

TITLE: [PR-CM] Unauthorised Fence Lot 156 DP 628026 Creek Street, Hastings Point

ORIGIN:

Development Assessment

FILE NO: PF1431/190

SUMMARY OF REPORT:

Council has received complaints from an adjoining owner regarding a fence that has been constructed at Lot 156 DP 628026 Creek Street Hastings Point. The fence has been constructed within the site and not on the boundary. Part of the site is zoned 7(a) Environmental Protection (Wetlands and Rainforests). The fence is not exempt and requires approval if it can be demonstrated that the fence is ancillary to a lawful use of the site.

Attempts have been made by Council officers to seek a suitable response from the site owner to address the unauthorised fencing, in terms of either removing the fencing, or lodging a development application for its retention.

A response has now been received requesting eight weeks to lodge an application for the fence in the 7(a) zone. See attachment for a copy of the letter.

RECOMMENDATION:

That Council engages its solicitors to commence appropriate proceedings to have any unlawful internal fencing on Lot 156 DP 628026, Creek Street, Hastings Point removed if a development application is not submitted by 15 March 2010.

REPORT:

Council has received complaints from an adjoining land resident regarding an internal fence located on Lot 156. The owners of the subject lot were written to on 23 November 2009 regarding the matter with options to remove the fence or to lodge an application. The owners were given fourteen days to advise Council of their intentions. A response was received by Council on 27 November 2009 indicating the owners were taking advice from their consultants. Verbal advice on 12 December 2009 and 11 January 2009 from the consultant was received indicating a submission was being prepared for Council. The response to Council's letter was received on 18 January 2010.

It is understood that the purpose of the fence is to prevent trespassing across the site by adjoining residents to Cudgera Creek. A fence exists on the boundary between Lot 156 and the residential properties in Creek Street. It is likely that the boundary fence has existed for many years. Its construction doesn't prevent access through the fence and there are also openings such as gates located along the fence.

The internal fencing has been erected within the part of the site zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests). Council's records indicate that a development application has not been lodged or approved for fencing on the subject site. Fencing in the 7(a) zone could only be considered permissible if it is ancillary to a lawful use carried out on the site.

The owner will need to demonstrate in the application why that the part of the fence located in the 2(e) zone doesn't need consent and that it is lawful.

Following determination of the development application consideration will be given to punitive action for unauthorised development.

The following provisions apply -

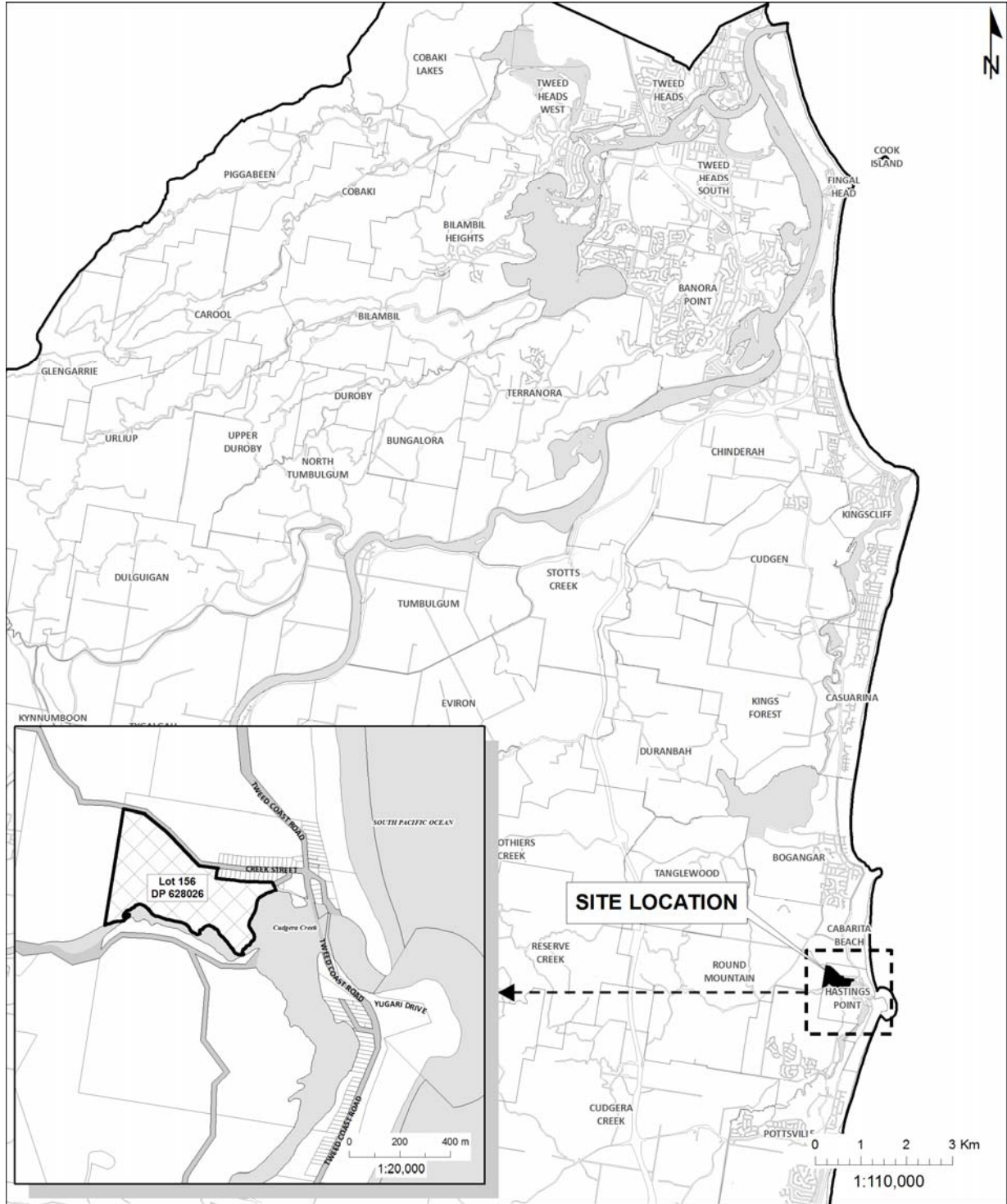
Tweed Development Control Plan Section A10 Exempt and Complying Development has a section setting out the circumstances that exempt fences from needing approval however section A10.2.2 (e) states that the exempt provisions do not apply to land zoned 7(a).

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 contains a section setting out the circumstances that exempt fences from needing approval however as the location of the fence falls within an environmentally sensitive area (section 1.19 (4) (f)) as defined by the SEPP the exempt provisions do not apply. Additionally the site is flood prone and the exempt provisions do not apply to fences located on a flood control lot (section 2.33 (c)).

Tweed Local Environmental Plan 2000 (TLEP) Zone 7(a) provisions states that everything that is not listed in Items 1, 2 or 3 is prohibited. Fences are not listed in items 1, 2 or 3. Accordingly as indicated above fencing could only be considered lawfully permissible if it could be demonstrated via a development application that the fencing was ancillary to a lawful use on the site.

The options available are to remove the fencing that is unlawful and or lodge a development application with Council seeking approval for fencing based on the advice above.

SITE DIAGRAM:



LOCALITY PLAN
Lot 156 DP 628026
Creek Street, Hastings Point

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 28 January, 2010

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Cadastre: 28 January, 2010
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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PHOTOS:









OPTIONS

1. Undertake action in accordance with this report.
2. Request that a development application be lodged sooner.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur legal expenses to regularise the fence however costs will be pursued if successful.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Letter from the applicant dated 12 January 2010 (ECM 11955252)
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