1.5m off the north-eastern side boundary in order to reduce its impact upon the existing dwelling house at No. 13 The Hermitage.

The proposed dwelling house stands a minimum of 1.397m off the southern side boundary and whilst this does not observe the required 1.5m setback specified under the current DCP a variation is requested in this regard as there is a 4.0m wide pathway located between Nos. 11 and 13 The Hermitage and the shadow diagrams submitted indicate that the amenity of No. 11 will not be adversely affected.

Design Control 4 -Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP.

The proposed dwelling house complies having a total of four off street car parking spaces provided, two in front and two behind Council's building line and vehicle access to these spaces is considered satisfactory as the levels allow motorists optimum vision of the street.

It is to be noted that the controls require carports to be one space wide or 4m this is impractical as it would restrict access to the double garage behind.

Design Control 5 -Height

Building Height

The DCP contains the following requirements relating to building height:

- a. *9m is the maximum overall building height for dwelling houses.*
- b. *8.5 m is the maximum wall plate height for dwelling houses.*
- c. *Carports maximum height 3.5m for a flat roof and 4.5m for a pitched roof.*
- d. *Detached garages are to have an eave height of no more than 2.7m and a maximum overall building height of 3.5 m for a flat roof and 4.5m for a pitched roof.*

The proposed building will have an overall maximum height of 10.79m which exceeds the specified maximum height. It is to be noted that the dwelling house by definition is three stories and at the time of lodgement the planning requirements in force prescribed a maximum of three stories but did not set a maximum height.

The original plans have been amended to achieve a proposed dwelling house not exceeding three stories and without any areas of fill exceeding 1.0m (in fact minimal fill is proposed). Accordingly a variation to this controls 9.0m height limit is sought based on the fact that the proposal satisfies the planning constraints applicable at the time of lodgement and a discussed in other sections of this report it is considered that the design of this dwelling house is a sensitive response to the topographical constraints of the site and overshadowing satisfies Design control 6.

The proposed double carport will have a maximum height of 4.0m as measured above the driveway slab and 6.0m at one point above the lowest ground level. Whilst these heights exceed the control requirement of 3.5m it is considered that a variation is required due to the topography of the site, the suspended carport slab allows safe vehicular access and the carport roof contributes to the articulated design of the dwelling house. It is to be noted that double carport dimensioned shade sail structures exist at number 10 and 20 The Hermitage within the 6m primary setback. Therefore a precedent exists for double carports to be located within the primary setback for the immediate area.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a combination of ceiling heights being of 2.45m and 2.7m in order to reduce the overall height of the dwelling. The proposal complies with this control.

Design Control 6- Building Amenity

Sunlight Access

The dwelling house includes private open space by the provision of decks orientated to the north-west and therefore will receive sufficient access to sunlight.

This design control requires consideration of overshadowing from the proposed development during the most solar disadvantaged day of the year being between 9am and 3pm on 21 June within the winter solstice. The shadow diagrams submitted with the latest amended plans indicate that the property located to the south at No. 11 will experience over shadowing during in the winter months as the sun moves through the sky. These diagrams indicate that the shadow cast will satisfy the requirement of this control as stated below,

For neighbouring properties ensure:

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

Visual Privacy

As stated previously in this report overlooking of adjoining properties from active living areas has been minimised by their location and the use of a privacy screen on the north western side of the deck.

It is further recommended that the window of the theatre and the southern window of the rumpus be required to have a minimum sill height of 1.5m to reduce any impact on these areas upon the neighbouring properties.

The proposed building generally complies with the objectives of this control.

Acoustic Privacy

The sound insulation of this design complies with the objectives of this control and a suitable condition on the consent will be imposed to control air conditioning and other mechanical equipment.

View Sharing

The proposal satisfies this control as each of the neighbouring properties has its own exclusive opportunity to the views at the rear of their properties.

Natural Ventilation

The design complies with this control. The dwelling provides for adequate natural ventilation of the dwelling with openable windows and ample breeze paths.

Building Orientation

The dwelling has been sited on the property to optimize views and solar access and complies with the objectives of this control by the provision of active living areas to the north western aspect.

Building separation

The proposed building has been sited with adequate boundary setbacks and together with the privacy screen to the rear deck and sill heights of living rooms in the north-eastern and southern elevations it is considered that this control has been satisfied.

Design Control 7 – External Building Elements

Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate that a 2.0m high courtyard fence located within the 6.0m primary setback is proposed with this application. Due to the topography of the site this courtyard fence is necessary to ensure adequate privacy to the open space located within the primary setback. The design of the courtyard walls and sliding gate incorporates transparent materials, slatted and stone clad portions which will complement the character of the proposed dwelling house and achieve a minimum openness of 60%. The controls limit the height of the fencing to 1.5m; however a variation to this is required for an additional 0.5m in height. This is necessary to achieve a reasonable level of privacy to the private open space located in the primary setback. Also it is to be noted that the fencing code in force at the time of lodgement did allow 2.0m high fencing in front of the 6.0m building line.

Also it is to be noted that No. 6 The Hermitage has front courtyard masonry fencing having a height in excess of 2.0m. Therefore a precedent is set in the immediate locality which provides support for the proposed courtyard fencing.

Roof

The roof satisfies the objectives of this section in that it contributes to the contemporary appearance of the dwelling house and will provide insulation to the internal spaces.

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

Design Control 8 -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.

Design Control 9- Outbuildings

There are no outbuildings proposed as part of this application.

Design Control 10- Swimming pools and spas

There is an inground swimming pool proposed as a part of this application which satisfies the applicable controls.

Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application

Design Control 12 - Floor Space Ratio (FSR)

Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.55:1 for the dwelling house as the site has an area of 715m². The proposed FSR for the dwelling house is 0.476:1 which satisfies this design control.

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

No demolition is proposed as part of the development.

Clause 93 Fire Safety Considerations

None required.

Clause 94 Buildings to be upgraded

None required.

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

Context and Setting

The design, scale and appearance of the dwelling are considered to be reasonable and generally consistent with the housing stock in this area.

Access, Transport and Traffic

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

Flora and Fauna

No significant impacts anticipated as a result of the development.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The proposal is not inconsistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is considered to be in keeping with the existing residential character of the area.

Topography

The applicant has submitted a geotechnical engineer's report which confirms that the site is suitable for the proposed development.

Site Orientation

The active living areas have been oriented to the north to take advantage of solar access.

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

In accordance with Council's notification policy adjoining property owners were notified of the proposal and in response five written objections to the proposal were received including a petition with 21 signatures.

Amended plans and supporting documentation was submitted to Council on the 31 March 2009. The application was renotified to the same residents on the 7 April 2009 and in response two written objections were received one of which includes an architect's submission.

During assessment of these amended plans it was revealed that the proposal by definition is still considered to be a four storey dwelling and discussions with the Manager of Building and Environmental Health concluded that the proposal could not be recommended for approval. The applicant and their building designer were notified of this decision which resulted in a meeting on 4 August 2009 with the owners and their building consultant. At this meeting the Manager of Building and Environmental Health advised the applicant that the current proposal could not be supported and to submit amended plans incorporating the a minimum 1.5m setback off the north-eastern side boundary and a design proposing a three storey dwelling house complying with LEP2000. On 15 October 2009 amended plans were received from Parameter Design Pty Ltd in respect of the recommended changes. These plans were not renotified as a result due to the similarity of the proposal and as it is considered that the objections are still current and will be taken into account.

Each objection and a response are listed as follows:-

- *Loss of views of the north-western view of Terranora inlet from the approved dwelling yet to be constructed at No.11 The Hermitage due to the bulk, scale and height of the proposal, principles of view sharing not adhered to.*

Response – The neighbouring property has its own opportunity to view Terranora Inlet and it is a commonly held opinion that a neighbour does not have the right of a view across a neighbour's property.

- *The proposed development will cast a significant shadow over our living room, deck, master bedroom, garden and clothesline particularly in winter at No.11 The Hermitage. This in turn will substantially increase heating and cooling costs. Overshadowing from the development would restrict natural light and air to adjoining residences. The design of the dwelling house will create a canyon for almost constant wind pressure/movement and preventing light and sunshine to both sides. During heavy rainfall, such narrow corridor will fail to collect/absorb/divert water – erosion will be unavoidable, not only within the property but in the gardens next door.*

Response – The submitted shadow diagrams indicate that the proposed dwelling house satisfies design control No.6 in respect to sunlight access.

- *The development will cause a reduction in light to the master bedroom and bedroom four of No. 13 The Hermitage.*

Response – The submitted shadow diagrams indicate that the proposed dwelling house satisfies design control No.6 in respect to sunlight access. In particular on the 21 June between 9am and 3pm there is no shadow cast upon No. 13. It is to be noted that DCP A1 Part A requires assessment of sunlight access on 21 June being within winter solstice.

- *The bedrooms and deck of the proposal will allow a direct view into the master bedroom and bedroom 4 of No. 13 The Hermitage.*

Response – The submitted plans indicate a privacy screen to the north eastern end of the rear deck and Design Control No.6 of the DCP considers that overlooking from bedrooms is less concern than overlooking from the windows of other habitable rooms. This is due to their predominant night time use as opposed to active living areas which have a greater potential to affect the amenity of the surrounding properties.

- *Daylight will be reduced to the deck area and part of the swimming pool of No. 13 The Hermitage*

Response – The submitted shadow diagrams indicate that the proposed dwelling house satisfies design control No. 6 in respect to sunlight access. In particular on the 21 June between 9am and 3pm there is no shadow cast upon No. 13.

- *Building height exceeds maximum permitted. The four storey height is considered excessive, not consistent with the adjoining development.*

Response – Whilst this objection was valid in respect of the first and second submitted plans the latest amended plans propose a three storey dwelling house as defined in the Tweed LEP. It is considered that the proposal satisfies the objectives of DCP A1 Part A.

- *The height and location of the development is not in keeping with the immediate streetscape due to the size and the huge concrete fence. Most dwelling houses in this street are single and two storeys.*

Response – The front elevation of the proposed dwelling house presents to the immediate streetscape as an articulated two storey dwelling which is consistent with the established streetscape of the immediate locality. Whilst there are no other examples of courtyard fencing similar to that proposed in the immediate locality it is considered that approval will not adversely affect the streetscape due to the location of the subject site at the end of the cul-de-sac, the landscaping proposed in front of the courtyard wall as a means of soften its impact.

- *The size of the dwelling house not only suggests potential multiple occupancy, but is suitable for acreage, not for a steep, suburban block in a tight cul-de-sac*

Response – There is no evidence available to substantiate the potential of the development for multiple occupancy.

- *The location of the proposed dwelling to the rear reserve could easily assist fire to spread to surrounding dwellings*

Response – The proposed dwelling house is separated from the rear boundary by a reinforced concrete swimming pool with a rear setback of 6.6/12.2m. Also the application has been referred to the rural fire service who has recommended approval subject to the inclusion of conditions requiring compliance with AS 3959. These bushfire requirements have been formulated as a means of ensuring that the dwelling house has an appropriate degree of bush fire protection and the rural fire service have adequate access for fighting bushfires.

- *There is a stand of medium to tall gum trees which the owners of No. 12 may request be removed in order to improve their view over the Broadwater. Tree removal??*

Response – The applicant has not indicated that they will be requiring removal of the trees. The subject property is affected by Tree Preservation Order (1990) therefore removal of these trees which are more than 8 metres from the proposed development if approved would require approval from Council.

- *The double garage and double carport will add to the congestion to the cul-de-sac and may effect vehicle movements to other residents entering and leaving their residents. Also this will increase the potential for problems encountered by Council's garbage contractors.*

Response – there is no evidence available to support these claims. It is to be noted that as the driveway and levels of the carport and garage have minimal grade and the fencing satisfies the 2m by 2m sight triangle requirements the motorists should have optimum vision. Also the proposed four off street car parking spaces should reduce the incidence of on street parking by the applicant's household.

- *No structures in front of the 6 metre building line should be permitted. The double carport will have a negative effect upon the streetscape.*

Response – The building line policy in force at the time of this DA lodgement and design controls permits open structures such as fencing up to 2.0m in height and carports in front of the 6.0m building line. It is to be noted that double carport dimensioned shade sail structures exist at number 10 and 20 The Hermitage within the 6m primary setback. Therefore a precedent exists for double carports to be located within the primary setback for the immediate area.

- *The excavation so close to the public road could cause destabilisation and exceeds the 1 metre requirement brought in by Council in 2007.*

Response – There is no significant excavation proposed within the 6.0m setback. It is to be noted that the driveway/carport slab and front deck will be supported off a suspended slab.

- *The proposal is identified as two storeys, the site plan indicates three storey and it has been notified as a four storey.*

Response – The latest amended plans have been revised to represent a three storey dwelling as defined in the Tweed LEP.

- *The development will have an impact upon the environment.*

Response – It is considered that the proposal will satisfy the planning controls as detailed in this report.

- *The dwelling will stand close to the side boundaries*

Response – The proposed development is considered to satisfy the objectives of Design Control 3 in respect to setbacks as required by DCP A1 Part A.

- *Due to the waterfront locations of blocks 12 and 13 The Hermitage, this proposal will create a wind tunnel due to differential pressures created by a downdraft coming from the prevailing winds from the south & east. The wind tunnel will have the potential to produce not only irritating levels of decibels, but due to the down draft, pollution from the four car spaces will be evident should the occupants have their motors running whilst shifting cars in and out of garages and carports. I do not believe that this proposal has given any thought to the effects of the wind tunnel factor.*
- *The proposed development will create a canyon for almost constant wind pressure/movement and preventing light and sunshine to both sides. During heavy rainfall, such narrow corridor will fail to collect/absorb/divert water – erosion will be unavoidable, not only within the property but in the gardens next door (No.11).*

Response – This perceived affect is one which is not identified in the applicable planning controls for this type of development, namely the Tweed LEP and the DCP A1. Therefore this cannot be assessed under our planning controls and is not a relevant matter for consideration.

- *The location of the four car garage and carport on the western side is closest to our master bedroom and bedroom 2. The subject garage and carport should be located on the other side beside the 4 metre wide easement thus minimising any noise from vehicular movements.*

Response – Apart from the driveway achieving the required grades there are no planning controls which require us to consider which side of a particular property that a driveway, carport or garage should be located

- *The side boundary setback of the development is 1.37m appears in violation of the building code.*

Response – Whilst there were no applicable planning controls stipulating setbacks at the time of lodgement for this proposal, the latest plans comply with the BCA and DCP A1 Part A in respect of Controls. This includes a variation to the DCP A1 Part A Design Control 3 based on the affect being minimised due to the existence of a 4.0m wide pathway between 11 and 12. It is considered that the submitted shadow diagrams confirm the level of impact in accordance with Design Control 6 of the DCP.

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

1. Council resolves to approve the development application subject to conditions.
2. Council resolves 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 which would incur financial costs to Council in defence.

Should the application be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application would incur financial costs to Council in defence.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

On balance the assessment of the relevant planning matters, it is considered that the proposed development is suitable for approval, subject to conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

5 [PR-CM] Development Application DA09/0113 for a Nine (9) Lot Rural Residential Subdivision at Lot 2 DP 866690, No. 161 Cobaki Road, Cobaki

ORIGIN:

Development Assessment

FILE NO: DA09/0113 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 49.45%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 7(d) if the area of each allotment created is at least 40 hectares. Proposed lot 6 has a total area of 20.22ha and is inclusive of the totality of 7(d) zoned land and remnant vegetation on the subject site (17.5ha). This land is currently located within a 32.65ha allotment (existing 18% variation to this development standard) which comprises the subject site.

The applicant seeks consent for a nine (9) lot rural residential subdivision, including construction of a dedicated public road for access.

Concurrence was granted by the Director General in this instance for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The proposal allows for protection of the 7(d) land from further development.

The proposal was placed on public exhibition for fourteen days. No submissions were received.

It is considered that the application is suitable for approval, subject to conditions.

RECOMMENDATION:

That Development Application DA09/0113 for a nine (9) lot rural residential subdivision at Lot 2 DP 866690, No. 161 Cobaki Road, Cobaki be approved subject to the following conditions: -

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and**

- Plan No 16901 B (Site Plan) prepared by B & P Surveys and dated 8/5/08
- Figure 4.0 (Roadworks Layout) prepared by Opus Qantec McWilliam and dated July 2008
- Figure 6.0 (Road 2 Longitudinal Section) prepared by Opus Qantec McWilliam and dated July 2008
- Figure 6.1 (Road 2 Longitudinal Section) prepared by Opus Qantec McWilliam and dated July 2008,

except where varied by the conditions of this consent.

[GEN0005]

2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.

[GEN0045]

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

[GEN0125]

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

[GEN0135]

5. A Subdivision Works Accredited Certifier (SWAC) shall be appointed to assume the responsibility for certifying the compliance of the completed public infrastructure (refer to Development Construction Specification C101.01 for variations).

The SWAC shall be accredited by the Building Professionals Board Accreditation Scheme, in the following categories,

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

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

[GEN0275]

6. Native vegetation within land currently zoned 7(d) Environmental Protection (Scenic / Escarpment) must be retained.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

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

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

[PCC0275]

8. 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]

9. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17^o or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

10. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate 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 the approval of the General Manager or his delegate.

[PCC0465]

11. 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 construction certificate application for Council approval.

[PCC0485]

12. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

13. 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]

14. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

RURAL SEAL

- (a) Construction of a public road that meets or exceeds the following minimum standards: 6m wide carriageway with a 9m radius turning bulb.

Regarding the road cross-section, the applicant is to address the requirements of Council specification D7: Stormwater Quality - particularly D7.05(f). The use of Water Sensitive Urban Design (WSUD) is encouraged for the proposed new road, to soften the impact of the proposed urban-style road in the rural setting. Opportunities exist for avoiding kerb and gutter, improving stormwater management and reducing costs.

Note that for any WSUD features, the following matters must be specifically addressed.;

- A maintenance program is required to be prepared for the full life cycle of any WSUD features, particularly any biofiltration areas.
- Access must be individually addressed for each property, to ensure compatibility with any WSUD features.

INTERSECTIONS

- (b) Construction of a new intersection with Cobaki Road in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance. All lots are required to have a sealed access driveway per TSC DCP Section A5 - sub-section A5.5.6: "Access to Dwellings".

ACCESS

- (c) All lots are required to have a sealed access driveway per TSC DCP Section A5 - sub-section A5.5.6: "Access to Dwellings".

[PCC0875]

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

[PCC0935]

16. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

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

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]

17. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 – Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (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]

18. Erosion and Sediment Control shall be provided in accordance with the following:
-

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.
19. Stormwater discharge from the site's primary discharge point, being at chainage 126 along the new road, is to be dispersed to minimise erosion of the downstream depression. Details are to be provided with the construction certificate application.
- [PCC1155]
20. Where water is to be drawn from Councils reticulated system, the proponent shall: -
- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
 - Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
 - Payment of relevant fees in accordance with Councils adopted fees and charges.
- [PCC1205]
21. The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council.
- [PCCNS01]
22. Prior to issue of the Construction Certificate, the applicant must submit a Threatened Species Management Plan to the satisfaction of Director Planning and Regulation addressing:
- (a) Proposed measures to protect, propagate and translocate (in accordance with *Guidelines for Translocation of Threatened Plants (SGAP)*) the threatened flora species Red Bopple Nut (*Hicksbeachia pinnatifolia*);
- (b) Proposed measures to be undertaken to avoid any impact upon the threatened fauna species Magpie Goose (*Anseranas semipalmata*) including measures to avoid drainage, sedimentation or pollution of the majority of waterways on the site and measures to ensure new and additional predators are not introduced to the site;
- (c) Details and measures to be undertaken to protect any further threatened species should they be found on site during or prior to construction.

[PCCNS02]

23. Prior to the issue of the Construction Certificate, the applicant must submit a Weed Management Plan to the satisfaction of Director Planning and Regulation addressing the removal of Cocos Palms and any other known environmental weeds from the development area.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

24. 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]

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

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems – General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

26. 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]

27. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and confirmation that 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]

28. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

29. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:**
 - (i) the consent authority, or**
 - (ii) an accredited certifier, and**
- (b) the person having the benefit of the development consent:**
 - (i) has appointed a principal certifying authority,**
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:**
 - C4: Accredited Certifier – Stormwater management facilities construction compliance**
 - C6: Accredited Certifier – Subdivision road and drainage construction compliance**
 - The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and**
 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,**
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and**
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.**

[PCW0815]

- 30. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.**

[PCW0835]

- 31. 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]

32. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water.

[PCW1045]

DURING CONSTRUCTION

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

[DUR0005]

34. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

[DUR0025]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

- A. Short Term Period - 4 weeks.

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

- B. Long term period - the duration.

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

[DUR0215]

37. 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 and 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]

38. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

39. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

40. 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]

41. 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]

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

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

[DUR1005]

43. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.
- [DUR1015]
44. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
- [DUR1045]
45. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
- [DUR1795]
46. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- [DUR1805]
47. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
- [DUR1825]
48. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]

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

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Final inspections - on maintenance
- (h) Off Maintenance inspection

Stormwater Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

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

[DUR1895]

50. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

51. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

52. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

53. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

54. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

55. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

56. 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]

57. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

58. Access to adjoining Lot 1 DP 816914 is to remain open and functional at all times during the construction period.

The existing access driveway to the adjoining property is to be connected to the new road by appropriate footpath crossing treatment.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

59. 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]

60. Section 94 Contributions

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

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

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

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

(a) Tweed Road Contribution Plan:

52 Trips @ \$1829 per Trips \$95,108

(\$1662 base rate + \$167 indexation)

S94 Plan No. 4

Sector4_4

(b) Open Space (Casual):

8 ET @ \$526 per ET \$4,208

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

(c) Open Space (Structured):

8 ET @ \$602 per ET \$4,816

(\$575 base rate + \$27 indexation)

S94 Plan No. 5

(d) Shirewide Library Facilities:

8 ET @ \$374 per ET \$2,992

(\$374 base rate + \$0 indexation)

S94 Plan No. 11

(e) Eviron Cemetery: 8 ET @ \$131 per ET (\$131 base rate + \$0 indexation) S94 Plan No. 13	\$1,048
(f) Emergency Facilities (Surf Lifesaving): 8 ET @ \$113 per ET (\$113 base rate + \$0 indexation) S94 Plan No. 16	\$904
(g) Extensions to Council Administration Offices & Technical Support Facilities 8 ET @ \$1996.8 per ET (\$1996.8 base rate + \$0 indexation) S94 Plan No. 18	\$15,974.40
(h) Cycleways: 8 ET @ \$352 per ET (\$352 base rate + \$0 indexation) S94 Plan No. 22	\$2,816
(i) Regional Open Space (Casual) 8 ET @ \$855 per ET (\$855 base rate + \$0 indexation) S94 Plan No. 26	\$6,840
(j) Regional Open Space (Structured): 8 ET @ \$2327 per ET (\$2327 base rate + \$0 indexation) S94 Plan No. 26	\$18,616

[PSC0175]

61. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

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

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

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[PSC0185]

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

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

[PSC0215]

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

[PSC0235]

64. All landscaping requirements shall be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate.

[PSC0485]

65. 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]

66. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

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

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

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

[PSC0735]

67. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

68. 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]

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

- (a) Easements for sewer, water supply and drainage (where applicable) over ALL public services/infrastructure on private property.
- (b) Restrictions are to be created over Lots 1 to 8 stating that;

- The lot is not connected to a reticulated water service, and that all future owners will need to make alternative arrangements for a potable water supply, and to meet Rural Fire Service requirements.
- The lot is not connected to a reticulated sewer system, and any dwelling to be constructed on the site will need to provide an on-site sewage management system, generally in accordance with the recommendations of the "On-site Sewage Management Design Report" numbered HMC 2008.058, by HMC Environmental Consulting Pty Ltd, dated June 2008.
- Any dwelling to be erected on the site shall be located in the nominated building envelope in accordance with the Preliminary Contaminated Land Assessment Report for Lot 2 DP 866690 Cobaki Road, Cobaki. (prepared by HMC Environmental Consulting Pty Ltd and dated January 2009) Report: HMC 2008.167 and as approved by Development Consent DA09/0113. Alternative dwelling locations can be considered, but will require a contaminated lands investigation and separate approval of Council.

- (c) The existing Restriction-on-Title over the parent property Lot 2 DP 866690 regarding the protection of two Black Walnut (*Endiandra globosa*) trees located in the 7(d) zone - is to be reiterated and created over Lot 6 only. Burden: Proposed Lot 6. Benefit: Tweed Shire Council.

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]

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

[PSC0845]

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

[PSC0855]

72. 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]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

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

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

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

75. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

76. 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. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0945]

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

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

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

78. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

79. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to a point no less than 45 metres from the front boundary of each allotment.

The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1175]

80. Prior to the issue of a subdivision certificate the applicant shall be issued with approval to operate an onsite sewerage management system under Section 68 of the Local Government Act 1993 for the existing system servicing the existing dwelling located on proposed Lot 9.

[PSCNS01]

81. The existing Right-of-Carriageway encumbering the front of the parent property is to be extinguished as part of the application for a Subdivision Certificate.

[PSCNS02]

GENERAL TERMS OF APPROVAL UNDER THE WATER MANAGEMENT ACT 2000 (Works requiring a Controlled Activity Approval)

Plans, standards and guidelines

1. These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA09/0113 provided by Council and the additional information provided by Allen Patterson with letter dated 28 May 2009.

Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the Department of Water & Energy must be notified to determine if any variations to these GTA will be required.

2. Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the Department of Water & Energy. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the watercourses identified.
3. The consent holder must prepare or commission the preparation of:
 - (i) Erosion and Sediment Control Plan
 - (ii) Soil and Water Management Plan
4. All plans must be prepared by a suitably qualified person and submitted to the Department of Water & Energy for approval prior to any controlled activity commencing. The plans must be prepared in accordance with Department of Water & Energy guidelines located at www.naturalresources.nsw.gov.au/water/controlled_activity.shtml
 - (i) Riparian Corridors
 - (ii) Watercourse crossings
5. N/A

Rehabilitation and maintenance

6. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Water & Energy.
7. N/A

Reporting requirements

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

Security Deposits

9. N/A

Access-ways

10. N/A
11. N/A

Bridge, causeway, culverts and crossing

12. The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the watercourses or waterfront land, other than in accordance with a plan approved by the Department of Water & Energy.

13. N/A

Culvert

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

Disposal

15. N/A

16. The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the Department of Water & Energy.

Drainage and Stormwater

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

Erosion Control

18. N/A

19. N/A

Excavation

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

Maintaining river

21. N/A

River bed and bank protection

22. The consent holder must clearly mark (with stakes using a GPS or peg out survey), protect and maintain a riparian corridor with a width of 10 metres measured horizontally landward for a distance 10 metres upstream and downstream from the site of the controlled activity (where possible) in accordance with a plan approved by the Department of Water & Energy.

23. N/A

Plans, Standards and Guidelines

24. N/A

25. N/A

26. N/A

27. N/A

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

1. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 9, to a distance of 10 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
3. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'. A perimeter road nor a through road are required in this instance.

REPORT:

Applicant: Mr A Patterson and Mrs J Patterson
Owner: Mr AJ Patterson and Mrs JA Patterson
Location: Lot 2 DP 866690, No. 161 Cobaki Road, Cobaki
Zoning: 1(c) Rural Living & 7(d) Environmental Protection (Scenic/Escarpment)
Cost: \$1,000,000

BACKGROUND:

History

The site has been in the current ownership since 1992. Applications have been lodged over the subject site as follows:

- DA1584/92: dwelling
- D98/0189: attached dual occupancy – the (retrospective) addition of a flat to the lower level of the existing dwelling (1992) to create an extra occupancy. Approximate area of the flat is 86m² at one third of the gross floor area of the lower section. Contributions were paid for Section 94 Plans 4, 5, 11, 13, 16 and 18.
- DA02/0516: use existing packing shed to sell produce – application to formalise the sale of whole seasonal produce grown on the land with a display area of 15m² from an existing packing and storage shed located approximately 500m from Cobaki Road.
- CDC03/0263: bed & breakfast – complying application for construction of a building for B&B purposes – consent issued 23/09/03, expired 23/09/08.
- MP08_0107: 9-lot rural residential subdivision and internal road – the initial major project version of the current application.

The applicant met with Council officers at the Development Assessment Panel meeting held on Wednesday 4 June 2003 to discuss a proposed three-lot subdivision (two rural residential lots and a balance area). The development met the criteria as a 'state significant development' to be lodged with Planning NSW as the consent authority. No subsequent application was lodged.

Prior to the current application being lodged in March 2009, the developers met with Council officers at the Development Assessment Panel meeting held on Wednesday 30 April 2008.

The application was lodged with the Department of Planning under the SEPP (Major Projects) 2005 and Council was requested to provide details of key issues and assessment requirements in August 2008. The applicant requested that the Department of Planning review their decision, given the minor nature of the development. The department subsequently declared the project of Local Environmental Planning Significance with Tweed Shire Council to be the consent authority on 29 January 2009.

This application (DA09/0113) was lodged with Council on 9 March 2009.

The Subject Site

The subject land is described as Lot 2 DP 866690 Cobaki Road, Cobaki and has a total area of 32.65 hectares. The site is irregular in shape with frontage and existing vehicular access to Cobaki Road. The land has flat, moderate and steep slopes. The lower slopes have been used primarily for agricultural purposes including the growing of passionfruit, bananas, paw paw, tomatoes and small crops. The higher slopes contain remnant vegetation that will be retained.

The land is not identified as prime crop or pastureland by NSW DPI (Agriculture), nor is it identified as being of any significance in the Northern Rivers Farmland Protection project mapping. The applicant has ceased horticultural production in any event, as it is not economically viable.

Drainage paths flow across the subject site defined by natural grassed gullies and swales with no well defined banks. There is a southern drainage path near the existing access road that has rocks scattered within the swale drain and palm trees adjoining the gully. The northern drainage near the existing access has a predominant earth batter on the one side and minor slope on the other.

The majority of the site has been previously cleared for agricultural practices. There are a number of areas of retained vegetation within the site that support a mix of sclerophyll and rainforest species.

Existing improvements include a two storey dwelling, several farm sheds, nine dams and shade structures (hail nets on frames). The dwelling is to be retained within proposed Lot 9 but the shade structures will be removed. One small dam will need to be filled to enable construction of the public road.

A Section 88B restriction to user applies to the land. It includes:

- Restriction on Use (per DP 866690) that protects two Black Walnut Trees and associated enclosure fences located in the 7(d) zoned land within the subject site
- Easement to Supply Water at 2m wide in the north-eastern corner of the site which is well removed from any proposed development
- Right of Carriageway 20m wide and variable which covers the narrow access 'neck' of the property as it joins Cobaki Road, providing legal access for adjoining Lot 1 DP 816914. This will become the site's dedicated public road access but will still need to be formally extinguished as part of the subdivision process.

The site is located in an area generally characterised as rural residential / agricultural. Adjoining land to the south is utilised for grazing purposes. Land to the south and west is zoned for urban or rural residential purposes.

Site levels range from approximately RL 3m AHD adjacent to Cobaki Road to well in excess of RL 100m AHD in the south eastern corner of the site.

The Proposed Development

The applicant seeks consent for a nine (9) lot rural residential subdivision including construction of a dedicated public road for access. Land areas of the proposed lots are as follows:

- Lot 1 = 1.00ha
- Lot 2 = 1.16ha
- Lot 3 = 1.36ha
- Lot 4 = 1.20ha

- Lot 5 = 1.04ha
- Lot 6 = 20.22ha (retention of all 7(d) zoned land & 2.72ha of 1(c) zoned land)
- Lot 7 = 2.21ha
- Lot 8 = 1.00ha
- Lot 9 = 2.48ha (retention of existing dwelling)

The proposal includes:

- Subdivision of the site into 9 rural residential lots (Torrens Title)
- Creation of a new public road
- Works to include stripping, clearing and bulk excavation to form roadways, building platforms and driveways.

The plan of subdivision identifies proposed house sites on each of the lots. The location of these sites has been based on a consideration of site topography and drainage and aims to minimise cut and fill requirements for future housing. Proposed effluent disposal areas have also been identified for each of the sites.

The applicant proposes to construct a new 7m wide (kerb to kerb) road within a 20m / 16m wide road reserve, to connect to Cobaki Road. Minor road widening of Cobaki Road is required to ensure appropriate sight distance is provided for the new intersection being created. A Section 138 application will not be required as all required civil works will be covered by the construction certificate application.

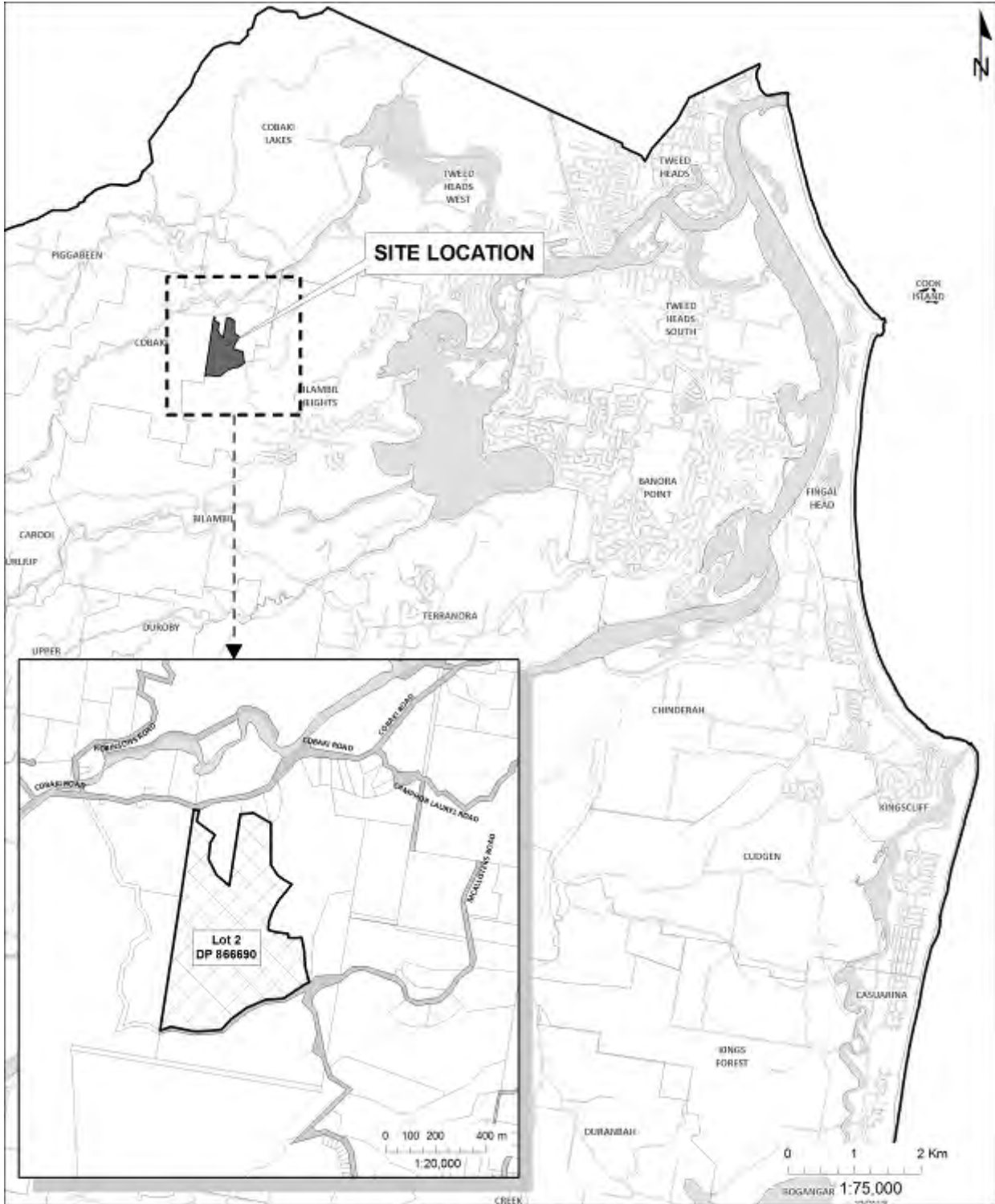
Public Submissions

The proposed development did not attract any letters of support or objection following exhibition of the application.

Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding rural residential development and environmentally sensitive land, amenity issues and an assessment against SEPP 1 and Clause 20(2)(a) of the Tweed LEP 2000 in particular, the proposed nine (9) lot rural residential subdivision is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

SITE DIAGRAM:



LOCALITY PLAN
Lot 2 DP 866690
No.161 Cobaki Road, Cobaki

Filename: Z:\year\planning\tweed\A4P_B&W SitePlan.mxd

Author: J. Bachelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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Coordinate System - MGA Zone 56
 Datum - GDA 94

Cadastral: 1 December, 2009
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DO NOT SCALE
 OFF PRINT - NOT CERTIFIED

Civic and Cultural Centre
 3 Tambouran Road
 Manildra NSW 2484
 PO Box 316
 Manildra NSW 2484
 T: (02) 6670 2400 / 1300 262 872
 F: (02) 6670 2482
 W: www.tweed.nsw.gov.au
 E: planningreforms@tweed.nsw.gov.au



DEVELOPMENT PLANS:

North Arrow

The hills to the east of the property is covered by plantation crops and dense forest communities. The forest through this area of the site will be retained and the plantations removed, providing grassed slopes with a forest background which will emulate the scenic pastoral character site of the surrounding valley.

The views from the site to the north are restricted by the narrow entry to the site from Cobaki Road. To the north of the site there is grazing land and properties on low lying land. The view into the site is also restricted to the entry off Cobaki Road. As this is the first identifying feature of the site, a distinctive landscape feature will be allocated to provide an entrance statement for the site.

South of the site the land rises up the mountain. The existing forest communities that grow on the slopes beyond the plantation crops form a deep green border before the slopes open into cleared grazing land. Rural dwellings can be seen in the far distance. This scenery forms an attractive rural backdrop to the landscape features of the site. The proposed development will have no significant impacts to views out of or into the site to the south.

The western boundary of the site adjoins with rural grazing land. The green pastoral land and the slopes of the opposite side of the valley dominate the views from the site in this direction. The site provides a vegetated profile to the west due to the dense landscape plantings along the western boundary. The intent of the landscaping for the proposed development will provide vegetation along this boundary to ensure scenic views from Cobaki Road and the adjacent properties are maintained.

CLIENT	PLAK NUMBER	LOCATION	TITLE	SCALE	DATE	DESIGN BY	ASSOCIATED CONSULTANTS
ALLEN PATTERSON	118 - AV	LOT 2 ON DP988690 COBAKI ROAD - COBAKI	SITE AERIAL VISUAL ANALYSIS	N/A	11/12/2008	Allen Patterson & Associates Ltd Lynne Stewart & Associates Julia Duffy & Associates	DARREN GIBSON PLANNING



PRELIMINARY
ONLY
20/11/2007

PRELIMINARY
ONLY
20/11/2007



B & P SURVEYS CONSULTING SERVICES
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ALLAN & JUDY PATTERSON

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The existing vegetation on site will be conserved by the development proposal. The planting allocation has provided a different landscape feature for the site. It also provides a buffer from surrounding houses and creates a physical barrier around the proposed MA.

The road reserve for the development should be planted in small groups in a suitable species to ensure that it blends in with the rest of the landscape and areas in formal structures: plant layout.

The road reserve areas should be planted with a mix of tall and short trees to provide a canopy effect and provide a complete grass coverage is achieved with the road reserve.

Proposed infrastructure road.

The entrance road will have been allocated to provide the subdivision with a unique landscape character that suits the location. An entrance easement provides a great opportunity to distinguish the site from the surrounding land use and provides a point of reference along rural roads.

The landscape enhancement areas have been provided along the banks of the existing flows. (Refer to Concept Design). These areas will provide the course palms as they are already growing in this site. These areas will be planted with native and exotics to enhance the existing water bodies.

The existing sites on site have been conserved and will provide a park-like setting of natural environment, enhanced by the best of the MA and skill roads.

Future road access

The existing site access will be provided to adequately offset the proposed effect on site for irrigation purposes. These can be used for turf or pasture with any growing areas.

Impervious paved areas: The impervious areas and the future residential services will be paved with pervious concrete. This will be effective in reducing the water runoff and will be planted with native grass species, this will enhance soil exposure.



The new landscape (or) major lakes, these provide a great landscape feature for the proposed subdivision. This proposed road will run east from the lake including the irrigation by the southern part of the site. These wetlands will provide a wide range of landscape functions including, seedling, feeding, and breeding habitats for native and introduced species. The body of water adds to the scenic experience and provides an extra dimension to the surrounding and combines with the vegetation in a landscape bordering the site.



The existing wetlands/forest vegetation is setback 20m from the proposed road on the opposite side from the lake. This provides a natural border and enhances the landscape setting. The site best will preserve the existing vegetation commitment on site.



The site contains various palms, including the coconut palms. These are providing a variety of landscape functions, including shelter, soil binding, and erosion control. The recommended trees are native on site to fill the landscape function but they require maintenance to ensure they are not allowed to develop fruit. These may be gradually removed and replaced by more suitable species.



Another great landscape feature on the site is a first class concrete for irrigation on the lake. This concrete will be used to support the proposed irrigation. This will be used to support the irrigation system and provide a buffer from other surrounding land use.

CLIENT	PLAN NUMBER	LOCATION	TITLE	SCALE	DATE	DESIGN BY	ASSOCIATED CONSULTANTS
ALLEY PATTERSON	178 - PL	LOT 2.0M DP986680 COBAKI ROAD - COBAKI	PROPOSED DEVELOPMENT LANDSCAPE CONCEPT DESIGN	(A3) 1:2000 (A1) 1:1000	17/11/2008	John Durnan (Lead Designer) Laine Marshall (Designer) Alan O'Leary (Landscape Architect)	CARREN GIBSON PLANNING

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

Clause 8 - Zone objectives

The site is zoned 1(c) Rural Living & 7(d) Environmental Protection (Scenic/Escarpment) as per the Tweed LEP 2000.

1(c) Rural Living Zone

Primary objectives of the 1(c) Rural Living zone relate to the enabling of rural residential development which does not compromise rural activities within the vicinity, detract from rural amenity or place unreasonable demands for the extension of public amenities or services. They also permit quality rural residential development that makes a positive contribution to existing local rural character.

The secondary object of the zone enables other development that is compatible with rural residential development.

The proposed rural residential subdivision is consistent with the applicable primary objectives of the zone in that it represents quality rural residential development of appropriate scale and character to that of the locality. It will not result in a burden on public amenities or services.

Dwelling houses not connected to Council's reticulated sewerage system are permissible if they are located on allotments with a minimum area of one (1) hectare (refer Clause 21 of the Tweed LEP 2000). All proposed lots meet the minimum requirement of one (1) hectare.

7(d) Environmental Protection (Scenic / Escarpment) Zone

Primary objectives of the 7(d) Environmental Protection (Scenic / Escarpment) zone seek to protect and enhance areas of particular scenic value to the area of Tweed as well as minimising soil erosion and preventing inappropriate development that may negatively impact upon the amenity of visually prominent locations.

The secondary objective permits other development that is compatible with the primary function of the zone.

It is noted that no development is proposed within this zone. It shall be retained in its entirety within proposed Lot 6.

As such, the proposed rural residential subdivision supports the primary intent of this zone by locating this environmentally sensitive land within a land parcel that includes the creation of a building platform on a 2.72ha portion of 1(c) Rural Living zoned land.

Creation of Lot 6 with a total area less than 40ha is discussed below (refer Clause 20 of the Tweed LEP 2000) and is the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General.

Clause 15 - Essential Services

Country Energy has advised that the existing infrastructure is capable of servicing the proposed development. This may require the establishment of distribution substations, extending the high voltage (11,000V) supply from connection points.

Reticulated potable water and piped effluent disposal infrastructure is not available to the subject site.

Telecommunication services are currently provided to the area via Telstra infrastructure.

Clause 16 - Height of Building

There are no buildings proposed as part of the development application.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment.

Clause 35 - Acid Sulfate Soils

The site exhibits Class 5 Acid Sulfate Soils. The proposed works include construction of a roadway, building platform and driveways. These works are within 500m of Class 2 Acid Sulfate Soils, however, are considered minor and are unlikely to lower the water table below 1m AHD in the Class 2 land. Acid Sulfate Soils are unlikely to be a constraint for the proposed works.

Other Specific Clauses

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent.

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

The main objective of this clause is to prevent the potential for fragmentation of rural land that would lead to an adverse impact upon its agricultural and/or environmental character. It is also to prevent unsustainable development and to protect the area of Tweed's water supply quality.

Clause 20 provides for the subdivision in 7(d) zoned land if the area of each allotment created is at least 40 hectares. This application proposes to locate 17.5ha of 7(d) zoned land (along with 2.72ha of 1(c) zoned land) within a parcel with a total land area of 20.22ha.

It is proposed to use this 'undersized' lot for residential purposes by the creation of a building pad in the 1(c) zoned portion. It is therefore the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General and is discussed in full at a later stage within this report.

Clause 21 – Subdivision in Zone 1(c)

The objective of Clause 21 is to ensure that the semi-rural character and environmental values of the locality are protected.

The proposal is in accordance with Clause 21 as each of the proposed lots which are not connected to the Council's reticulated sewerage system, have an area not less than 1ha. A tank water supply has been nominated for future dwellings and indicative areas for on-site treatment and disposal of sewage have been nominated and assessed as acceptable by the Environmental Health Unit.

Clause 26 – Development in Zone 7(d) Environmental Protection (Scenic/Escarpment)

The objective of this clause is to ensure that the development of land within this zone minimises soil erosion and preserves and enhances the scenic quality of the land and the locality.

Apart from some possible minor clearing works for boundary fencing (on the boundary with 1(c) zoned land) there is no development proposed in this zone.

Clause 31 – Development Adjoining Waterbodies

The relevant objective of this clause is to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.

It applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody. Waterfront land, for the purposes of this development application is land and material in or within 40m of the top of the bank or shore of the watercourses identified on the site.

Minor drainage paths are located on the subject site that encroach upon the existing and proposed new road alignment. Three culvert crossings are proposed under the new road alignment to maintain the existing drainage path flows. Modification of the existing water paths on site will be limited to discharging the existing overland flow under the road which will maintain the existing alignment across the property.

The application was referred, as integrated development, to the Department of Water and Energy. Please refer to an assessment undertaken (and subsequent approval granted) by DWE in a later section of this report. As such, the proposal complies with Clause 31.

Clause 34 – Flooding

The site is considered flood liable, however the affectation is limited to a very small inconsequential area along the north-western boundary. The nominated flood level for the site is RL 3.6m AHD. The flood liability is limited to the future roadway and will have no effect on future residential lots. Minor cut and fill for the road will necessitate slight filling of the flood plain which is deemed acceptable.

Clause 39 – Remediation of Contaminated Land

The objective of this clause is to ensure that contaminated land is adequately remediated prior to development occurring.

Please refer to a full assessment in accordance with SEPP 55 (Remediation of Land) in a later section of this report. As such, the proposal complies with Clause 39.

Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the Local Rural Fire Service on 20 March 2009 for consideration and comment, as the subject site is bushfire prone land. A response was received 23 April 2009. The Service recommended conditions to be attached to the development consent, should it be granted.

The conditions relate to Asset Protection Zones, Water and Utilities and Public Road Access.

Clause 54 – Tree Preservation Order

The objective of this clause is to enable the protection of vegetation for reasons of amenity or ecology. Any removal of vegetation as a result of this development proposal proceeding must be considered in terms of:

- the Tree Preservation Order 1990 - affects land zoned 1(c), and
- the Tree Preservation Order 2004 – affects land zoned 7(d)

and must obtain development consent.

The proposal is designed to avoid vegetation clearing, with dwelling sites, effluent disposal and access located within existing cleared areas of the site previously used for agricultural purposes. Minor clearing may be required for boundary fencing and possible alternative bushfire access.

A summary of vegetation to be removed and considered as part of this development application is outlined below:

- clearance of a narrow band of disturbed, fragmented vegetation which is bounded by Cobaki Road and a cleared paddock in order to widen Cobaki Road. This vegetation does support a single Red Bopple Nut sapling (approximately 1.5m in height) which is listed as 'vulnerable' under the Threatened Species Conservation (TSC) Act 1995 and the Environment Protection and Biodiversity Conservation (EPBC) Act 1999. It is recommended that this specimen be relocated to the area of suitable habitat within the mixed wet sclerophyll closed forest. The applicant has advised that his sapling will be relocated to a suitable portion of 7(d) land
- relocation of exotic species including a variety of palms, frangipani and succulents from the area designated for construction of the public road to other areas within the subject site.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause states that 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 recent history of the use of the site since 1992 has been for minor agricultural activities. The small parcel of land has been deemed of marginal agricultural value by the Department of Primary Industries.

Adjoining and surrounding land is utilised for rural residential and grazing purposes.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon any nearby agricultural activities.

Clause 15: Rivers, streams and wetlands

This clause aims to ensure the viability of wetlands or fishery habitats. The only waterbodies on this site are dams and drainage paths (which have been discussed as part of the integrated referral to the Department of Water and Energy).

Magpie Geese (vulnerable species under the TSC Act) visit the dams on an infrequent basis. Only one small dam out of nine will be removed for the purposes of building the new public road. The remaining dams will be retained in their current state. The proposed plan will not have an adverse effect on the life cycle of the species.

Clause 29A: Natural areas and water catchment

Clause 29A controls clearing of native vegetation in zones such as 7(d) Environmental Protection (Scenic/Escarpment). The only possible clearing within proximity of the 7(d) zone is minor for the purpose of boundary fencing associated with the division. This clearing is subject to control under the Native Vegetation Act 2003. The applicant has stated that he would prefer not to remove any vegetation within the 7(d) zone for the purpose of fencing.

In any case, such minor clearing will have little or no impact upon the scenic values of the site.

Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

Site erosion will be minimised throughout the construction phase of the road and building pads and enforced via conditions of consent. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 7(d) zone for subdivision purposes as contained within Clause 20(2)(a) of the Tweed LEP 2000.

Clause 20(2) of the Tweed LEP 2000 states that:

*Consent may only be granted to the subdivision of land:
(a) within Zone 1(a), 1(b2), 7(a), 7(d), or 7(l) if the area of each allotment created is at least 40 hectares.*

The applicant contends that *the non-compliance in relation to minimum lot size is unavoidable, and the proposal is consistent with other controls and policies in the Tweed LEP and DCP.*

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

In support of the proposed variation, the applicant has provided the following:

“The reasons for this objection, which are outlined below, show that in the circumstances of this case the strict application of the standard is unreasonable, unnecessary and would not be compatible with sound planning principles.

- *The area of 7(d) zoned land is currently less than Council’s minimum requirement*
- *The proposal will not result in further fragmentation of this land as it is proposed to be contained within a single allotment and nothing within the proposal will result in an adverse impact on this land*
- *The land is marginal agricultural land given soil type and topography*
- *The land is not identified as prime crop or pastureland by NSW DPI (Agriculture) nor is it identified as being of any significance in the Northern Rivers Farmland Protection project mapping*
- *The proponent has ceased horticultural production as it is not economically viable*
- *The proposed subdivision will result in a more economic and orderly use of land for a use consistent with those surrounding the site*
- *Non-compliance with the minimum lot size control does not raise any matter of significance for State or regional environmental planning*
- *No public benefit issues are adversely affected by the proposed development not complying with the minimum lot size.*

The application is consistent with the objectives of the Clause 20(2)(a) development standard in that:

- *Appropriate technical investigations have been undertaken in relation to ecology and visual impact, and are discussed in detail in the Statement of Effects. The 7(d) zoned land will not require clearing, except for minimal tree removal for the purposes of boundary fencing. The subdivision layout and proposed building envelope locations minimise visual impact.*
- *The proposal will have no impact on Tweed’s water supply quality. The management of site water has been addressed in the proposed Stormwater Management Plan and On Site Effluent Report accompanying the Statement of Environmental Effects.”*

Assessment of the applicant’s submission:

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

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

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

The objective of Clause 20(2)(a) of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum allotment size. The objectives of this clause ensure there are no detrimental impacts to the ecological or scenic values of the land and prevent further fragmentation.

The proposed rural residential subdivision is of a quality design that is consistent with surrounding development. It does not compromising the ecological or scenic value of the subject site.

The applicant's submission in relation to being well founded is supported.

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

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for a Torrens Title subdivision that incorporates a new public road and no unreasonable burden on public infrastructure.

It is not considered that the granting of this application would hinder the attainment of such objectives.

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

The proposed non-compliance with Clause 20(2)(a) of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

No public benefit issues are adversely affected by not being able to maintain the development standard in this case as it already is non-compliant.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

Concurrence was granted in this instance for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The proposal allows for protection of the 7(d) land from further development.

It is recommended that Council assume the Director General's concurrence.

As stated previously in this report, concurrence was granted in this instance by the Director General for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The proposal allows for protection of the 7(d) land from further development.

SEPP No. 55 - Remediation of Land

This policy provides controls and guidelines for the remediation of contaminated land and aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Council's Environmental Health Unit has advised that:

- Checks of aerial photographs indicate areas of grassland, forest and some cropping on the subject site
- Any agricultural products used by the applicant would have degraded and are unlikely to have resulted in the site being contaminated
- Sampling was undertaken in accordance with the NSW EPA Guidelines for Assessing Banana Plantations which showed minor elevations of arsenic, below the Health Investigation Level for residential A development.

The applicant has advised that:

- Prior to 1992, the property was used only for cattle and horse grazing
- He started cropping on the site in 1992 when the more residual chemicals were not available for sale
- No such chemicals have been used or stored on the property
- Products have not been applied for over two years.

In summary, the applicant has used non-persistent chemicals on site and results of the sampling have not indicated analytes above health investigation levels for the proposed residential use. It is unlikely that the dwelling sites have been impacted by soil contamination and the proposed dwelling sites appear suitable for residential use.

A Section 88B 'restriction to user' will be placed on the title requiring further contamination tests to be undertaken should any of the proposed dwelling sites be altered.

SEPP No 71 – Coastal Protection

This policy aims to ensure that development in the NSW coastal zone is appropriate and suitably located to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.

The subject site is located within the coastal zone (although it is not within a sensitive coastal location) and is therefore subject to the provisions of SEPP 71. Clause 18(1)(c) states that subdivision of rural residential land into more than five (5) allotments requires preparation of a master plan. The requirement for this Master Plan has been waived by the Minister of Planning given the minor nature of the development.

Clause 8 of the SEPP identifies matters for consideration. The proposal is consistent with the aims of the SEPP in that:

- Public access to or amenity of the coastal foreshore will not be affected as a result of the proposal
- The residential form is consistent with the rural nature of the surrounding locality
- There will be no adverse impact upon the scenic qualities of the coastline
- Habitat for the vulnerable 'Magpie Geese' species will be conserved
- The site will be managed with a Stormwater Management and Erosion and Sediment Control Plan
- Retention of any functional wildlife corridors, and
- Site constraints, such as topography, have been taken into account in the subdivision design which minimises earthworks.

The protection of cultural heritage has been addressed via a condition of consent, in the event items of cultural significance are discovered all site works shall cease immediately.

The proposed development is not considered to result in adverse cumulative impacts, which is evident throughout this assessment.

SEPP (Major Projects) 2005

The application was originally lodged with the Department of Planning under the SEPP (Major Projects) 2005 and Council was requested to provide details of key issues and assessment requirements in August 2008.

The applicant requested that the Department of Planning review their decision, given the minor nature of the development. The department subsequently declared the project of Local Environmental Planning Significance with Tweed Shire Council to be the consent authority on 29 January 2009.

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

None of the provisions contained within the SEPP relate specifically to this site. The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

Draft TLEP amendment numbers 20, 21, 70 and 76 apply to the subject site. As per advice from the Department of Planning (Planning Circular 08-013) draft environmental planning instruments exhibited prior to 1 March 2006 and have not been gazetted are no longer required to be taken into consideration by consent authorities when determining development applications under section 79C of the EPA Act 1979. Therefore draft LEP amendment numbers 20 and 21 have not been considered in this assessment. Amendment numbers 70 and 76 are not relevant to the site.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The site is considered flood liable, however the affectation is limited to a very small inconsequential area along the north-western boundary. The nominated flood level for the site is RL 3.6m AHD. The flood liability is limited to the future roadway and will have no effect on future residential lots. Minor cut and fill for the road will necessitate slight filling of the flood plain which is deemed acceptable.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

The proposed road widths and lot sizes are considered acceptable. Road frontage dimensions are considered appropriate.

The smaller lot frontages in the cul-de-sac are scaled off the plans as 10m for Lot 7 and 14m for Lot 8. The A5 requirement for a minimum 9m kerb-line frontage for lots in urban cul-de-sac heads is not enforceable in rural situations, primarily as off-street parking is usually readily available in the rural areas. The hatchet shaped access handles for both these lots are not preferred but are acceptable.

A11-Public Notification of Development Proposals

Notification of the development was provided to adjoining land owners/properties in accordance with this section. The proposal was placed on exhibition for 14 days from 25 March to 8 April 2008. No submissions were received as a result of this process.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

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

Access, Transport and Traffic

Existing Right-of-Carriageway:

- The adjacent property, Lot 1 DP 816914 utilises this property's gravel driveway for access to Cobaki Road via a Right-of-Carriageway. The adjoining driveway is bitumen sealed within its own boundary. The proposed new (dedicated) road will address legal access for the adjoining property, with the existing driveway needing to be connected to the new road and at the same time ensuring unimpeded access for the neighbour during the construction phase. The existing Right-of-Carriageway will need to be extinguished as part of the plan / Section 88B submission.

Existing Driveway:

- The proposed new road will replace the existing driveway and retain much the same location. The existing driveway has been planted out with hundreds of palms and is very narrow in places. A landscaping plan will be required to address the loss of existing flora.

New Lots:

- Access to new individual rural lots is usually required to be provided via a 3m wide bitumen sealed driveway to 3m inside the property, plus a 3.6m wide gate in the fence.
- There is no requirement for a concrete footpath on the new road due to the rural setting and minimal traffic generation.

Kennedy Drive Catchment:

- As confirmed by prior correspondence with Council, the subdivision will generate an extra 52 vehicle trips per day. The existing road network is capable of handling this extra traffic. There is existing available capacity for Kennedy Drive at Cobaki Bridge for this traffic flow.

Intersections:

- The subdivision will create a new road intersection which is to be designed in accordance with "Austroads Guide to Traffic Engineering Practice Part 5: Intersections at Grade" booklet.

Drainage

Council's Development Engineers have requested further stormwater management solutions to be submitted as part of the Construction Certificate assessment. A condition has been applied accordingly.

Flora and Fauna

Ecological value of the site is considered low to moderate overall, with some habitat value contained within a number of water bodies scattered over the site and some faunal movement able to occur through treed areas on the steeper slopes. It should be noted that such areas are generally mapped as Camphor Laurel dominated.

Whilst this does not preclude threatened species presence, both flora and fauna, the vegetated slopes do not form part of the development site and are intended to be set aside within one larger lot to be retained by the present owners.

One threatened plant, the Bopple Nut (*Hicksbeachia pinnatifolia*) has been located within the road reserve of Cobaki Road and appears likely to be impacted by road widening required for sight distances. Bopple Nuts, similarly to Davidsons Plums, have recorded varying success in translocation efforts but are likely to succeed with preparation and care.

The property also has an Section 88B instrument on title protecting two Black Walnut (*Endiandra globosa*) trees within the 7(d) zoned area, towards the north-eastern corner of the site. This species is listed on the *Rare or Threatened Australian Plant list* (Briggs and Leigh) as a rare plant, however, it is not listed on the Schedules of the Threatened Species Conservation Act 1995 and the flora location is well clear of any proposed works.

A third threatened species, being a migratory bird, the Magpie Goose has been recorded as occasionally utilising farm dams on the site. Proposed works should not have direct impacts upon this species as the majority of water bodies are proposed to remain. This is assuming no severe pollution events occur.

Any filling or draining apart from the one small dam included within the current proposal must be considered in light of the species' habitat requirements such that seasonal use is not prevented.

A rare and threatened species management plan has been conditioned to deal with the above issues.

The only other issues of concern with regard to the proposed development is the presence of large numbers of weed trees, primarily Camphor Laurel (*Cinnamomum camphora*) on the steeper slopes, and within landscape plantings, with Cocos Palm (*Syagrus romanzoffianum*) being of greatest concern.

It is considered that Camphor Laurel has now been declared a Noxious Weed and thus the requirement to continuously control any stems less than 3m in height and to control 10% per year of the larger trees is covered under separate legislation (Noxious Weeds Act) and is an appropriate way to address the issue. A weed management plan has been conditioned to deal with exotic landscape species.

(c) Suitability of the site for the development

Groundwater

The subject site is classified as having Moderately High groundwater vulnerability. Sampling by Border Tech did not intercept groundwater with boreholes ranging from 1.6m – 3m in depth across the site. Groundwater is unlikely to be intercepted by the proposed works.

On-site Sewage Management

There is a current approval to operate for the existing onsite sewage management system currently connected to the dwelling on the site.

Waste

Residential waste collection services currently operate in this area by Solo Resource Recovery. They have agreed to service the additional lots and will be able to do so without the need for reversing or any other awkward manoeuvring.

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

The proposal was placed on public exhibition for fourteen days from 25 March to 8 April 2008. To date no submissions have been received.

Department of Water and Energy

The application was referred as integrated development to DWE for General Terms of Approval (GTA) for works requiring a Controlled Activity Approval under the Water Management Act 2000. These works entail works within land and/or placement of material in or within 40m of the top of the bank or shore of the watercourses identified.

The watercourses identified are minor overland drainage paths that are located in proximity to the existing access routes and proposed public road on the cleared sections of the subject site.

Council's consent must be consistent with the GTA proposed to be granted by the approval body. Accordingly, the GTA have been entered as conditions to be applied to the proposed development, should it be approved.

(e) Public interest

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public.

OPTIONS:

1. Resolve to approve the development application with conditions; or
2. Resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the option to appeal the matter in the Land and Environment Court should they be dissatisfied with Council's resolution.

POLICY IMPLICATIONS:

Nil

CONTRIBUTIONS:

Applicable Section 94 contribution fees have been calculated for the additional eight (8) rural residential lots (taking into account the existing site credit of 2ET for all applicable contribution plans to cater for the existing attached dual occupancy which will be located on proposed lot 9) and applied as a condition of consent. No Section 64 Water or Sewer contributions apply. A breakdown of the calculations is on file.

CONCLUSION:

The proposed nine (9) lot rural residential subdivision is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

6 [PR-CM] Development Application DA09/0460 for a Boundary Adjustment Subdivision at Lot 3 DP 602563; Lot 6, 7 DP 748802, No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar

ORIGIN:

Development Assessment

FILE NO: DA09/0460 Pt1

SUMMARY OF REPORT:

The proposed development seeks Council consent for a boundary adjustment subdivision which will result in the following configuration:-

- Proposed Lot 11 - Having an area of 4,729m² and a frontage to Upper Burringbar Road.
- Proposed Lot 12 - Having an area of 78.76ha and a frontage to Upper Burringbar Road.
- Proposed Lot 10 - Having an area of 3,253m² and a frontage to Upper Burringbar Road.

The applicants have stated that the reason for the boundary adjustment is to remedy all encroachments by existing improvements over existing lot boundaries and to provide further width for access around the existing dwelling on proposed Lot 11.

As the proposed subdivision will result in proposed Lots 10 and 11 being under the minimum allotment size they will therefore not enjoy a dwelling entitlement in accordance with the Tweed LEP. In this case, for the existing dwellings to remain lawful, existing use provisions will allow the continuation of previous rights to occupy a dwelling house on proposed lots 10 and 11. However, this may create some restrictions should the owners of these allotments intend on doing future development or building works. This issue has been raised with the applicant.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(b) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 10 hectare minimum lot size development standard for the 1(b1) zone.

The SEPP 1 objection relates to proposed lots 10 and 11 being below 10 hectares. Also, Council does not have the authority to assume the Director-Generals Concurrence, as the boundary adjustment subdivision is between three allotments.

The Department of Planning have granted Director General's Concurrence, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than a 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.

RECOMMENDATION:

That Development Application DA09/0460 for a boundary adjustment subdivision at Lot 3 DP 602563; Lot 6, 7 DP 748802, No. 519 Upper Burringbar Road Upper Burringbar No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 2433D1-A3/2 prepared by N.C. White & Associates and dated 15/06/2009, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0125]

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

- 4. 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]

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

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

[DUR1005]

6. 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]

USE

7. 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]

8. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate.

[USE0875]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

9. 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]

10. 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 must include the following:

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]

11. 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]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

13. Prior to the issue of the subdivision certificate the applicant shall be issued with an Approval to Operate the existing onsite sewage management systems on proposed lots 10, 11 & 12 under the Local Government Act, 1993, and shall complete all system upgrades or replacements required by such Approvals, to the satisfaction of the General Manager or his delegate.

[PSCNS01]

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

1. At the issue of a subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on all proposed lots, to a distance of 10 metres or to their respective property boundaries, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

REPORT:

Applicant: Ms L Cotelli

Owner: Mr DF Cotelli, Mr GP Cotelli, Mrs LA Cotelli and Mrs LA Cotelli

Location: Lot 3 DP 602563; Lot 6, 7 DP 748802, No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar

Zoning: 1(b1) Agricultural Protection

Cost: Nil

BACKGROUND:

The proposed development seeks Council consent for a boundary adjustment subdivision between three (3) existing allotments:

- Lot 3 DP 602563 - Has an area of 2,834m² and contains an existing dwelling house and associated garage. Lot 3 is accessed via an existing right of carriageway burdening Lot 6 from Upper Burringbar Road.
- Lot 6 DP 748802 - Has an area of 79.17ha and contains two existing dwelling houses and associated rural outbuildings. Lot 6 is accessed via Upper Burringbar Road
- Lot 7 DP 748802 - Has an area of 1000m² and contains an existing dwelling house and associated garage. Lot 7 is accessed via Upper Burringbar Road.

The proposed subdivision will result in the following configuration:-

- Proposed Lot 11 - Having an area of 4,729m² and a frontage to Upper Burringbar Road.
- Proposed Lot 12 - Having an area of 78.76ha and a frontage to Upper Burringbar Road.
- Proposed Lot 10 - Having an area of 3,253m² and a frontage to Upper Burringbar Road.

The existing lot layout and proposed lot layout are provided in the body of this report for ease of reference.

The applicants have stated that the reason for the boundary adjustment is to remedy all encroachments by existing improvements over existing lot boundaries and to provide further width for access around the existing dwelling on proposed Lot 11.

No works will be required other than the adjustment of boundary fences. The easement to draw water servicing existing Lot 5 DP 605722 is also proposed to be extended (in a westerly direction) to service existing Lot 7 DP 748802 (proposed Lot 10). All other easements are to remain as per the current plan.

The subject land is located in the locality of Upper Burringbar with all lots having an existing boundary and access to Upper Burringbar Road. There is an existing lawful dwelling on each of the existing lots. Proposed Lot 12 has a second dwelling house erected upon the property. A search of Council's rates books from 1960 was conducted to confirm the legitimacy of the dwelling. The rates books state that there were two cottages erected on the property, therefore confirming that there were two dwelling houses erected on the property at that particular date. Based on the above evidence, it is considered that the two dwellings are lawful and attract the protection of Section 106 and are entitled to continue pursuant to Section 107 of the Environmental Planning and Assessment Act 1979.

The land generally falls in a northerly direction towards Upper Burringbar Road and then to the Burringbar Creek, which forms the northern boundary of existing Lot 6.

The application was originally submitted as a minor boundary adjustment. However, the proposed application is not considered to be a minor boundary adjustment in accordance with the Tweed Local Environmental Plan 2000 (Tweed LEP). A minor boundary adjustment is defined as:

'a subdivision of adjoining lots to create new lots none of which is significantly different in area, shape or dimensions from the corresponding former lot.'

In regard to the above definition the proposal cannot be considered minor as the proposed allotments exhibit different shape and dimensions. The application therefore is considered as a subdivision for the purposes of the Tweed LEP.

It must be noted that because the proposed subdivision will result in proposed Lots 10 and 11 being under the minimum allotment size they will therefore not enjoy a dwelling entitlement in accordance with the Tweed LEP. In this case, for the existing dwellings to remain lawful, existing use provisions will allow the continuation of previous rights to occupy a dwelling house on proposed lots 10 and 11. However, this may create some restrictions should the owners of these allotments intend on doing future development or building works. This issue has been raised with the applicant.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(b) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 10 hectare minimum lot size development standard for the 1(b1) zone.

The SEPP 1 objection relates to proposed lots 10 and 11 being below 10 hectares. Also, Council does not have the authority to assume the Director-Generals Concurrence, as the boundary adjustment subdivision is between three allotments.

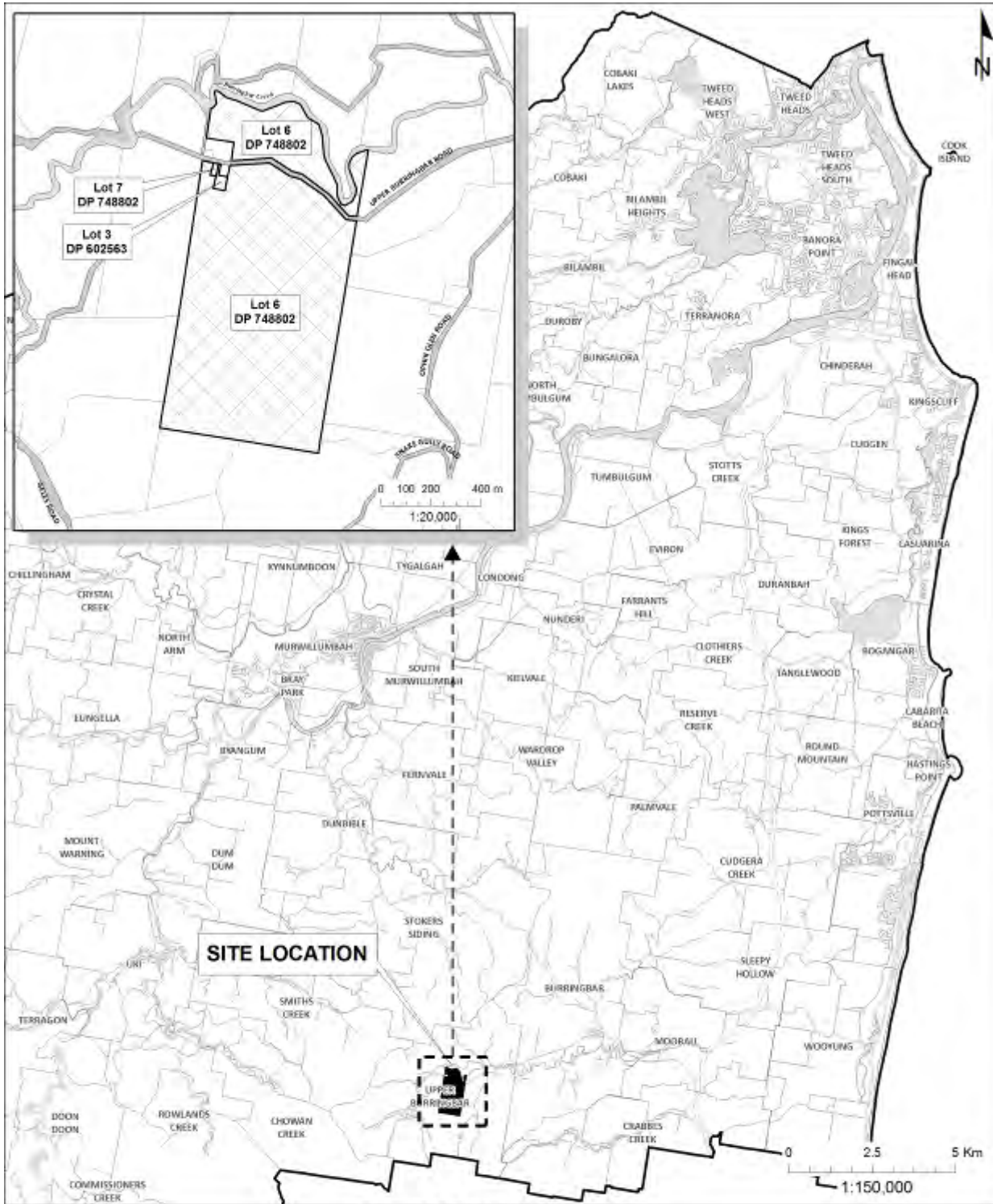
The application was therefore referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 10 hectare minimum lot size development standard. The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- The adjustment to the boundaries is only minor transferring small areas of land from one lot to the two smaller lots to create three lots similar in size to the existing lots.
- The existing three lots have dwellings located on each lot, no new dwelling entitlements are to be given to these lots and no new lots will be created.

As the Department of Planning have granted Director General's Concurrence, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than a 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.

SITE DIAGRAM:



LOCALITY PLAN

Lot 3 DP 602563; Lot 6 & 7 DP 748802
 No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar

Filename: z:\yesr\planning\mxd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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Coordinate System - MGA Zone 56
 Datum - GDA 84

Cadastre: 1 December, 2009
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One and Cultural Centre
 3 Tumbulghum Road
 Murwillumbah NSW 2464
 PO Box 816
 Murwillumbah NSW 2484

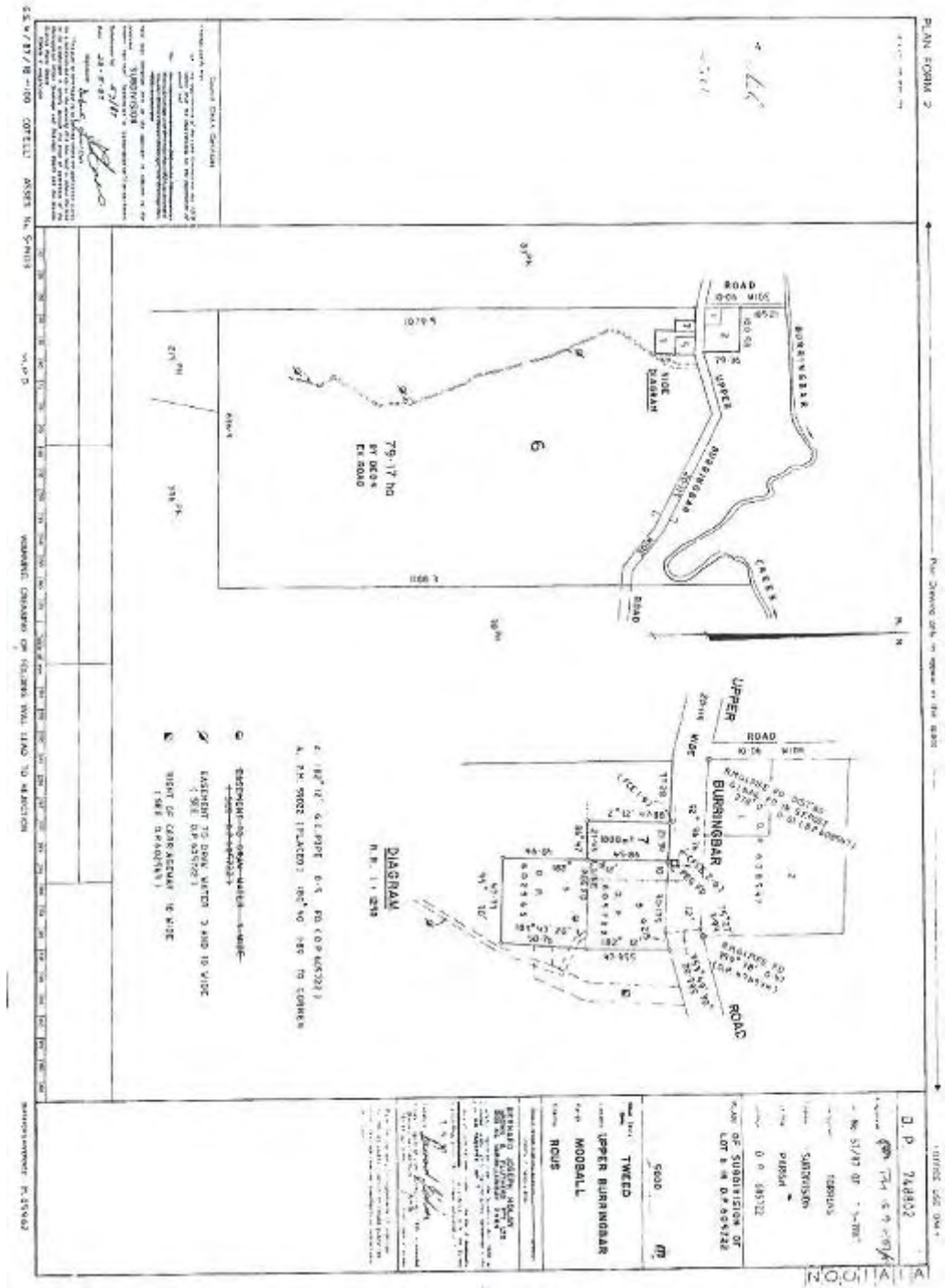
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 W: www.tweed.nsw.gov.au
 E: planning.reforms@tweed.nsw.gov.au



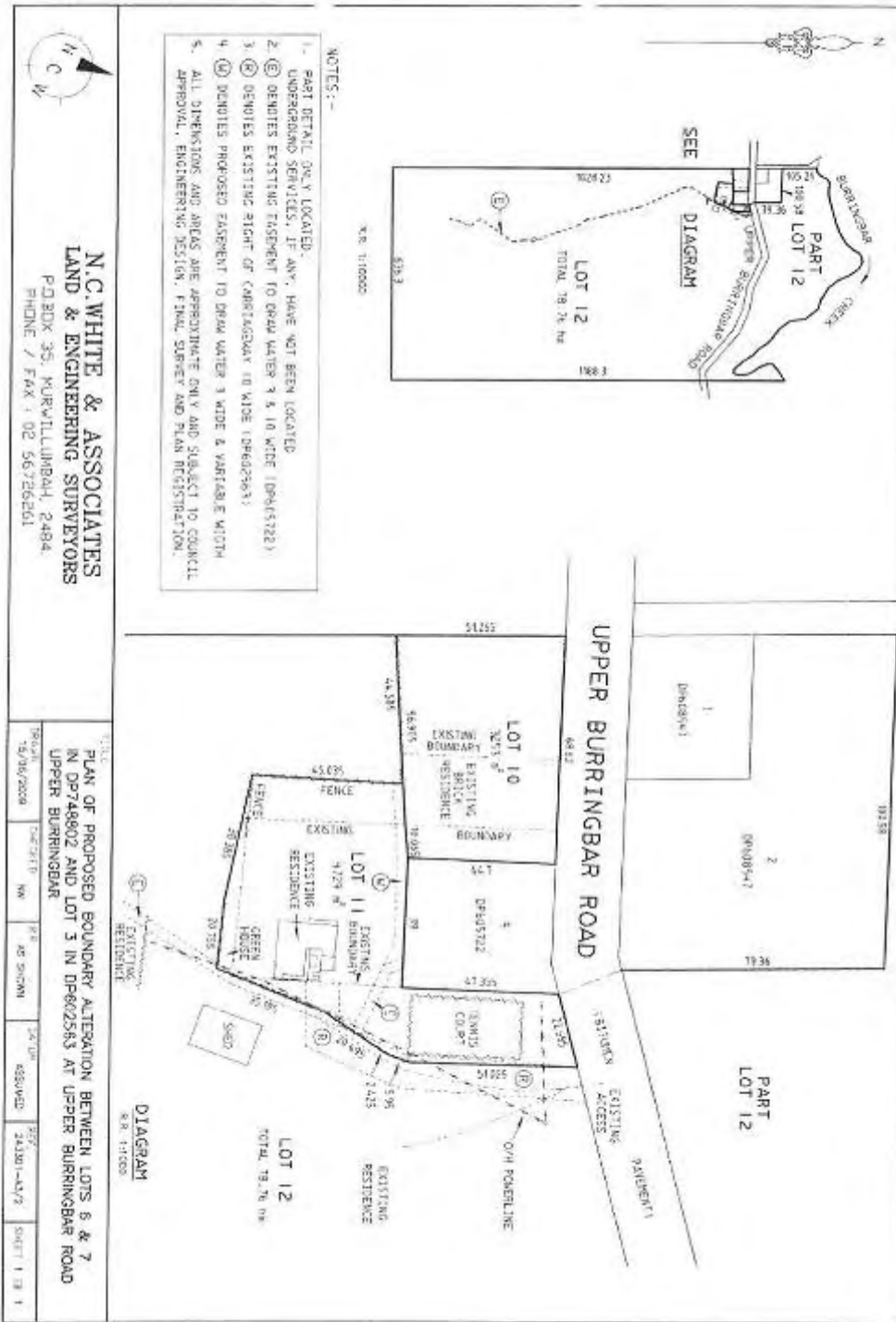
TWEED
 SHIRE COUNCIL

DEVELOPMENT PLANS:

Existing layout



Proposed Layout



- NOTES:-
1. PART DETAIL ONLY LOCATED.
 2. UNDERGROUND SERVICES, IF ANY, HAVE NOT BEEN LOCATED.
 3. (C) DENOTES EXISTING EASEMENT TO DRINK WATER 3 & 10 WIDE (DP645722)
 4. (D) DENOTES EXISTING RIGHT OF CARTRIDGEWAY 10 WIDE (DP662563)
 5. (E) DENOTES PROPOSED EASEMENT TO DRINK WATER 3 WIDE & VARIABLE WIDTH
 6. ALL DIMENSIONS AND AREAS ARE APPROXIMATE ONLY AND SUBJECT TO COUNCIL APPROVAL, ENGINEERING DESIGN, FINAL SURVEY AND PLAN REGISTRATION.

N.C. WHITE & ASSOCIATES
LAND & ENGINEERING SURVEYORS
 PO BOX 35, KURWILLUMBAH, 2484
 PHONE / FAX : 02 56726261

PLAN OF PROPOSED BOUNDARY ALTERATION BETWEEN LOTS 6 & 7
 IN DP748802 AND LOT 3 IN DP662563 AT UPPER BURRINGBAR ROAD
 UPPER BURRINGBAR

PROJECT NO	DATE	BY	CHKD BY	REV	DATE	BY
10/26/2009						

DATE ISSUED: 24/10/09
 SHEET 1 OF 1

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is considered to be consistent with the aims of the Tweed Local Environmental Plan. The proposed development is considered to be consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed Shire is retained."

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 with existing dwellings and rural outbuildings improved on the site. 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 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

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

In this instance, the subject site is zoned 1(b1) Agricultural Protection, the primary objectives of which are outlined below.

The proposed boundary adjustment subdivision is considered consistent with the primary objective of the zone as it will not change the status quo.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed boundary adjustment subdivision generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established rural nature of the subject area.

Clause 11 - Zone Objectives

The subject land is zoned 1(b1) Agricultural Protection. The objectives of the 1(b1) zone include:-

Primary objective

- *to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.*

Secondary objective

- *to allow other development that is compatible with agricultural activities.*

The proposed boundary adjustment subdivision's new configuration and proposed lot sizes will not have a significant impact on the agricultural potential of the site particularly for proposed Lot 12 as proposed Lots 10 and 11 will remain as rural residential allotments. Therefore the status quo will not change. It is also considered that the proposed configuration will not lead to establishing rural land use conflicts which will not result in the rural character and amenity being compromised.

Clause 15 - Essential Services

Water supplies are currently provided to each dwelling house by rainwater tanks. Onsite effluent treatment and disposal systems exist for each dwelling house.

Electricity and telecommunications are connected to both existing dwellings on the land. No additional infrastructure or physical works are required to service the proposed subdivision.

Clause 20 - Subdivision

This clause requires a minimum allotment size of 10 hectares in the 1(b1) zone. Proposed lots 10 and 11 do not comply with this development standard. An objection under State Environmental Planning Policy No.1 has been prepared by the applicant in this regard and is addressed later in this report.

Clause 57 – Protection of Existing Dwelling Entitlement

As previously stated, because the proposed subdivision will result in proposed Lots 10 and 11 being under the minimum allotment size they will therefore not enjoy a dwelling entitlement in accordance with the Tweed LEP. Clause 57 does not provide for the protection of these existing dwelling entitlements as the allotments are not being created for public purpose. In this case, for the existing dwellings to remain lawful, existing use provisions will allow the continuation of previous rights to have a dwelling house on each parcel of land. However, this may create some restrictions should the owners of these allotments intend on doing future development or building works.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

Clause 12 provides that consideration must be given to the likely impact of the proposed development on the use of the adjoining or adjacent agricultural land and whether the development will cause loss of prime agricultural land and whether the development will cause a loss of prime crop or pasture land.

It is considered that the proposed boundary would not result in a loss of prime agricultural land.

The surrounding land is used for cattle grazing and associated agricultural purposes, the boundary adjustment subdivision will not result in any land use conflict as the proposal will not change the status quo.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard identified within Clause 20 (2)(b) of the Tweed LEP, specifically seeking variance to the 10 hectare minimum lot size development standard for the 1(b1) zone.

The SEPP 1 objection relates to proposed lots 10 and 11 being below 10 hectares. The applicant contends that *the proposed development raises no matters of adverse significance in local, regional or state terms and no public benefit will result from the maintenance of the subject development standard in this case.*

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

In support of the proposed variation, the applicant has provided the following:

The numerical control of the standard in this instance is considered unreasonable as the proposal endeavours to improve an existing situation with no additional lots or dwellings proposed. The Cotelli family who are the current and long time owners of the land have been farming the land for many years and which to improve the current lot configuration to better reflect the existing site improvements. The subject land exhibits a unique case of existing dwelling location and previously approved shape. This proposal is not considered to create an undesirable precedent but only to show that a relatively minor boundary adjustment can substantially improve an existing situation. Approval of this proposal will provide a practical location for lot boundaries with minimal negative impact on the subject or adjoining land.

Assessment of the applicant's submission:

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

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

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

It is considered that the standard is unreasonable and unnecessary in this instance as the current lot sizes of the two smaller lots already do not comply with the development standard and the purpose of this subdivision is in response to improving an existing situation by increasing the size of the two smaller lots with only minor impact on the larger lot. The changes result in both smaller lots being increased in size to be closer to the current minimum lot size of 10 ha. There are also no additional lots or dwellings proposed.

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

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for a boundary adjustment subdivision between three lots. The proposed new lot configurations will not affect the current orderly and economic use of the land as the land that is being transferred from the larger agricultural lot will have a negligible affect on the agricultural potential of due to the small amount of land and the fact that this land is not currently being used for agricultural pursuits as it is adjacent to the existing dwelling houses.

It is considered that the proposed increased lot sizes for the two smaller lots will assist in providing a buffer and will greater reduce any potential land use conflicts with the continuing agricultural pursuits in the larger residue lot.

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

The proposed non-compliance with Clause 20(2)(b) of the Tweed LEP is not considered to raise any matter of significance for State or Regional planning.

There would also be little public benefit in maintaining the development standard in this case as proposed Lots 10 and 11 already do not comply with the development standard and the purpose of the subdivision is to improve an existing situation by increasing the size of the of the two smaller lots.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

In addition, the Director-General's Concurrence has been granted to vary the 10 hectare minimum lot size development standard. Concurrence was granted in this instance for the following reasons:

- The adjustment to the boundaries is only minor transferring small areas of land from one lot to the two smaller lots to create three lots similar in size to the existing lots.
- The existing three lots have dwellings located on each lot, no new dwelling entitlements are to be given to these lots and no new lots will be created.

SEPP (Rural Lands) 2008

The subject land is within the 1(b1) Agricultural Protection Zone and the provisions of this SEPP apply to the proposed development.

Clause 7 Rural Planning Principles

The principles are stated and addressed as follows:

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed development is compliant with the rural subdivision principles in the SEPP as the subdivision will not affect the continuance and potential productive sustainable activities to be undertaken on the property as the portion of land that will be afforded to the smaller lots is already being used for access and as gardens for the smaller lots.

Clause 8 - Rural Subdivision Principles

The principles are stated and addressed as follows:

The Rural Subdivision Principles are as follows:

- (a) *the minimisation of rural land fragmentation,*
- (b) *the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) *the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) *the consideration of the natural and physical constraints and opportunities of land,*
- (e) *ensuring that planning for dwelling opportunities takes account of those constraints.*

The proposal will not substantially alter the existing use of the land and cause land fragmentation. The land to be transferred from the larger agricultural lot will also have a negligible effect on the agricultural potential of the land while at the same time increasing the amenity for the two smaller lots-

Clause 10 - Matters to be considered in determining development applications for rural subdivisions or rural dwellings

The matters to be considered in determining a development application are stated and addressed as follows:

- (1) *This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*
- (2) *A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*
 - (a) *subdivision of land proposed to be used for the purposes of a dwelling,*
 - (b) *erection of a dwelling.*

(3) *The following matters are to be taken into account:*

- (a) *the existing uses and approved uses of land in the vicinity of the development,*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

As stated previously in this report, the proposed boundary adjustment subdivision will not change the status quo. The proposed new lot configurations will not affect the current orderly and economic use of the land as the land that is being transferred from the larger agricultural lot will have a negligible affect on the agricultural potential of due to the small amount of land and the fact that this land is not currently being used for agricultural pursuits as it is adjacent to the existing dwelling houses.

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

Draft Tweed Local Environmental Plan - Amendment 21 - Vegetation Management

The aims and objectives of the draft Plan are as follows:

- 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 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 2004.

Draft amendment 21 of the Tweed Local Environmental Plan 2000 is relevant to the subject site but does not have any direct impact upon the proposal.

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

Tweed Development Control Plan

Section A5 - Subdivision Manual

Council's Development Engineer has reviewed the application with respect to the provisions of Section A. The application is considered satisfactory subject to number of conditions of consent.

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

Bushfire

The application required an Integrated Referral to the NSW Rural Fire Service due to the bushfire prone nature of the land. In a response dated 25 November 2009, a Bushfire Safety Authority was granted subject to certain conditions of consent.

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

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

The proposal is consistent with the surrounding rural character. The site's suitability has been demonstrated throughout the assessment of the proposal including the assessment of the minimal environmental impacts and consistency with environmental planning instruments and the DCP. The proposed development will not change the status quo.

(c) Suitability of the site for the development

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan and minimal environmental impacts. The proposal is consistent with the residential character of the locality.

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

The application did not require notification under Council's Notification Policy.

(e) Public interest

The application is not considered contrary to the public interest as the application satisfies the objectives of Tweed Local Environmental Plan 2000.

OPTIONS:

1. Approve the application in accordance with the recommended conditions.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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7 [PR-CM] Development Application DA07/0022 for a Three (3) Storey Residential Flat Building Containing Five (5) Units at Lot 9 DP 14141, No. 21 Tweed Coast, Road Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA07/0022 Pt9

SUMMARY OF REPORT:

On 21 July 2009 Council resolved to refuse this Development Application and accordingly continue to defend the Class 1 Appeal in the NSW Land & Environment Court.

Council actively defended the Appeal and appeared in Court on 15 and 16 October 2009, and 6 November 2009.

On 25 November the Senior Commissioner of the Land & Environment Court Tim Moore dismissed the Appeal and refused the Development Application in accordance with Council's previous decision to refuse the application.

Hunt & Hunt Lawyers (on behalf of the owner of the land) has since served notice on Council that they may be commencing additional legal proceedings to claim loss and damage that they say occurred as a result of Council's failure to consider a relevant matter in the exercise of its planning discretion when it determined the Development Application in June 2007. This matter has been referred to Council's Insurance Company to defend as necessary.

It is recommended that Council receive and note the Land & Environment Court Decision and the possible additional claim for loss and damage which has been lodged by the owner of the land.

RECOMMENDATION:

That:

- 1. Council receives and notes the Land and Environment Court Decision and the possible additional claim for loss and damage which has been lodged by the owner of the land.**
- 2. ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act, 1993, because it contains information of a confidential nature that would, if disclosed:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege**

REPORT:

Applicant: PDK Developments
Owner: Ms LP Wiseman and Mr J Bortoli
Location: Lot 9 DP 14141, No. 21 Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$1,100,000

BACKGROUND:

Council received DA07/0022 in January 2007. The original application sought approval for a 3-storey 6 unit multi-dwelling housing development at 21 Tweed Coast Road, Hastings Point (on the corner of Tweed Coast Road & Young Street). Amended plans were lodged that sought approval for seven units in a town house configuration.

At the time of the original assessment the amended proposal was considered to represent a good planning and design outcome for the site and locality generally. Subsequently Council approved the Development Application in June 2007 subject to conditions of consent.

The Development Application was challenged in the NSW Land & Environment Court by Hastings Point Progress Association Incorporated. Judge Pain determined that Council failed to adequately consider cumulative impact which was a statutory requirement of Clause 8 of the Tweed LEP 2000. The consent was determined void and of no effect.

The applicant then requested that Council re-assess the Development Application and make a determination on the proposal.

On 18 November 2008 Council resolved to refuse DA07/0022 which at that time sought approval for a multi dwelling housing development comprising seven town house units across three buildings all three storeys in height.

Following Council's refusal of this application the applicant lodged a Class 1 Merit Appeal with the NSW Land & Environment Court.

Council subsequently resolved (on 16 December 2008) to defend the Class 1 Merit Appeal lodged against Council's refusal.

The applicant obtained approval from the NSW Land & Environment Court to lodge amended plans (with the Court) for reconsideration. Furthermore, the Court granted leave to allow Council to re-consider the amended plans (as lodged on 5 May 2009) before the application progresses through the Court system any further.

In July 2009 the amended plans were considered by Council. The plans sought approval for the construction of a part two and part three storey residential flat building that comprises 5 units over ground level garaging.

The assessment concluded that as a result of the Interim Site Specific Controls that apply to Hastings Point (two storeys in height and no more than two dwellings per property) the amended application can not be supported. Whilst the amended design had a high degree of architectural merit it represented a medium density development that was not consistent with the predominant existing buildings in the area.

Accordingly the application was refused in accordance with the officer's recommendation.

It was this refusal that was ultimately challenged by the applicant in the NSW Land & Environment Court.

Council actively defended the refusal in an attempt to uphold the integrity of the Interim Controls applying to Hastings Point pending a Locality Plan for Hastings Point.

The Court Case primarily focussed on the integrity of the Interim Controls. The Senior Commissioner wanted to ensure that the Tweed DCP Section A1 Interim Controls were made in accordance with the required statutory process and that the reason for the controls was not merely to stop this one development.

Council engaged a consultant to review the controls applying to Hastings Point in August 2007 immediately after initial approval was given for this application.

Accordingly the Commissioner was satisfied that Council had followed due process in assessing the subject DA and further that the Interim Controls were validly made and had the legal weight of a DCP.

The Commissioner further concluded that the visual prominence of the proposed building is unacceptable, in a streetscape perspective, when viewed travelling in a southerly direction along Tweed Coast Road.

The full Land & Environment Court determination is attached to this agenda.

Possible Additional Legal Proceedings to Claim Loss & Damage

Hunt & Hunt Lawyers (on behalf of the owner of the land) has served notice on Council that they may be commencing additional legal proceedings to claim loss and damage that they say occurred as a result of Council's failure to consider a relevant matter in the exercise of its planning discretion when it determined the Development Application in June 2007.

The loss and damage claimed includes:


- Lost development potential of the land, namely 7 units to possibly only five units;
- Holdings costs on the land;
- Devaluation costs for the value of the land from June 2007 to date;
- Legal costs including expert fees for advice since June 2007, and the legal costs of defending the action in June 2007

This matter has been referred to Council's Insurance Company to defend as necessary.

Council will be advised of the outcome of this matter should it proceed.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken in the production of this map, the TWEED-SHIRE COUNCIL, its Employees, Officers and Consultants cannot be held responsible for any errors, omissions or inaccuracies (if any) to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 514 Tel: (02) 6670 2400 Murumbidgee NSW, 2484 Fax: (02) 6670 2400</p>	<p><i>Tweed Shire Council</i></p> <p>Lot 9 DP 14141 No. 21 Tweed Coast Road, Hastings Point</p>		<p>PLANNING REFORMS UNIT</p> <p>Site Plan</p>	
<p>File: N:\Munisys\A4P - SITE PLAN\Wor</p>		<p>Author: J. Batchelor</p>	<p>Date: 18/May/2007</p>	<p>Scale: 1:10,000 Sheet: 1 of 1</p>

OPTIONS:

1. That Council receives and notes this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council incurred legal costs defending this appeal and will incur additional legal costs defending the claim for loss and damage.

POLICY IMPLICATIONS:

The Appeal result has reinforced the validity of the Interim Area Specific Controls in Tweed DCP Section A1.

CONCLUSION:

The merits of DA07/0022 have been assessed and debated at length on numerous occasions. The Appeal result reinforces Council's assessment and provides strength to the Interim Area Specific Controls in Tweed DCP Section A1.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council Report - Planning Meeting held 21/07/2009 - DA07/0022 (ECM 9669729)
 2. NSW Land & Environment Court Decision DA07/0022 (ECM 9669731)
 3. CONFIDENTIAL – Hunt & Hunt Correspondence (Claim Loss & Damage) dated 24/11/2009 (ECM 9669732)
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8 [PR-CM] Draft Companion Animals Management Plan

ORIGIN:

Regulatory Services

SUMMARY OF REPORT:

A review of the Companion Animals Management Plan Policy has been completed in accordance with the Department of Local Government strategic task guide and Councils "*Promoting Better Practice Review*". This review has significantly updated the previous Companion Animal Management Plan Policy, accordingly, advertising of the Draft Plan is recommended to ensure all sectors of the community have the opportunity to provide comment.

RECOMMENDATION:

That: -

- 1. Council approves the public exhibition of the Draft Companion Animals Management Plan Policy.**
- 2. A further report be submitted to Council following the public exhibition seeking final endorsement of the plan.**

REPORT:

A review of the Companion Animals Management Plan Policy has been completed in accordance with the Department of Local Government strategic task guide and Councils "*Promoting Better Practice Review*". This review has significantly updated the previous Companion Animal Management Plan Policy, accordingly, public exhibition of the Draft Plan is recommended to ensure all sectors of the community have the opportunity to provide comment.

The original Companion Animals Management Plan provided an action plan to help establish stages of implementation and transitional periods associated with the introduction of the Companion Animals Act as well addressing resource issues and the upgrading of facilities.

The implementation included:

- The establishment of off leash exercise areas,
- The transition from an annual registration fee for cats and dogs to a lifetime registration and permanent identification (microchipping) scheme,
- A state wide register,
- Training in maintenance of the state wide register for Council
- Establishing internal procedures to compliment the new Act,
- The identification of restricted and dangerous dogs and the regulation of requirements associated with owning these animals,
- Education strategies to inform the public of legislative change,
- Training Council staff on the new legislation and associated issues of enforcement.

The new plan establishes Councils ongoing role in maintaining the current standard achieved from this implementation, whilst outlining the desired objectives of Councils role in animal management. These objectives include:

- Community Education to achieve responsible pet ownership,
- Increased rates of identification and registration of companion animals,
- The protection of the environment,
- Community amenity,
- Provision of facilities and service to the community

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The draft plan contains a series of updated provisions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Companion Animals Management Plan (ECM 9693365)
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9 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the November 2009 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
DA08/0869	dwelling, attached garage, swimming pool & fence	Lot 346 DP 1087716 No. 9 Cylinders Drive, Kingscliff	20/11/2009	Clause 32B(4)(b) – overshadowing	2(f) Tourism	<p>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.</p> <p>The area of the coastal reserve that will be affected comprises a grassed area, coastal dune vegetation and a cycle way. The shadow will not impact on areas used for formal recreational activities.</p>	The proposed variation relates to the casting of shadows by a development in to the fore shore after 6.30 pm mid summer. The extent of variation is difficult to quantify as a percentage as it is timed based.	Tweed Shire Council
DA09/0523	Dwelling	Lot 383 DP 1134599 Overall Drive, Pottsville	20/11/2009	Clause 34B(4)(b) – overshadowing	2(a) Low Density Residential	<p>After assessment of the relevant planning matters, and taking into account the minor overshadowing to open waterfront space at Mooball Creek and also the constraints imposed by the geometry of the corner allotment it is considered that the proposed development is suitable for approval, subject to conditions.</p>	Greater than 10%	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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10 [PR-CM] Pottsville Employment Lands - Rezoning Application

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2000/85 Pt1 and GT1/LEP/2006 Pt8

SUMMARY OF REPORT:

This report provides a progress report on Draft LEP 85 – Pottsville Employment Land (Part A) as well as recommended actions in respect of an alleged breach of the Tweed LEP and Tree Preservation Order on part of the site of the rezoning (Part B).

The rezoning application was lodged on 24 September 2008 following earlier Council resolutions in 2006, and has been the subject of intensive review and extensive consultation between Council Officers and the Applicant. The progress of the application has been impacted upon by the complexity of issues presented by the site and with the physical infrastructure requirements. Several key aspects of the proposal still require further investigation.

A major unresolved constraint to the rezoning is issue of on-site sewer infrastructure management and disposal, land contouring through earthworks, and environmental (vegetation) management.

The rezoning application originally included Council-owned land as part of the overall proposal. It has recently been acknowledged by both Council Management and the proponent that there is limited financial benefit and procedural complexities for Council to maintain its inclusion in the rezoning proposal. Furthermore, there is a need to maintain the land for its operational status for water supply infrastructure. On that basis, it is recommended that Council resolve to rescind part of a previous resolution, to formally establish this exclusion of Council land from the rezoning proposal.

Concurrent to the rezoning application, Council Officers are investigating an alleged breach of the Tweed Local Environmental Plan 2000 (Tweed LEP) in respect to tree clearing within a Tree Preservation Order (TPO) 2004 area within part of the rezoning site, and the further and consequential alleged wilful damage to an Aboriginal heritage significant (scar) tree. This matter is being pursued with the landowner, who for present purposes is not a party to the rezoning application.

It is necessary that any unlawful breach of the Tweed LEP be concluded prior to investigating the vegetation management issues with the rezoning application.

RECOMMENDATION:

That Council endorses Parts A and B in respect of land affected by Draft Local Environmental Plan No. 85 – Pottsville Employment Land.

PART A – THE REZONING APPLICATION

1. The resolution of 13 June 2006 in respect of preparing a draft Local Environmental Plan on Lot 12 DP 1015369, Lot 4 DP753328, Lot 1 DP 215998 and Lot 1 DP 1080884 is amended to relate to Lot 12 DP 1015369 only comprising the land bounded by a heavy black line identified in Figure 2 – ‘Extent of Draft LEP 85 Area Boundary’ of this report.
2. That item 2, 3 and 4 of the resolution of 13 June 2006 in relation to the preparation of the Draft Local Environmental Plan known as Amendment No.85 as referred to in this report be rescinded.

PART B – ALLEGED BREACH OF TWEED LOCAL ENVIRONMENTAL PLAN 2000

3. That the Director of Planning and Regulation refer the alleged breaches of the Tweed Local Environmental Plan relating to vegetation clearing in contravention of the Tweed Tree Preservation Order to Council’s Solicitors for legal advice in respect of ascertaining options in respect of legal proceedings.
4. That the restoration, regeneration, contributory off-set planting and protection of significant vegetation and or areas be included in any rezoning proposal on the land and in any legal proceedings for orders to remedy any established breach of the Tweed Tree Preservation Order.
5. That the fire damage to the ‘scar’ tree sited in the Aboriginal site referred to on the State Aboriginal Heritage Information Management System Register as “Kudgerie Avenue 1” be referred to the NSW Department of Environment, Climate Change and Water for their information and advice.

REPORT:

PART A – THE REZONING APPLICATION

BACKGROUND

Council's original resolution (13 June 2006)

Council resolved on 13 June 2006 to prepare a draft LEP over certain land at Pottsville to create a Trade/Industrial Area for employment-generating purposes. The resolutions of Council were as follows:

“RECOMMENDED that Council:

- 1. Advises the Department of Planning that it intends to prepare a draft Tweed Local Environmental Plan Amendment for Lot 12 DP 1015369, Lot 4 DP 753328, Lot 1 DP 215998, Lot 1 DP 1080884 Pottsville Road, Pottsville, in accordance with Section 54 of the Environmental Planning and Assessment Act.*
- 2. Negotiates with the landowners of this land to obtain funding for the Local Environmental Study and advises the landowners that a consultant will not be engaged until the relevant monies are received by Council;*
- 3. Exhibits the draft Local Environmental Plan Amendment in accordance with the Best Practice Guidelines published by the Department of Urban Affairs and Planning, January 1997 titled "LEP's and Council Land - Guidelines for Council's using delegated powers to prepare LEPs including land that is or was previously owned by Council";*
- 4. Engage a suitable qualified independent planning consultant to undertake the preparation of the draft Tweed Local Environmental Plan Amendment and Environmental Study.”*

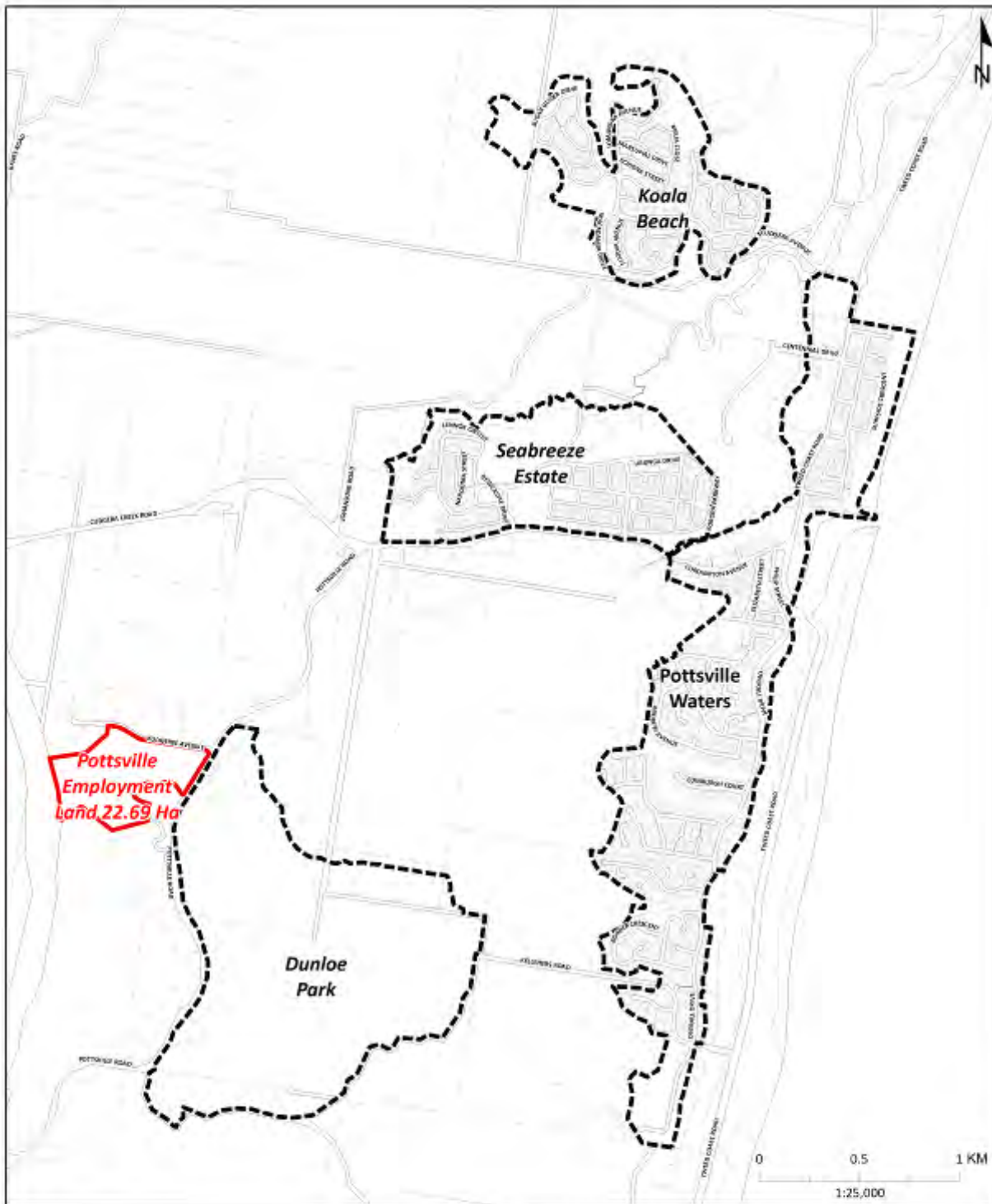
Rezoning submission received

A rezoning application was received on 24 September 2008 from Planit Consulting acting on behalf of Heritage Pacific Pty Ltd seeking the rezoning of the land from Rural 1(a) to “suitable industrial and/or commercial zones” (generally 4(a) Industrial) under the Tweed LEP 2000. Figure 1 – Locality Plan identifies the boundary area of the draft LEP.

The Application proposed to rezone land (Stage 1) in accordance with the Council's resolution, and included a larger area (Stage 2) adjoining and to the north (See ATTACHMENT 3). The area nominated as Stage 1 is identified in the Far North Coast Regional Strategy 2006 (FNCRS) and the Tweed Urban and Employment Land Strategy 2009 (TUE&LRS) as potential employment land.

The proposed Stage 2 land (refer to Figure 2) is not identified in the FNCRS and cannot be advanced until such time that the FNCRS is amended to include this land.

Figure 1 – Extent of Draft LEP 85 Area Boundary



Pottsville Employment Land
Locality Plan

Filename: z:\usr\planning\psol\Pottsville\Pottsville Industrial Land.mxd

Author: J Satchler - Planning Reforms Unit

Date Printed: 9 October, 2009

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Coordinate System - MGA Zone 56
Datum - GDA 84

Cadastre: 9 October, 2009
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Tweed Shire Council
PO Box 816,
Murrumbidgee
NSW 2484
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Figure 2 – Proposed Rezoning Application Staging Plan

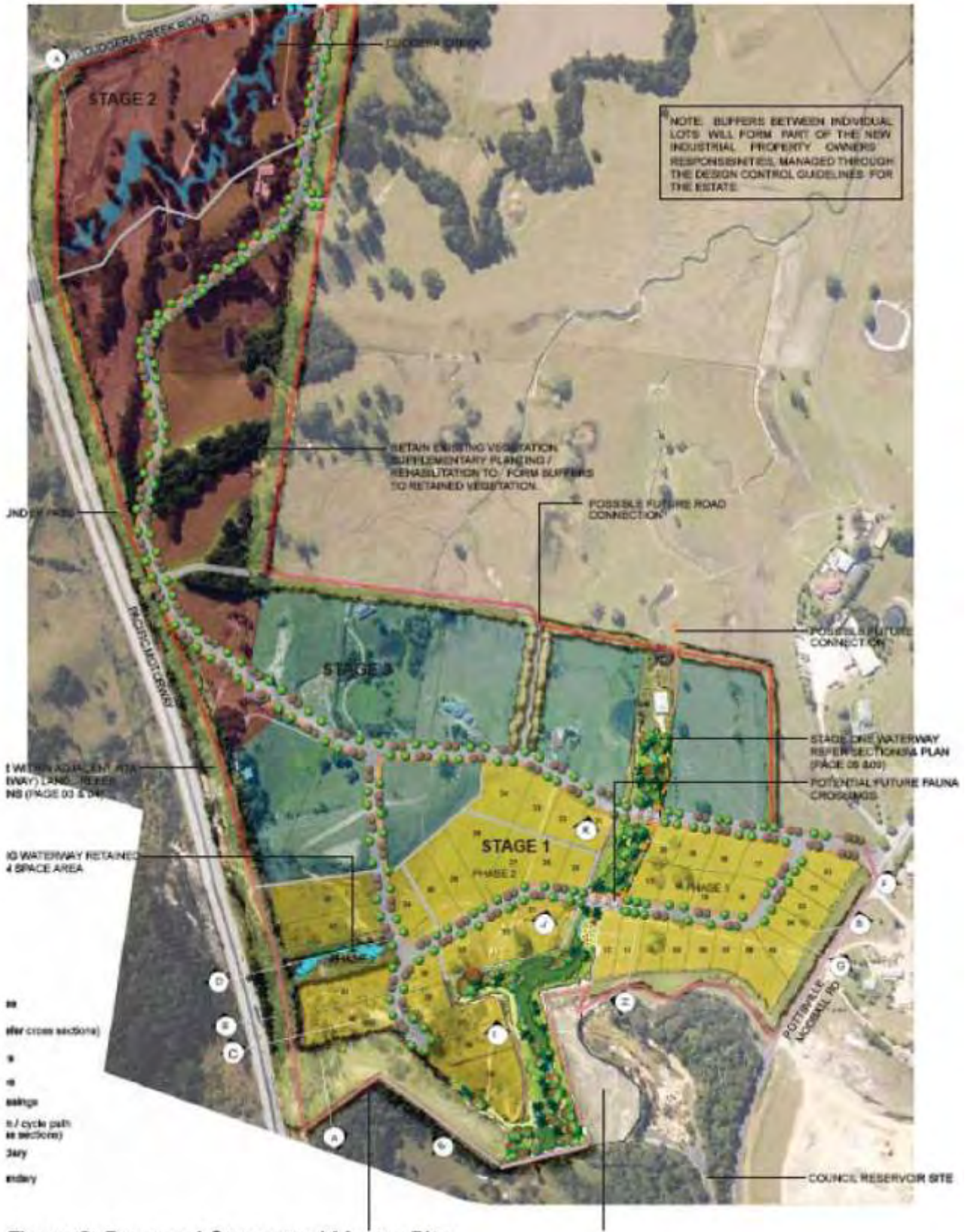


Figure 3: Proposed Conceptual Master Plan

PROGRESS OF ASSESSMENT OF REZONING APPLICATION

On 25 August 2009 Planit Consulting on request submitted amended documentation addressing concerns raised by Council Officers about the rezoning submission. A series of meetings have been held between the Council Officers and the proponent to attempt to resolve a number of major concerns with the proposal, including vegetation management, effluent disposal, geotechnical matters, stormwater management, land tenure and access to public land.

Both parties are committed to maintaining regular communication in an effort to progressively resolve these outstanding issues. It is expected that a further report on the rezoning will be submitted to Council in early 2010.

NEED TO AMEND COUNCIL RESOLUTION OF 13 JUNE 2006

Council Owned Land

Whilst there appeared to be a number of benefits to Council in its original decision in 2006 to be included in the land of Draft LEP 85, through the further investigation of the rezoning submission and assessment, it has been acknowledged by Council Management and the proponent that there is limited financial benefit to Council maintaining its inclusion in the rezoning. Furthermore, it has been recognised that there is a need for Council to protect the operational status of its land for water supply infrastructure.

Council's land is identified as Lot 4 DP 753328, Lot 1 DP 215997, and Lot 1 DP 1080884.

Therefore, *Item 1* of the 2006 resolution needs to be amended to reflect the changed status and scope of the Draft LEP. The extent of the draft LEP boundary is identified in Figure 1, above.

The Need for a Local Environmental Study

Item 2 of the 2006 resolution refers to the need to negotiate with the landowners for the funding of a Local Environmental Study (LES).

The Department of Planning advised in their letter of 29 June 2009 that an LES will not be necessary, which also sets aside the need for any funding negotiations. The earlier resolution should be amended to reflect the change in circumstances.

The Department of Planning has however provided a detailed list of matters which must be considered in the preparation of the rezoning submission.

Appointment of an Independent Planning Consultant

Item 4 of the 2006 resolution refers to the need to engage an independent planning consultant to prepare both the draft LEP and LES. This was seemingly premised on two fronts, firstly; as a landowner issues of probity and conflict of interest arise, and secondly; those issues would flow into the preparation of an LES. The proposal to exclude Council land from the rezoning will negate the need for Item 4.

Exhibition and Preparation of the Draft LEP

Item 3 of the 2006 resolution permits the public exhibition of the draft LEP and calls into effect 'Best Practice Guidelines'.

The first part authorises the public exhibition of the draft LEP notwithstanding that the status and ultimate form of the draft Plan would not have been referred to Council. This does not accord with the current practice of Council's Planning Department and as such it would be appropriate to enforce that practice, which is to seek Council's endorsement of the final draft Plan prior to any referral to the Department of Planning for an authority to publicly exhibit the Draft Plan.

The second part refers to guidelines published by the Department of Urban Affairs and Planning, January 1997 titled "*LEP's and Council Land - Guidelines for Council's using delegated powers to prepare LEPs including land that is or was previously owned by Council*". These guidelines have since been superseded and are of no relevance.

In light of the above Item 4 of the 2006 resolution should be amended accordingly.

In summary Items 2, 3 and 4 of the 2006 resolution should be removed. Item 1 of that resolution should be amended to reflect the actual land the subject of the current rezoning application and draft LEP Amendment No.85.

The Environmental Planning and Assessment Act 1979 introduced a new 'Plan Making' process on 30 June 2009. The amendments to the 2006 resolution proposed in this report have taken those changes into account and are designed to avoid triggering a fresh process. Under the savings provisions effective from 1 June 2009, the Draft LEP 85 has an 18 month timeframe within which it must be completed.

PART B – ALLEGED BREACH OF TWEED LOCAL ENVIRONMENTAL PLAN 2000

BREACH OF COUNCIL'S TREE PRESERVATION ORDER 2004 AND DAMAGE OF ABORIGINAL HERITAGE SCAR TREE

The property is identified in both the *Far North Coast Regional Strategy* in 2006 and subsequently within Council's *Tweed Urban and Employment Land Release Strategy 2009* as potential Employment Lands. However, the site is constrained by both steep slopes and vegetation of conservation value. Refer to ATTACHMENTS 2 and 3.

Further evidence of the significance of the site is evidenced in the application of Council's 2004 Tree Preservation Order to cover approximately one-third of the site. This is further enforced by the proposed rezoning of the subject land to E2 Environmental Conservation zoning in the draft LEP 2010.

In addition, the Roads and Traffic Authority have considered the area of sufficient conservation value to construct a vegetated land bridge across the Pacific Highway just south of the site to facilitate connectivity of the landscape either side of the highway.

Comparison of recent aerial photography within the rezoning submission with Council's 2007 aerial photography raised concerns with regard to apparent vegetation loss within the TPO area.

Council Staff visited the site in early July and reported substantial clearing and burning on the site. The matter was referred to the Compliance Officer and Ecologist who visited the site on 20 July 2009 and confirmed that a significant area protected by TPO 2004 and previously vegetated was now denuded of vegetation and/or greatly thinned, and that much of the cleared vegetation was being burnt on site. Of particular concern was a fire that was burning the trunk of a moderately sized Brushbox tree, as the fire appeared to have been purposely constructed against the tree's trunk.

Further review of the rezoning documentation identified that this particular Brushbox tree had been referenced in one of the applicant's specialist reports as a "scarred tree" of Aboriginal cultural heritage significance and was subject to a record on the Department of Climate Change and Water (DECCW) Aboriginal Heritage Information Management System register.

The owners were requested to show cause as to why the vegetation had been removed and damaged. The landowners provided a written response but failed to adequately show cause or justification for their actions.

The significance of the vegetation clearing and the severity of damage to the identified Aboriginal significant 'scar' tree is considered very serious and a matter that may warrant prosecution.

Action is recommended for a breach of the Tweed Tree Preservation Order 2004, and damage of an Aboriginal place.

RELATIONSHIP BETWEEN POTENTIAL ACTION UNDER THE TWEED TPO 2004 AND REZONING APPLICATION

The alleged breach for vegetation clearing involves the registered landowners. The rezoning application involves Planit Consulting Pty Ltd and Heritage Pacific Pty Ltd. These two matters are, for the purposes of the parties involved, unconnected.

Notwithstanding that the parties are 'unconnected' the matters affecting the site are interrelated. The assignment of priority falls to the alleged unlawful breach of the Tweed LEP. This creates some difficulty for the applicant of the rezoning application because they are unable to finalise the full extent of the proposed rezoning, that is, the footprint of the proposed development, without establishing common ground on a property vegetation management proposal.

Council staff will be unable to assess or enter into negotiations on vegetation management for the site until the vegetation clearing issue has been settled with the registered landowners.

CONCLUSION:

The progress of this rezoning application has been impacted by a number of significant issues. An issue of particular note is sewerage provision, as any further development will be reliant upon an on-site sewerage scheme owing to the absence of capacity in the Hastings Point sewer treatment plant for new 'greenfield' development. This matter is being investigated by the applicant and it is anticipated that greater detail on the serviceability of the site will become available in early 2010.

A further issue involves vegetation management on the site. As discussed above, owing to the alleged and outstanding issues of breach of the Tweed LEP, in relation to vegetation clearing, Council Staff are unable to settle on an appropriate proposal until the alleged breach is resolved with the registered landowners.

The alleged vegetation clearing and apparent wilful damage to the Aboriginal significant scar tree is significant and in the absence of an appropriate response from the landowners to show just cause or justification it is recommended that the alleged breach be referred to Council's Solicitors for legal advice in respect of ascertaining options in respect of legal proceedings.

Following the satisfactory resolution to the alleged breaches, the vegetation management issues of the rezoning application can be assessed and subject to all other outstanding issues being satisfied the Draft LEP can be prepared for public exhibition.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Costs may arise from any legal expenses incurred in obtaining advice and should prosecution occur.

POLICY IMPLICATIONS:

The clearing of vegetation on land where the Tweed Tree Preservation Order (TPO) 2004 applies is permissible only with consent. The integrity of the TPO may be affected were appropriate redress of any unlawful breach is not pursued and appropriate remedy applied.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Extract from Tweed Urban and Employment Land Release Strategy 2009 (Figure 17) showing exclusion of vegetation on the south western portion of Lot 12 DP 1015369 (ECM 9421670)
 2. Extract from the Far North Coast Regional Strategy 2006 showing "indicative high level constraints" on the southern and eastern boundaries of the site (ECM 9421670)
 3. Boundaries of the Pottsville Employment Land Rezoning Submission and Other Studies (ECM 9421670)
 4. Chronology of Events (ECM 9421670)
 5. Ecologist report 20 July 2009 (ECM 9421670)
 6. Extract from Cultural Heritage Assessment (Everick Heritage Consultants, August 2008) (ECM 9421670)
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- 11 [PR-CM] Development Application DA09/0385 for a Telecommunications Facility (30 Metre High Monopole and Associated Infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place Uki

ORIGIN:

Development Assessment

FILE NO: DA09/0385 Pt1

SUMMARY OF REPORT:

Council at its meeting of 17 November 2009 resolved as follows:

*“**RESOLVED** that this application be deferred for presentation at a future Council meeting following the conduct of a public meeting by Optus in the Uki community in order to properly gauge community opinion on this proposal and report the outcome of that meeting to Council.”*

Further to Council's resolution, Optus organised a meeting with Uki residents on Monday 7 December 2009 held at Uki Hotel. A copy of a report prepared by Optus detailing the outcomes and discussion of this meeting are attached to this Council report.

The full Council report is now reproduced below for Council's determination.

RECOMMENDATION:

That Development Application DA09/0385 for a telecommunications facility (30 metre high monopole and associated infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place, Uki 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 S8479F, Sheets G1 – G4 prepared by Daly International dated 06/04/2009, 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. **Access to the site shall be upgraded to provide a bitumen seal from edge of the existing road carriageway of meadow Place to the property boundary.**
[GENNS01]

5. Erosion and Sediment Control shall be provided and maintained in accordance *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
[GENNS01]
6. The access track from the property boundary at Meadow Place to the Optus Compound shall be upgraded to provide a driveway of minimum standard to allow a 2 wheel drive vehicle access to the compound under all weather conditions.
[GENNS01]
7. A Right of Carriageway shall be created over the existing property access road servicing the proposed Optus compound.
[GENNS01]
8. An easement for electricity supply (minimum 2m wide) shall be created (as required) over the electricity infrastructure within Lot 17 DP 778719 servicing the proposed Optus compound.
[GENNS01]
9. The monopole is to be painted mist green to blend with it's surrounds.
[GENNS02]
10. At the commencement of building works and in perpetuity the leased area 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'.
[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.
[PCC0285]
12. Detailed design drawings for the proposed access road to the monopole site must be submitted for approval by Director Planning and Regulation. The location of native vegetation species must be indicated and named on the plans and measures to avoid or ameliorate impacts indicated. In particular, avoidance of the average 2m wide root plate for larger Brushbox (*Lophostemon confertus*) trees and avoidance of damage to the Strangler Fig (*Ficus watkinsiana*) roots must be demonstrated.
[PCCNS01]
13. A vegetation management plan must be submitted for approval by Director Planning and Regulation detailing compensatory works as an offset for loss of native species. Such works must include planting of a minimum of 30 native species and Camphor Laurel and other weed species control within a defined area no less than 1 hectare in area.
[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

14. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
15. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing. [PCW0215]
- [PCW0225]
16. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

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

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

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

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

20. 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]

21. 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]

22. 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]

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

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

[DUR1005]

24. 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.

Any damage to property (including pavement damage) is to be rectified by the Developer to the satisfaction of the General Manager.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

25. 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]

26. 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]

USE

27. 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]

28. 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]

29. 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]

30. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.

[USE1035]

31. Works must be completed by qualified bush regenerators in accordance with the approved vegetation management plan.

[USENS01]

REPORT:

Applicant: Optus Mobile Pty Ltd
Owner: Mr D Nelmes and Mrs C Timbs
Location: Lot 17 DP 778719, No. 19 Meadow Place Uki
Zoning: 1(a) Rural
Cost: \$200,000

BACKGROUND:

Council has received an application for the construction of a telecommunication facility at Lot 10 DP 778719, No. 19 Meadow Place Uki. The telecommunication facility will comprise of:

- A 30 metre high monopole with 6 panel antennas mounted on a circular headframe and 2 x 1.2 metre parabolic antennas at 26 metres.
- A prefabricated equipment shelter will be located at the base of the proposed monopole.
- A high security chain wire fence around the proposed compound;
- Ancillary and associated equipment including items such as safety equipment, amplifiers, diplexers, triplexers, mounts, feeders, cable trays, and other associated infrastructure which are all considered to be necessary to facilitate the safe operation of the authorised facilities.

Optus have stated that the purpose of siting a mobile tower in this location is that they have identified the need to improve digital mobile telephone coverage and to introduce the new Optus 3G mobile phone network to the areas of Uki, Dum Dum and rural surrounds.

The proposed site is located approximately 1.1 km north east of Uki Village on an elevated rural property. The subdivision pattern in this vicinity comprises of a mixture of small and large rural holdings used for both farming practices and residential occupation. The closest dwelling house to the facility is approximately 150 metres. The proposed location for the telecommunication facility is located amidst a dense plot of vegetation made up of predominantly camphor laurel trees with a number of native species. Access to the proposed site is achieved firstly via the existing driveway which leads to the existing residence on the property and secondly onto an existing dirt track.

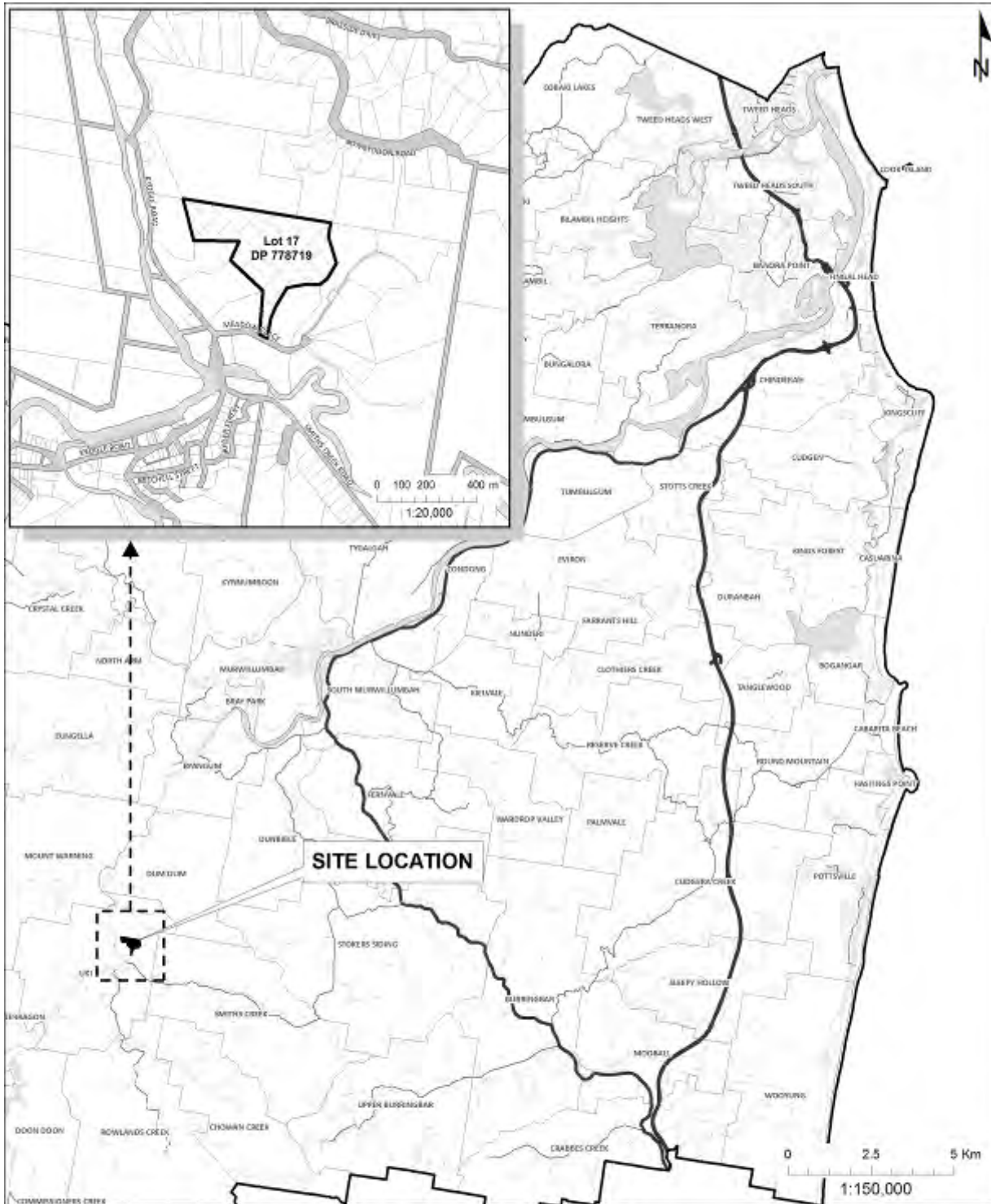
The applicants have stated that the proposed site was preferred as opposed to other locations in the Uki area for the following reasons:

- The elevated position of the site;
- The visual screening the existing tree cover affords;
- The Rural 1(a) zoning as opposed to an environmental protection zoning which incorporates a majority of the high points in Uki;
- The site is readily accessible;
- The availability of power at close range; and
- The lower ecological value of the site;

The application was advertised for a period of fourteen (14) days from Wednesday 22nd July 2009 to Wednesday 5th August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. The most common issues raised were regarding the visual impact of the monopole, health concerns from electromagnetic energy generated from the facility and consideration of alternative locations. An assessment of the issues raised is summarised within the body of this report.

Following the assessment against the relevant heads of consideration, Council Officers consider that the proposed telecommunication facility will enhance the telecommunications services in Uki and the broader locality and therefore are recommending approval of the application. It is considered that the location and design of the proposal is suitable without causing any significant adverse impacts on the natural and built environments, the communications facility will also create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 17 DP 778719
 No.19 Meadow Place, Uki

Filename: z:\esr\planning\mxd\AAP_B&W_SitePlan.mxd Author: J.Batchelor - Planning Reforms Unit Date Printed: 4 November, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of its being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any construction a "Dig before you Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

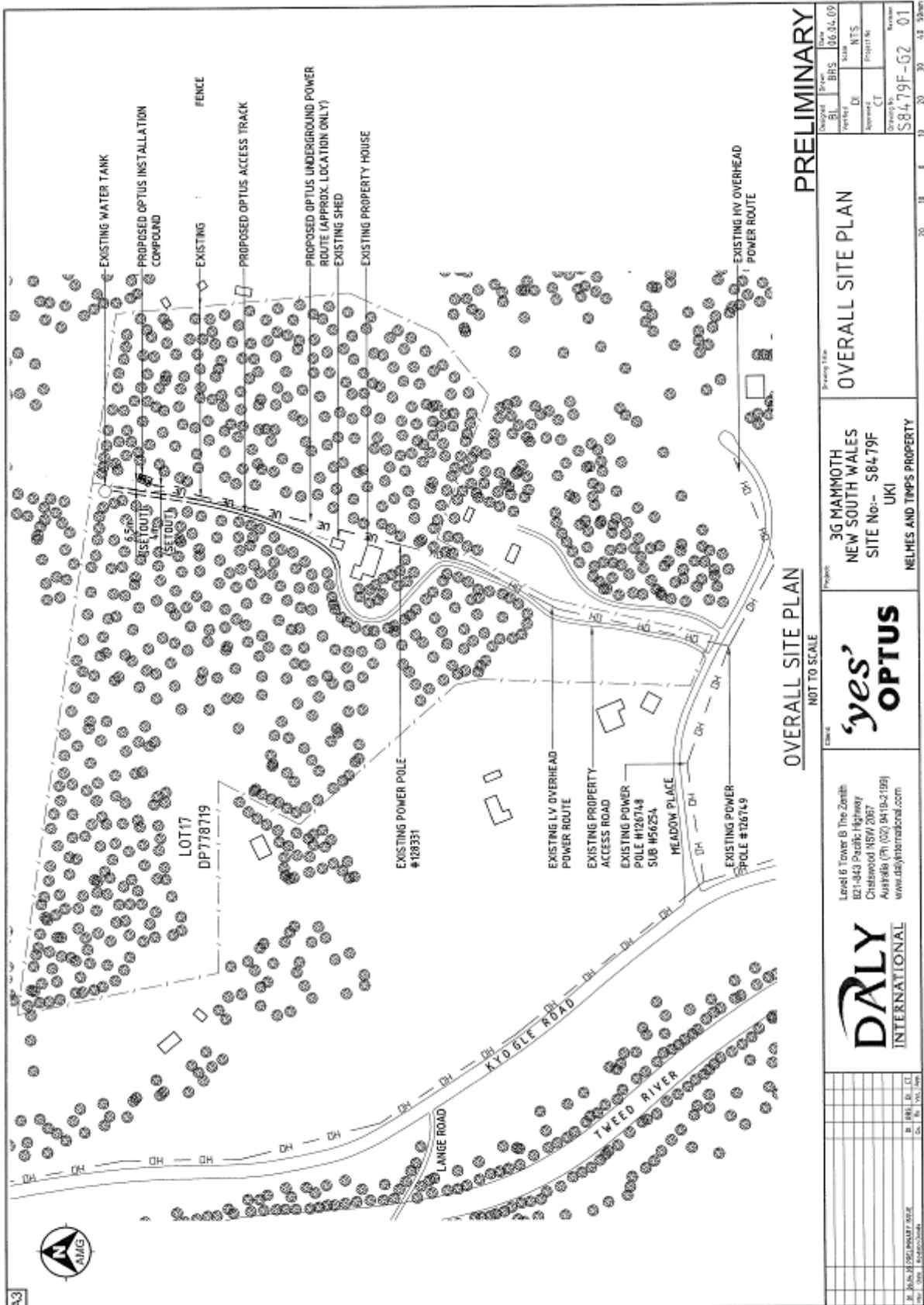
GDA **Calligra 4 November, 2009**
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Coordinate System - MGA Zone 56 Datum - GDA 94 DO NOT SCALE COPY ONLY - NOT CONTRACT

Civic and Cultural Centre
 3 Tambourine Road
 Mullumbidgee NSW 2484
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 T: (02) 6670 2400 | 1300 202 672
 F: (02) 6670 2403
 W: www.tweed.nsw.gov.au
 E: planningreforms@tweed.nsw.gov.au

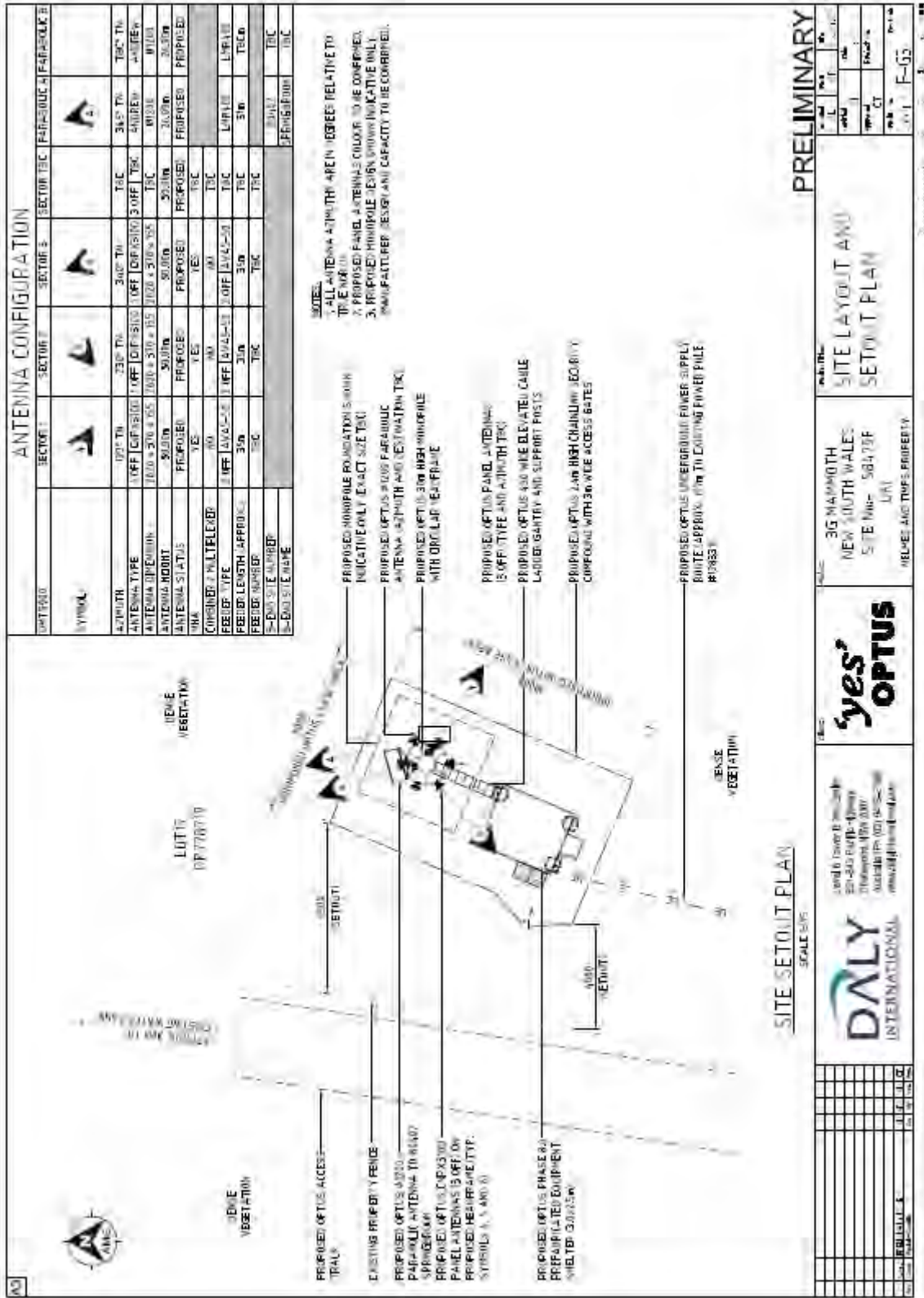
TWEED SHIRE COUNCIL

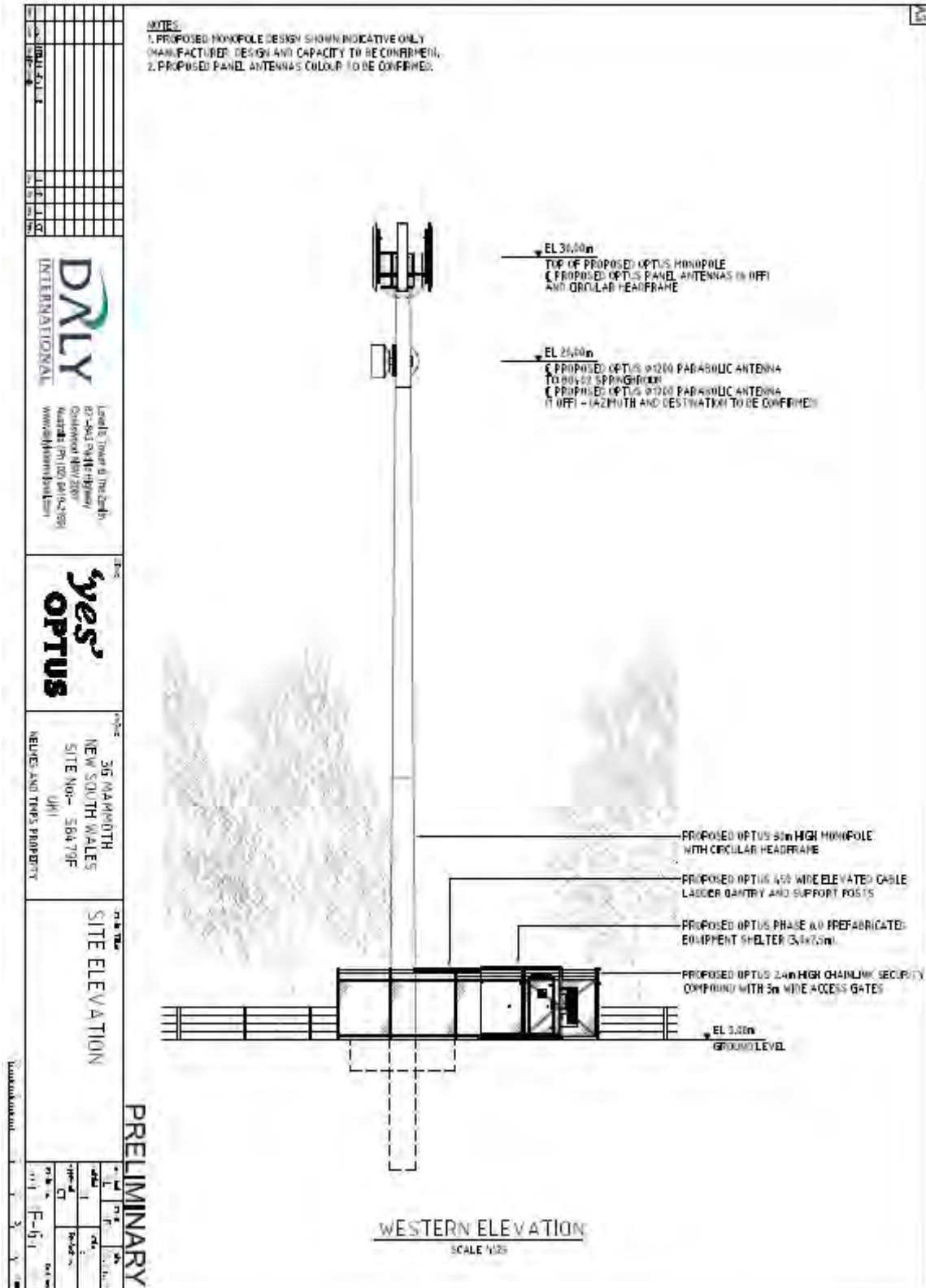
DEVELOPMENT/ELEVATION PLANS:



OVERALL SITE PLAN
NOT TO SCALE

<p>CLIENT</p> <p>Level 6 Tower B The Zenith 821-843 Pacific Highway Chateauwood NSW 2087 Australia (Ph) (02) 94194199 www.dalyinternational.com</p>	<p>CLIENT</p> <p>'yes' OPTUS</p>	<p>PROJECT</p> <p>3G MAMMOTH NEW SOUTH WALES SITE No:- S8479F UKI NELMES AND TEMPS PROPERTY</p>	<p>PRELIMINARY</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Design</td> <td>By</td> <td>BBS</td> <td>Date</td> <td>28/04/09</td> </tr> <tr> <td>Author</td> <td>By</td> <td>NTS</td> <td>Scale</td> <td>NTS</td> </tr> <tr> <td>Approved</td> <td>By</td> <td>CT</td> <td>Project No.</td> <td></td> </tr> <tr> <td>Drawn By</td> <td colspan="3"></td> <td>Revision</td> </tr> <tr> <td colspan="4"></td> <td>S8479F-02</td> </tr> <tr> <td colspan="4"></td> <td>01</td> </tr> </table>	Design	By	BBS	Date	28/04/09	Author	By	NTS	Scale	NTS	Approved	By	CT	Project No.		Drawn By				Revision					S8479F-02					01
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Drawn By				Revision																													
				S8479F-02																													
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

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

The subject proposal seeks consent for the erection of a telecommunications facility comprising of a 30 metre high monopole and ancillary infrastructure. The proposal involves minor modification to the natural environment in the form of the removal of a small clump of camphor laurel trees. The remaining vegetation including native species will not be touched. It is considered that the proposed 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 therefore considered to be 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 land is zoned 1(a) Rural.

The primary objective of the 1(a) zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilisation purposes and associated development and to protect rural character and amenity.

The proposal is consistent with the primary objective of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

The proposed telecommunication facility is consistent with the secondary objective of the 1(a) zone by allowing development that is not suitable within an urban area due to the greater visual impact it generates and at the same time improving telecommunications in the locality. The proposed telecommunication facility 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 - Zone objectives

Primary objectives

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

Secondary objectives

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

The proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with development consent and is consistent with the objectives of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

Clause 15 - Essential Services

Electricity supply is available from Meadow Place. Power is proposed to be supplied as an extension to this supply. The power supply is proposed to be run underground via a 2 metre easement.

Clause 16 - Height of Building

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 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.

State Environmental Planning Policies

SEPP (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.

Due to the site being heavily vegetated, it is considered that the development will not cause a loss of prime crop or pasture land.

SEPP (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.

SEPP (Rural Lands) 2008

The land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

The principles are stated and addressed as follows:

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It is considered that the proposed development satisfies the rural planning principles as it will provide development on rural land that will contribute to the broader community needs by improving telecommunications in the locality.

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

N/A

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Vehicular access to the site is proposed via Meadow Place. An existing driveway

(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. However, considering the distance to nearby dwellings is approximately 150 metres, no significant impacts are anticipated. 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. The SEE states that the site is heavily vegetated and the site has not been used for any other uses. Council's mapping system shows that there are no cattle dip sites within 200m of the proposed facility. An examination of the available aerial photos and topographical maps for the site also do not indicate that the site was used for any potentially contaminating activity.

Radiofrequency Electro Magnetic Emissions (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 24/04/09. This Report has been prepared in accordance with the requirements of The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and estimates the maximum cumulative EME levels (% of ACMA mandated exposure limit) produced by the site at ground level at the following distance from the antennas:

Distance from the antennas at 19 Meadow Place	Maximum Cumulative EME Level
0m to 50m	0.0051%
50m to 100m	0.0079%
100m to 200m	0.042%
200m to 300m	0.042%
300m to 400m	0.024%
400m to 500m	0.014%

The values of electromagnetic energy are given as percentages of the permitted limit. The results indicate that the **maximum estimated EME level is 0.042% of the ACMA mandated exposure limit at a distance of 202.67m**. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. Therefore the operation of the Base Station is not expected to give rise to any RF- EME issue for the public.

Visual Impact

The proposed monopole is 30 metres 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 undulating and winding terrain also assists in mitigating numerous view sheds to the site. The proposed monopole is to be painted mist green as to blend with its surrounds. The monopole structure has a relatively small circumference and the type of headframe is in a compact circular form as to further reduce the visual impact.

The following is a response provided by the applicant regarding the potential impact of the main view sheds of concern with this proposal.

- *Figure 3 below depicts view sheds when exiting and entering Uki village.*

Figure 3. Viewsheds entering and exiting Uki Village. Pink dot denotes the subject site.



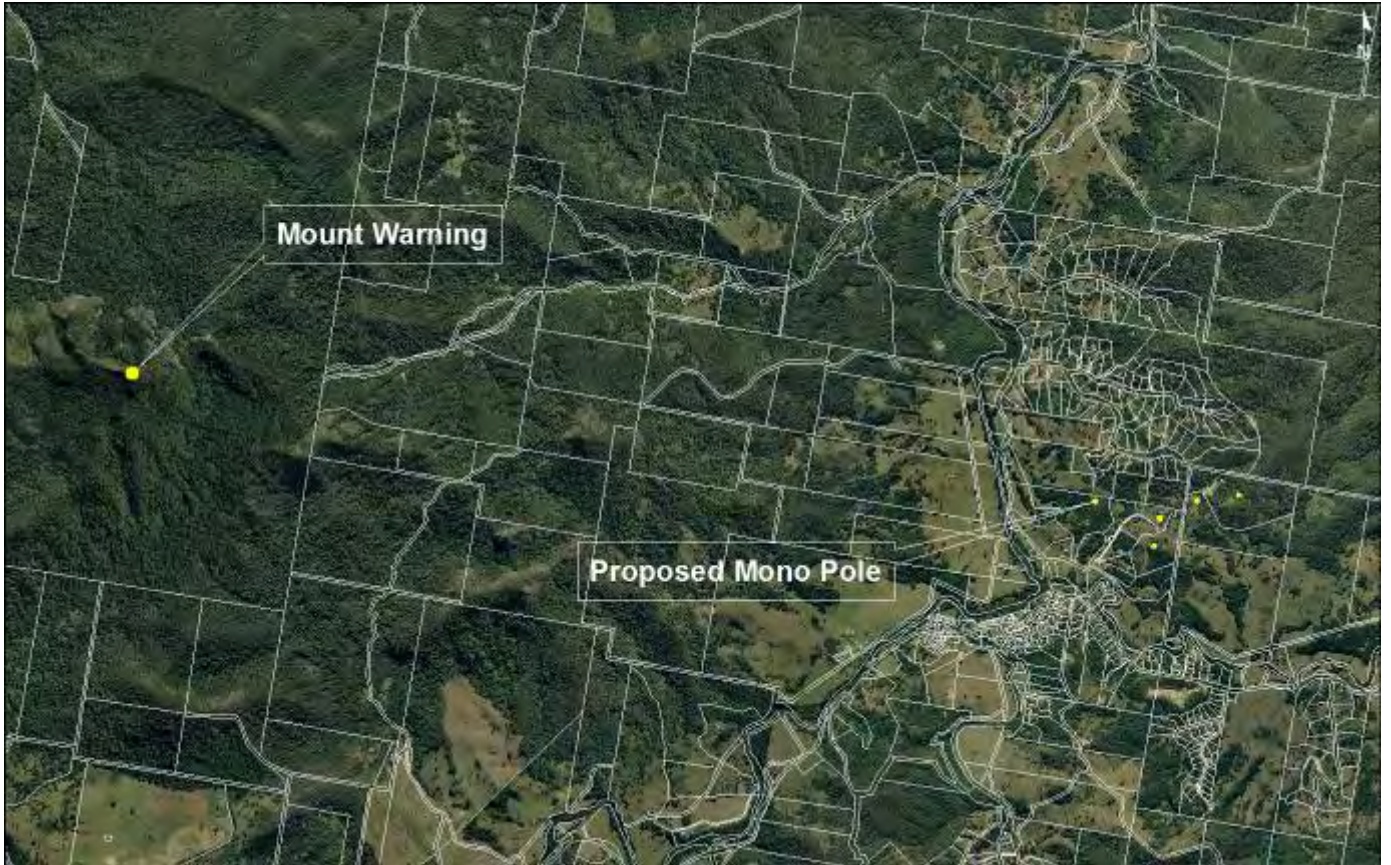
Source: <http://imagery.maps.nsw.gov.au/>

- *Entering Uki heading north east along Kyogle Road “B”, the proposed monopole will not be visible.*
- *Entry into Uki heading south along Kyogle Road “A”; the proposed monopole is also unlikely to be detected until just before/driving past 1361 Kyogle road (refer to photo 6 below). The driver’s attention would have to be towards the left of the vehicle to view the proposed monopole. The impact of this view shed will be mitigated by vegetation which will make detection by drivers passing by difficult.*

Photo 6. Photograph taken from 1361 Kyogle road looking north east towards cherry picker and proposed site (proposed site located 140m behind cherry picker). The orange arrow indicates location of cherry picker. Pink arrow indicates compensation (distance & angle) for approximate location.



- *Views from the main centre of the village area “C” (commercial/tourist area). The proposed site location is difficult to detect from the centre of the village because of the elevated terrain at the northern end of the village. It is not anticipated that the monopole would be visible from the central area of Uki Village.*
- *There is minimal to no detrimental effect when heading through Uki village along Kyogle Road due to the double factors of dense mature vegetation and sharply twisting roads/ undulating steep terrain that limits the “panoramic view sheds”. Panoramic view sheds are more common when driving through rural farmland largely cleared of the majority of vegetation combined with gently undulating terrain. The only area where varying degrees of view to the proposed monopole can be gained is at the end of Meadow Place. The figures below identify potentially 4 properties which may have Mount Warning and the proposed monopole in the same view shed.*



From the information submitted above by the applicants, it is conceded that the proposed monopole may have some visual impact in public areas and on some neighbouring private properties as it will not be completely invisible as the facility needs a clear line of sight for transmission. However, the main view sheds of concern's impact is considered to be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

Consideration of Alternative Sites

The applicant provided the following analysis of alternative sites:

"When looking at alternative sites there is a limit as to how far the 3G mobile base station can be located from the targeted coverage area (in this case the township of Uki). Even though 3G coverage from a mobile station may reach many kilometres out from the actual base station the greater the distance from the base station the greater degradation the 3G signal suffers. Signal degradation leads to commonly experienced problems such as dropping out, poor connectivity, etc.

Alternative sites considered - (please refer to Map 1)

A telecommunications facility at this location would have been prominent from the main street of Uki.

Candidate 2 - Lot 2 DP 581366 No. 22-30 Aults Road Uki

Difficulties were encountered in sourcing power to this site. Additionally it was also anticipated that there would be difficulty in getting heavy machinery to the site (for construction) due to the steep gradient of the terrain.

Candidate 3 - Lot 53 DP 755754, Langes Road, Uki

Inability to obtain tenure approval from the property owner.

Candidate 4 - Water Treatment works, end of Old Convent Road, Uki

As per candidate 1.

Candidate 5 - Water Reservoir at end of Grants Road, Uki

Existing layout of area around water reservoir is problematic. There was difficulty in locating an appropriate area for the facility to be erected.

Candidate 6 - Lot 4 DP 43844 1359 Kyogle Road, Byangum NSW

Insufficient space left on property to appropriately accommodate the proposed facility. Furthermore, the existing house is already located in the prime area for any proposed telecommunications facility.

Candidate 7 - Property at end of Sunrise Place, Uki

As per candidate 3.

Candidate 8 - Working Quarry site off Smiths Creek Road, East of Uki

Site was discounted from a radiofrequency perspective because the 3G signal to Uki was blocked by terrain of a greater elevation to the west of the quarry. Basically, the main intended target of the 3G coverage, Uki Village, would have received no coverage from this location. Please see Figure 1 for a 3D illustration. Additionally the quarry is also a working quarry which also makes it difficult to secure an area that will not impede quarry activities now and in the future.

Candidate 9 - Site located around Mt Wollumbin

This site was very difficult to access by heavy machinery due to the steep terrain. It is also probable that the creation of a significant power easement (20m wide) requiring tree removal, would have been needed if this site had been progressed.

Candidate 10 - Lot 17 DP 778719, 19 Meadow Place, Uki

Candidate 10 is situated on elevated terrain outside the main Uki village area. This candidate has many attractive features for telecommunications facility siting including access, power and good vegetation cover.

Following critical evaluation of the above candidates, a preferred nominated candidate is then selected. This selection is based on a number of key issues including radiofrequency coverage; planning/environmental considerations; engineering criteria; and the availability of the site and associated construction costs (as outlined in greater detail in Section 2.2 above).

In this particular instance, the proposed candidate identified as Candidate 10 at Lot 17 DP 778719, 19 Meadow Place, Uki was considered as the optimum outcome to provide Optus 3G mobile and wireless broadband to the Uki area."

Council is satisfied with the applicant's analysis as detailed above and accordingly has recommended approval for the subject site based on appropriate conditions of consent.

Flora and Fauna

The site is mapped under the Tweed Vegetation Management Strategy 2004 as Camphor Laurel dominated vegetation of low ecological significance and low ecological sensitivity. A site visit confirmed that the area upon which the monopole is proposed is mainly cleared and surrounded by Camphor Laurel, declared a Noxious Weed in Tweed Shire in March 2009. Camphor Laurel trees up to 6m as well as 10 rainforest edge species saplings 1 to 2m will require removal to enable the monopole erection. In addition, some further minor removal of native and exotic vegetation is likely along the proposed access road.

The larger site is mapped as Steep Protected Land in part with slopes over eighteen degrees. Ecological value exists within the occasional large (greater than 40cm diameter at breast height) Brushbox and Strangler Fig trees on the lot at lower elevation and regeneration of native rainforest seedlings is occurring in the vicinity of these trees. Despite the dominance of Camphor Laurel, these regenerating species indicate that the hillside could be rehabilitated to Brushbox Open Forest with a rainforest understorey over a period of time if significant effort were to be expended. Such occurrences are greater than 50m from the proposed monopole site and thus potential fauna using these trees are unlikely to be affected by installation of the tower.

Wildlife Atlas records for the surrounding 5km radius include records of a number of threatened flora and fauna species and the site is likely to provide occasional forage habitat for some of these threatened species such as the Grey-headed Flying Fox, Rose-crowned Fruit Dove and Superb Fruit Dove. However, the habitat is unlikely to provide roost sites for these species such that they could be considered resident on site.

(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

The application was advertised for a period of fourteen (14) days from Wednesday 22nd July 2009 to Wednesday 5th August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. In response to the various objecting submissions the following assessment of the common issues raised is summarised below.

Objection	Response
Health concerns from electromagnetic energy generated from the facility	This has been discussed previously in this report.
Devaluation of property prices	The consideration of property prices is not a Section 79C matter for consideration.
Increased Traffic	The facility will be unmanned and service vehicles are expected to attend the facility for maintenance purposes only on average four (4) times per year. Due to the limited amount of servicing, additional traffic on Meadow Place is not considered an issue.
Alternative sites	<p>Optus has a network of base stations throughout Australia and when an area is identified to have poor network coverage or capacity a new facility has to be located to fit into the existing network. Optus, where practicable will try and locate telecommunications equipment on existing structures or rooftops.</p> <p>A search of the area has revealed that due to the area being generally rural, there are no existing structures such as water towers that would be suitable to house a telecommunications facility.</p> <p>In choosing the proposed location for the monopole, the applicants also considered a number of alternative sites, attached to this report is a copy of the applicants assessment of Alternative Sites.</p>
Location/site unsuitable	A search of the area has revealed that there are no other telecommunications facilities in the area. In order to reduce the number of facilities in the area Telstra would normally co-locate, but there are no such towers in the area.
Lack of community consultation	It is not a statutory obligation for the applicants to undertake community consultation.
Visual impacts	This has been discussed previously in this report.

(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 1(a) zone and therefore can be assessed by Council.

The visual impact on the adjoining landowners will be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

The communities concerns in regard to health risks are acknowledged and have been considered. However, 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 or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. Applicant's assessment of alternative sites (ECM 8404297)
 2. Report prepared by Optus detailing the outcomes and discussion of meeting held 7 December 2009 (ECM 9734930)
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12 [PR-CM] Proposal to Amend the Rezoning Timeframe of the Tweed Urban and Employment Land Release Strategy 2009 for the Boyds Bay Garden World Site, Tweed Heads

ORIGIN:

Planning Reforms

SUMMARY OF REPORT:

A submission seeking a request to amend Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years) relating to the Boyds Bay Garden World site was received by Council from Planit Consulting on 9 September 2009. The submission identifies that, should Council support an amendment to the Strategy, the proponents will advance an application to rezone the site from the current 1(a) Rural zone under Tweed Local Environmental Plan 2000 to a zone which will facilitate an employment generating, business park redevelopment, to include such uses as aviation servicing, bio tech, logistics/warehouses and food related industries.

This report addresses the strategic implications and planning merit issues relating to both the Strategy amendment proposal, and the general nature of the proposed business park use, for which Council will need to be satisfied that such a proposal is an economically viable use for this site.

From the officer's assessment of the proponents' submission, despite the current Strategy's identification that there is currently approximately 102 hectares of available, potentially useable zoned employment land within Tweed Shire, it was acknowledged that there are a number of favourable and strategic aspects relating to the location of the subject site and its proposed employment generating potential. However, the assessment also identified a number of site constraints, such as the impacts of Gold Coast Airport operations, regional and local road access, and proximity to Council's new Tweed Heads sewerage treatment plant, which require further investigation, prior to there being assurance that a future business park redevelopment is feasible for the site.

In any support of the proponents' proposed amendment of the TEULRS, Council needs to be provided with some certainty that the subject business park redevelopment proposal can resolve the major site constraint and planning issues identified above. One option is for Council to require a Development Application (DA) to be submitted concurrent to any rezoning application for the site. However, given the recent legislative changes to the State Government's plan making processes, whereby the submission requirements for the new "Planning Proposal" and "Gateway" system are much less onerous for any initial rezoning application, it may therefore be seen as an unreasonable imposition on the proponents in this instance to require the details of a full DA with their rezoning proposal. The option for a combined application under s 72J of the Act is nevertheless there should the proponent decide to proceed on that basis.

As an alternative approach to gaining greater certainty in establishing the viability of the proposed redevelopment of the Boyds Bay Garden World site, it is recommended that the proponents provided a detailed response to the main outstanding issues of their Strategy amendment submission in any Planning Proposal documentation, and that further prior consultation occur with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority.

On the basis of this approach, it is considered that there are sufficient grounds for Council to support the proponents' request to amend Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years) relating to the Boyds Bay Garden World site, subject to further consultation with relevant authorities, and resolution of the key planning and site constraint issues identified in this report.

RECOMMENDATION:

That:-

- 1. Council endorses the proposed amendment Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years), as outlined in the submission received by Council from Planit Consulting on 9 September 2009, relating to the Boyds Bay Garden World site, Lot 10, DP 1084319, Tweed Heads.**
- 2. Approval of Point 1 above will be subject to the proponents providing a more detailed response to the main outstanding issues identified in this report, including further prior consultation occurring with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority, as part of any future Planning Proposal application to rezone this site.**

REPORT:

Background

Following an earlier presentation to a Councillors Workshop, and subsequent meetings with Councillors and Council staff, a request to amend the Tweed Urban and Employment Land Strategy (TUELRS) 2009 relating to the Boyds Bay Garden World site was submitted by Planit Consulting Pty Ltd, on behalf of Leisure Brothers, on 9 September 2009. Please refer to Attachment 1 of this report for a copy of this submission.

The submission identifies that, should Council support an amendment to the Strategy, the proponents will advance an application to rezone the site from the current 1(a) Rural zone under Tweed Local Environmental Plan 2000 to a zone which will facilitate an employment generating, business park redevelopment, to include such uses as aviation servicing, bio tech, logistics/warehouses and food related industries.

The basis for the request is to amend the TUELRS strategy in respect of the nominated staged release of the subject land (refer Figure 1 below), which is identified as 'Airport Precinct' Area 2, and which is shown in Table 9-1 (refer Figure 2 below) of the TUELRS as a 'medium' term proposal. Under the definition provided in the strategy medium designation refers to a staged release timing of 10-20 years, meaning that the staged release of Area 2 was envisaged to commence in 2019 at the earliest.



Figure 1 – Area 2 (Airport Precinct) – Figure 14 Tweed Urban and Employment Land Strategy 2009

Table 9-1 Tweed Shire Employment Land Release Program

Potential Employment Locality	Gross Area (ha)	Net Area (ha)	Approximate Years supply (@ 10 ha per yr Shire wide demand)	Timing for commencement of rezoning	Comment
Airport precinct (Area 1)	14	11	1.1	Medium Term	Note that Area 1 is recommended for deletion from the Employment Lands Strategy and is not included in the supply calculations.
Airport precinct (Area 2)	29	23	2.3	Medium Term	Assumes 80% of land will yield lots.
Border Race Track (Area 3)	11	9	0.9	Short Term	Assumes 80% of land will yield lots.
Chinderah East (Area 4)	37	26	2.6	Short Term	Assumes 70% of land will yield lots due to vegetation buffers.
Wardrop Valley West (Area 5)	63	44	4.4	Long Term	Assumes only 70% of land will yield lots due to vegetation buffers and agricultural buffers
Wardrop Valley East (Area 6)	60	48	4.8	Short Term	Assumes 80% of land will yield lots
West Pottsville (Area 7)	144	86	8.6	Short /Medium Term	Assumes only 60% of land will yield lots due to rural residential and riparian buffers

Figure 2 - Table 9-1 – Tweed Urban and Employment Land Strategy 2009

Relevant Council Resolution

At the Council Meeting of 20 October 2009 when considering a progress report on the Planning Reforms Unit work program, Council resolved to bring forward the assessment of the request as a priority consideration within the works program, by way of the following resolution:

“RESOLVED that the Planning Reform Unit Work Program be amended to enable Council to consider Boyds Bay Garden World site as a short term priority.”

Assessment of the Site Suitability of a Rezoning and Future Business Park Use

The proponents' submission required referral to external agencies as well as to other Divisions within Council. The most notable areas requiring consideration can be summarised as; roads, sewer and water, flooding, and aircraft noise. Each of these critical areas provide guidance on the suitability of the land's potential for development under current conditions and assists with assessing the need to amend the Table 9-1 of the TUELRs strategy.

Preliminary assessment and verbal advice from the Roads and Traffic Authority has indicated that the road network, although requiring additional road works as part of any future development, is not likely to pose any insurmountable impediment to the development of the land. However, at the time of finalising this report, written confirmation of the RTA's verbal advice had not been received. Further, Council's Infrastructure Engineers' had likewise indicated that traffic issues would likely be manageable and would be best assessed in detail within a development application (DA). This advice applies equally to stormwater management which would also need to be addressed within a future DA. Flooding does not present a significant issue for the subject site particularly as the majority of the site will be above the design flood level of RL 2.6m AHD and given that the site is not subject to high flow or emergency response provisions.

Council's Water Unit has raised the issue of the subject site being within the 400m operational buffer zone to the Tweed Heads Waste Water Treatment Plant (WWTP), which requires a consideration of the location and use of the buildings within the site.

Another important issue requiring similar consideration about the ultimate use of the site is raised in a response from Gold Coast Airport (GCA) dated 18 November 2009 (refer Attachment 2). In particular, GCA has raised the need to consider; public health and safety, noise, lighting and materials, and height limitations.

The issues raised above require careful consideration of the ultimate uses upon the site and their location within the site. The Planit report addresses the perceived opportunities associated with the development of the site including raising the employment generation from traditional industrial land uses supporting about 40 workers per hectare to something more in the order of 60-70 workers per hectare.

Under more suitable conditions increasing the employment generation within new employment lands is highly desirable and would be consistent with the aims of the TUELRs. However, this approach is seemingly at odds with the limitations presented by the sites proximity to the airport and to a lesser extent because of its location within the 400m buffer zone to the WWTP.

Consequently, out of the uses identified as potentially suitable the lower employment generating warehouse and distribution uses may present the better option in the face of the constraints and issues raised. That said, further consideration is needed when taking into account those uses as they often require taller buildings, operate 24hrs per day and are of prefabricated materials, raising potential issues with the operational height limitation that seemingly will restrict building height to about 10metres, issues with lighting and reflectivity. Issues arising in relation to the WWTP buffer zone will be lessened with lower employment generating land and will fall more to the siting, location and design of building and car parks.

The above issues have been discussed with the proponents, who have since submitted some additional justification for their rezoning proposal, and expressing their commitment to undertake further detailed assessment should the ability to pursue a rezoning of the land arise.

TABLE 9-1 OF TWEED URBAN AND EMPLOYMENT LAND STRATEGY 2009

The Planit request is based on the need to amend Table 9-1 (Figure 2 above) to enable a rezoning to occur in a shorter time than the 10-20 years currently nominated.

The purpose of Table 9-1 comes from the aims of the TUELRS which to summarise is to ensure a replenishing 25 year supply of land to meet the employment needs of the Tweed in a coordinated and planned way.

There is a projected demand for between 110 and 250ha of employment over the next 25 years. Tweed has 231ha of zoned 'industrial' land of which about 138ha (about 102ha when discounted) is vacant undeveloped land and this represents about 10 years supply. The TUELRS objective is to identify suitable sites for future investigation with the aim of releasing land for rezoning to match demand; this is often referred to as the supply and demand nexus. This 'nexus' can be very useful in guiding the better utilisation of land, which is a naturally occurring practice in an environment of scarcity, opposed to underdeveloped and consumption which can occur when land is supply is plentiful and prices are comparatively low. This ideology underpins the operation and intent of the TUELRS.

The question that arises for consideration is whether, under the circumstances of the case presented in their submission, the applicant's request to amend Table 9-1 to bring forward the timing of the subject land should be supported?

Fundamentally this question is answered in the strategy in as much that it identifies a substantial amount of land already zoned but not developed, so much so, that is about 10 years supply. On analysis of the aims of the TUELRS it can be seen that the operational structure of the plan is to ensure that an oversupply of zoned land is not made available partly, in order to discourage underdevelopment and historic trends of land banking.

Despite the current Strategy's identification that there is currently approximately 102 hectares of available, potentially useable zoned employment land within Tweed Shire, it is the officers' opinion that that there are a number of favourable and strategic aspects relating to the location of the subject site and its proposed employment generating potential, which warrant the support of a shorter term release of the Boyds Bay Garden World site.

CONCLUSION

From the officer's assessment of the proponents' submission, despite the current Strategy's identification that there is currently approximately 102 hectares of available, potentially useable zoned employment land within Tweed Shire, it was acknowledged that there are a number of favourable and strategic aspects relating to the location of the subject site and its proposed employment generating potential. However, the assessment also identified a number of site constraints, such as the impacts of Gold Coast Airport operations, regional and local road access, and proximity to Council's new Tweed Heads sewerage treatment plant, which require further investigation, prior to there being assurance that a future business park redevelopment is feasible for the site.

In any support of the proponents' proposed amendment of the TEULRS, Council needs to be provided with some certainty that the subject business park redevelopment proposal can resolve the major site constraint and planning issues identified above. One option is for Council to require a Development Application (DA) to be submitted concurrent to any rezoning application for the site. However, given the recent legislative changes to the State Government's plan making processes, whereby the submission requirements for the new "Planning Proposal" and "Gateway" system are much less onerous for any initial rezoning application, it may therefore be seen to be unnecessary or unreasonable to require the proponents in this instance to provide a full DA with their rezoning proposal.

As an alternative approach to gaining greater certainty in establishing the viability of the proposed redevelopment of the Boyds Bay Garden World site, it is recommended that the proponents provided a detailed response to the main outstanding issues of their Strategy amendment submission in any Planning Proposal documentation, and that further prior consultation occur with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority.

On the basis of this approach, it is considered that there are sufficient grounds for Council to support the proponents' request to amend Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years) relating to the Boyds Bay Garden World site, subject to further consultation with relevant authorities, and resolution of the key planning and site constraint issues identified in this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The recommendation of this report is to support an amendment to the Tweed Urban and Employment Land Strategy 2009 facilitating a change in policy relating to a specific site.

UNDER SEPARATE COVER:

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

1. A copy of the submission of Planit Consulting dated 7 September 2009 (ECM 9692800)
 2. Advice from Gold Coast Airport dated 18 November 2009 (ECM 9692813)
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- 13 [PR-CM] S96 Applications D94/0015.04, T4/2794.01 and PN1074.04 to Amend the Three Existing Development Applications (D94/0015, T4/2794 and PN1074) to Facilitate an Amended Caravan Park Layout Comprising 148 Sites (from 180 sites) at Lot 382 DP 755740 and**

ORIGIN:

Development Assessment

FILE NO: PF4030/2620 Pt10

SUMMARY OF REPORT:

Council is in receipt of three (3) S96 Applications which all amend the existing layout of the former Banora Point Caravan Park (now known as River). The need for the three (3) S96 Applications is a direct result of how the Caravan Park was approved (which was over three separate applications). Subsequently, each consent needs to be amended to reflect the amended plans which show a revised allotment layout to reflect 148 caravan sites rather than the previously approved 180 sites. This is effectively achieved by increasing the size of each individual site. The general road layout has remained similar to the original pattern.

The subject site has had an extensive development and compliance history which was recently reported to Council on 18 November 2008 and 17 March 2009. The three S96 Applications to some extent seek to rectify the previous compliance matters and enable a lawful way forward for the development of the subject site.

In accordance with Council's previous resolutions the subject site and the current S96 Applications have been reviewed by Council's Solicitors to assist the assessment of these applications. The legal advice presents a finely balanced argument. Upon careful review of the advice Council Officers believe there is scope for the three S96's to be considered in a lawful manner. A complete copy of the legal advice is contained within a confidential attachment to this agenda.

The following report assesses the proposed amendments having regard to the Environmental Planning and Assessment Act and all applicable planning legislation. On balance of all the relevant heads of consideration this report concludes that the amendments will result in, minimal environmental impact, substantially the same development as that approved and that all relevant consultations and submissions have been undertaken. The results of such consultations do not warrant refusal of these applications.

Subject to the imposition of additional conditions of consent the three S96 Applications are recommended for approval.

RECOMMENDATION:

That:

- 1. The three S96 Applications D94/0015.04, T4/2794.01 and PN1074.04 for amendments (to facilitate an amended caravan park layout comprising 148 sites from 180 sites) to Development Consents (D94/0015, T4/2794 and PN1074) which all granted approval for part of the former Banora Point Caravan Park at Lot 382 DP 755740 and Lot 5 DP 828639 (formerly known as Lot 1 DP 583322) and unnamed road reserve, Pacific Highway East, Banora Point be approved subject to the three consents being amended to all read as follows:**

- 1. The description on each development consent should read as follows:
“A CARAVAN PARK AND BUSHFIRE HAZARD REDUCTION WORK”**
- 2. The conditions on each development consent should read as follows:**

GENERAL

- 1. The caravan park shall have a layout comprising 148 long term sites as detailed within the Statement of Environmental Effects prepared by Planit dated July 2009 and Plan No A0.04 Issue D prepared by Lightwave (as approved by S96 Applications D94/0015.04, T4/2794.01 and PN1074.04 in December 2009) , except where varied by the conditions of this consent.**
[GENN005]
- 2. Prior to the installation of any structures on the site, the applicant shall obtain an Approval to Operate a Caravan Park under the provisions of Section 68 of the Local Government Act 1993.**
[GENNS01]
- 3. The prior approval of council shall be obtained before the installation of any structures on sites within the Caravan Park. All applications shall be made on the appropriate form and be accompanied with all plans and specifications as required under the provisions of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 and be accompanied by the appropriate fee.**
[GENNS02]
- 4. Prior to the installation of any structure (including manufactured home) on each site, the applicant is to obtain approval in respect of plumbing and drainage work under the provisions of Section 68 of the Local Government Act 1993.**
[GENNS03]
- 5. Prior to the installation of any structure (including manufactured home) on each site, the applicant is to obtain approval in respect of stormwater and drainage work under the provisions of Section 68 of the Local Government Act 1993.**
[GENNS04]

6. Prior to the issue of an Approval to Operate a Caravan Park under the provisions of Section 68 of the Local Government Act 1993 the applicant shall obtain an Approval to Operate an On-Site Sewage Management System under the provisions of Section 68 of the Local Government Act 1993 for the existing private sewage ejection pump station and associated sanitary drainage line and any associated attenuation storage vessel in accordance with the conditions as specified in the Approval to Alter/Modify an On-Site Sewage Management System Reference SEP08/0016 dated 11 November 2008.

[GENNS05]
7. Prior to the issue of an Approval to Operate a Caravan Park under the provisions of Section 68 of the Local Government Act 1993 the applicant shall obtain a satisfactory final plumbing inspection and satisfy all the conditions in respect of Sewer Approval No. SEW08/0090.

[GENNS06]
8. The Caravan Park shall be designed, constructed, maintained and operated in accordance with the relevant requirements of Subdivisions 1-8 of Division 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

[GENNS07]
9. No part of the 7(a) zoned land can be used as part of the approved caravan park. This exclusion of the 7(a) lands includes an exclusion of use as passive recreational space in conjunction with the caravan park. The 7(a) zoned land can only be used to undertake bushfire hazard reduction as required by the conditions of this consent and utility installations once approved as statutorily required.

[GENNS08]
10. Prior to the installation of any structures on the site a non-flammable perimeter fence is to be erected to effectively separate the adjoining northerly and westerly wetlands from the development. Such fencing is to be of suitable design so as to prevent encroachment or intrusion onto the wetland areas and is to be erected along the full length of the boundary of each lot adjoining Lot 4 DP 828639 and Lot 7010 DP 1069421 and including the present Crown Road Reserve (with owners consent). Where boundary fencing necessitates vegetation removal, such removal must be limited to 3m either side of the boundary in accordance with the provisions of SEPP 14.

[GENNS09]
11. Other than minor vegetation required to be removed strictly for boundary fence provisions, no further removal of SEPP 14 or any other wetland or significant native vegetation or ecological communities including mangroves, saltmarsh, Swamp Oak (*Casuarina glauca*), Swamp Sclerophyll Forest or Littoral Rainforest is permitted without approval from the General Manager or his delegate.

[GENNS010]

12. **Asset Protection Zones must be provided wholly within land the subject of the subject applications.**
[GENNS11]
13. **No temporary or permanent dwelling or private facility or other structure apart from the perimeter road is permitted within 20m of the Mean High Water Mark of the Tweed River.**
[GENNS12]
14. **Provision must be made for traversable public pedestrian access to and along the foreshore of the Tweed River adjacent the full length of Lot 5 DP 828639 and Lot 382 DP 755740 being the land the subject of this development. A public benefit covenant (benefitting Tweed Shire Council) shall be imposed on the land to accommodate the public pedestrian access prior to installation of any structures on the land.**
[GENNS13]
15. **No construction or works are to proceed on the Crown road adjacent Lot 5 DP828639 or other Crown lands until due authorisation has been obtained from the Land and Property Management Authority under the Crown Lands Act 1989 for any existing structures and proposed improvements.**
[GENNS14]
16. **Appropriate easements to the satisfaction of the Land and Property Management Authority (LPMA) must be created with respect to any utilities on Crown land, including but not limited to sewerage pumping station, and to provide access to adjoining Crown lands (by Roads and Traffic Authority and LPMA).**
[GENNS15]
17. **Prior to issue of an approval to operate the applicant is to prepare a Vegetation Management Plan (as detailed below) for the buffer area to Tweed River.**

Furthermore, prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act 2000 from the Department of Environment, Climate Change and Water (DECCW). Waterfront land for the purpose of this consent is land and material in or within 40 metres of the top of the bank or shore of the Tweed River.

The consent holder must prepare or commission the preparation of a Vegetation Management Plan. All plans must be prepared by a suitably qualified person and submitted to the Department of Environment, Climate Change and Water (DECCW) for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the DECCW guidelines located at: www.naturalresources.nsw.gov.au/water/controlled_activity.shtml

The plan should include a Vegetation Management Plan and Riparian Corridors

The consent holder must:

- i) carry out any controlled activity in accordance with approved plans and
- ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and
- iii) when required, provide a certificate of completion to the Department of Environment, Climate Change & Water.

The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Environment, Climate Change & Water.

The consent holder must establish a riparian corridor along the Tweed River in accordance with a plan approved by the Department of Environment, Climate Change & Water.

[GENNS16]

18. The site is to remain filled to at least the design flood level of 2.8m AHD.

[GENNS17]

GENERAL TERMS OF APPROVAL UNDER THE RURAL FIRE ACT 1997

1. This assessment is based in part upon the advice and recommendations within the Bushfire Threat Assessment Report, prepared by BCA Check Pty Ltd. All recommendations within that report shall be complied with, except where modified below.
2. At the commencement of building works and in perpetuity the existing Crown Road Reserve shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*.
3. Water, electricity and gas to the proposed dwelling on proposed Lot 101 are to comply with sections 4.1.3 of *Planning for Bush Fire Protection 2006*.
4. Internal roads shall comply with following requirements of section 4.2.7 of *Planning for Bush Fire Protection 2006*.
 - Internal roads are two-wheel drive, sealed, all weather roads.
5. Arrangements for emergency and evacuation are to comply with section 4.2.7 of *Planning for Bush Fire Protection 2006*.

General Advice – consent authority to note

This response recognises the current approval to operate a caravan park on the site within the existing layout. This original approval was issued prior to the implementation of Planning for Bush Fire Protection and no bush fire safety authority was issued by the RFS. The proposed modifications as conditioned will however provide a better outcome for the development.

2. **ATTACHMENT NOS. 1, 2 AND 3 are CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act, 1993, because it contains information of a confidential nature that would, if disclosed:**
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

REPORT:

Applicant: Acegrange Constructions
Owner: Lifestyle Resorts Australia Pty Ltd and Department of Lands
Location: Lot 382 DP 755740; Lot 5 DP 828639 (formerly known as Lot 1 DP 583322) and unnamed road reserve Pacific Highway, Banora Point
Zoning: 6(b) Recreation
Cost: N/A to Section 96 applications

BACKGROUND:

The subject site has an extensive development and compliance history which have been reported to Council previously (see attachments). Specific to the current S96 Applications is the development history as follows:

- Permit Number PN1074 was granted approval on 14 November 1967 for a “caravan park and holiday units”;
- Development Consent No. T4/2794 was granted approval on 17 March 1986 for the “extensions to an existing caravan park to accommodate thirty six (36) movable dwelling sites); and
- Development Consent No. D94/0015 was granted approval on 24 June 1994 for the “additions to existing caravan park”. The plans show five additional caravan sites within the park.

The result of these development applications is a caravan park comprising 180 sites with a mix of long and short term sites. This was established in the NSW Land & Environment Court *Blackington Pty Limited v Tweed Shire Council* (a s.68 Appeal).

The three S96 Applications now seek to

- Amend the configuration of the caravan park to show 148 sites (road alignment slightly amended and some sites enlarged) ;
- Lot sizes now between approximately 100m²and 350m²;
- Deletion of 14th and 15th Avenue to improve road efficiency and enable larger allotments;
- Nominate all sites as long term sites;
- Relocation of amenities to 11th Avenue (detailed construction subject to separate application);
- Revised visitor parking location;

Note: No filling or clearing of the land is proposed with respect to this modification. Furthermore no drainage works are proposed with respect of this application.

The assessment of this modification must be undertaken on its merits based on the application as lodged with Council. It is not an opportunity to reconsider the merit of any of the original applications.

The legality and merits of the subject S96 Applications are finely balanced and are best articulated in the confidential attached legal advice.

However, having undertaken the merit assessment of this application in conjunction with the statutory planning provisions (including cumulative impact and precedent); and the prior compliance matters, on balance it is recommended that the subject application be recommended for approval subject to the recommended conditions of consent.

This course of action enables a lawful way forward for the development of the site and allows Council the opportunity to update the three consents which are out of date in terms of terminology and the process that should be followed into the future.

It is the recommended conditions of consent that give the ultimate consent boundaries and parameters in terms of the future process to be followed.

The current application which is being considered by Council is merely the change in the number of allotments within a previously approved Caravan Park. Part of the merit assessment undertaken included a review of all the additional (external) information available for the site. This included the applicant's current advertising material which clearly demonstrates the intended built form for the site (as shown in the attached earlier Council reports).

Whilst it seems that the applicant's ultimate built form may not reflect a traditional caravan park in appearance, this report demonstrates that the legislation enables and envisaged the use of manufactured homes within a caravan park. The ultimate appropriateness of the built form will be determined under licensing provisions as this application does not seek approval for the ultimate built form but rather an approval only for the site configuration.

Other Development Applications

Council is aware of two other applications that will affect the subject site:

The first is DA09/0064 which seeks approval for pools within the caravan park site. Referral comments received from DECCW and NSW Fisheries in regards to this application have been utilised for this assessment to ensure consistency between the applications. Should the subject S96's be determined by way of approval the swimming pool applications can then be determined under staff delegation.

The second is a possible Marina Development. Acegrange Constructions had Planit Consulting prepare a Preliminary Assessment report for a floating berth style marina (90 to 135 berths) and associated Marine Services & Tourist Facility comprising part of Lot 5 on DP 828639 at Banora Point (Tweed Heads), otherwise commonly referred to as Barneys Point. The Preliminary Assessment was provided to the Department of Planning to enable them to form a view of whether such an application would comprise a Major Project for which the Department of Planning would be the consent authority.

On 3 December 2009 the Department of Planning advised the applicant and Council that:

"I refer to your letter dated 12 October 2009 in which you sought the Minister for Planning's opinion that the above project is a Major Project under Part 3A of the Environmental Planning and Assessment Act 1979 (the Act). On 1 December 2009 the Deputy Director-General as delegate for the Minister for Planning declared the proposal as a project of only local environmental planning significance pursuant to clause 14(1) of Schedule 1 of the State Environmental Planning Policy (Major Development) 2005.

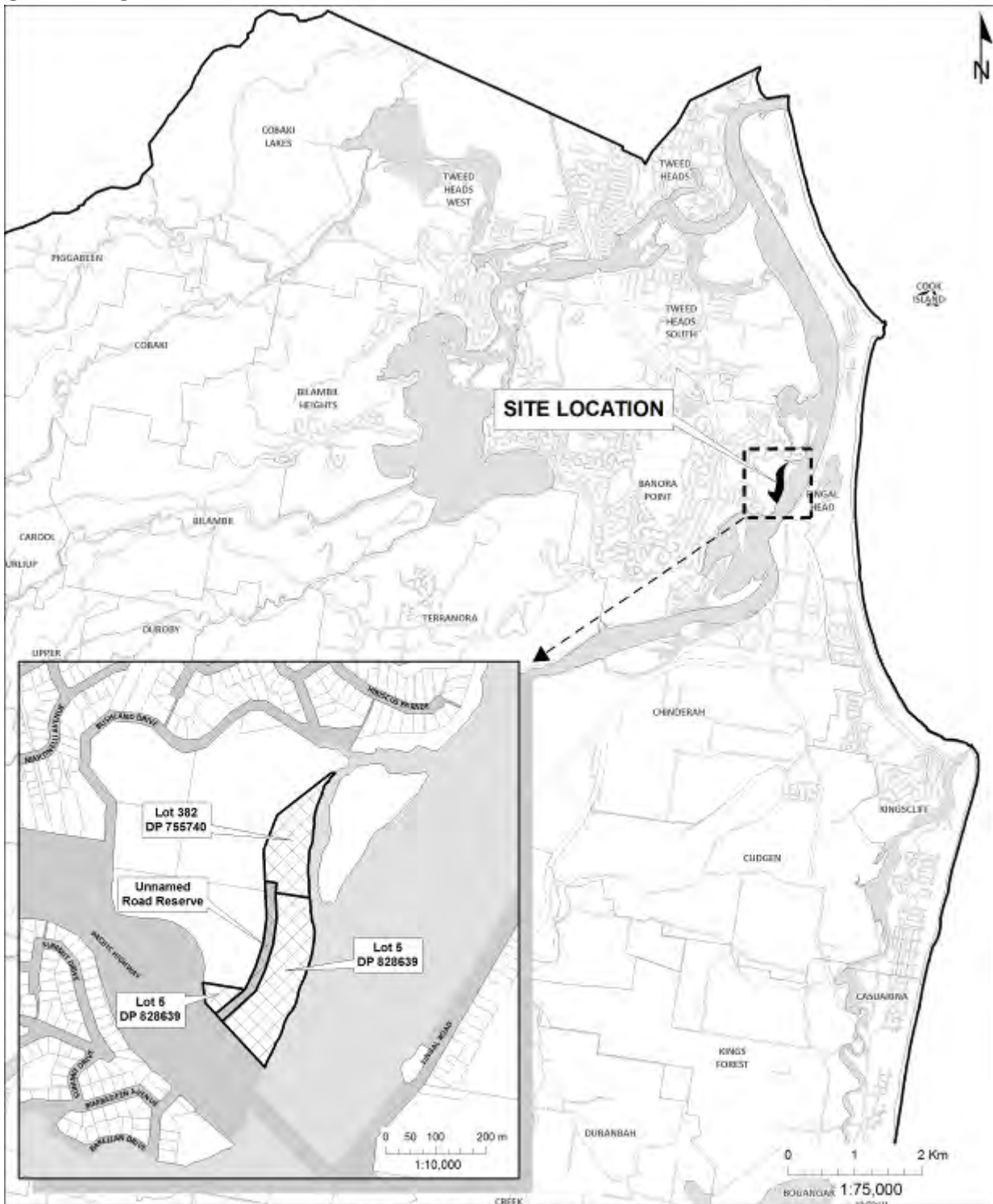
On this basis the proposal is now subject to the provisions of Part 4 of the Act, and is not a project to which Part 3A of the Act applies. A development application can now be lodged with Tweed Shire Council".

Therefore should the applicant proceed with an application for such a Marina, a Development Application would need to be prepared in accordance with Part 4 of the Environmental Planning & Assessment Act 1979. Such an application would then be assessed by Council's Technical Staff before being reported to the either Council or the Joint Regional Planning Panel (as the development may be greater than \$5M) for determination.

The applicant's Preliminary Assessment report is attached as a confidential item, for Councillors information only.

The Marina plans show that some of the proposed caravan park may be lost should the Marina development proceed. This does not impact the current S96 Applications as the applicant would have various options that effectively surrender part of their development consent in view of another development application proceeding.

SITE DIAGRAM:



LOCALITY PLAN


**Lot 382 DP 755740; Lot 5 DP 828639 (formerly known as Lot 1 DP 583322)
and unnamed road reserve - Pacific Highway, Banora Point**

Filename: z:\year\planning\mxd\A&P_@&W SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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GDA  Cadastre: 1 December, 2009
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Coordinate System - MGA Zone 56
Datum - GDA 84 DO NOT SCALE
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F: (02) 8670 2463
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



1962 AERIAL PHOTOGRAPH:



BANORA POINT CARAVAN PARK
SITE PRIOR TO ITS DEVELOPMENT

1976 AERIAL PHOTOGRAPH:



1987 AERIAL PHOTOGRAPH:



1996 AERIAL PHOTOGRAPH:



2007 AERIAL PHOTOGRAPH (note site is predominantly vacant excluding the office at present)



2007 aerial photography is supplied by Fugro Spatial Solutions Pty Ltd

AERIAL PHOTO
Lot 5 DP 828639 and Lot 382 DP 755740
Pacific Highway East, Banora Point

Filename: z:\esr\planning\mact\AAP_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 9 November, 2009

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Coordinate System: MGA Zone 56
 Datum: GDA 94



Cadastral: 9 November, 2009
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 E: planning@twm@tweed.nsw.gov.au



TWEED
 SHIRE COUNCIL

PREVIOUSLY APPROVED COMMUNITY PLAN (1999):

NOTES

- 1) Symbols indicate status
- 2) VENDOR CAPACITY: 400 2.0 x 1 km
- 3) LEVELS HAVE BEEN DECIDED BASED ON PLAIN SURVEYING. BENCHMARKS AND DATUMS MAY VARY. SURVEYING POINTS ARE TO BE USED FOR ALL FUTURE SURVEYING. OTHER LEVELS SHOWN ARE ON 100% OF CONCRETE NOT BY MANUSCRIPT SURVEYING

DETAILED PROPERTY DESCRIPTION

LOT 1000 TO LOT 1050 IN SUBDIVISION LOTS 1000 TO 1050
 BARBERA PT, DISTRICT OF HOUSTON, COUNTY OF HOUSTON
 TOTAL SITE AREA - 4.23 AC. (0.184 Ha)
 (NETT GROUND HOUSING AREA - 0.64 Ha)

SCALE 1:1000

LOT 5, LOT 6, LOT 7, LOT 8, LOT 9, LOT 10, LOT 11, LOT 12, LOT 13, LOT 14, LOT 15, LOT 16, LOT 17, LOT 18, LOT 19, LOT 20, LOT 21, LOT 22, LOT 23, LOT 24, LOT 25, LOT 26, LOT 27, LOT 28, LOT 29, LOT 30, LOT 31, LOT 32, LOT 33, LOT 34, LOT 35, LOT 36, LOT 37, LOT 38, LOT 39, LOT 40, LOT 41, LOT 42, LOT 43, LOT 44, LOT 45, LOT 46, LOT 47, LOT 48, LOT 49, LOT 50, LOT 51, LOT 52, LOT 53, LOT 54, LOT 55, LOT 56, LOT 57, LOT 58, LOT 59, LOT 60, LOT 61, LOT 62, LOT 63, LOT 64, LOT 65, LOT 66, LOT 67, LOT 68, LOT 69, LOT 70, LOT 71, LOT 72, LOT 73, LOT 74, LOT 75, LOT 76, LOT 77, LOT 78, LOT 79, LOT 80, LOT 81, LOT 82, LOT 83, LOT 84, LOT 85, LOT 86, LOT 87, LOT 88, LOT 89, LOT 90, LOT 91, LOT 92, LOT 93, LOT 94, LOT 95, LOT 96, LOT 97, LOT 98, LOT 99, LOT 100, LOT 101, LOT 102, LOT 103, LOT 104, LOT 105

NOTES: - REFER ATTACHED SCHEDULE FOR ALL SITE DIMENSIONS. THE INFORMATION ON THIS PLAN HAS BEEN PARTLY COMPILED FROM INFORMATION BY OTHERS

ROBERT. A. HARRIES
 SURVEYOR
 P.O. BOX 1725 WINTHROP, HOV. 3488
 PHONE / FAX : 02 86741424

COMMUNITY PLAN
 BARBERA POINT CARAWAN PARK
 BARBERA POINT

DATE: 27/01/2009
 TIME: 11:20 AM
 DRAWING: [redacted] 1 of 1

PROPOSED COMMUNITY PLAN:

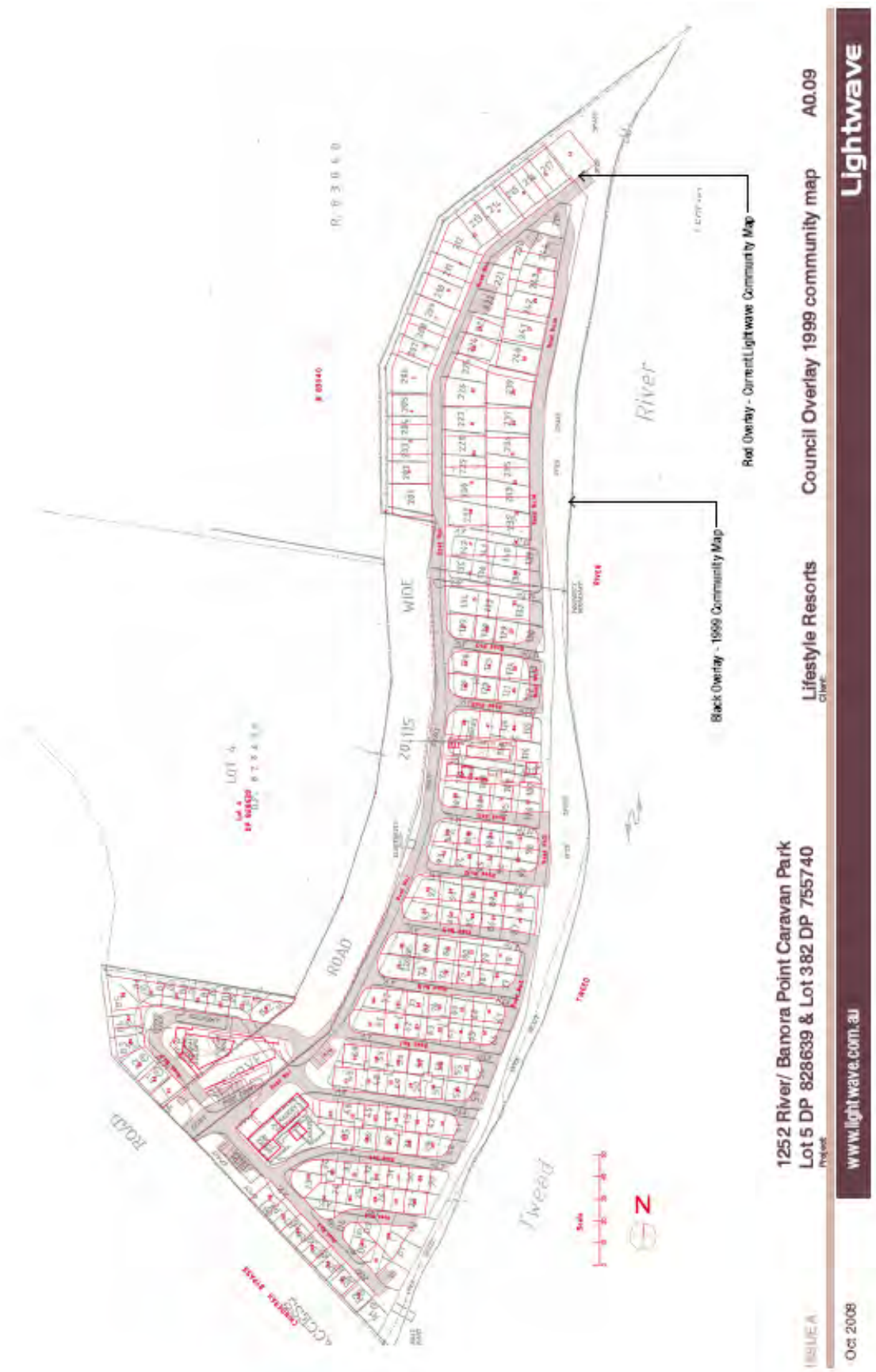


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98	100	1076	100	1076	100	1076
99	100	1076	100	1076	100	1076
100	100	1076	100	1076	100	1076

ISSUE D
 Oct 2008 1:750@A1
 1:1500@A3
 www.lightwave.com.au
 Lightwave
 Lifestyle Resorts
 Community Map
 A0.04
 1250 Barneys Point Resort

OVERLAY PLAN

Note: Red Overlay shows the applicants proposed layout at the time of lodgement of these S96's, the plan has since been amended in a minor manor as shown above. The overlay is still useful to demonstrate the changes between the previously community plan layout and the layout now proposed).



1252 River/ Banora Point Caravan Park
Lot 5 DP 828639 & Lot 382 DP 755740
Project

www.lightwave.com.au

Lifestyle Resorts
Council Overlay 1999 community map A0.09



ISSUE A
Oct 2008

CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96 of the Act specifies that;

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.”*

Accordingly the following report addresses these heads of consideration.

To determine if the S96 Applications are of minimal environmental impact and substantially the same development a 79C (1) Assessment has been undertaken in the first instance:

79C (1) Assessment – Environmental Planning and Assessment Act 1979

The matters of relevance are addressed as follows:

Tweed Local Environmental Plan 2000

General Permissibility

The subject site is zoned part 6(b) Open Space (Recreation) and part 7(a) Environmental Protection (Wetlands and Littoral Rainforest).

Historically the approved caravan park occupied Lot 382 in DP 755740 and Lot 5 in DP 828639 within that part of the site which is zoned 6(b). In that section of the site a caravan park is permissible subject to an assessment against Clause 8(2) of the Tweed LEP 2000.

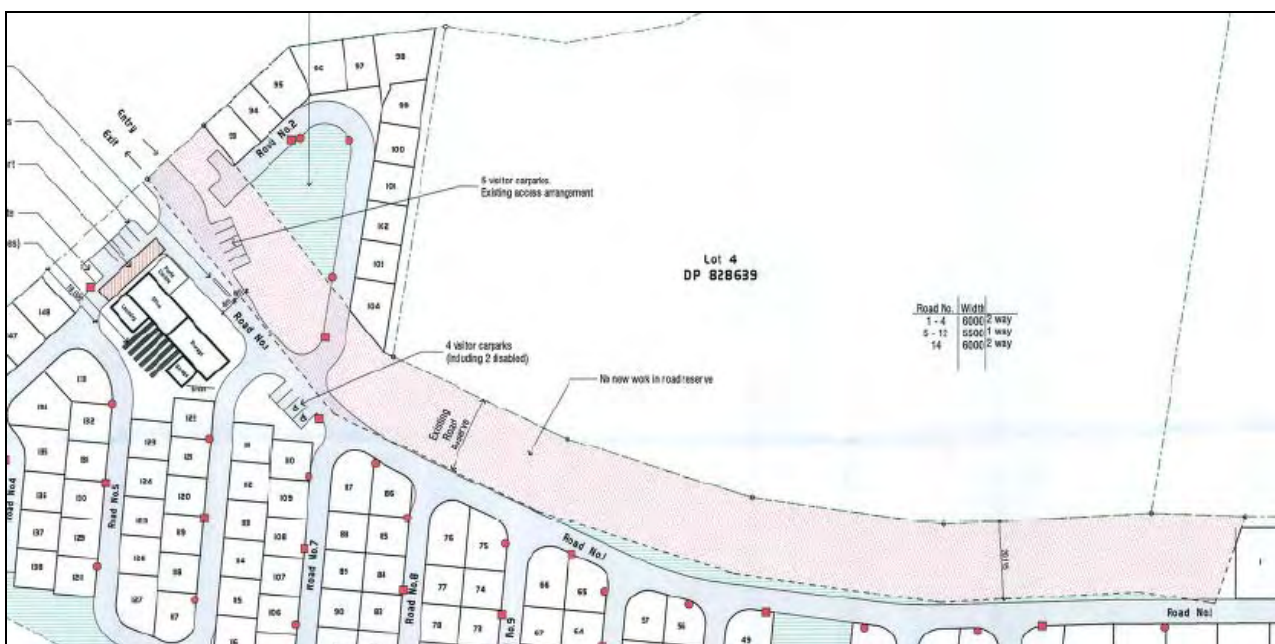
Over the years the applicant has utilised a lease from the Crown to use the adjoining Crown land for recreation and part of the driveway entrance. However, this aspect of site utilisation was never formally part of any of the development consents for the site.

The subject S96 Applications have sought to bring in the Crown Land as part of the development consent. Whilst Council's legal advice has indicated that this can be done within a S96 it does not negate the need for any land uses within the Crown land to be permissible.

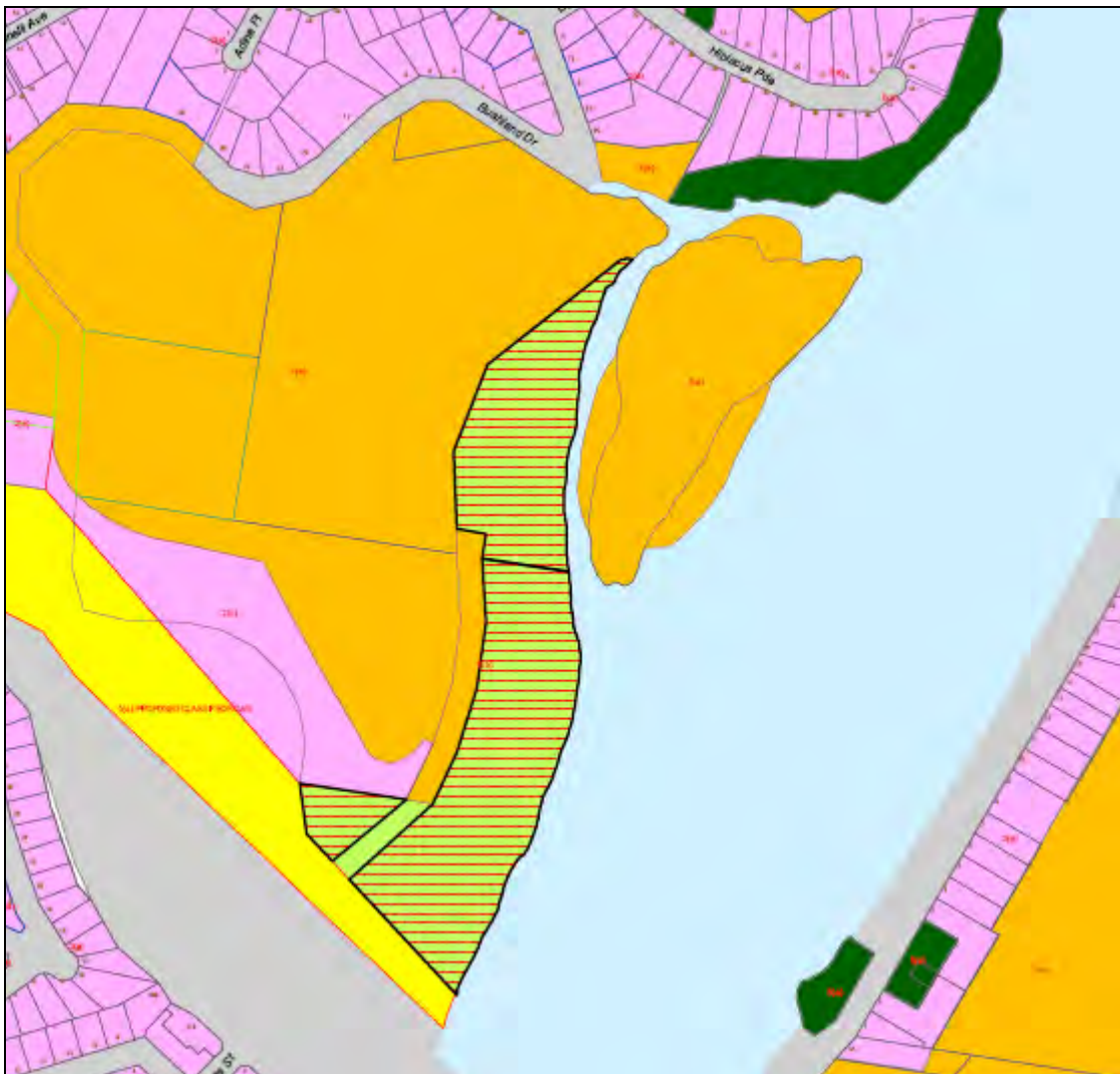
The Crown land is in part zoned 6(b) Open Space (Recreation) and in part zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforest).

A caravan park is prohibited in the 7(a) section of the Crown Road.

Below is an extract from the plan demonstrating what structures are proposed within the Crown Road Reserve.



Below is an extract from the Tweed LEP 2000 Zoning Map demonstrating what part of the Crown Road is zoned 7(a) compared to that zoned 6(b).



From these plans the entrance way, roads, and visitors parking are all within that part of the site zoned 6(b) (which is permissible subject to satisfying Clause 8(2) of the Tweed LEP 2000).

The remaining part of the Crown Road zoned 7(a) shows no new work within this section of the site. It will however, be necessary to undertake bushfire hazard reduction work in this part of the site in accordance with the RFS General Terms of Approval. This land use is permissible in the 7(a) zone.

Having reviewed the applicant's legal advice on permissibility and Council's legal advice on permissibility (both attached as confidential attachments), the proposed modification is considered to be permissible with consent provided an additional condition of consent is incorporated into the consent which specifies that:

No part of the 7(a) zoned land can be used as part of the approved caravan park. This exclusion of the 7(a) lands includes an exclusion of use as passive recreational space in conjunction with the caravan park. The 7(a) zoned land can only be used to undertake bushfire hazard reduction as required by the conditions of this consent and utility installations once approved as statutorily required.

Use of the Crown Road has been problematic and the Land Property Management Authority (LPMA - formerly Department of Lands) has previously refused owners consent to lodgement of DA's and their modifications containing structures on the road reserve as permanent structures are not permitted under the Crown Lands Act on Crown Road Reserve and thus the road must be closed and ownership transferred.

LPMA have now provided owner's consent to the lodgement of the modifications based on discussions with the applicant relating to a potential land "swap" for foreshore land of equal or greater area. The letter and documentation granting owners consent refers to "our in principle agreement to a land exchange" and states that "such agreement should be predicated on achievement of development consent, approval of road closing, and other terms related to plan preparation, easement/s for infrastructure and right of access to adjoining lands, payment of costs and construction and maintenance of works on the foreshore lands.

The LPMA letter also refers to future provision or upgrade of a sewer pipeline through the adjoining Crown land zoned for environmental protection.

Two issues of concern are noted. The first is that the modification application specifically states that "dedication of foreshore land is not proposed as part of this modification", yet permanent structures are shown within Crown road reserve on the plans accompanying the Statement of Environmental Effects and thus would be approved by consenting to this modification. As this is an arrangement between two parties, the following conditions of consent (as requested by LPMA) are recommended:

No construction or works are to proceed on the Crown Road adjacent Lot 5 DP828639 or other Crown Lands until due authorisation has been obtained from the Land and Property Management Authority under the Crown Lands Act 1989 for any existing structures and proposed improvements.

Appropriate easements to the satisfaction of the Land and Property Management Authority (LPMA) must be created with respect to any utilities on Crown land, including but not limited to sewerage pumping station, and to provide access to adjoining Crown lands (by Roads and Traffic Authority and LPMA).

The second matter of concern is that the accompanying plans show that roadways encroach further into any potential foreshore reserve such that any such area is reduced, particularly taking into consideration the area occupied by existing riverbank rock revetment which is largely unusable. It is considered that the original 1 chain (roughly equal to 20m) is the minimum required riparian reserve acceptable and this aspect is recommended to be repeated in current combined conditions. The Department of Industry and Investment NSW (I&I NSW), formerly NSW Fisheries have also requested that this foreshore area be conditioned. Accordingly the following conditions are recommended:

No temporary or permanent dwelling or private facility or other structure apart from the perimeter road is permitted within 20m of the Mean High Water Mark of the Tweed River.

Provision must be made for traversable public pedestrian access to and along the foreshore of the Tweed River adjacent the full length of Lot 5 DP 828639 and Lot 382 DP 755740 being the land the subject of this development.

Clause 4 - Aims of the Plan

The land use is permissible within the zone as detailed above and the site can be appropriately conditioned to ensure the developed character of the site is adequately managed. Therefore, having regard to the proposed S96 Applications (only - as this is not an opportunity to re-assess the whole application) the proposal satisfies the aims of the Tweed LEP 2000.

Clause 5 - Ecologically Sustainable Development

The S96's seek to decrease the number of sites within an already approved Caravan Park. Subject to compliance with the recommended conditions of consent (specifically in regard to setbacks to Tweed River) the proposed modification is considered to satisfy the provisions within Clause 5.

Clause 8 – Consent Considerations

Clause 8(2) specifies that

- (8)(2) *The consent authority may grant consent to development specified in Item 3 of the Table to Clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*
- (a) *the development is necessary for any one of the following reasons:*
 - (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
 - (ii) *it meets an identified urgent community need,*
 - (iii) *it comprises a major employment generator, and*
 - (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*
 - (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
 - (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

The previously approved footprint of the Caravan Park does not need to be re-assessed against this provision.

The current S96 Applications have now included that part of the Crown Road Reserve which is zoned 6(b) Open Space Recreation. A Caravan Park is permissible with consent subject to satisfying Clause 8(2) as detailed above.

The driveway entrance, internal road and visitor car parking spaces are integral parts of the proposed modification to ensure a suitable access to the site. Therefore these facilities need to be in that location. There is no other appropriate location for these facilities. They enable access to the site in a manner which is consistent with the existing lawful development. Furthermore, the development as a whole satisfies the zone objectives as detailed below. Accordingly the proposed S96 Applications are considered suitable and permissible as Clause 8(2) is satisfied.

Clause 11 – The Zones

The proposed modification occurs entirely within that part of the site zoned 6(b) Open Space Recreation.

The 6(b) Zone objectives are:

Primary objective

- *to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.*

Secondary objective

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

The Tweed LEP 2000 does not specifically define “recreational purposes”. It does however have definitions for recreational establishment, recreational facility, recreation area, recreational vehicle area and recreational beach activities. These suite of definitions anticipate a wide variety of development types.

A Caravan Park is defined as land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

Having regard for all definitions, a Caravan Park can be considered a recreational purpose and accordingly the proposed modification is considered to satisfy the primary zone objective.

Clause 15 - Essential Services

The site is adequately serviced.

Clause 16 - Height of Building

The subject application does not seek approval for the construction of any building.

Clause 17 - Social Impact Assessment

Clause 17 states:

(1) Objective

- *to ensure proper consideration of development that may have a significant social or economic impact.*
- (2) *Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.*
- (3) *The socio-economic impact statement that the consent authority considers must do at least the following:*
- (a) *identify the likely future impacts of the development on the affected community,*
 - (b) *analyse the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services, and the like,*
 - (c) *determine if the impacts will cause a loss of amenity within the locality due to a net reduction in community services and facilities,*
 - (d) *determine and assess possible measures for the management or mitigation of likely impacts.*

The applicant has stated that:

“The proposal is considered unlikely to have any negative social impacts given that it entails a reduction in the number of sites and will continue, once approvals are appropriately in place to provide for a mix of housing types across varying price points.

Given that the proposal seeks only to reduce the yield and that such a move undoubtedly provides for positive environmental impacts, no detailed socio economic impact assessment has been undertaken.

An assessment pursuant to the checklist contained within Council’s DCP has been undertaken and can be found at Appendix H to this submission.”

The applicant’s comments are concurred with. The subject S96’s do not represent a significant social or economic impact and thus do not necessitate a detailed socio economic impact.

It is acknowledged that when consideration is given to the additional (external) material available (for example the advertising material) the change between the old Banora Point Caravan Park and the likely built form is quite different. However, the site is currently vacant and can be lawfully re-developed subject to the proper approvals being obtained. Were this application for a new caravan park a socio economic assessment would be required. However, the applications before Council are S96 Amendments to a previously approved Caravan Park. The S96’s do not seek approval for the ultimate built form and merely seek approval for a reconfigured park.

On this basis the S96's are considered to satisfy the provisions of Clause 17.

Clause 22 Development near Designated Roads

The subject site is adjacent to the road described as the Old Pacific Highway. This road is now essentially a suburban street.

The access to the site has been authorised by way of a S138 Approval.

The proposed S96 Application seeks to reduce the number of approved sites from 180 to 148. This change could theoretically reduce the overall traffic accessing the site, however, should the ultimate built form comprise manufactured homes each with three bedrooms traffic numbers may be similar to that previously approved or slightly higher.

Either way the existing road carriageway is capable of accommodating the proposed modification.

The applicant has completed a review of Clause 22 and concluded that the proposed modification satisfies Clause 22. This assessment is concurred with.

Clause 25 Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on Adjacent Land.

(1) *Objective*

- *to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of Tweed.*

(2) *Unless it is exempt development, a person must not clear vegetation from, drain, excavate or fill land within Zone 7 (a) except with development consent.*

(3) *Consent must not be granted to the carrying out of development on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration:*

- (a) *the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and*
- (b) *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 clearing, and*
- (c) *a plan of management showing how any adverse effects arising from the development can be mitigated, and*
- (d) *the likely effects of the development on the water table, and*
- (e) *the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.*

The applicant has stated that:

“The existing park adjoins land zoned 7(a) under the Tweed LEP 2000. The proposal seeks to simply modify the existing approved layout so as to reduce the approved number of sites. No expansion beyond the approved development footprints is proposed as demonstrated within the attached overlay plans. Given that this application seeks to modify only (as opposed to a standalone new development proposal), it is considered that the proposal will not have any impact upon the adjacent wetlands.

In this regard it is pertinent to again note that the proposed modification does not seek to comprise any clearing, filling or draining of the site. We also note that Council has approved the carrying out of servicing works to each of the proposed amended allotments as demonstrated in the plans and approvals attached at Appendix I to this submission.

A plan of management as referred to in Sub clause 3(c) above has been prepared and is contained within Appendix J to this submission. This plan of management contains a particular focus on the ongoing management of the interface between the site and the adjacent wetland, with works proposed (and management measures relating to same) within the Tweed River foreshore to be subject to a separately prepared plan of management associated with potential foreshore dedication linked to ongoing discussions with the Department of Lands.”

The above comments are generally concurred with.

Council’s Specialist Planner/Ecologist has reviewed the application and imposed the necessary conditions of consent to ensure management plans are enforced, adequate setbacks to the Tweed River are achieved and edge effects are minimised.

The NSW Rural Fire Service has imposed a General Term of Approval that specifies:

“2. At the commencement of building works and in perpetuity the existing Crown Road Reserve shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service’s document Standards for asset protection zones.”

Bushfire Hazard Reduction (that is not exempt development) is permissible with consent in the 7(a) zone. Accordingly this S96 Application includes any necessary bushfire hazard reduction on the part of the Crown Road Reserve zoned 7(a). Such work shall be in accordance with the sites management plans and shall not impact on the ecological integrity of any other adjoining blocks of land.

Appropriate conditions of consent have been recommended to ensure the objectives of the 7(a) zone are met.

Clause 31 Development Adjoining Waterbodies

Clause 31 of Tweed LEP 2000 provides that consent must not be granted to land that adjoins the mean high water mark of a waterbody, within such distance as is determined by the consent authority of the mean high water mark unless it is satisfied that (amongst other things):

“adequate arrangements for public access to and use of the foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements”.

As provided by LPMA, provision of a foreshore reserve would establish continuous public foreshore access in this location. In accordance with the original consent the appropriate distance is considered to be 20m (formerly one chain). This is contrary to the current Tweed River Estuary Management Plan which requires a 50m setback, however, the site benefits from existing consents and the current S96 does not vary the previously adopted setback provision.

Another application over the same land parcel DA09/0064 sought approval for two swimming pools and a foreshore esplanade. This application was referred to DECCW as it involved works that would potentially require a Controlled Activity Approval under the Water Management Act. DECCW General Terms of Approval required provision of a Vegetation Management Plan for the foreshore and implementation of revegetation works, amongst other things. It is considered appropriate that these conditions be included within the current modification application and accordingly they are included in the recommended conditions of consent.

Subject to the recommended conditions of consent Clause 31 is considered to have been adequately addressed.

Clause 34 - Flooding

The subject site has a design flood level of RL 2.8m AHD.

Council's current practice for approving the filling of land in Banora Point to increase flood immunity is to impose minimum fill requirements to design flood level. It is understood that approximately 0.3m of additional fill has been generally applied across the site to achieve a finished ground level of approximately RL 3.0m AHD.

The new fill exceeds Council's existing design flood level and therefore appears to meet current DCP-A3 requirements.

Given the site has been filled to at least design flood level, and the site's proximity and access to high land (Sextons Hill), there are no outstanding issues with regard to flooding.

The applicant will be required to prepare a flood evacuation plan for licensing purposes.

In DCP-A3 TSC requires the following information as part of a "Flood Response Assessment Plan":

- Expected number of occupants
- Typical demographics of occupants (families with children, retirees etc)
- 100 year ARI flood level and PMF level for the development site (RL 2.8m AHD and RL 5.4m AHD respectively)
- Nominated Flood Risk Management Approach for the development (avoidance, evacuation, shelter in place. Note that rescue is not an appropriate response for any development type)

- For evacuation, provide detail of nearest evacuation centre (as advised by the NSW State Emergency Service), the intended mode of transport to the centre, and indicative ground/road levels at significant points along the nominated evacuation route.
- Any special requirements for evacuation centre to cater for evacuees (food, water, waste, medicines etc)
- If shelter in place, provide details of refuge in accordance with Note 2 or Note 4 as applicable.

It is further noted that the applicant has previously upgraded stormwater drainage throughout their internal road system, including installing treatment devices prior to discharge to the river. Such works have been confirmed by way of a s68 Approval.

The current S96 Applications are adequate having regard to Clause 34 of the Tweed LEP 2000.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as a Class 2 Acid Sulfate Soils area.

The proposed S96 Applications do not seek approval for any works that would interfere with acid sulfate material.

In assessing the current S96's Council Environmental Health Officers have been trying to ensure that any previously placed fill was free from contaminates (including acid sulfate soils). Sufficient documentation has now been provided by the applicant which demonstrates that the site is free from contaminates.

Clause 35 is considered satisfied.

Clause 39 – Remediation of Contaminated Land

As detailed above TSC has been trying to ensure that any previously placed fill was free from contaminates (including acid sulfate soils). Sufficient documentation has now been provided by the applicant which demonstrates that the site is free from contaminates.

Clause 39 is considered satisfied.

Clause 39A Bushfire Protection

The subject site is a mapped bushfire prone area.

In accordance with Planning for Bushfire Protection Guidelines 2006, Asset Protection Zones for the Special Fire Protection Purpose of a caravan park would usually require the development to be set back 50m from the bushfire hazard. The Bush Fire report provided with the application has considered the development as infill and used "exceptional circumstances" to justify 21 lots being in the "Flame Zone" (3m setback only) such that they would require construction provisions above the highest nominated Level 3 construction standard. Because caravans, moveable dwellings or manufactured homes may be built on the site without further consent, the provisions of S100B requiring referral to the Rural Fire Service would not be invoked and thus the detailed provisions within the plan will not be applied at the time of dwelling construction. Such provisions must thus be considered within the current application.

Accordingly the application was referred to the NSW Rural Fire Service who have provided General Terms of Approval which form part of the recommendation for approval.

It is noted that once dwellings exist on the site, the level of hazard to residents will be a cause for concern such that pressure may be placed upon adjoining Crown Land containing the Endangered Ecological Communities Littoral Rainforest and Swamp Sclerophyll Forest for provision of APZ's external to the development site, and thus the management of these lands for conservation value may be compromised (as has occurred on Council-owned SEPP 14 lands elsewhere). This should be prevented through provision of a flame proof boundary fence. A fence preventing resident access into the reserve has been previously conditioned but not built; therefore this aspect has been conditioned.

The applicant's bushfire report recommends that the entire site should be managed as an Inner Protection Area, which may conflict with requirements for revegetation of the foreshore. It is not appropriate for such a requirement to apply such that removal of native vegetation of high conservation value (mangroves, wetland or littoral rainforest species etc.) would be required and this aspect has been conditioned.

The NSW Rural Fire Service General terms of Approval only require the Crown Land to be maintained as an Inner protection Area and therefore existing foreshore vegetation and revegetation should be retained as per the recommended conditions.

Subject to the recommended conditions of consent Clause 39A is considered to have been adequately addressed.

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed caravan park is not governed by this Section of the DCP.

A2-Site Access and Parking Code

Parking will need to be in accordance with the Regulations for Caravan Parks this will be enforced through the licensing provisions.

A3-Development of Flood Liable Land

The site has been filled in excess of the design flood level. Appropriate evacuation plans will be enforced through the licensing provisions.

A11-Public Notification of Development Proposals

The proposed S96 Applications were advertised in accordance with Clause 8(2) of the Tweed LEP 2000. Two submissions were received and are considered later in this report.

A13-Socio-Economic Impact Assessment

As detailed in the above report the applications before Council are S96 Amendments to a previously approved Caravan Park. The S96's do not seek approval for the ultimate built form and merely seek approval for a reconfigured park.

On this basis a detailed socio economic assessment was not required. A merit assessment and a review of the applicant's checklist for socio economic matters was considered adequate to determine that the subject application satisfies Clause 17 of the Tweed LEP 2000 and Tweed DCP Section A13.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

This Clause states:

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 unless it has considered the following matters:

- (a) the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*
- (b) the need to conserve the existing amateur and commercial fisheries,*
- (c) any loss of habitat which will or is likely to be caused by the carrying out of the development,*
- (d) whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*
- (e) whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*
- (f) the proximity of aquatic reserves dedicated under the [Fisheries Management Act 1994](#) and the effect the development will have on these reserves,*
- (g) whether the watercourse is an area of protected land as defined in section 21AB of the [Soil Conservation Act 1938](#) and any measures to prevent soil erosion, and*
- (h) the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*
- (i) the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.*

The subject site has previously been reviewed by DECCW. As part of previously recommended conditions of consent DECCW required provision of a Vegetation Management Plan for the foreshore and implementation of revegetation works, amongst other things. It is considered appropriate that these conditions be included within the current modification application and accordingly they are included in the recommended conditions of consent.

The Department of Industry and Investment NSW (I&I NSW), formerly NSW Fisheries have also requested that this foreshore area be conditioned. Accordingly the following conditions are recommended:

No temporary or permanent dwelling or private facility or other structure apart from the perimeter road is permitted within 20m of the Mean High Water Mark of the Tweed River.

Provision must be made for traversable public pedestrian access to and along the foreshore of the Tweed River adjacent the full length of Lot 5 DP 828639 and Lot 382 DP 755740 being the land the subject of this development.

S68 Approvals have regulated the quality of water being discharged from the site to ensure adequate environmental protection measures are in place.

Subject to the recommended conditions of consent the proposed modification is considered suitable having regard to Clause 15 of the SEPP/REP.

Clause 32B: Coastal Lands

The proposed modification does not restrict access to a foreshore nor overshadow a foreshore area. Having regard to the NSW Coastal Policy 1997, the Coastline Management Manual, and the North Coast: Design Guidelines. The proposed S96 Applications are suitable for approval.

Clause 33: Coastal hazard areas

This clause specifies that:

Before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:

- (a) take into account the Coastline Management Manual,*
- (b) require as a condition of development consent that disturbed foreshore areas be rehabilitated, and*
- (c) require as a condition of development consent that access across foredune areas be confined to specified points.*

The site adjoins the Tweed River and would be affected by climate change and any change in sea level. However, the site is not mapped as part of the Coastal Erosion Mapping.

Therefore subject to the site being designed above the design flood level (with adequate egress provisions) the proposed modification is considered suitable in regards to coastal hazards and the provisions contained within the Coastline Management Manual.

Clause 43: Residential development

This clause specifies that:

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

The proposed modification (Caravan Park) is suitably located to ensure adequate access to services. Furthermore, the subject site is suitable for the proposed modification subject to the recommended conditions of consent.

Clause 75: Tourism development

The Clause specifies that

- (1) *The council must not grant consent to tourism development unless it is satisfied that:*
 - (a) *adequate access by road, railway or water transport (or any combination of them) exists or will be provided to service the development, taking into account the scale of the development proposed, and*
 - (b) *if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents exist in close proximity to the development, and*
 - (c) *the development will not be detrimental to the scenery or other significant features of the natural environment, and*
 - (d) *reticulated water and sewerage are available, or arrangements satisfactory to the council have been made for the provision of those facilities.*
- (2) *In considering an application for consent to tourism development, the council must have regard to principles contained in the Tourism Development Along the New South Wales Coast: Guidelines.*
- (3) *The council must not approve an application for large scale resort development unless it is within or adjacent to a prime tourism development area or adequate urban services are available.*

The proposed modification (Caravan Park) is suitably located to ensure adequate access to all necessary services. The proposed amendment is in keeping with the existing lawful use.

Clause 81: Development adjacent to the ocean or a waterway

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
 - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
 - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*

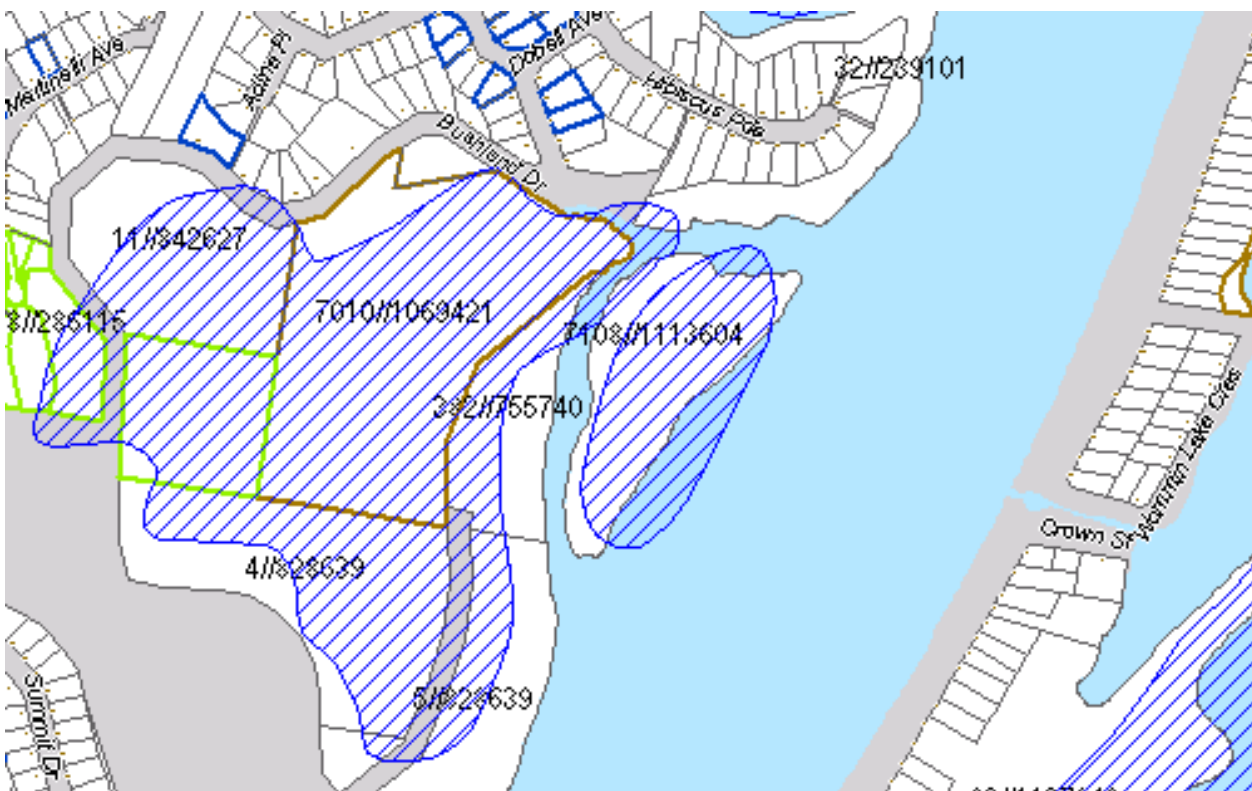
Appropriate conditions of consent have been recommended to ensure adequate foreshore space is managed in accordance with appropriate management plans.

This application does not seek approval for the ultimate built form as this will be assessed as part of the licensing provisions.

In summary the proposed S96 Application is considered acceptable having regard to the provisions contained within the SEPP REP.

SEPP No. 14 - Coastal Wetlands

SEPP 14 Coastal Wetland mapping overlaps the northern and western extent of the proposed modification site as shown below:



Civil Engineering Plans accompanying the applications indicate filling over the site including SEPP 14 mapped land totalling 24,795sq.m and earthworks involving cut of 15,140sq.m. Such works within SEPP 14 land would generally require concurrence and be considered designated development, however, the work has already been undertaken and approval must be considered as having been given within the 1986 consent (T4/2794) which required the site to be filled to the minimum design flood level of 3m AHD.

Draft guidelines prepared by DIPNR (2004) provide guidance in determining whether a development application is affected by SEPP 14. This is required as SEPP 14 boundaries are based on 1:25 000 hard copy maps. At a site scale, this “theoretical” on-ground boundary line is considered the centre line of a 50m wide “potential boundary zone”. Therefore, if the development application affects land within approximately 25m of the “theoretical” on-ground boundary line of a SEPP 14 wetland it may be considered within the “field identified boundary” of the SEPP 14 wetland if certain field recognition criteria are satisfied.

Field recognition criteria in DIPNR’s draft guidelines suggests that the disturbance footprint of the development application, whilst still within the “potential boundary zone” of the SEPP14 wetland, is not considered SEPP 14 wetland due to the absence of wetland vegetation. However Casuarina and Mangrove Forest occurs adjacent the site to the north and west, both being vegetation types included within field recognition criteria of SEPP 14 Coastal Wetlands. From a review of aerial photography and a site visit, wetland vegetation types protected under SEPP 14 may extend marginally into the site subject to the development application and any impacts must be avoided. This aspect has been conditioned.

The proposed S96 Applications are therefore not affected by SEPP 14.

SEPP No. 21 - Caravan Parks

Below is a series of relevant extracts from the document

- (1) *The aim of this Policy is to encourage:*
 - (a) *the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and*
 - (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and*
 - (c) *the provision of community facilities for land so used, and*
 - (d) *the protection of the environment of, and in the vicinity of, land so used.*

- (2) *The strategies by which that aim is to be achieved are:*
 - (a) *(Repealed)*
 - (b) *by requiring that development consent be obtained from the local Council for development for the purposes of caravan parks, and*
 - (c) *by providing that development consent may be granted that will authorise the use of sites for short-term stays (whether or not by tourists) or for long-term residential purposes, or for both, and*

- (d) *by requiring that development consent be obtained from the local Council for the subdivision of land for lease purposes under section 289K of the [Local Government Act 1919](#).*

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

- (2) *Before granting development consent to the use of land for the purposes of a caravan park, a Council must determine:*
- (a) *the number of sites (if any) within that land that the Council considers are suitable for long-term residence, within the meaning of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993, and*
- (b) *the number of sites (if any) within that land that the Council considers are not suitable for long-term residence, but are suitable for short-term residence, within the meaning of that Regulation.*

9 Subdivision of caravan parks for lease purposes

- (1) *Land may be subdivided for lease purposes under section 289K of the [Local Government Act 1919](#), but only with the development consent of the Council.*
- (2) *A Council must not grant such a development consent unless the Council is satisfied that each of the lots intended to be created for lease purposes by the proposed subdivision meets the requirements of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993 for a site to be used for long-term residence.*

10 Matters to be considered by Councils

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,*
- (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,*
- (c) *whether there is adequate low-cost housing, or land available for low-cost housing, in that 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,*
- (e) *any relevant guidelines issued by the Director, and*
- (f) *the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.*

The proposed Section 96 Applications can comply with the aims of SEPP 21.

The applications seek consent for 148 long term sites.

No lease is proposed as part of this application.

In regards to the matters for consideration the following responses are provided:

- (a) The site is suitable for long term residence and has access to all essential services.
- (b) The Tweed Coast currently has adequate provision for tourist accommodation. More recently Council has been advised by various local consultants that there is an oversupply of tourist accommodation and accordingly Council have been inundated with requests to convert tourist units into residential units.
- (c) The subject application does not seek approval for the ultimate built form of the subject site. The subject application only seeks approval for a reconfigured caravan park layout. There is no definitive advice that enables Council to confidently have regard for additional (external material i.e. advertising material) in assessment of this application.

Furthermore, there is no definition to define low cost housing.

A more familiar term is affordable housing.

The Act defines affordable housing as *housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.*

The Department of Planning has recently produced documents such as SEPP (Affordable Rental Housing) 2009 which encourages new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

The proposed modification has not been lodged under this SEPP. This application seeks to reconfigure a previously approved caravan park. Assessing the future built form within this application against low cost housing criteria is not possible without looking to external additional material which is not necessary a lawful option.

Tweed Shire is a beautiful coastal area which has seen an increase in development pressure and an increase in the value of property as more people strive to move to the area.

The requirement to provide affordable housing does not rest on single developers and should be addressed under state, regional and local policies.

Locally Tweed Shire Council has not adopted an affordable housing policy and therefore affordability needs to be addressed by way of providing a variety of housing options across the whole shire not necessarily variety within every site.

The proposed modification only seeks an approval for a revised caravan park layout. The ultimate built form will be subject to a separate process, however, should the applicant proceed with the advertised product (in a lawful manner) then the proposed built form offers an alternative housing choice for residents within the shire and thus is considered acceptable.

- (d) Adequate services are available in the caravan park.
- (e) All applicable legislation has been considered.
- (f) An assessment against the Regulations has been undertaken and the proposed caravan park layout is therefore considered capable of accommodating a compliant built form.

Therefore, based on this assessment the proposed modification is considered suitable having regard to SEPP 21.

SEPP No. 44 - Koala Habitat Protection

The site adjoins land mapped as a secondary habitat for Koala's. Any bushfire hazard reduction work within the 7(a) land would need to have regard for the protection of habitat in adjoining properties.

SEPP No. 55 - Remediation of Land

The subject site is considered free of contaminates.

SEPP No 71 – Coastal Protection

Having regard to Clause 8 Matters for Consideration under SEPP 71 provision of a foreshore reserve would establish continuous public foreshore access in this location. In accordance with the original consent the appropriate distance is considered to be 20m (formerly one chain).

Subject to the recommended conditions of consent the proposed modification (s96's Modifications) is considered to satisfy the provisions of SEPP 71.

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

The applicant and Council have undertaken an assessment of the revised caravan park layout having regard to these regulations. Based on the information available it appears that the proposed layout is capable of accommodating a complying caravan park.

The advertised product ("River") may not necessarily achieve compliance with these provisions and accordingly the applicant may have to redesign the ultimate built form to achieve compliance with these Regulations.

Such matters will be addressed through the licensing and S68 provisions as required by the conditions of this consent.

Minimal Environmental Impact

The above 79C Assessment has demonstrated that the proposed modification will have minimal environmental impact subject to enforcement of the recommended conditions of consent.

Substantially the Same Development

Having regard for this criteria the applicant has provided that the proposed variations result in substantially the same development on the basis that:

- *The Development remains as a Caravan Park;*
- *The extent and general form of the development remains the same as that approved;*
- *The proposed amendments do not raise any environmental issues which have not already been investigated with the previous assessment of the proposal; and*
- *The changes to the layout of the allotments and internal road network are modest and are essentially the same as those originally approved.*

These are reasonable arguments to support these S96 Applications.

Council's attached legal advice reviews this matter in detail. It presents a finely balanced argument yet states that a more thorough examination is needed to examine the development purpose for which the modifications are sought i.e. the ultimate land use (which the applicant has asked Council to ignore for the purposes of this S96).

The subject site is presently vacant and whilst it previously contained modest caravans and cabins the land owner is entitled to re-develop their land. Council's obligation at this stage is to ensure any consent issued relates to a caravan park and a caravan park layout that is substantially the same as the existing development consents.

This can be achieved within the scope of these S96 Applications.

Firstly, the Caravan Park layout is certainly substantially the same as the existing approved layout. And secondly the S96 Determination Notice can clearly condition and re-enforce the nature of the consent which is for the purposes of a Caravan Park.

The future built form will need to be in accordance with all the applicable legislation applying to Caravan Parks.

Therefore it is recommended that in this instance the applicant's justification for substantially the same development is adopted and the applications be dealt with via S96 (1A) of the Act.

Submissions

The S96 Applications were jointly advertised and notified to nearby residents between 2 September 2009 and 16 September 2009. During this period Council received two (2) written submissions to the proposed amendments.

The issues raised in the submissions are detailed as follows:

Issue	Assessment
<p><i>Park Ownership – The application was prepared for Acegrange Constructions and specifically nominates Acegrange Construction as the owner of the property</i></p>	<p>The Application form nominates the applicant as Acegrange Constructions C/O Planit Consulting; however, the owner of the property is correctly listed as Lifestyle Resorts Australia and the Department of Lands (for the unnamed road which is Crown Land).</p> <p>Both Lifestyle Resorts Australia and Department of Lands have consented to the lodgement of the S96 Applications and accordingly Council is in a position to determine the applications.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>The applicant's intention is to build a gated residential waterfront village. This is evidenced in the applicants Plan of Management and on the web.</i></p>	<p>As detailed in the above report Council is aware of the extra information available in relation to the applicant's intention for the subject site.</p> <p>This application seeks approval for a reduction in the number of sites within a previously approved caravan park. Any amendment to this application retains the site as a caravan park.</p> <p>The future built form within the caravan park will need to be considered by Council at the time of licensing.</p> <p>This objection specifically represents the finely balanced arguments as documented within the above report. However, on review the subject application is considered to warrant conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>Extra material available on the web conflicts ("River" - frequently asked questions) with the information within the S96 Applications.</i></p>	<p>As detailed in the above report Council is aware of the extra information available on the web in relation to the subject site.</p> <p>Council has reviewed the S96 Applications (as submitted) and assessed them on their merits while having regard to the applicable planning instruments.</p> <p>On balance it is recommended that these applications be approved subject to conditions of consent.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>The removal of 18 short term sites and 14 long term sites to create a gated residential village is clearly not substantially the same development.</i></p>	<p>The above report has examined the "substantially the same test" having regard to the applications as submitted.</p> <p>Based on this review the applications are considered to satisfy this test and accordingly the applications have been recommended for conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>The proposed modifications and publically stated future use of the park fail to meet the requirements of SEPP 21, Tweed LEP 2000 and the Local Government (Manufactured Home Estates, Caravan parks, Camping Grounds and Moveable Dwellings) regulation 2005.</i></p>	<p>The above report has examined the objectives of the applicable planning instruments.</p> <p>Based on this review the applications are considered to satisfy this test and accordingly the applications have been recommended for conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>

Issue	Assessment
<p><i>The application is reliant on a land exchange as indicated on drawing 12797 - 14D, this appears to be subjective and may not eventuate.</i></p>	<p>Whilst the application details a possible land exchange between the applicant and the Department of Lands the appropriate owners consent from the Department of Lands has been received for the subject applications.</p> <p>The merits of the proposed S96 Application to reduce the overall sites from 180 sites to 148 sites do not rely on the land exchange. Such an arrangement could occur at any time subject to agreement between the parties.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Site Stress (Density)</u></p> <p><i>The proposed development will result in more people despite having less sites given the 3 and 4 bedroom dwellings.</i></p>	<p>The caravan park has approval for 180 caravan site. Assuming 2 people per site this would equate to 360 people over the entire property at any given time.</p> <p>The proposed S96 reduces the number of sites to 148.</p> <p>Having regard to the applicants advertising material the future structures (subject to a separate application) are 3 and 4 bedroom dwellings. Council's Urban Land Release Strategy assumes 2.6 people per dwelling (on average) which would equate to 384.8 people at any given time.</p> <p>The potential increase in population and (regularity of that higher population) is relatively minor (24.8 people) and on merit would be considered acceptable.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Affordable Housing</u></p> <p><i>The concept of selling 148 homes with a starting price of \$385,000 where previously caravans and manufactured homes could be installed for between \$30,000 and \$100,000 does not meet the requirement for low cost housing.</i></p>	<p>This matter has been addressed in the report above.</p> <p>The subject application does not seek approval for the ultimate built form of the subject site. The subject application only seeks approval for a reconfigured caravan park layout. There is no definitive advice that enables Council to confidently have regard for additional (external material i.e. advertising material) in assessment of this application.</p> <p>The Department of Planning has recently created documents such as SEPP (Affordable Rental Housing) 2009 to offer incentives for developers to supply affordable housing. However, the subject application has not been lodged under such a scheme.</p> <p>Should the applicant proceed with the advertised product (in a lawful manner) then the proposed built form offers an alternative housing choice for residents within the shire and thus is considered acceptable.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Tourist Accommodation</u></p> <p><i>The loss of short term sites will be sorely missed as there are no other short term stay accommodation options in Banora Point.</i></p>	<p>Tweed Shire Council does not have a requirement for a certain percentage of development to be short term versus long term accommodation. This is normally a factor determined by market forces.</p> <p>Council has zoned land across the shire which permits tourist accommodation the ultimate utilisation of this opportunity will always rest with market forces.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>

Issue	Assessment
<p><u>Intended Future Use & Permissibility</u></p> <p><i>What is the intended future use of the park? Caravan park long term residential sites are distinctly different to a residential village. 148 x 3 or 4 bedroom homes is either a manufactured home estate or residential estate.</i></p> <p><i>The land in question has a Tweed LEP 2000 zoning of 6(b) and 7(a) respectively and either zoning precludes a manufactured home estate or residential village</i></p>	<p>The above report clearly balances the assessment of the proposed S96 Application (which seeks to reduce the overall sites to 148 from 180) verses the known information about the ultimate built form.</p> <p>The application which requires determination seeks a change in the number of sites within a caravan park.</p> <p>The land use has always been defined as a caravan park and will continue to be defined as a caravan park under the subject S96 Applications.</p> <p>A caravan park is a permissible land use within the subject zone (subject to consent and subject to Clause 8(2) of the Tweed LEP 2000).</p> <p>It is further noted that a manufactured home (which may be part of the future built form) is allowed to be assembled within an approved caravan park.</p> <p>Therefore as detailed within the above report the subject S96 applications are considered permissible with development consent.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Misleading Information</u></p> <p><i>It appears that Council is being given misleading information.</i></p>	<p>As detailed in the above report Council is aware of the extra information available in relation to the applicant's intention for the subject site.</p> <p>However, based on the manner in which the S96's have been lodged and the merits of that application the applications are recommended for conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>

In addition to the one objection summarised above the NSW Land & Property Management Authority (Crown Lands Division) wrote to Council during the exhibition period in addition to providing owners consent initially.

The department raised the following matters for consideration:

- SEPP 14 wetland and other sensitive environmental values on adjoining Crown land and any potential adverse impacts from adjoining development;
- Bushfire Risk Management and incursions from noxious pests and weeds;
- Suitable boundary fencing to contain unauthorised encroachments and address uncontrolled access by caravan park residents and pets;
- Stormwater discharge prevented from encroaching Crown land;
- Appropriate asset protection zones and environmental buffers within the development site itself;
- Possible land exchange between the unnamed crown road and the foreshore;

All of the above issues have been considered as part of the assessment of these Section 96 Applications. The issues are not considered to warrant further amendment or refusal and subsequently the current S96 applications are recommended for conditional consent.

OPTIONS:

1. Approve the S96 Applications in accordance with the recommended conditions of consent.
2. Refuse the S96 Applications and provide reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination of these applications they have a right to make a Class1 Appeal (merit) to the NSW Land & Environment Court.

Should any objector be dissatisfied with the statutory assessment of these applications they have a right to make a Class 4 Appeal (process) to the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The subject S96 Applications have been assessed on their merits having regard for the current legislative framework. This is the same process that would be undertaken for the re-development of any site. Therefore there are considered to be no policy implications associated with these applications.

CONCLUSION:

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determinations.

Having balanced and assessed the S96 Applications against the current applicable controls, and the Council's legal advice the application is considered to warrant conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Confidential Attachment – TSC Legal Advice from HWL Ebsworth Lawyers dated 3 November 2009 (ECM 9693011)
 2. Confidential Attachment – Applicant's Legal Advice (ECM 9693058)
 3. Confidential Attachment – Preliminary Environmental Assessment Proposed Marina, Marine Services & Tourist Facility Banora Point Caravan Park (ECM 9693059)
 4. Development Consent PN1074 no associated plans (ECM 8584897)
 5. Development Consent T4/2794 and Plans (ECM 8584902)
 6. Development Consent D94/0015 and Plans (ECM 8584908)
 7. Council Report 18 November 2008 (ECM 9693053)
 8. Council Report 17 March 2009 (ECM 9693056)
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