



TWEED
SHIRE COUNCIL

Mayor: Cr Warren Polglase

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

Agenda

Ordinary Council Meeting Tuesday 15 June 2010

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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CONFIRMATION OF MINUTES

- 1 **Minutes of the Ordinary and Confidential Council Meetings held Tuesday 18 May 2010**

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. Minutes of the Ordinary Council Meeting held Tuesday 18 May 2010 (ECM 16709590)
 2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 18 May 2010 (ECM 16707540)
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SCHEDULE OF OUTSTANDING RESOLUTIONS

2 Schedule of Outstanding Resolutions

FOR COUNCILLOR'S INFORMATION:

18 November 2008

PLANNING COMMITTEE

P4 [PR-PC] Development Application DA07/0945 for Multi Dwelling Housing Consisting 34 Residential Units at Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point

P 13 COMMITTEE DECISION:

**Cr W Polglase
Cr K Skinner**

RECOMMENDED that this item be deferred to allow for further negotiations with the applicant.

Council officers are still liaising with the applicant on a number of unresolved issues but it is expected that the investigation of these matters will be finalised in the near future.

Current Status: To be reported to a future Council Meeting.

17 November 2009

ORDERS OF THE DAY

55 [NOM-Cr D Holdom] Local Government Aboriginal Network Conference 2012

**444
Cr D Holdom
Cr K Skinner**

RESOLVED that Council staff investigate and report back to Council on lodging a bid to hold the Local Government Aboriginal Network Conference in the Tweed Shire in 2012.

Current Status: The Aboriginal Liaison Officer has resigned. Once this position is filled this task will be pursued.

16 February 2010

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

27 [CNR-CM] Burringbar/Mooball Sewerage Scheme and Tyalgum Water Treatment Plant Funding Under New South Wales Country Towns Water Supply and Sewerage Program

88

Cr D Holdom

Cr P Youngblutt

RESOLVED that Council:

1. Proceeds with both the Burringbar/Mooball Sewerage Scheme and the Tyalgum Water Treatment Plant without receiving upfront grant funding approval from the Country Towns Water Supply and Sewerage Program.
2. Writes to the Minister to obtain a commitment to obtain future grant funds retrospectively.
3. Meets all the grant funding approval requirements and applies for grant funding retrospectively for these projects.
4. Officers bring forward a report on options to provide sufficient capacity to service those lands immediately adjacent to the villages of Burringbar (Area 8) and Mooball (Area 9) identified in the Urban Release Strategy.

Current Status: Letter to the Minister yet to be completed and report to be prepared.

28 [CNR-CM] Sewerage Strategy for Future Pottsville Area Development

90

Cr B Longland

Cr J van Lieshout

RESOLVED that notwithstanding Council's adopted Urban Release Strategy, Council proceeds with negotiations for the preparation of a Memorandum of Understanding (MOU) which would involve:

- (a) Landholder/proponent funded sewerage and reuse strategy to facilitate the development of Urban Land Release Strategy Areas 5, 6 and 7, and Employment Land Release Area 7;
- (b) Memorandum of Understanding (MOU) covering terms of reference, risk allocation, timings and scope for the strategy stages and to obtain agreements for the proposal to fund the various stages of the strategy; and

- (c) Preparation of a report to Council with MOU and funding agreements for Council approval before proceeding with engaging consultants for the preparation of the strategy.

Current Status: Letter sent to landholders commencing negotiations.

33 [CNR-CM] Urban Sustainability Program “Improving Urban and Peri-Urban Bushland Sustainability in Tweed and Byron Shires” (Tweed Byron Bush Futures) Business Plan Approved

94

Cr D Holdom

Cr B Longland

RESOLVED that Council:-

1. Receives and notes the approval of the Tweed-Byron Bush Futures Business Plan by the NSW Environmental Trust.
2. Officers conduct an information workshop for Councillors and Executive Management outlining the contents of the Business Plan.

Current Status: Workshop scheduled to be held on 10 June 2010.

ORDERS OF THE DAY

57 [NOM-Cr K Milne] Tree Removal Approval

NOTICE OF MOTION:

114

Cr K Milne

Cr K Skinner

RESOLVED that a report be brought forward on an appropriate system that requires authorisation for tree removal on private lands such as implemented in other councils.

Current Status: A report is being prepared and will be submitted to a future Council meeting.

ORDERS OF THE DAY IN COMMITTEE

7 [NOM-Cr K Milne] State Emergency Services (SES) Facility

NOTICE OF MOTION:

Reason for Confidentiality

Confidential Nature of this Item: The Local Government Act 1993 Clause 10A(2)

(f) matters affecting the security of the council, councillors, council staff or council property

C 16

That following the recent workshop from the State Emergency Service (SES) a report be brought forward by Council outlining the following:

1. Consideration of the need for an improved SES Control Centre identified by the SES, to the standard of the new Lismore Control Centre (\$1.5 million), and options for providing funding in Council's upcoming and future budgets for such a facility.
2. Options for enhancement of emergency infrastructure funds due to the high risk flooding category of the Tweed as outlined by the SES.
3. Any other emergency services infrastructure responsibilities under Council's jurisdiction.
4. Consideration of advertising the evacuation centres and evacuation routes on the Council website.

Current Status: The Report is included in the Agenda for this meeting.

REPORTS FROM THE ACTING DIRECTOR PLANNING AND REGULATION

- 15 [PR-CM] Development Application DA05/0223.07 for an Amendment to Development Consent DA05/0223 for a Restaurant at Lot 1 DP 553728, No. 4 Wharf Street, Tweed Heads

145
AMENDMENT

Cr K Skinner
Cr P Youngblutt

RESOLVED that this item be deferred.

Current Status: A Section 96 Application has recently been lodged and advertised. A further report will be submitted to Council

18 MAY 2010-06-03

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 8 [PR-CM] Development Application DA09/0685 for a Two (2) Lot Subdivision at Lot 2 DP 772129, Hogan's Road, Bilambil

1
Cr J van Lieshout
Cr K Skinner

RESOLVED that this item be deferred for further consultation and Workshop with Council.

Current Status: The Workshop has been held and the report is included in the Agenda for this meeting.

- 12 [PR-CM] Development Application DA08/1171.01 for an amendment to Development Consent DA08/1171 for Addition of Deck to Existing Surf Life Saving Club at Lot 7010 DP 1055324; Lot 2 DP 1083851, Pandanus Parade, Cabarita Beach

2

Cr D Holdom
Cr K Milne

RESOLVED that this item be deferred to a Workshop to be held before the next Council meeting to obtain clarification of the liquor licensing and to allow officers time for a in depth analysis of the changes referred at the meeting.

Current Status: A Workshop has been held and the report is included in the Agenda for this meeting.

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

- 22 [CNR-CM] Request for "In Kind" Support/Waive Fee

3

Cr D Holdom
Cr B Longland

RESOLVED this item be deferred to the next meeting to allow a meeting with the Kingscliff Community Playgroup.

Current Status: A Meeting to be held on site with representatives of the Kingscliff Community Playgroup with a report to come back to Council

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

- 30 [EO-CM] Darlington Drive, Banora Point – Application to Close Unnecessary Road Reserve – Lot 164 DP1057452

4

Cr K Skinner
Cr K Milne

RESOLVED that this item be deferred to the next meeting of Council.

Current Status: Further investigations are being undertaken - to be reported to July Council meeting.

ORDERS OF THE DAY

59 [NOM-Cr K Skinner] Lakes Drive Bridge Implementation

5

Cr K Skinner

Cr W Polglase

RESOLVED that Council brings forward a report on the possibility of reinvestigating the original plans for the Lakes Drive bridge implementation.

Current Status: The Report is included in the Agenda for this meeting.

62 [NOM-Cr K Skinner] Community and Operation Land

6

Cr K Skinner

Cr D Holdom

RESOLVED that Council officers investigate and bring forward a preliminary report on parcels of Council owned "Community" and "Operational" land that could potentially be considered for alternative and more appropriate use, acknowledging that Council and community needs and circumstances change over time

Current Status: Further investigations being undertaken.

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MAYORAL MINUTE

3 [MM] Mayoral Minute for the period 03 May to 02 June 2010

Councillors,

COMMITTEE MEETINGS:

Attended by the Mayor

- 06 May 2010 - Murwillumbah Community Centre Management Committee meeting
 - 11 May 2010 - Tweed River Art Gallery Foundation - Tweed River Art Gallery, 2 Mistral Road, Murwillumbah
 - 28 May 2010 - NOROC - Byron Shire Council Chambers, Mullimbimby
-

INVITATIONS:

Attended by the Mayor

- 03 May 2010 - Tweed Head South Rotary Club Meeting - Tweed Sports Club, Minjungbal Drive
- 05 May 2010 - 4CRB Talkback with the Mayor - 8 Stevenson Crt, Burleigh Heads
- 07 May 2010 - Murwillumbah Chamber of Commerce Breakfast - Murwillumbah Services Club
- 07 May 2010 - Mt St Patricks Parents and Friends Annual Debutante Ball - Catholic Hall, Murwillumbah St, Murwillumbah
- 10 May 2010 - Tweed Head South Rotary Club Meeting - Tweed Sports Club, Minjungbal Drive
- 11 May 2010 - Tweed Heads Chamber of Commerce Breakfast – North Coast Tafe, Kingscliff Campus, Cudgen Road, Caldera Restaurant
- 15 May 2010 - Private Citizenship Ceremony for 3 new citizens – Council Chambers, Murwillumbah Civic Centre
- 16 May 2010 - RSPCA Million Paws Walk and Bone Throwing - Jack Bayliss Park
- 16 May 2010 - Murwillumbah Philharmonic Society, Vivaldi's Gloria - All Saints Church, Kyogle Rd, Murwillumbah

- 17 May 2010 - Tweed Head South Rotary Club Meeting - Tweed Sports Club, Minjungbal Drive
- 19 May 2010 - Tweed Heads Business breakfast with John Hudson - Tweed Bowls Club
- 19 May 2010 - 4CRB Talkback with the Mayor - 8 Stevenson Crt, Burleigh Heads
- 19 May 2010 - Tweed River Art Gallery Advisory Committee - Tweed River Art Gallery (also attended by Cr van Lieshout)
- 19 May 2010 - Tweed Tourism Network Night, Murwillumbah Golf Club
- 20 May 2010 - Max Potential Launch of Youth Mentoring Program & Mayor's Speech - Seagulls, Gollan Drive, Tweed Heads West
- 29 May 2010 - FESR Navy 55th Anniversary International Reunion, Ceremonial Sunset and Beat to Quarters - Chris Cunningham Memorial Park

Attended by other Councillor(s) on behalf of the Mayor

- 8 & 9 May 2010 - Saltwater Festival - Salt Village, Tweed Heads, Kingscliff (attended by Cr Dot Holdom)
- 13 May 2010 - Twin Town Friends Big Cuppa for Cancer - Community Hall, Tweed Heads South (attended by Cr Dot Holdom)
- 26 May 2010 - Twin Town Friends, Volunteers Appreciation Ceremony - Community Hall, Heffron St, Sth Tweed Heads (attended by Crs Holdom, Skinner and Longland and Karlene Polglase)
- 30 May 2010 - FESR Navy 55th Anniversary International Reunion, Memorial Service and Laying of Wreath - Chris Cunningham Memorial Park (attended by Cr Joan van Lieshout)
- 30 May 2010 - Stocklands Hundred Hills display homes launch - Hundred Hills Green, cnr Riveroak Drive and Old Lismore Road, Murwillumbah (attended by Deputy Mayor Cr Phil Youngblutt)
- 31 May 2010 - Community Safety Precinct Committee (CSPC) Youth Crime meeting - Tweed Heads Police Station, 52 Recreation Street, Tweed Heads (attended by Cr Dot Holdom)
- 01 Jun 2010 - Launch of 'Plastic bag free Chillingham' - Banana Cabana and Chillingham store, Numbinbah Road, Chillingham (attended by Crs Milne and Holdom)

Inability to Attend by or on behalf of the Mayor

- 7 & 8 May 2010 - Southern Cross University Graduation Ceremonies – Lismore Campus
- 12 May 2010 - Banana Festival Queen Sashing Night - Murwillumbah Services Club, Wollumbin Room
- 13 May 2010 - Tweed Ultima Function Centre Launch Event – 20 Stuart Street, Tweed Heads
- 13 May 2010 - Wild about Macadamias Southern Project Meeting – Murwillumbah Civic Centre, Canvas & Kettle Room
- 18 May 2010 - Evening of Business Insight hosted by SCU and TEDC – Peppers Salt Resort and Spa, Bells Boulevard, South Kingscliff
- 18 May 2010 - Kids in Community Tweed Shire Awards Launch – South Tweed Sports
- 28 May 2010 - Care Connect Ltd official opening – Level 3, Wharf Central, Tweed Heads
- 30 May 2010 - Dragon Boat Festival Prize giving - Boat Ramp, McLeod Street, Condong
- 30 May 2010 - Kids in Community Awards Launch – Lismore Workers Club

CONFERENCES:

Conferences attended by the Mayor and/or Councillors

- 04 May 2010 - Leaders of Local Government Briefing – Parliament House, Macquarie St, Sydney (attended by Cr Warren Polglase)
- 25-26 May 2010 - 3rd Victorian Sustainable Development Conference – Zinc, Federation Square, Melbourne (attended by Cr Katie Milne)
- 31 May 2010 - LGMA NSW 2010 Forum - Sheraton on the Park - 161 Elizabeth Street, Sydney, The Ballroom (attended by Cr Warren Polglase)
- 01-02 Jun 2010 - Shires Association of NSW Annual Conference 2010, Sofitel Wentworth, Sydney

Information on Conferences to be held

Councillors, please refer to the Councillor portal for complete Conference information

- 12-14 Sep 2010 - LGSA Water Management Conference – Orange City Council, NSW
 - 18-19 Oct 2010 - 2010 Tourism Symposium – Peppers Salt Resort, Kingscliff –
Registration \$400
-

SIGNING OF DOCUMENTS BY THE MAYOR:

- Licence Agreement – “Reelfishin” Charters – Southern Boatharbour
- Plan of Easement for electricity purposes – Lot 14 DP746154 – Fraser Drive Banora Point
- Cancellation of Easement - Lot 10 DP 262411 – Parkes Lane Terranora
- Land Acquisition – Lots 1-4 DP 1143290 – Limpinwood Road, Limpinwood
- Land Acquisition – Lot 7 DP 1130131 – Dodds Road Chinderah
- Land Acquisition – Lot 5 DP 1142639 – Cudgen Road Duranbah
- Land Acquisition – Lot 1 DP 1140522 – Oyster Point Road Banora Point
- Restriction on Use of Land – Tweed Ultima – Stuart Street, Tweed Heads
- Granting Easement Transfer – Lot 5 DP 246253 – 10 Machinery Drive Tweed Heads South
- Lease of Land – lot 2 DP72166 – Numinbah Road North Arm

RECOMMENDATION:

That:-

- 1. The Mayoral Minute for the period 03 May to 02 June 2010 be received and noted.**
 - 2. The attendance of Councillors at nominated Conferences be authorised.**
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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE GENERAL MANAGER

4 [GM-CM] Organisational Structure

ORIGIN:

General Manager

FILE NO: Council Management; Council Restructure - Tweed Shire

SUMMARY OF REPORT:

The current organisational structure was reported to and adopted by Council on 21 July 2009. This report recommends that Council endorses new reporting arrangements in the Director Technology and Corporate Services area and amends the current organisational structure to reflect those arrangements.

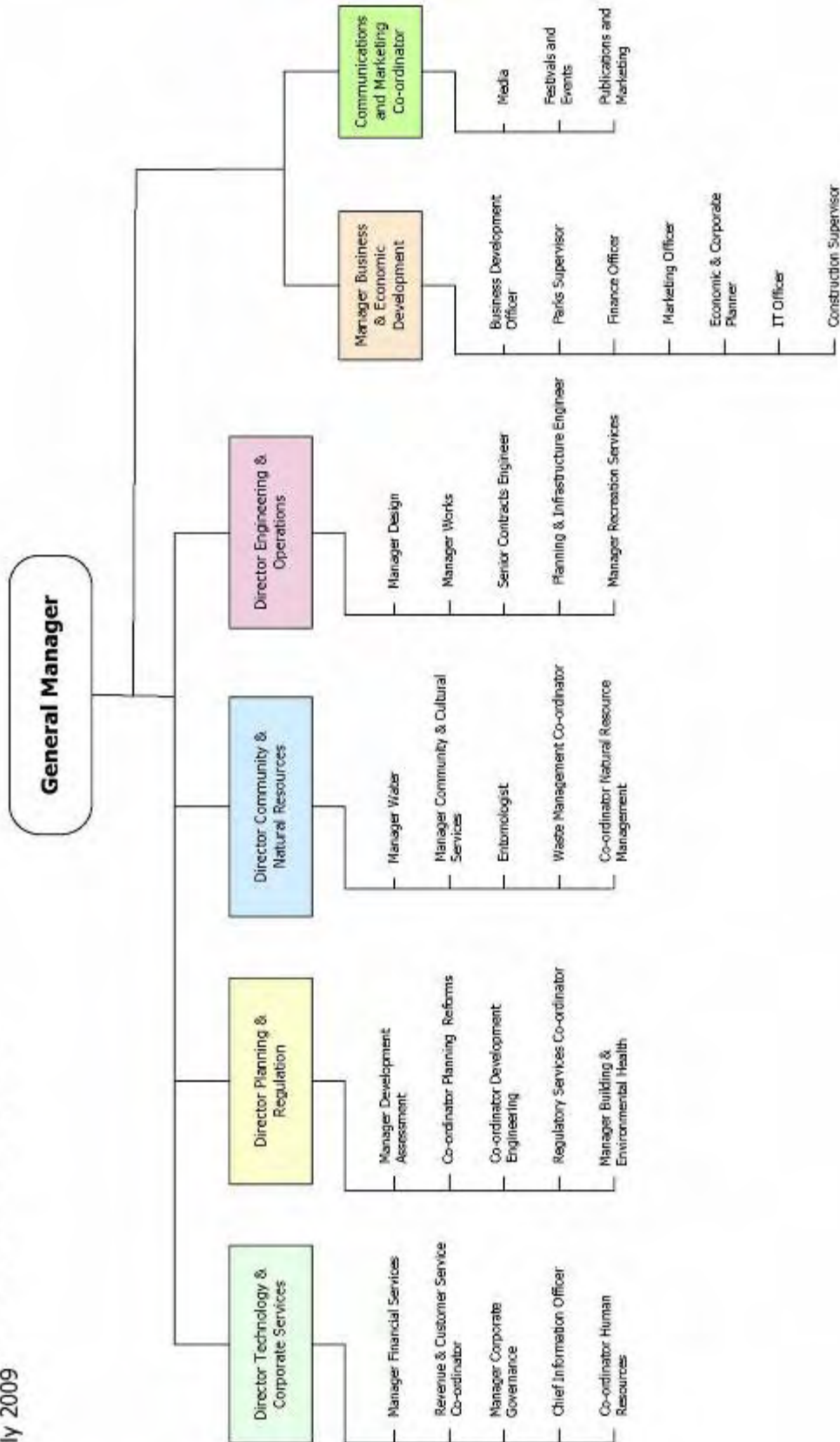
RECOMMENDATION:

That Council adopts the revised organisational structure reflecting new reporting arrangements in the Technology and Corporate Services area of Manager Information Technology, Manager Human Resources and Coordinator Corporate Records.

REPORT:

The current organisational structure was reported to and adopted by Council on 21 July 2009. The structure is reprinted below.

Organisational Structure
July 2009



The roles of Chief Information Officer and Coordinator Human Resources report to the Director Technology and Corporate Services. Both positions currently sit at one job grade below Manager level in the organisation.

With regard to Information Systems and Technology, the responsibilities scope and staffing within this area have grown significantly over recent years. As a consequence the responsibilities of the head of this section now falls within the Manager band of Council's structure.

An associated review has also been underway within Records Management to determine the best operational structure to ensure compliance with statutory requirements and to accommodate the increased emphasis and importance on corporate record keeping.

As a consequence of this review, it is proposed that a position of Corporate Records Coordinator be created and that the Records Management Team be split into two operational teams. The overall full time employees within the Records Team will remain unchanged by this restructure.

With regard to Human Resources, changes implemented last year resulted in a restructure of the Risk and Human Resources Unit along with changes to Corporate Compliance. The separate units of Corporate Governance and Human Resources were created. With the implementation of this change the senior positions within both units were independently evaluated to be at Manager Level. An interim fixed term position of Coordinator Human Resources was implemented whilst it was determined whether to establish the position of Manager Human Resources or to further restructure the unit by creating two separate sections both reporting independently to the Director Technology & Corporate Services. Ultimately, a decision has been taken to maintain an integrated Human Resources function.

The positions will be incorporated within each section's existing staffing complement and will be advertised externally. There will be no increase to full time employees in either section as a result of this restructure.

This report, therefore, recommends that Council adopts a new organisational structure with new reporting arrangements in the Director Technology and Corporate Services area of:



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There will be no increase to the Full Time Equivalent Staffing in either Unit.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

5 [GM-CM] Tweed Tourism Quarterly Performance Report – January to March 2010

ORIGIN:

Business and Economic Development

SUMMARY OF REPORT:

As required by the current agreement between Tweed Tourism and Council a quarterly performance report and summary financial statement are to be provided for Council's review. This report provides the Tweed Tourism's Quarterly Reports for the quarter 1 January to 31 March 2010. All financial information that is of a 'commercial in confidence' nature in this report has been provided in a confidential attachment.

RECOMMENDATION:

That Council endorses:

- 1. The Tweed Tourism Quarterly Report for the quarter January to March 2010.**
- 2. ATTACHMENT 1 as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**
 - (d) commercial information of a confidential nature that would, if disclosed:**
 - (i) prejudice the commercial position of the person who supplied it, or**
 - (ii) confer a commercial advantage on a competitor of the council, or**
 - (iii) reveal a trade secret**

REPORT:



**Tweed Tourism
March 2010 Quarter Report**

5. VISITOR INFORMATION CENTRES

Movement in visitor numbers at each VIC previous year

2009 - 2010

	2009/10	2008/09	Variance	2009/10	2008/09	Variance
	WHRC			Tweed Heads		
Sept Qtr	6840	6471	5.70%	7007	6750	3.81%
Dec Qtr	6162	6029	2.21%	8991	5304	69.51%
Mar Qtr	6996	6142	13.90%	7676	5462	40.53%
Jun Qtr						
Total	19998	18642	7.27%	23674	17516	35.16%

- Murwillumbah again showed a growth in visitor numbers to last year bringing the overall increase in visitors for the quarter to 14% and 7% year to date. Great result considering last year the numbers where visitor numbers declined. Good to see the numbers beginning to grow again.
- Tweed Heads again showed substantial growth for the quarter in visitor numbers in comparison to the same quarter last year, still in the honeymoon period with the new location of the centre.
- Locals continue to frequent centres, however it was the visitors from NSW most dominant in Tweed, and Queenslanders have the higher number of visitations in Murwillumbah.
- European visitors where again the highest to both centres, visitors from the USA and Canada increasing in Tweed.

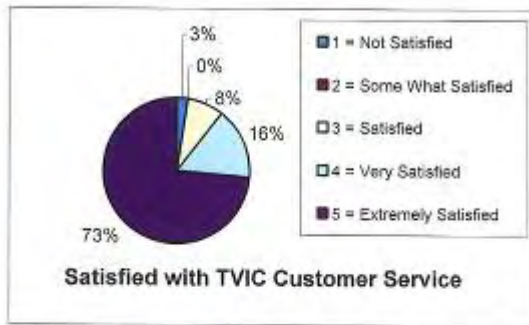
Commissions earned:

- Commission revenue for the third quarter of the 2009 – 2010 financial year totalled \$8267, considerably less than the budgeted figure of \$11,500. The poor result can be attributed to less demand by phone from the 1800 number and by email for accommodation, changes to our internal accounting procedures for the commission results and there was noticeably less demand for tour bookings direct to the information centres. The availability of extremely discounted theme park tickets appears to have decreased the demand for many other tours and activities.
- Commissions revenue represents 10% of total booking value made.
- 37.84% of bookings through the website were made online, an decrease of 8.5% in comparison to the previous quarter.

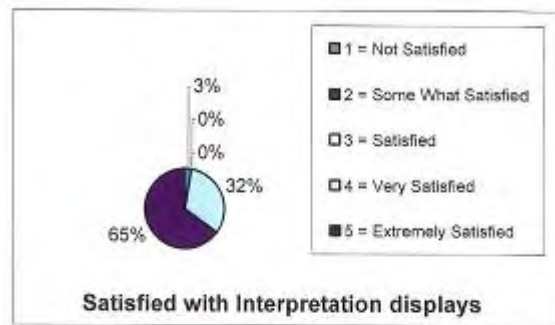


Quality of service at Visitor Information Centres:

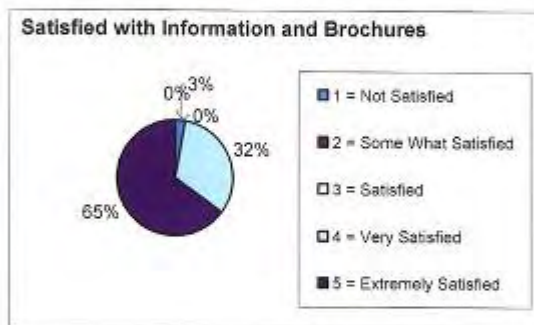
- Surveys for the last quarter, results show that 73% of visitors to the VIC's were extremely satisfied, 16% very satisfied with the quality of customer service received. Majority of visitors surveyed were happy with the range of brochures and information provided as well as the interpretative displays.
- Whilst most feedback was positive, there were still a few comments regarding caravan access and disappointment that the Art Gallery is closed on Mondays.



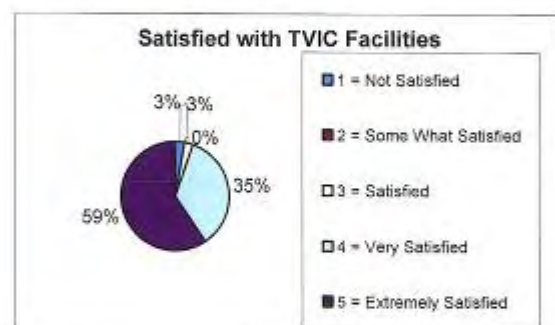
Were our visitors satisfied with our customer service.



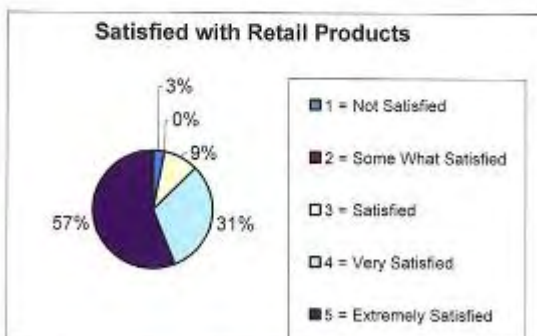
Were our visitors satisfied with our displays.



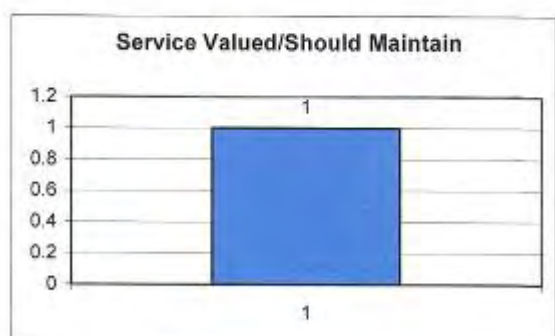
Were our visitors satisfied with our range of information.



Were our visitors satisfied with our facilities.



Were our visitors satisfied with the quality of retail products



Is our service valued and should it be maintained

6. PRODUCT DEVELOPMENT

Art & Culture

Working with Lesley Buckley of Tweed Shire Council on the Arts Connecting Communities action plan initiated by the Australian Business Arts Foundation (Abaf). It is designed to foster relationships between businesses and the artists.

Festivals

The Saltwater Festival will run for the first time this year and Malfunction has been repeated.

Taste the Tweed

Seafood Discovery Trail – The hardcopy booklets have been distributed. The website is established but work continues to raise its profile and new material is being investigated. Discussions in relation to a seafood festival or series of events has commenced.

Farmers Market –The Development Application and Marketing Management Plan have been completed and sent, with Tweed Shire Council's Letter of Support, to the Department of Lands for their approval. The market day is planned for Wednesday mornings in Knox Park.

Taste the Tweed Hampers – Taste the Tweed hampers are selling well through the Tweed Visitor Information Centre and as conference gift packs.

Taste the Tweed Events – In initial discussions with a number of venues for other Taste the Tweed events.

Environment

National Landscape s- In the process of applying for other funding opportunities for the Experiences Delivery Strategy (originally referred to as the Tourism Master Plan). Discussions in process with Byron Bay to have them represented on the AGC Working Group.

Birds

Information in relation to bird watching is now being included in the What's On in the Tweed newsletter. Also developing material for the website.

Walks

The recently launched Caldera Institute for Sustainable Community Development has gained funding to take the walking, cycling, kayaking, horse riding, trails project forward. In continued discussions.

Sports

QSM Sports – Battle of the Border cycling event runs in April and a number of other sporting events are being discussed.

Network Nights

The last Network Night was held at the Currumbin Wildlife Sanctuary. The next Network Night is planned for Wednesday 18 May at the Murwillumbah Golf Club.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. **Confidential Attachment** – Tweed Tourism Quarterly Financial Report – January to March 2010 (ECM 16371510)
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6 [GM-CM] Tweed Economic Development Corporation (TEDC) Quarterly Financial Report - March 2010

ORIGIN:

Business and Economic Development

SUMMARY OF REPORT:

As required by the current Tweed Economic Development Corporation (TEDC) Agreement a quarterly performance report and financial statement is to be provided for Council's review. TEDC's Financial Report January to March 2010 has now been provided.

Due to the confidential nature of the information contained within financial statements are presented as a confidential attachment to this report.

RECOMMENDATION:

That Council;

- 1. Receives and notes the quarterly financial report from Tweed Economic Development Corporation from January to March 2010.**
- 2. ATTACHMENT 1 as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**
 - (d) commercial information of a confidential nature that would, if disclosed:**
 - (i) prejudice the commercial position of the person who supplied it, or**
 - (ii) confer a commercial advantage on a competitor of the council, or**
 - (iii) reveal a trade secret**

REPORT:

1. TEDC Marketing Material Update.

- The upgrading of the TEDC marketing material including the Web site redesign was completed in January 2010. The web site is a content managed site which allows for changes, modifications and information to be uploaded in house (by TEDC staff) on an as required basis. The web site redesign enables search engine optimization for internet inquiries; provides the capacity to upload MP3 files of speeches, TEDC presentations and interviews; and also incorporates the use of the internet for member's forums and survey monkeys.
- The marketing material update includes the production of a new TEDC Investment Attraction Portfolio, new stationery, and a new and revised approach to the TEDC News Letter which links directly back to the TEDC web site.
- The new and re-formatted quarterly Tweed Pulse publication was released in January 2010, and continues to receive growing recognition by the business and investment industry.
- As part of promoting the Tweed to the broader investment community, TEDC placed promotional advertisements in the JetStar in-flight magazine for months of December 2009 and January 2010.
- TEDC has established a new web page titled "What's New" and the purpose of this page is to highlight new products, services or initiatives including partnership projects or collaborative projects with other organizations including TSC.
- The first item featured on this new page was the promotion of a new TSC/State government initiative - Electronic Housing Code Pilot Project. Troy Green, Corporate Services Director TSC invited TEDC participation as part of a process of getting the message out to the broader Tweed business community via the TEDC web site.

2. Increased Level of Business and Investment Inquiry

- The dedicated and consistent approach to marketing adopted by TEDC, along with the content and substance of the data and information now available, continues to raise the profile and recognition of TEDC, by the investment industry and other government and semi government agencies, who all form part of the ever increasing number of inquiries by businesses, investors, and organisations who are now identifying the Tweed region as a business and investment destination.
- TEDC is now recognized as the first point of contact for businesses seeking information on facts, figures and opportunities in the Tweed. In the last three months TEDC has been directly approached by more than 30 business entities seeking a range of information on; business opportunities, access to TEDC research and statistics, and a broad range of other information which is used to assist in the development of business plans and/or in assessing the Tweed as a potential business location/destination. In some instances TEDC has introduced the business to TSC or made connections with other state and federal government business agencies.

3. Increasing Awareness of Value of TEDC Information at the Local Community Level

TEDC is also receiving an increasing number of requests from local organizations to make presentations on facts relating to the Tweed economy.

Recent presentations include:

- The Tweed Heads Bowls Club as part of their forward thinking, strategic planning process.
- The Creative Arts "Connecting the Community Program" who were seeking economic data on the Tweed economy.
- A Medical Group in the Tweed who are seeking assistance and information on expanding their services in the Tweed as part of a process of dealing with the increasing challenges presented by the aging demographic and youth of the Tweed; and

- A local sporting club who have sought assistance as part of a process of managing changes to the club industry.

4. Whole of Tweed Shire Business Survey.

- In February 2010 TEDC initiated a first ever Tweed Shire-wide Business Retention & Expansion Survey.
- The survey was conducted over a six weeks period, and survey forms were forwarded by email and by direct mail to all 4,515 ABN registered Tweed Businesses.
- The survey was designed to seek a range of information from Tweed Businesses which will assist TEDC to understand the needs and challenges facing businesses in the Tweed.
- At this stage TEDC has received 431 responses to the survey and when it is considered that many of the businesses surveyed have more than one ABN, the results suggest better than a 10% response, which is very good by normal survey standards.
- TEDC is currently in the process of assessing the responses from the survey, and the data and information collected will be used by TEDC to inform the of process of developing plans and strategies to assist existing business growth, and new job generating business investment growth and attraction into the future.
- The TEDC now has a data base of all 4,515 ABN registered Businesses in the Tweed and this has allowed identification and categorization of the range and types of businesses in the Tweed, including the number in each category. Initial assessments support earlier economic modeling research by once again confirming that the Tweed economy is basically a serviced based economy.
- Initial research suggests the top 20 business categories in the Tweed are as follows: Café's & Restaurants top the scale at 181, Housing & Construction Services at 143, TAB Agencies 127, Real Estate Services 105, Transport Services at 105, GP Medical Services 97, Hairdressing and Beauty Services 93, Computer Services 80, Electrical Services 78, Accommodation Houses 77, Food Product Manufacturing 76, Auto Repairers 69, Management Consultants 67, Plumbing Services 66, Accounting Services 64, Engineering Consultants 58, Allied Health Services 58, Building and Industrial Cleaning Services 57, Sugar Cane Growers 56. A full break down will be provided as part of the Final Report.
- It is anticipated that a preliminary report will be available by the end of May, and the report will then be made available to the TEDC Board.
- A summary of the information compiled will also be made available to Tweed businesses through presentation at chamber meetings.

5. TEDC Business and Events & Sponsorship Program 2010 Update.

TEDC and the Southern Cross University's Graduate College of Management have formed a partnership to deliver the Business Insights seminar series in the Tweed over the next twelve months. The strategic objective of this strategy is to further promote TEDC'S credentials and role as a major facilitator of business growth and development in the Tweed.

Program of events are as follows:

16th April – Tweed Academy of Sport

Sponsorship of Corporate Golf Day

TEDC Contribution - \$100 Donation towards prize. TEDC will be providing 150 Prospectus's and copies of the January Tweed Pulse as part of the sponsorship package provided to each player on the day.

This event provides the opportunity for TEDC to develop a relationship with the Sports Business sector and show support for the development of the Tweed Academy of Sport Program. The TEDC logo will be present on the marketing material for the event providing further exposure for the TEDC brand.

12th May – TEDC/SCU Graduate College of Management Partnership Event

Business Insights – *How to Grow Your Business*

TEDC Contribution – Approx budget \$1500

This is the second partnership event with SCU which consolidates a working relationship with the University and again reinforces the role and function of TEDC as a leader providing high profile events and speakers on key business issues relevant to the Tweed business community.

26th April – 31st May – North Coast Innovation Festival (NCIF)

TEDC/SCU Graduate College of Management Partnership Event to participate in the NCIF

Business Insights – *How to Grow Your Business*

TEDC Contribution – Advertising Budget \$660.00.

Again this initiative assists in establishing the credentials of TEDC as a leader in facilitating business development through innovative practices relevant to current and projected industry needs.

24th May – Home Based Business Network

Luncheon Launch

TEDC Contribution – Joint Sponsorship with Ausindustry and NorBEC. Budget \$750

This event will build on the huge TEDC Business Survey response received from the Tweed home based business operators and will assist TEDC to support and grow Home Based Business as part of the outcomes of this project.

Note the following events are subject to TEDC/TSC Review Process.

August – Proposed TEDC/SCU Graduate College of Management Partnership Event

VIP Workshop

Early discussions with SCU propose a more formal workshop event with major VIP businesses in the Tweed. This workshop/event will provide the opportunity to build on possible outcomes from the TEDC Business Survey.

21st September - North Coast Business Road show

TEDC Contribution – Gold Sponsorship of the Tweed Event. Budget \$600

The Road Show is in its 4th year of operation & will again run in conjunction with Small Business Month (Sept). TEDC has been a sponsor of the road show from the inaugural year with the event providing exposure and a solid marketing platform to a very specific target market. The Road Show will run in conjunction with the Tweed Chamber Breakfast and will comprise a mix of some 30 exhibitors, including; government departments, funded bodies, and private sector business advisors/educators.

November – TEDC AGM Dinner Presentation with Guest Speaker

Details subject to outcomes of review process.

6. Telecommunications Infrastructure Action Plan

- TEDC is part of a TSC/ Southern Cross University (SCU)/ Northern NSW consortium which incorporates all LGA'S from Coffs Harbour to the Tweed who have come together to submit a proposal for the Northern NSW region to be considered for inclusion in Federal Government Roll out of the NBN Fibre Network infrastructure program.
- The formation of this consortium is a clear recognition of the future significance and importance of having access to advanced optic fibre technology across the Northern NSW region as part of managing and accommodating sustainable social and economic growth into the future.

7. Meeting and Functions Attended.

- January 25th Official Opening Gold Coast Airport extensions.
- January 29th Presentation of SCU and Far North Coast Submission On Telecommunications Infrastructure to Federal Member Janelle Saffin at Lismore.
- February 2nd meeting Gary Corbett TSC Health and Ageing.
- Murwillumbah Chamber presentation of Survey and Facts.
- February 5th Brisbane Convention Centre – Guest of THG – Robert McNulty – Return of Liveable Communities in SE Queensland Presentation.
- February 9th Meeting TSC Creative Arts Steering Committee Meeting.
- February 9th Tweed Chamber Breakfast Presentation on Survey and facts.
- February 12th Regional Development Australia presentation.
- February 15th meeting Far North Coast Innovation Festival.
- February 16th Kingscliff Chamber presentation Survey and Facts.
- February 16th Tweed River Art Gallery – Launch of Country Scapes.
- February 17th Launch SCU Gold Coast Campus.
- February 17th attended function at invitation of Justine Elliott to meet Deputy PM Julia Gillard.
- February 26th meeting facilitating growth of Tweed Health facilities.
- March 2nd Meeting Crown Castle – TSC/Telecommunications Infrastructure
- March 13th Launch sustainability Institute.
- March 16th Summerland Credit Union Presentation.
- March 19th Attended meeting BFG/Sextons Hill/TSC
- March 20th Attended meeting Dig IT Landscaping
- March 24th Meeting Gold Coast tourism.
- March 25th Meeting with Representatives form TSC, NSW LPMA and Consultants regarding plans for redevelopment of Jack Evans Boat Harbour, Flagstaff Hill and Duranbah Beach
- March 25th Meeting/Presentation Dr Doug McTaggart SCU
- March 26th Attended function Industry Central
- March 30th Participated in SCU Think Tank Lismore.
- March 31st Meeting Business Owners re need for redevelopment of South Murwillumbah.

8. Review of TEDC 2010 Work Program.

TEDC is in the process of reviewing its 2010 work program, however under the current situation it is very difficult to identify projects and initiatives which can be initiated and or implemented in this interim period of uncertainty.

9. Media Coverage January to March 2010

Date	Headline	Media	Size	Unit cost per page	Advert Value	Editorial Value
5/01/2010	Shire's jobs challenge	Tweed Daily News	1/2 page	\$1,375.00	\$ 1,375.00	\$ 4,125.00
21/01/2010	Business opinions to help growth	Tweed Border Mail	22cm x 9cm 11cm x 20cm		\$ 803.00	\$ 1,809.00
21/01/2010	Seven-year itch for soaring CBD	Tweed Sun			\$ 803.00	\$ 1,809.00
5/02/2010	Web network needed now	Tweed Daily News	25cm x 3 col		\$ 803.00	\$ 1,809.00
11/02/2010	Faster speed for Tweed on cyber horizon	Tweed Sun	1/4 page		\$ 1,000.00	\$ 3,000.00
15/02/2010	Business unity needed to avert crisis	The Weekly Gold Coast Bulletin	1/2 page		\$ 1,375.00	\$ 4,125.00
15/02/2010	Drop the Tweedy reputation	The Weekly Gold Coast Bulletin	1/2 page		\$ 1,375.00	\$ 4,125.00
15/02/2010	Tweed's main need	Gold Coast Bulletin	38x14		\$ 1,000.00	\$ 3,000.00
25/02/2010	Land zoning needs an 'urgent review'	Tweed Sun	25cm x 3 col		\$ 803.00	\$ 1,809.00
4/03/2010	Mega-mansion hideout	Gold Coast Bulletin	3/4 page		\$ 2,250.00	\$ 6,750.00
10/03/2010	HEART OF THE TWEED DYING	Tweed Daily News	1 page		\$ 2,750.00	\$ 8,250.00
11/03/2010	Strategists offer food for thought	Tweed Sun	1/4 page		\$ 1,000.00	\$ 3,000.00
11/03/2010	Survey down to business of rewards	Tweed Border Mail	1/4 page		\$ 1,000.00	\$ 3,000.00
18/03/2010	Tweed's age-old problem	Tweed Sun	1/4 page		\$ 1,000.00	\$ 3,000.00
25/03/2010	River ferry gains business support Campaigners claim job seekers need rail	Tweed Sun	1/2page		\$ 1,375.00	\$ 4,125.00 \$ -
26/03/2010	Camping closure a mistake	Tweed Daily News	1/2 page		\$ 1,375.00	\$ 4,125.00
TOTAL					\$19,287.00	\$57,861.00

* Editorial Value estimated based on the PRIA multiplier of 3

Other Media Coverage

Date	Headline	Media	Distribution Type
15/02/2010	Broadband boom for Coffs	Coffs coast Advocate	
9/02/2010	Tweed may get super-fast broadband earlier	Tweed link	household

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

- Confidential Attachment TEDC Financial Statements for January to March 2010 Quarter (ECM15920714)

7 [GM-CM] Draft Community Engagement Strategy

ORIGIN:

Communications and Marketing

SUMMARY OF REPORT:

On 28 May 2009, Council resolved to proceed with the development of a draft Public Participation Policy for consideration, providing Council with options for its preferred methods of engaging with the community.

The NSW Government on 1 October 2009 assented the Local Government Amendment (Planning and Reporting) Act 2009, which requires Council to implement an integrated planning reporting framework by, at the latest, 30 June 2012.

An integrated part of the framework requires Council to prepare and implement a Community Engagement Strategy for engagement with the local community in developing and reviewing the Community Strategic Plan.

Further the strategy must identify relevant stakeholder groups within the community and outline methods of engaging each group.

As a result, Council has established a Draft Community Engagement Strategy, rather than a Public Participation Policy. This broad strategy applies for the whole Council, outlining its processes to inform, consult, involve and collaborate with the community throughout all stages of Council projects, as well as its day-to-day business.

The strategy:

- 1) Defines community engagement and identifies the methods of engagement Council uses for the key stages of engagement – inform, consult, involve, collaborate, empower.
- 2) Identifies the broad categories of Council projects which require engagement.
- 3) Provides an Engagement Matrix to align the methods of engagement with the category of Council projects.

The strategy enhances the use of web 2.0 technologies, as well as traditional methods of engagement. It has been created from many resources including Council's in-house administrative and operational reviews, other local government council community engagement strategies and best practice methods and processes from the International Association of Public Participation (IAP2).

RECOMMENDATION:

That Council adopts the Draft Community Engagement Strategy Version 1.0 for the purpose of public exhibition for a period of 28 days.

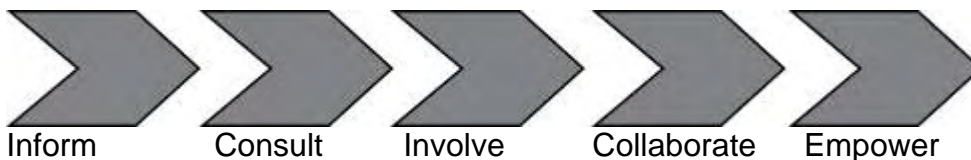
REPORT:

The draft Community Engagement Strategy outlines the measures and methods for involving the Tweed community in Council's strategic planning and decision making processes.

It has been created from many resources including Council's in-house administrative and operational reviews, other local government council community engagement strategies and best practice methods and processes from the International Association of Public Participation (IAP2).

The elements of public participation are illustrated in the model developed by the IAP2 and show the progression of public involvement across the spectrum of participation:

Increasing Levels of Public Involvement (IAP2)



Council functions under the Local Government Act 1993 which gives ultimate responsibility for decision making to Councillors, who are elected (empowered) by the community to make decisions on its behalf.

To further achieve the IAP2 objective of empowering the community, the engagement strategy identifies our stakeholders and aims to give the Tweed community greater input during the collaborate, involve, consult and inform stages of engagement, to inform Councillors and assist in effective decision making.

Objectives of the Draft Community Engagement Strategy

- 1) Involve the Tweed community in the development, implementation and review of Council's planning and decision-making processes within its legislative abilities.
- 2) Establish a uniform approach and minimum standards to the way Council, and consultants employed by Council, engages the community on a range of issues.
- 3) Coordinate and centralise the engagement/participation process for Council to avoid duplication and loss of valuable information. This will help build an ongoing understanding and rapport between the community and Council.
- 4) Build a positive reputation for Tweed Shire Council by demonstrating that Council is listening, informing and being informed by the broad Tweed community.
- 5) Ensure Council and Councillors receive quality information representative of the views of the Tweed community sourced from a range of methods to assist in effective decision making.

The strategy:

- 1) Defines community engagement and identifies the methods of engagement Council uses for the key stages of engagement – inform, consult, involve, collaborate and empower.

- 2) Identifies the broad categories of Council projects which require engagement as shire wide/high impact, shire wide/low impact, locality based/high impact, locality based/low impact.
- 3) Provides an Engagement Matrix to align the methods of engagement with the category of Council projects.

While most of the methods are traditional engagement methods, the rise of technology advancements is an opportunity for Council to improve the ways it communicates. The Inform stages in particular focus on websites, contact centres and the Tweed Link as our primary forms of informing.

The 2006 Census reported 16,730 Tweed households had the internet at home. Since that time, the national average has increased by 25%, which suggests more than 20,000 of the Tweed's 34,000 households have access to the internet at home.

The Tweed Link's value as a primary source of information about Council activities was highlighted by an independent survey conducted in May 2010. It revealed 78 per cent of respondents read the Link every week, while 90 per cent read it at least every couple of weeks. Encouragingly, most respondents (55%) said they had modified their behaviour as a result of information in the Link, most notably their household habits such as recycling and water/energy use, attending an event or cultural/recreational facility, lodging a submission or attending public meetings.

A vast majority of respondents regarded the Tweed Link as informative (86%), helpful (81%) and interesting (72%), with many saying it kept them up to date with Council programs (94%), development in the shire (89%), events (87%) and educational information about environmental measures (86%).

The Engagement Matrix will guide staff through Council's minimum standards for engagement, supported by internal tools available on Council's intranet. Following the adoption of the strategy, in-house tools for Council staff will be created to support and guide them through the engagement process.

In addition to the strategy, it is recommended Council establishes a panel of providers for market research/surveys and independent facilitation of engagement methods, once the strategy is adopted. This ensures ongoing relationships with the community are maintained, all intellectual and tangible knowledge is retained and provides greater understanding of Council's engagement practices.

As part of the Draft Community Engagement Strategy, it is intended to centralise the management and coordination of Council's community engagement requirements to the Communications and Marketing Unit, to create greater consistency, effectiveness and utilisation of skills and resources.

This will lead to an increased exchange of knowledge between Council's departments, improved expertise and involvement in community engagement across Council, consolidation of all Council consultation activities and greater retention of the information collected.

Citizens Panel

The Draft Community Engagement Strategy identifies the creation of a Citizens Panel which would be an unbiased and statistically representative portion of the community. The citizens panel is not a decision making body, but rather the aim is to provide ongoing comment and general feedback on various issues for consultation, to provide a broad and representative view from the Tweed community.

The panel will comprise approximately 800 members, selected randomly from the shire's approximately 80,000 residents and around 9500 non-resident ratepayers, using the electoral roll and Council's non-resident ratepayer database. A sample of this size will ensure it is representative, within an accuracy level of +/- 3.5% - which is well above industry accepted standards.

The sample size and random selection process will ensure the community's various demographics – such as gender, age and race – are proportionately represented in the panel, while encouraging the involvement of people who are otherwise unlikely to participate in the engagement process.

Membership numbers will also be proportionate to the populations of the Tweed's four geographical areas based on localities – Tweed Heads and Surrounds, Tweed Coast, Murwillumbah and Surrounds and Rural.

The Citizen Panel will primarily be hosted online using an internet portal. Any member without internet access will be provided hard copies of all communication to ensure they can participate freely.

The panel will be complemented by a Youth Panel sub-group, open to Tweed residents aged 12 to 25. It will be used by specific discussions on youth issues, as well as broader Citizen Panel consultations.

It is anticipated the Citizens Panel will use the NSW electoral roll as a basis for random selection for participation on the Citizens Panel. The NSW Electoral Commission has advised Council it no longer freely provides access to the electoral roll, as a result of changes in legislation in 2004, and all requests for access to the roll must be in writing. Council has sent a letter to the NSW Electoral Commissioner seeking access to the roll. Should this be denied, an alternative source will be recommended to Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

This is a new strategy for Council and will replace the current Communications Policy.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Draft Community Engagement Strategy 1.0 (ECM 17634908)
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8 [GM-CM] Tweed Shire Council's proposed participation in Channel Seven television production 'Local Rules'

ORIGIN:

Communications and Marketing

SUMMARY OF REPORT:

Representatives from television station Channel Seven approached Council in April 2010 to consider participating in a proposed half-hour national television show with a working title 'Local Rules' (The Council Show).

The show is being produced by the 'Factual Development Unit' division of Channel Seven which also produces shows such as Border Security and The Force.

The aim of the observational documentary is to increase the community's understanding of the wide range of roles carried out by local councils, and the difficulties encountered by council officers.

Channel Seven have committed to producing the series 'Local Rules' and eight episodes of the program are scheduled to air later this year. A number of other councils have agreed to participate including Muswellbrook Shire Council, Rockdale City Council and Port Stephens Council. Negotiations are continuing with other councils across Australia.

If Council agreed to participate, the production crew has indicated they would be interested in filming a variety of Council activities with a focus on compliance issues including: mediating during building approval disputes, investigating tree poisoning, catching illegal dumpers in the act, helping resolve neighbour disputes over regulatory issues and enforcing compliance issues for those breaching regulations.

The primary contact between Tweed Shire Council and Channel Seven is Council's Communication Officer – Media.

RECOMMENDATION:

That Council:

- 1. Agrees to participate in Channel Seven's television series 'Local Rules' and grants relevant staff permission to be filmed during the course of their duties and;**
- 2. Grants permission to Channel Seven to film the relevant section of meetings of Tweed Shire Council and Community Access on a case-by-case basis. This permission is restricted to Tweed Shire Councillors and staff. Channel Seven will be responsible for seeking permission from any individuals they wish to film.**

3. **ATTACHMENT 2 as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**
- (d) commercial information of a confidential nature that would, if disclosed:
- (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret

REPORT:

Representatives from television station Channel Seven approached Council in April 2010 to consider participating in a proposed half-hour national television show with a working title 'Local Rules' (The Council Show).

At the time, Channel Seven's Factual Development Unit was working on a pilot program. Channel Seven has since agreed to proceed with the project and the eight episodes of the program are scheduled to air later this year.

Channel Seven produces similar documentary programs such as The Force and Border Security.

The nature of this production and recording is not 'current affairs' like or traditional media recording, it is a researched and factual program involving crews shadowing Council officers over a period of time. It is anticipated that filming would take place in blocks over four to eight weeks with a delay of up to 3 – 4 months between filming and when the series will appear on air later in the year.

The aim of the observational documentary is to increase the community's understanding of the wide range of roles carried out by local councils, and the difficulties encountered by council officers.

If Council agreed to participate, the production crew has indicated they would be interested in filming a variety of compliance issues including: mediating during building approval disputes, investigating tree poisoning, catching illegal dumpers in the act, helping resolve neighbour disputes over barking dogs and shutting down pubs breaching regulations.

A number of other councils have agreed to participate including Muswellbrook Shire Council, Rockdale City Council and Port Stephens Council. Negotiations are continuing with other councils across Australia.

It is considered that the benefits for Council of participation would be:

1. Educating the public about the wide range of issues Council officers deal with in their day-to-day duties.
2. An opportunity for Council officers to expand their skills and feel pride in their jobs.
3. National exposure of the physical beauty of the Tweed's mountains and beaches leading to potential tourism benefits.
4. An opportunity for Council to be open and transparent about the way it conducts its dealings with the public as required by the Code of Conduct.

A number of officers have indicated their willingness to participate in the program, including rangers, compliance officers, environmental health officers and health and building surveyors.

It would be the responsibility of Channel Seven to gain written permission from members of the public to allow filming to take place and to gain the right to enter private property.

Where permission was not granted, the storyline would not proceed.

Although the focus would be on council regulatory staff, Channel Seven has asked for permission to on occasion film in the Council Chambers in Murwillumbah during Community Access sessions and Council meetings.

Filming or photography in the Council Chambers is not permitted under Council's Code of Meeting Practice (Section 2.10 – Local Government (General) Regulations 2005, Section 273) during a Council meeting, unless permission is otherwise granted by resolution. This could be achieved through granting this approval as it arises.

While there is an element of risk associated with potentially negative publicity which might be generated for Tweed Shire Council and the Tweed, this is an opportunity for Tweed Shire Council to educate the community in an open and transparent forum about what happens behind the scenes in local government. While Channel Seven is ultimately interested in entertainment and ratings, officers believe the result will be an honest and fair portrayal of the work of council staff and local issues.

If, in Council's reasonable opinion, an element of a story would compromise the Council (such as depicting a breach of safety or breach of protocol by a Council employee), and/or adversely impact on current investigations or would be defamatory if it was included in the Series, Council has the ability to request Channel Seven to edit the story to address Council's concerns.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Proposal from Channel Seven (ECM17457154)
 2. **Confidential Attachment** - Agreement between Channel Seven and Tweed Shire Council (ECM17458266)
-

9 [GM-CM] Potential Employment Land - Wardrop Valley

ORIGIN:

General Manager

FILE NO: GT1/LEP/2006 Pt16; LEP Review Employment Lands

SUMMARY OF REPORT:

Council has been requested by Darryl Anderson Consulting to contribute to the preparation of a planning proposal to consider the extension of employment lands at Wardrop Valley. This proposal is in collaboration with the adjoining land owners Messrs L and J Dickinson.

RECOMMENDATION:

That Council:

- 1. Agrees to the request from Darryl Anderson Consulting to contribute towards the costs of the preparation of a planning proposal for employment lands for Council owned land located at Wardrop Valley (Part Lot1 DP1069561).**
- 2. Funds the study from Council's Land Development Fund.**

REPORT:

Council has been requested by Darryl Anderson Consulting to contribute to the preparation of a planning proposal to consider the extension of employment lands at Wardrop Valley. This proposal is in collaboration with the adjoining land owners Messrs L and J Dickinson. It is estimated that the planning assessment would cost Council in the vicinity of \$15,000.

Council's Employment Lands Strategy identifies two potential extension areas to the existing employment lands at Murwillumbah. These are identified as areas 5 and 6. Council owns 7.2Ha within Area 6, the remainder of the land within Area 6 is owned by Messrs L and J Dickinson, refer Figure 1 below. The 8 parcels to be included in the planning assessment represent the complete Area 6 identified in the Employment Lands Strategy.



	LEGEND		
	LGA Boundary Cadastre	Railway Line Watercourse Areas	Potential Employment Lands

1:25,000 for A4 		Tweed Shire Council Tweed Employment Lands Strategy Potential Employment Lands South Murwillumbah & Wardrop Valley Figure 16 14 February 2008	Job no. 22-13462 rev no. 8
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Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

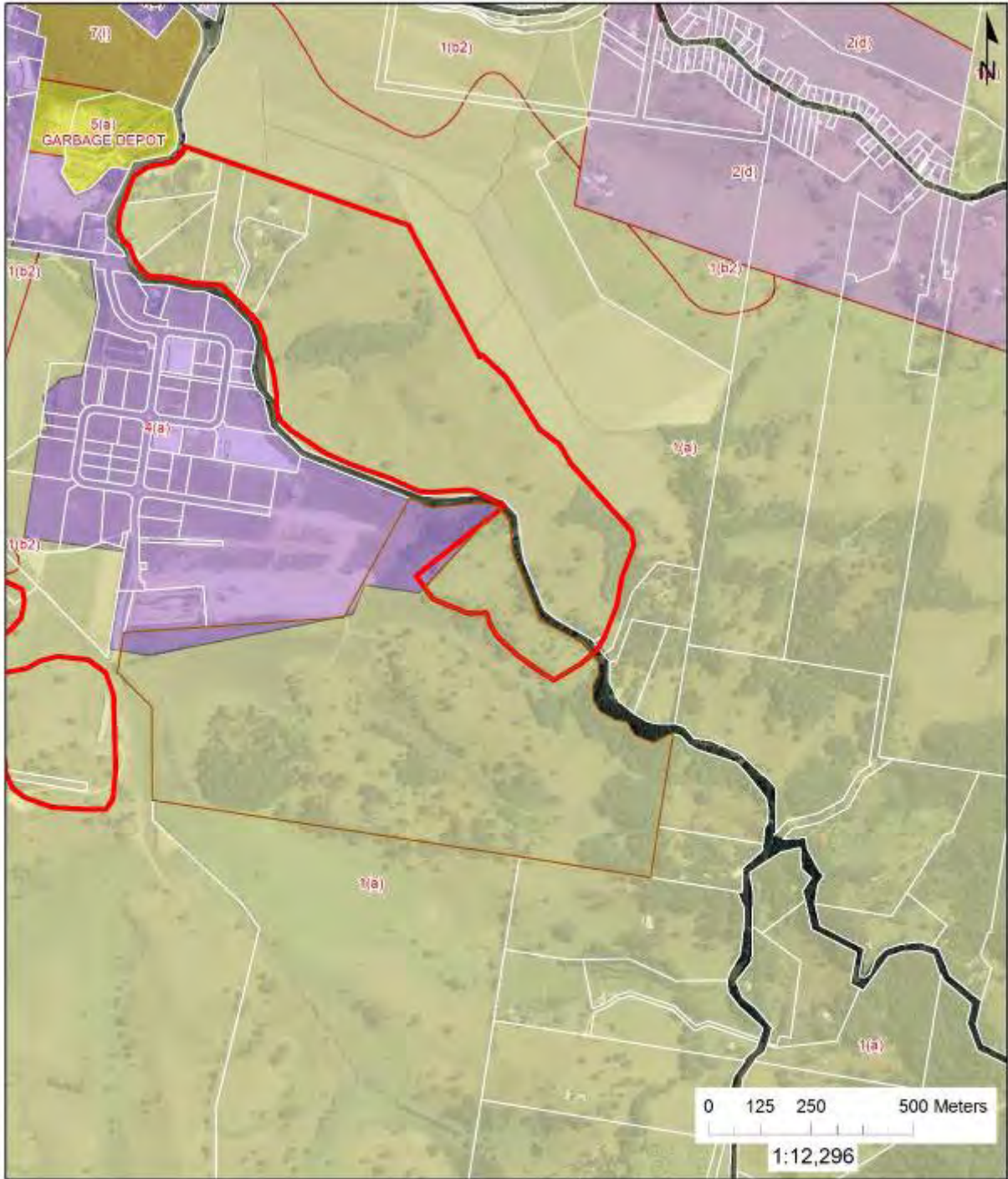
GIS Filename: G:\210362018\MAPS\Land Release Strategy\2210402_Fig16_Potential_Employed 352 King Street Newcastle NSW 2000 Australia T 61 2 4979 9999 F 61 2 4979 0568 E rtrial@ghd.com.au W www.ghd.com.au

Figure 1: Tweed Employment Lands Strategy, Areas 5 and 6.

The adjoining land owners Messrs L and J Dickinson have engaged Darryl Anderson Consulting to prepare a Planning Proposal for Area 6 to be utilised for employment lands. The planning proposal is for the following parcels;

Parcel	Area (Ha)	Owner	Zoning (LEP 2000)
Part L1 DP1069561	7.2	Tweed Shire Council	Rural 1(a)
L1 DP842157	41.3	L and J Dickinson	Rural 1(a)
L4 DP811482	2.0	L and J Dickinson	Rural 1(a)
L5 DP811482	2.0	L and J Dickinson	Rural 1(a)
L6 DP811482	2.0	L and J Dickinson	Rural 1(a)
L7 DP811482	2.1	L and J Dickinson	Rural 1(a)
L8 DP811482	1.9	L and J Dickinson	Rural 1(a)
L9 DP811482	2.1	L and J Dickinson	Rural 1(a)
TOTAL	60.6		

Council owns Lot 1 DP1069561 Wardrop Valley in free hold. The land is classified as *Operational Land* under the Local Government Act. The portion of Council's land to be included in the assessment represents 7.2 Ha or 10% of the total lot. The existing industrial zoned portion of the lot represents 6 Ha which is not required to be included as it is already zoned appropriately for employment lands.



**Wardrop Valley
Area to be included in Planning Proposal**

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 data 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 excavations a "Dial 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.



Coordinate System - MGA Zone 56
Datum - GDA 92

Cadastre 14 Database, 2009
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TWEED
SHIRE COUNCIL

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

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10 [PR-CM] Development Application DA08/1171.01 for an amendment to Development Consent DA08/1171 for Addition of Deck to Existing Surf Life Saving Club at Lot 7010 DP 1055324; Lot 2 DP 1083851, Pandanus Parade, Cabarita Beach

ORIGIN:

Development Assessment

FILE NO: DA08/1171 Pt1

SUMMARY OF REPORT:

On 28 May 2009, Council approved an above ground deck to the Cabarita Surf Life Saving Club.

On 30 October 2009, Council received a Section 96 application which proposes to amend the design of the development in terms of the size of the deck, reducing the area to approximately 106.1m² in area (a reduction of 35.7m²) and increase the number of times the deck is to be used to six times per month (an increase from twice a month).

The applicant raised contentions relating to; legality of Section 94 Contribution Plan No. 23 – *Tweed Roads Contribution Plan*, method of calculating car parking, precedent and material benefit of the surf club, deferred or periodic payment of contributions and calculation of Section 64 contributions. Each of the above contentions are addressed within the body of this report.

This Section 96 application was reported to Council on the 18 May 2010. Council resolved, *“that this item be deferred to a Workshop to be held before the next Council meeting to obtain clarification of the liquor licensing and to allow officers time for a in depth analysis of the changes referred at the meeting.”*

In terms of the contributions issue, Councillors have discussed the alternative options of Council supporting a part donation/part loan to the Club and a proposal to waive all of the required Section 94 and Section 64 contributions.

It is the officers view that the previously recommended conditions for contributions are still valid and justified, and that the alternative options considered by Councillors are not strictly in accordance with Council's Contribution Plans.

It should also be pointed out that, given that 12 months has elapsed since the date of the original consent (28 May 2009), strict adherence to Council's Contributions Plans requires the applicant to pay the current, indexed amounts of \$10,856 (Tweed Road Contributions Plan) and \$193,599 (or 7 spaces x \$27,659 per space – Shirewide Car Parking Plan). Council will need to determine whether or not this indexed amount is appropriate.

It is therefore recommended that Council endorse the recommended conditions of the report to Council's 18 May 2010 meeting, as repeated below. On the basis of the alternative options being considered by Councillors a separate report has been included in the June Council meeting Business Paper Agenda, which needs to be considered following the determination of this item.

In terms of the suggested unrestricted hours of operation of the proposed deck which was discussed by Councillors at the 18 May 2010 meeting, it is considered that recommended Condition No. 22 *"The deck is only to be used for a maximum of two functions each month and Sunday each week."* relates to the liquor license obtained by the Club and therefore it is considered appropriate to be retained in order for the Club to satisfy its licensing requirements. It should also be noted that Council's assessment of the Section 96 contributions takes into account the frequency of use of the deck and deck area. Any proposal to increase the frequency of use would generate an increased amount of Section 94 contributions.

The subject application, to amend the approved development, is recommended for approval subject to the recommended conditions.

RECOMMENDATION:

That Development Application DA08/1171.01 for an amendment to DA08/1171 for addition of deck to existing surf life saving club at Lot 7010 DP 1055324; Lot 2 DP 1083851, Pandanus Parade, Cabarita Beach be approved subject to the amendment of the following conditions: -

- 1. Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:**

1A. The development shall be completed in accordance with the Statement of Environmental Effects and Plans Numbered 290.3 Sheet 01, 02, 03, 07, 08, 09 and 10, prepared by Tweed Coast Design Drafting and dated June 2009, except where varied by the conditions of this consent.

[GEN0005]

- 2. Delete Condition No. 2 and replace it with Condition No. 10.1 which reads as follows:**

10.1. Prior to the issue of a Construction Certificate plans detailing adequate privacy screening to the south and western facade of the building and deck, to protect privacy of adjacent units, shall be submitted to Council and approved by the General Manager or his Delegate

[PCCNS01]

- 3. Delete Condition No. 3 and replace it with Condition No. 3A which reads as follows:**

3A. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

11.3678 Trips @ \$930 \$10,572.05

S94 Plan No. 4

Sector7_4

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 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. 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:

\\$Con_{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 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

(b) Shirewide Car Parking

7 space/s @ \$13,619 \$95,333

S94 Plan No. 23

[PCC0215/PSC0175]

4. Delete Condition No. 4 and replace it with Condition No. 4A which reads as follows:

4A. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP6: 0.4244 ET @ \$10346.9 \$4391.22

Sewer Hastings Point: 0.6366 ET @ \$4972.1 \$3165.24

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[PCC0265/PSC0165]

5. Delete Condition No. 9 and replace it with Condition No. 9A which reads as follows:

9A. The applicant shall pay contributions for 7 car parking spaces in accordance with section 94 plan number 23 - Off-Site Parking.

[PCCNS02]

6. The following conditions are to be added to the amended development consent:

2.1. The approved deck is not to exceed 106.1m² in area.

[GENNS02]

2.2. The deck is only to be used for a maximum of two functions each month and Sunday each week.

[GENNS03]

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

[POC1055]

REPORT:

Applicant: Cabarita Beach Surf Life Saving Club Inc
Owner: Tweed Shire Council
Location: Lot 7010 DP 1055324; Lot 2 DP 1083851, Pandanus Parade, Cabarita Beach
Zoning: 5(a) Surf Life Saving Club
Cost: N/A

BACKGROUND:

This Section 96 application was reported to Council on the 18 May 2010. Council resolved, *“that this item be deferred to a Workshop to be held before the next Council meeting to obtain clarification of the liquor licensing and to allow officers time for a in depth analysis of the changes referred at the meeting.”*

In terms of the contributions issue, Councillors have discussed the alternative options of Council supporting a part donation/part loan to the Club and a proposal to waive all of the required Section 94 and Section 64 contributions.

It is the officers view that the previously recommended conditions for contributions are still valid and justified, and that the alternative options considered by Councillors are not strictly in accordance with Council's Contribution Plans.

It is therefore recommended that Council endorse the recommended conditions of the report to Council's 18 May 2010 meeting, as repeated below. On the basis of the alternative options being considered by Councillors a separate report has been included in the June Council meeting Business Paper Agenda, which needs to be considered following the determination of this item.

In terms of the suggested unrestricted hours of operation of the proposed deck which was discussed by Councillors at the 18 May 2010 meeting, it is considered that recommended Condition No. 22 *“The deck is only to be used for a maximum of two functions each month and Sunday each week.”* relates to the liquor license obtained by the Club and therefore it is considered appropriate to be retained in order for the Club to satisfy its licensing requirements. It should also be noted that Council's assessment of the Section 96 contributions takes into account the frequency of use of the deck and deck area. Any proposal to increase the frequency of use would generate an increased amount of Section 94 contributions.

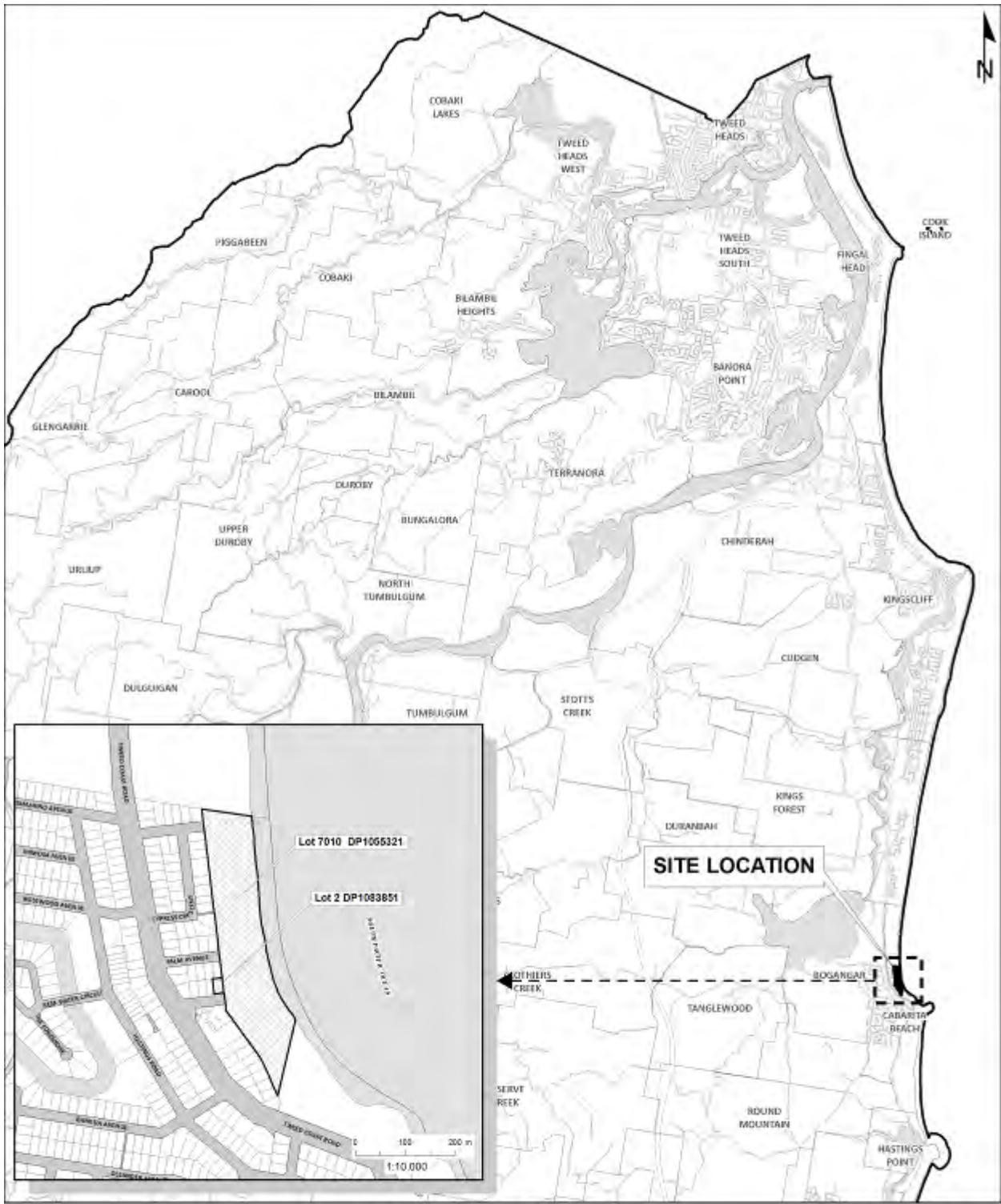
Council strongly supports the core life saving activities of the Cabarita Surf Life Saving Club and has already given the club substantial funds for these activities. However the current application is for 'Entertainment Facilities' and the club is required to pay the normal developer contributions that all other developers have to pay for this type of development. Council has previously allocated around \$900,000 to upgrade surf life saving facilities at Cabarita because the Surf Club was integral to effective patrols on Tweed beaches.

In 2004 Council provided a \$650,000 grant for the construction of the Cabarita Surf Life Saving Club and waived approximately \$250,000 in development contributions at that time, because the facility played a vital role in keeping the shire's beaches safe.

DA09/1171 - Cabarita Surf Club

Council granted approval, on the 28 May 2009, for the construction of a deck, (the area of the deck is 141.8m²) associated with the existing Cabarita Surf Life Saving Club (SLSC) to be used twice a month. The subject application required a SEPP 1 objection to clause 32B - *Development control-coastal lands*, pursuant to the *North Coast Regional Environmental Plan* (overshadowing of the foreshore). The subject application was generally compliant with Council's requirements with the exception of the ability to provide for onsite car parking. The applicant requested that Council waive the requirement to pay section 94 and section 64 contributions as well as monetary fees required in lieu of on-site car parking. It was considered that the waiver of these contributions and fees is not justified. The application was approved subject to recommended conditions of consent.

SITE DIAGRAM:



LOCALITY PLAN

Lot 7010 DP 1055324; Lot 2 DP 1083851,
Pandanus Parade, Cabarita Beach

0 0.75 1.5 2.25 3 Km
1:100,000

Filename: z:\esr\planning\mtd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 04 May, 2010

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Cadastral: 04 May, 2010
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Datum - GDA 94

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TWEED
SHIRE COUNCIL

CONSIDERATIONS UNDER SECTION 79C AND S96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Proposal

The application proposes to amend the design of the development in terms of the size of the deck, reducing the area to approximately 106.1m² in area (a reduction of 35.7m²) and increase the number of times the deck is to be used to six times per month. The application seeks amendment to conditions 1, 3 and 4 which are provided below:

1. *The development shall be completed in accordance with the Statement of Environmental Effects and Plans-*
 - *Site Plan. Job No. CABA0001. ML Design dated 19/06/2008.*
 - *Ground Floor Plan Deck Addition. Job NO. CABA0001. ML Design dated 12/06/2008.*
 - *Elevations. Job No. CABA0001. ML Design dated 12/06/2008.*

Except where varied by the conditions of this consent.

[GEN0005]

3. *Section 94 Contributions*

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

4.935 Trips @ \$930 \$4590

S94 Plan No. 4

Sector7_4

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 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

where:

$\text{\$Con}_{TRCP - Heavy}$ 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 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

(b) Shirewide Car Parking

10 space/s @ \$13619 \$136,190

S94 Plan No. 23

[PCC0215/PSC0175]

4. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP6: 0.564 ET @ \$10346.9 \$5835.70

Sewer Hastings Point: 0.846 ET @ \$4972.1 \$4206.40

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[PCC0265/PSC0165]

Assessment

The application raises contentions relating to; legality of Section 94 Contribution Plan No. 23, method of calculating car parking, precedent and material benefit of the surf club and calculation of Section 64 contributions. Each of the contentions are addressed below.

Legality of Application of Section 94 Contribution Plan No. 23 to this site

The previous approval for a deck required cash payment in lieu of 10 on-site carparking, pursuant to contribution plan 23.

The applicant states '*the surf club nor the foreshore reserve is covered by the Section 94 Plan. It is therefore submitted that the contribution can not be legally levied pursuant to Section 94 of the EPA Act 1979.*'

It is to be noted that, if the condition requiring payment in lieu of the required parking spaces was not imposed, the application would have been recommended refusal as no on-site car parking is available.

On 19 January 2010, Council resolved to include the subject site within Contribution Plan No. 23. As such, Council can now lawfully apply the levy of contributions pursuant to Section 94 of the Environmental Planning and Assessment Act, 1979 to the site. Council is also satisfied that even though the majority of the deck is located within the neighbouring foreshore reserve (Lot 7010), that Contribution Plan No. 23 allows Council to levy Section 94 Contributions, as the deck is physically connected and directly associated with the operation of the Surf Club and that a portion of the deck is located within the surf club site, which is located within the area to which the Contribution Plan applies.

Method of calculating car parking for the deck

The applicant claims that the use of an auditorium rate associated with a club, in calculating the number of car spaces is not appropriate due to; '*the surf club having a limited licence, in comparison to establishments such as; Twin Towns Services Club and Seagull Football Club, which operate seven days per week for extended hours of 16 or more per day, that the surf club does not provide services such as poker machines, regular live entertainment or bistros or restaurants offering meals three times per day.*'

The applicant then states if car parking is to be calculated then it should be done taking into consideration the limited license and potential commercial usage, '*in terms of viewing it (the deck) as an extension of licensed premise, it is only reasonable that the car parking be looked at in terms of its limited license. That is two functions a month plus Sunday afternoons for four hours*' (this equates to six times a month), '*car parking if it was to be calculated should be based on a potential commercial usage on a pro rata basis....in direct terms of numbers, it is unlikely that the deck will result in any substantial increase in patronage...*'

The deck was assessed as a club, which is divided into bar area, lounge dining area and auditorium. The lower rate of an auditorium was used in this situation, generating ten car parking spaces. The Council report for DA08/1171 states:

The DCP outlines that the car parking requirement for a club is divided into bar area, lounge dining area and auditorium. The auditorium was decided as the best fit in this instance, the rate for auditorium is defined as 1 space /15m², therefore the proposed 141m² extension will require 9.4 car parking spaces (10). The section 94 plan number 23 (Off Street Parking) requires \$13,619 for each car space not provided, totalling a contribution of \$136,190 for the proposal.

The applicant also states that the deck could not be calculated in terms of car parking because, *'the deck under Tweed LEP 2000 and DCP 2002 is not defined as gross floor area, and as such its inclusion in the general calculations for determining car parking is difficult to justify.'*

The deck in this situation is considered a 'traffic generating facility' with the ability of containing tables and chairs, generally accommodating more people, making the surf club more attractive and usable, with car parking spaces based on peak period, not on the suggested limited hours. It is to be noted that additional staff were not added to Council's calculations (0.3 space per employee). The parking rate, used to calculate the number of parking spaces the proposed deck generates, is considered to be correct, consistent, logical (and generous).

The application seeks to reduce the area of the deck by 35.7m² to 106.1m² in area (original area 141.8m²). Therefore the modified parking requirements for the deck of 106.1m² equate to seven (7) spaces at the old rate of \$13, 619.00 per space x 7 = \$95,333.00). Council's Director of Engineering and Operations advised that the use of the old rate of \$13, 619.00 per space rate is reasonable in this instance, rather than the current \$27, 657.00 rate, on the bases that; the lesser rate stated on the consent remains fixed for twelve months (expires 1 June 2010) and that using the lesser amount will not adversely impact on the carparking budget. If the fees and charges are not paid prior to the 1 June 2010, the rates become applicable in accordance with Council's adopted Fees and Charges current at the time of payment.

Two additional conditions are recommended to be added to the amended consent:

- 2.1. The approved deck is not to exceed 106.1m² in area.

[GENNS02]

- 2.2. The deck is only to be used for a maximum of two functions each month and Sunday each week.

[GENNS03]

Precedent and Material Benefit of the Surf Club

The applicant states that section 94 contributions have been waived for other sporting clubs and facilities in particular the Cudgen (Kingscliff) Surf Club and development consents D96/0029, D98/0117 and DA04/1547. The applicant also agrees that contributions (and car parking) were previously waived for the re-development of the Cabarita Surf Club, so why not for the proposed deck?

It is noted by the applicant that conditions 6 and 8 of development consent D98/0117 (Cudgen Surf Club), waived the monetary contribution of \$169,400.00 for the provision of 22 car spaces. Council also waived the monetary contribution of \$26,548.00 for road contribution.

The applicant also notes that contributions were also waived in DA04/1547 (Cudgen Surf Club) relating to an increase in the size of the external deck and the operation of a commercial kitchen. Comments on these examples cited are provided below.

D96/0029 (Cudgen Surf Club)

Council granted conditional approval, on the 23 April 1996, for the extension of a licensed area to include the ground floor of the existing club and the establishment of a care takers residence at the Kingscliff Surf Club. Particular reference is given to conditions No. 8 and 9 of the development consent, which required the payment of contributions relating to water, sewer and roads.

D98/0117 (Cudgen Surf Club)

Council granted conditional approval for additions and alterations at the Kingscliff Surf Club. Council resolved to waive the monetary contribution of \$169,400.00 for the provision of 22 car spaces and \$26,548.00 for road contributions relating to conditions 6 and 8 of development consent D98/117. The planning report having defined the premises as a club then identified that a shortfall in car parking existed and subsequently recommended the application for refusal. Despite the shortfall of 22 car parking spaces Council recognised that the club provides a valuable service to the community and waived the requirement for further car parking in approving the application.

DA04/1547 (Cudgen Surf Club)

Council granted conditional approval, on the 17 July 2006, for additions and alterations at the Kingscliff Surf Club. The additions and alterations proposed an additional 18.7m² of balcony area. The infill of the void area to create a small balcony extension was considered, under strict application of the DCP No.2 – Access and Parking Code, to generate the requirement for 3 spaces and 18.7 vehicle trips per day. The Council report noted that, the applicant stated, the area in question will be used for other uses other than dining. Council's Traffic Engineer was quoted within the Council report as stating, *'the proposal will generate an extra 18.7 vehicle trips per day which is minimal and will easily be accommodated by the adjoining road network'*. The application was assessed on the basis that the balcony area will not increase the patronage of the club but rather, it will serve the needs of existing patrons and no additional car parking is warranted.

DA04/1547.07 (Cudgen Surf Club)

The application was approved enclosing part of the southern portion of the existing first floor verandah. The enclosed area would then be used as a storage area for the adjacent kitchen. The enclosure of the area will provide a dry, secure area for the storage of food / equipment associated with the existing first floor kitchen, which is much better outcome than the open area that is currently being used in terms of amenity and protection of stock.

The proposal did not generate section 94 or section 64 contributions.

DA08/0903 (Fingal Surf Club redevelopment)

The subject application was granted consent for the refurbishment and alterations and additions to the Fingal Head Surf Club. The development retained the existing footprint of the clubhouse, and increased the available floor space by approximately 283.41m² through the addition of a second level on the existing southern single storey portion of the building (approximately 222m²), the addition to the existing 1st floor deck (approximately 33.25m²), enclosing of the ground floor patio for use as a first aid room (approximately 17.5m²) and observation deck (approximately 10.66m²).

In this instance, it was recommended that car parking or S64 charges do not apply, as concessions had been made to the Cabarita Surf Club.

The Council meeting dated 3 July 2002, resolved that Council: (Cabarita Surf Club)

On the 3 July 2002 Council considered a report in confidential in relation to the Cabarita Surf Life Saving Club Section 94 Contributions and New Clubhouse and resolved as follows:

- “A. Intends to waive charges for carparking in lieu of provision of carparking when dealing with the development application for the new surf club building.*
- B. Will provide up to \$500,000 in funding for the provision of a building to be used for surf lifesaving being constructed by the Cabarita Beach Surf Lifesaving Club on the following basis:-*
 - 1. Council will be responsible for 70% of all progress payments up to a maximum amount of \$500,000.....’*

DA02/1646 (Cabarita Surf Club)

Council granted conditional approval, on the 23 May 2003, for a boundary adjustment, road widening and the erection of a surf life saving facility. The development consent did not contain conditions relating to section 94 or section 64 contributions or car parking requirements (23 parking spaces). The Council report concluded, *‘the public investment in the redevelopment of the Surf Club comprises:*

- \$640,000 of developer contributions – the repayment over a projected 8 year period of a \$500,000 loan as contribution to the redevelopment.*
- \$200,000 grant from the NSW State Government.*
- The decision by Council to not require car parking contributions related to the redevelopment of the Club – at the \$11,000 per lot contribution for car parking in Cabarita Beach – this translates to approximately an extra \$250,000, although the real land value consumption by providing these car parking spaces would be well in excess of this value.’*

To this end, in considering the previous public investments and concessions applied to the Cabarita Surf Club, it is not considered further concession on S64 or S94 charges and car parking is warranted.

Deferred or periodic payment of contributions

The applicant raised the option of deferred or periodic payment of contributions. The Tweed Roads Contribution Plan (CP No. 4) and Offsite Parking (CP No. 23) provide the option of deferred or periodic payment of contributions, however, payment is at the sole discretion of the Council.

Clause 9.4 of CP No. 4 (TRCP) states that Council will generally not accept deferred or periodic payment of contributions, however, payment is at the sole discretion of the Council.

Clause 2.11 of CP No. 23 (Offsite Parking) provides circumstances where deferred or periodic payments may be permitted, most notably: when works-in-kind or a planning agreement is accepted, or if the development is defined as an Eligible Business Enterprises, or if payment Prior to issue of Construction Certificate is unreasonable or unnecessary in the circumstances of the case. The policy provides a condition essentially requiring the total amount levied to be divided by 10 with each payment made annually for the next 10years.

The deferred or periodic payment option raises the issue of annual 'indexation' and also in this particular instance the cost per car parking space increasing from \$13,619.00 to \$27,657.00 on the 1 June 2010. Council is to consider if periodic payments are accepted, is each payment set for the next ten years or will each payment be subject to indexation (the fees recalculated to the current rate applicable at time of each payment). Two conditions have been recommended in the 'options' section of this report if Council chooses to approve the application permitting periodic payments.

Calculation of Section 64 contributions

The applicant requests levying headwork's based on the deck being a "commercial premise" and also argues that it adds to gross floor area of the Surf Club is incorrect, as decks and verandahs are not identified as gross floor area. However, as previously stated, given the deck will increase material use of the premises, it should be included as gross floor area.

Council's Water and Waste Water Engineer considers the use of the lesser rate of 'Commercial', as opposed to the use of the higher rate of 'Pub/Bar' to be appropriate in this situation.

Council's Water and Waste Water Engineer recognises that previous interpretation of "pub/bar" has been in the case of Licensed Clubs, the area of the actual bar and the serving space immediately adjoining it. The balance of the area could be treated at a lesser rate, such as commercial.

Further, the rates adopted have been a concession to the applicant by not applying the Pub / Bar rate to the whole floor area serviced by the bar, nor considering it as refreshment room which is another possibility.

It is to be noted that the refreshment room rate of 0.008ET per m² is higher then the commercial rate 0.004 ET per m². The commercial rate is lowest rate within possible rates that could be applied.

Environmental Planning and assessment Act 1979

Section 96 (Modification of consents-generally)

1A
(a) *It is satisfied that the proposed modification is of minimal environmental impact, and*

The proposed reduction in deck area and increase in use is considered to be of minimal environmental impact. The proposed development does not raise any environmental issues which have not already been assessed through the original Development Application.

- (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**

The proposed reduction in deck area is considered to be substantially the same development for which the consent was originally granted. The development remains as a deck extension to the existing Cabarita Surf Club building.

- (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**

The application was not notified.

- (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.**

Council did not receive any submissions relating to the subject application.

- (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.**

Section 79C(1) (Evaluation)

- (1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:**

- (a) the provisions of:**

- (i) any environmental planning instrument, and**
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**
- (iii) any development control plan, and**
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

The proposed development is in accordance with the Tweed LEP 2000 and Council's Development Control Plan.

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

The proposed reduction in approved deck size and increase in use is considered not to create an adverse impact on the natural or built environments or an adverse impact on the social or economic environments of the locality.

(c) The suitability of the site for the development,

The proposed reduction in approved deck size and increase in use is relatively minor in nature, with the site considered suitable for the proposed changes.

(d) Any submissions made in accordance with this Act or the regulations,

Referrals to other agencies were not required.

(e) The public interest.

The proposed reduction in deck area and increase in use is considered not to negate public interest, subject to the recommended conditions.

OPTIONS:

1. Refuse the application and provide reasons for refusal.
2. Approve the application subject to the recommended conditions.
3. Approve the application subject to the recommended conditions and for Council to accept deferred or periodic payment of contributions relating to Tweed Roads Contribution Plan and Contribution Plan number 23 - Offsite Parking, using the following conditions:
 1. In accordance with s80A(1) (d) of the Environmental Planning & Assessment Act 1979, the period during which the development, being the subject of this consent may be carried out is limited as follows:
 - a. If the Contribution Plan No. 23 - Offsite Parking contribution is paid in full prior to the commencement of the use stage of development, the period during which the development may be carried out is not limited by this condition

- b. If an amount being, the Contribution Plan No.23 - Offsite Parking contribution divided by 10 is paid prior to the commencement of the use stage of development, the period during which the development may be carried out shall be for one year from the date of such payment
 - c. The period referred to in b. above may be extended year by year by the payment (prior to the expiration of the previous period) of the Contribution Plan No.23 - Offsite Parking contribution divided by 10, with each such payment extending the period during which the development may be carried out by one year.
 - d. The consent for the use stage of this development will not commence until payment has been made in accordance with a. or b. above.
 - e. The consent for the use stage of this development will cease to operate (and the use stage of the development must cease) within a period of 90 days after the expiration of the annual period for which payment has been made under b. or c. above unless payment has been made under c. for the following year.
 - f. If 9 additional consecutive annual payments have been made in accordance with c. the Contributions Plan No.23 - Offsite Parking payment will be considered to be paid in full and the period during which the development may be carried out will not be further limited by this condition.
2. In accordance with s80A(1) (d) of the Environmental Planning & Assessment Act 1979, the period during which the development, being the subject of this consent may be carried out is limited as follows:
- a. If the Contribution Plan No. 4 – Tweed Roads Contribution Plan is paid in full prior to the commencement of the use stage of development, the period during which the development may be carried out is not limited by this condition
 - b. If an amount being, the Contribution Plan No. 4 – Tweed Roads Contribution Plan divided by 10 is paid prior to the commencement of the use stage of development, the period during which the development may be carried out shall be for one year from the date of such payment
 - c. The period referred to in b. above may be extended year by year by the payment (prior to the expiration of the previous period) of the Contribution Plan No. 4 – Tweed Roads Contribution Plan divided by 10, with each such payment extending the period during which the development may be carried out by one year.
 - d. The consent for the use stage of this development will not commence until payment has been made in accordance with a. or b. above.

- e. The consent for the use stage of this development will cease to operate (and the use stage of the development must cease) within a period of 90 days after the expiration of the annual period for which payment has been made under b. or c. above unless payment has been made under c. for the following year.
 - f. If 9 additional consecutive annual payments have been made in accordance with c. the Contributions Plan No. 4 – Tweed Roads Contribution Plan payment will be considered to be paid in full and the period during which the development may be carried out will not be further limited by this condition.
3. If the contribution payments are not paid to Council in accordance with the conditions of consent, the deck is to be removed from the site.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed reduction in the approved deck, reducing the area to approximately 106.1m² in area (a reduction of 35.7m²) and increase the number of times the deck is to be used to six times per month (approved use two times per month) is considered not to negate the public's interest subject to the recommended 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.

11 [PR-CM] Consideration of Alternative Contribution Payment Options for Development Application DA08/1171.01 for an Amendment to Development Consent DA08/1171 for the Addition of a Deck to Existing Surf Life Saving Club at Lot 7010 DP 1055324; Lot 2 DP 108

ORIGIN:

Development Assessment

FILE NO: DA08/1171 Pt1

SUMMARY OF REPORT:

A separate related Business Paper item seeks Council's endorsement of a Section 96 amendment to Development Consent DA08/1171 for the addition of a deck to an existing surf life saving club at Lot 7010 DP 1055324; Lot 2 DP 1083851 Pandanus Parade, Cabarita Beach.

This report responds to the Council resolution from the meeting held on 18 May 2010 *"that this item be deferred to a Workshop to be held before the next Council meeting to obtain clarification of the liquor licensing and to allow officers time for an in depth analysis of the changes referred at the meeting."*

Procedurally, the above item needs to be determined by Council, prior to Council determining this item. On confirmation of the above item, Council may wish to consider some alternative contribution payment options to that contained within the conditions of development consent.

Two options were discussed by Councillors at the 18 May 2010 Council meeting and subsequent Councillors workshop and involved either Council supporting a part donation/part loan to the Club to assist with the required Section 94 and Section 64 contributions, or a proposal to completely waive all these required contributions.

As stated in the related report on the Section 96 application DA08/1171.01 the officers are of the opinion that these alternative options are not strictly in accordance with the payment requirements of Council's current contributions plans.

It should also be pointed out that, given that 12 months has elapsed since the date of the original consent (28 May 2009), strict adherence to Council's Contributions Plans requires the applicant to pay the current, indexed amounts of \$10,856 (Tweed Road Contributions Plan) and \$193,599 (or 7 spaces x \$27,659 per space – Shirewide Car Parking Plan). Council will need to determine whether or not this indexed amount is appropriate.

Nonetheless, the Councillors have indicated that they are willing to consider these alternative options.

Accordingly, it is recommended that Council determine whether to support either of these options.

RECOMMENDATION:

That in terms of the required Section 94 and Section 64 contributions relating to the Section 96 Application for amendment to Development Consent DA08/1171.01 for the addition of a deck to an existing surf life saving club at Lot 7010 DP 1055324; Lot 2 DP 1083851 Pandanus Parade, Cabarita Beach that Council determines whether to support either, one or none of the following two options:

- 1. To waive all Section 94 and Section 64 contributions relating to this application; or**
- 2. Council invites the Cabarita Beach Surf Life Saving Club to make application to enter into a loan with Council for \$56,730.76 (being 50% of the current Tweed Roads Contribution Plan, Shirewide Car Parking and Section 64 contributions) at terms of 7% over 10 years with a minimum of two executives of the Club providing personal guarantees against the debt. Subject to satisfactory arrangements being made in relation to the proposed loan arrangement above, Council will make a donation of \$56,730.76 being 50% of the current contributions as detailed in Conditions 3A and 4A of Development Consent for DA08/1171.01.**

REPORT:

As per the summary.

OPTIONS:

1. To waive all Section 94 and Section 64 contributions relating to this application; or
2. Council invites the Cabarita Beach Surf Life Saving Club to make application to enter into a loan with Council for \$56,730.76 (being 50% of the current Tweed Roads Contribution Plan, Shirewide Car Parking and Section 64 contributions) at terms of 7% over 10 years with a minimum of two executives of the Club providing personal guarantees against the debt. Subject to satisfactory arrangements being made in relation to the proposed loan arrangement above, Council will make a donation of \$56,730.76 being 50% of the current contributions as detailed in Conditions 3A and 4A of Development Consent for DA08/1171.01.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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12 [PR-CM] Development Application DA10/0107 to Obtain Development Consent for a Fence Already Constructed within the Property Boundary at Lot 156 DP 628026, Creek Street, Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA10/0107 Pt1

SUMMARY OF REPORT:

At the Council Meeting of 16 February 2010 Council considered a report on an unauthorised fence at the subject property. Council resolved 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 1 March 2010”

Accordingly the applicant has now lodged a Development Application (received by Council on 1 March 2010) seeking Development Consent for the fence.

The application was publicly exhibited between 29 March 2010 and 14 April 2010. Council received 10 individual objections opposing the fence, 32 signed form letters opposing the fence, and various petitions opposing general development on Lot 156. The 10 individual objections included one letter from the Hastings Point Progress Association representing part of the community and one letter from a local solicitor also representing parts of the community. The letter from the Hastings Point Progress Association was accompanied with a video of Lot 156 being slashed of mangrove and saltmarsh, a PowerPoint detailing the historical damage done to this property, photo's of trucks entering Creek Street, petitions opposing the fence, and historical aerial photographs which show the original path of the estuary. The nature of the objections focussed on the following main issues:

- Extensive Unlawful History to Lot 156;
- The applicants justification for the fence is flawed;
- The fence will create an additional flood hazard;
- The fence will create an additional wildlife hazard;
- The fence has caused damage to mangroves and saltmarsh;
- The fence has created a maintenance problem in the 50cm gap between the various fences;
- The fence has created an unacceptable visual appearance;
- The fence is not permissible in the 7(a) zone;
- The fence has blocked access to the Creek and thus reduced amenity and property values;
- The unauthorised fence should be removed and the applicant's punished for building a fence without development approval.

The application was referred to Council's Planning & Infrastructure Engineer and Council's Ecologist for specific comments in regards to Flooding and Ecology. No objections were raised from these specialists subject to the imposition of the recommended conditions of consent, and referral of the matter to the Department of Environment and Climate Change and Water to investigate the applicant's need for a permit in association with the fence.

Having regard to the permissibility of the fence, the site suitability for the fence and the issues raised within the submissions it is recommended that the fence be approved subject to conditions of consent.

The Council will need to further determine whether a Penalty Infringement Notice should be issued as a result of the fence being erected without prior development approval. Such options are set out later in this report.

RECOMMENDATION:

That:

- A. Council refers the approval notice to the Department of Environment Climate Change and Water to investigate whether such works need any separate additional approvals under the National Parks and Wildlife Act 1974 or the Threatened Species Conservation Act 1995.**
- B. Council refers the approval notice to the Far North Coast Weeds Authority in relation to the presence of noxious weeds on the site, for this authority to investigate if necessary.**
- C. Development Application DA10/0107 to obtain development consent for a fence already constructed within the property boundary at Lot 156 DP 628026, Creek Street, Hastings Point be approved subject to the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Labelled "Fence Location Plan" prepared by Planit Consulting and dated May 2010, except where varied by the conditions of this consent.**
- 2. The proposed fence is to be constructed of cyclone wire mesh (no barbed wire) to a height no greater than 1.2m with star pickets at approximately 2.5m spacing.**
- 3. No vegetation is to be removed (cleared) to accommodate the proposed fence.**
- 4. Within 30 days of this consent all barbed wire is to be removed from the fence within the land zoned 7(a) Environment Protection (in accordance with Tweed LEP 2000) to the satisfaction of Council's General Manager or his delegate.**

- 5. Within 30 days of this consent, all materials associated with the fence construction, including old and/or left-over star pickets and barbed wire are to be removed from the land zoned 7(a) Environment Protection (in accordance with Tweed LEP 2000) to the satisfaction of Council's General Manager or his delegate.**
- 6. Within 30 days of this consent, four (4) sections (approximately 30 cm wide by 25 cm high) along the bottom of the fence behind the existing houses (where two fences run closely and parallel to each other) are to be provided to allow fauna caught between the two fences to escape. These works are to be undertaken to the satisfaction of Council's General Manager or his delegate.**
- 7. Within 90 days of this consent, a weed control plan for the prevention of weeds around the fence to the adjacent wetland areas is to be prepared, submitted to Council for approval, and implemented to the satisfaction of Council's General Manager or delegate.**

REPORT:

Applicant: Planit Consulting
Owner: Walter Elliott Holdings Pty Ltd
Location: Lot 156 DP 628026, Creek Street, Hastings Point
Zoning: Part 2(e) Residential Tourist and Part 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: \$3,500

BACKGROUND:

In late 2009 Council received complaints from an adjoining land resident regarding an internal fence that had been constructed on Lot 156 without development approval.

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 a Development 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 2010 from the consultant was received indicating a submission was being prepared for Council.

The official response to Council's letter was received on 18 January 2010 and stated that *"the fencing was erected by the landowner's caretaker for the purposes of property protection and security as it has been apparent that unauthorised access on to our clients land from adjoining properties has been occurring"*

Despite this response Council resolved on 16 February 2010 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 1 March 2010"

The Development Application was accordingly lodged on 1 March 2010 and contains the following information (provided by the applicant) to assist the determination:

"The Proposal

The proposal incorporates the erection of a fence inside the lot boundary. The fence is of cyclone wire meshing construction with star pickets at 2.5m spacing as supports. The fence is a maximum height of 1.2m and visually is highly permeable.

The fence is proposed in the location shown in the attached Fence Location Plan within Appendix A. A portion of the fence is located within land zoned as 7(a) Environmental Protection with the remainder of the fence in the area of the site zoned as 2(e) Residential/Tourist. The fence that is located within the 7(a) zone is located entirely within land that has for sometime been cleared and is 'paddock grass vegetation'. No vegetation is required to be removed in the construction of this fence.

Justification for Proposed Fence

The fence is considered necessary by the proponent for the following reasons. Firstly, the fence assists in preventing the pet dog/s of those occupying the dwelling on the site from gaining access to the rear yards of the dwellings that are located on the southern side of Creek Street (Lots 34 - 45 and Lots 10 & 11 Creek Street). Lots 34 – 35 contain single dwellings and many of these properties do not have a fence to the rear of the site separating them from the proponents' site. Without this fence in this area it is very difficult to prevent the dogs from gaining access to these properties without chaining them up all of the time. It is considered reasonable to allow these animals to use the open space areas of the site.

The second reason for the construction of the fence is to prevent the public entering the site from the wetlands in the north east corner of the site or from adjoining properties direct. The proponent has experienced a number of persons unlawfully entering the site from this area where there is a clear break in the mangroves to Cudgera Creek. Many people have been witnessed paddling water craft on higher tides through this break in the mangroves to the edge of the riparian zone and then entering the proponent's site. The area is shown within the photographs below.



Figure 4 Unauthorised use by public of private land



Figure 5 Accessible break in Mangroves to Cudgera Creek



Figure 6 Estuarine Lagoon



Figure 7 Subject site cleared land and positioning of existing dwelling in relation to proposed fencing to the eastern boundary

The primary objectives of the proposed fence are as follows:

- i. To provide security fencing upon the property; and*
- ii. To ensure the fence complies with Councils requirements and is suitably sited so that it does not impact upon neighbourhood amenity."*

Council raised additional questions (duplicated below in **bold**) in regards to permissibility and suitability and asked the applicant to provide additional information. The relevant additional material submitted is duplicated below (in *italics*):

The application justifies the need for the fence for two main reasons. One is security (for example the subject properties dogs to be contained) and the other is to prevent other residents from accessing the Creek via private land. The proposed layout does not appear to achieve either of the things as there are breaks in the fence that would allow the applicants dogs to escape and secondly community members are still accessing the Creek from the eastern road reserve around the proposed fencing. Please explain the reason for the current layout of the fence and refine the justification for the fence based on the above.

In relation to the claim that 'community members are still accessing the Creek from the eastern road reserve around the proposed fencing' may be true, however the main aim/objective of the fence is to prohibit community members accessing the Creek via private land. If they are still accessing this via Council land (road reserve) then this is obviously out of the proponent's control, but does not undermine the intent of the fencing. Additionally, there is no way the fence will indefinitely keep community members from accessing the Creek, however the intent of the proposed fence is to act as a deterrent aiming to stop community members accessing the Creek via private lands in order to minimise liability of the proponent as community members were frequently seen carrying personal watercraft to and from the creek, prior to the construction of the fence. Therefore the existence of the fence limits the risk of liability untoward the proponent.

Finally we believe an additional benefit in reducing the access via private land, is that the level of human disturbance to the riparian buffer in this eastern corner of the site will be reduced.

Lot 156 is defined by a variable Mean High Water Mark (MHWM) level. At the extreme eastern end of the subject property high tide has been seen to be within 7-10m of the properties facing Creek Street. Please confirm that all fencing forming part of this application occurs entirely within the subject land parcel having regard to the definitions of MHWM and the principals of submersion and accretion.

The variable Mean High Water Mark level has been taken into consideration in relation to the location of the proposed fencing. We can confirm that all fencing forming part of this application occurs entirely within the subject land parcel and has regard to the definitions of MHWM and the principals of submersion and accretion. Specifically in relation to the extreme eastern end of the subject property, please see below photos (taken at high tide) which confirm that the proposed fencing is and would not be subject to the principals of submersion and accretion.

Additionally, by way of correspondence with the surveyor relating to the original application, has confirmed that the MHWM has not changed and therefore the fence is in no way subject to the principals of submersion and accretion.

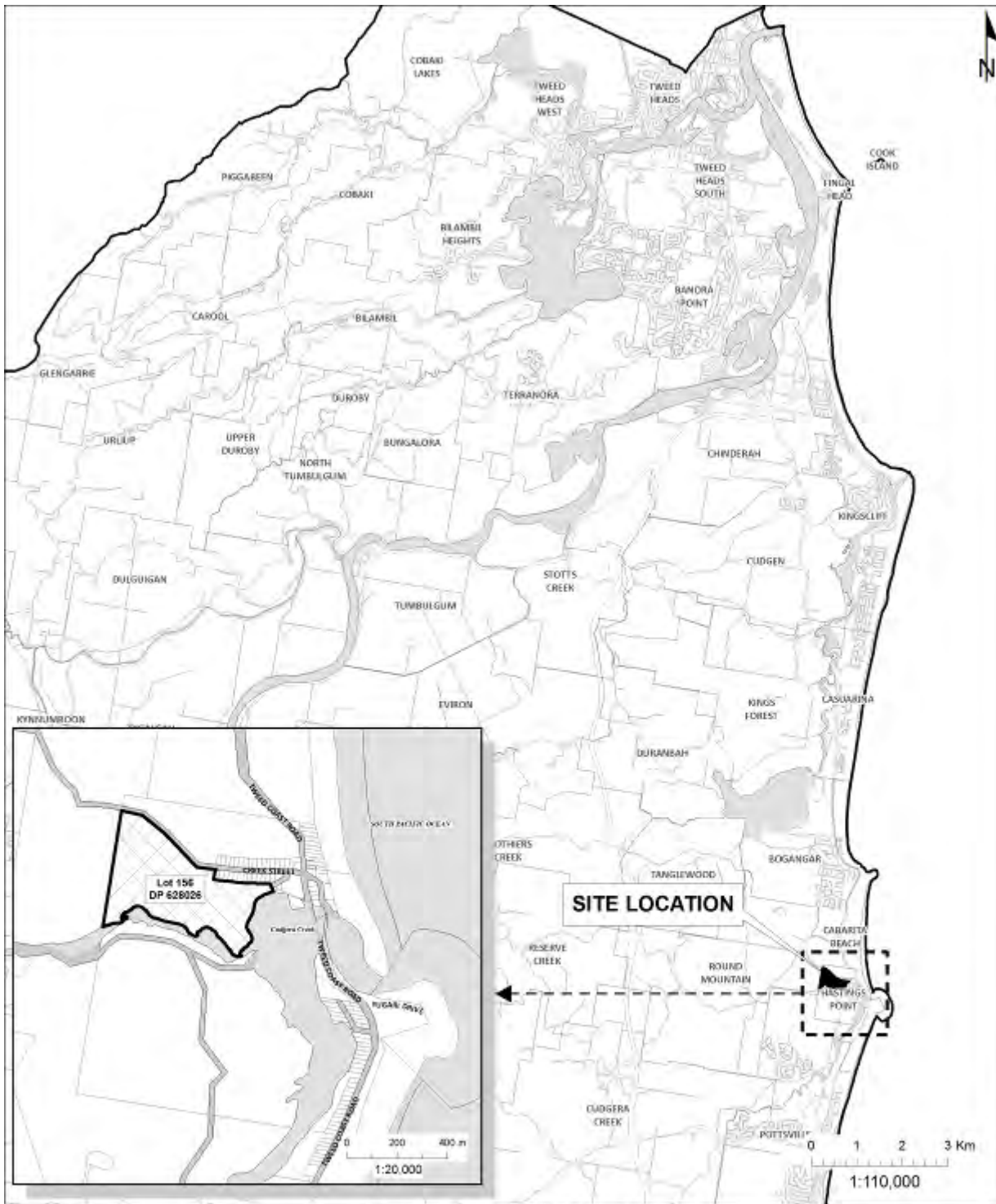
A site inspection revealed that there are numerous additional fences within Lot 156 that have not been shown on the submitted plan. Please undertake a site survey plan or equivalent to nominate all other fencing within Lot 156 and justify the need for the fences and the relationship between the numerous fences.

Please refer to the amended plan within Appendix B, which highlights the existing fence within the western corner of the subject site, which depicts that the need for this existing fence was originally to ensure the containment of livestock within the subject site. Additionally, this fence now ensures the containment of animals within the subject site and also ensures that the general public does not enter the site in order to gain access to the nearby Creek via private lands.

This relationship between these fences is that collectively they ensure the above stated aims of the fence are upheld, that being the containment of animals within the subject site and ensuring that the general public does not enter private land in order to gain access to the adjacent Creek. Any additional fences upon the subject site, that have not been captured upon the updated plan within Appendix B, are existing in nature and are deemed not relevant in relation to the proposed and existing fence line within the eastern corner of the subject site.

The following report assesses the applicants Development Application as described above. The assessment has not and can not take into account any possible future re-development of the site. The proposed re-development of Lot 156 is presently on public exhibition (2 June 2010 – 2 July 2010) before the Department of Planning will determine this application. It is anticipated that Council's comments on the Major Project will be reported to the Council Meeting of 20 July 2010.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 156 DP 628026
 Creek Street, Hastings Point

Filename: I:\year\planning\map\A4P_B&W_SitePlan.mxd

Author: J. Batchelor - Planning Reform Unit

Date Printed: 28 January, 2010

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TWEED
 SHIRE COUNCIL

ZONING MAP:



AERIAL IMAGE



AERIAL PHOTO - taken October 2009

Lot 156 DP 628026
Creek Street, Hastings Point

Filename: z:\new\planning\standard map\resources\map\hastings_point_aerial.mxd

Author: J. Batchelor - Planning Reform Unit

Date Printed: 02 June, 2010

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DEVELOPMENT/ELEVATION PLANS:



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 of the TLEP nominates the aims of the plan which in summary include giving effect to Tweed Shire 2000+ Strategic Plan, providing a legal basis for making DCP's, to give effect to Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development.

The Tweed Shire 2000+ Strategic Plan (published in 1997) in conjunction with Tweed 4/24 Strategic Plan 2004-2024 forms the strategic framework and visionary direction for the Tweed Shire. They set overarching goals that will help manage the Tweed into the future.

The proposed application (seeking consent for an already constructed fence) does not contravene the overarching strategic principals upon which the TLEP is based.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the TLEP requires consideration of the four principals of ecologically sustainable development. The subject application has been reviewed by Council's Planner and Ecologist in this regard. No vegetation has been specifically removed to accommodate the proposed fence and therefore, the fence in itself will not have a negative impact on general ESD principals.

Clause 8 – Consent Considerations and Clause 11 Zone Objectives

Clause 8 of the TLEP sets out the consent considerations when determining a development application.

8(1) 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 those other aims and objectives of this plan that are relevant to the development, and*
- (c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The subject land is zoned part 2(e) Residential Tourist and part 7(a) Environmental Protection (Wetlands and Littoral Rainforests) pursuant to the provisions of Tweed LEP 2000.

To address Clause 8(1) (a) the objectives of the 2(e) zone states:

Primary Objective

- *to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.*

Secondary Objective

- *to permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.*

The applicant has provided the following comments:

“Within the 2(e) zone, the proposed fence is considered as ancillary development to the approved dwelling house located within the site, with respect to the provision of security and safety for both the occupants pets but also from surrounding properties, which have been known to access the site for the purposes of then gaining wider access to the estuary. This in turn has an environmental benefit in that it restricts unfettered access to the creek and associated mangroves. The proposal is consistent with the objectives of the 2(e) zone. Given that the proposal is considered ancillary to the approved use, development approval is not required for the construction of a fence within the 2(e) zone. Nonetheless, we have sought to include this component within this application for reasons of abundant caution.”

The proposed fence within that part of the site zoned 2(e) is considered ancillary to the dwelling and therefore permissible with consent and consistent with the primary objective of the zone as detailed above.

The objectives of the 7(a) zone state:

Primary objective

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

Secondary objective

- *to protect the scenic values of wetlands and littoral rainforests.*
- *to allow other development that is compatible with the primary function of the zone.*

The applicant has provided the following comments:

“Fencing is undefined within Tweed Local Environmental Plan 2000. Furthermore, fencing cannot be considered to be exempt from requiring consent within 7(a) zone. Whilst undefined in the 7(a) zone, it is noted that fencing itself is a common element on all properties and hence its ability to be erected is relative to its function. In this instance, the function of the fence is consistent with the 7(a) zone objectives, in that it will restrict unfettered access to the adjacent mangrove areas from adjoining properties, hence aiding environmental management and repair. The fence will also, as a secondary element within the 7(a) zone, seek to provide some security for the existing dwelling house located within the 2(e) zone.”

The applicant’s interpretation of permissibility is generally concurred with. A fence is not separately defined in the Tweed LEP 2000 but can be considered ancillary to the existing house within that part of the same site partly zoned 2(e). The fence as an ancillary structure to the parcel of land (within the 7(a) zone) needs to satisfy the objectives of the 7(a) zone and be consistent with all other applicable Clauses of the Tweed LEP 2000.

The applicant claims the fence will restrict unfettered access to the adjacent mangrove areas thus assisting in protecting and conserving significant wetlands. Objections to this proposal say that such argument is not substantiated when the applicant regularly slashes the mangroves. Notwithstanding, the construction and retention of the fence in itself will not hinder the wetlands and environmental significance of the site. Therefore the application can be considered to satisfy the primary objective of the 7(a) zone and Clause 8(1)(a) of the Tweed LEP 2000.

To address Clause 8(1)(b) this report considers those other aims and objectives of this plan that are relevant to the development. Accordingly the application is capable of conditional approval as recommended.

To address Clause 8(1)(c) this report in its entirety represents a cumulative impact report. This planning report weighs up the development as a whole and makes a recommendation based on consideration of the implications on or from the perspective of flooding, permissibility, bushfire constraints, ecology, amenity, character, impacts and the general public interest.

In considering cumulative impact regard has been had for how this fence could affect adjoining properties and what impacts further approvals might have on a locality, community and catchment. In this regard it is noted that adjoining residential properties along Creek Street could and have (in some instances) fenced their properties in a similar manner. This has had a negligible effect on flooding, bushfire constraints, ecology, amenity, character, impacts and the general public interest.

Accordingly having regard to cumulative impact the proposed development is considered reasonable and capable of conditional approval as recommended.

Clause 25 Development in Zone 7(a) Environmental Protection (Wetlands and littoral Rainforests) on adjacent lands

Clause 25 states:

(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 clearing of vegetation or any form of excavation works is not proposed within this application. The proposed fencing is not likely to effect or disturb flora or fauna on the site. The fencing should act as a physical barrier protecting the Wetlands and Littoral Rainforest from domestic pets and unauthorised human activity. There will be no increased hazards for the area in terms of bushfire or flooding. The overall proposal is considered relatively innocuous and is compliant with the objectives within this clause.”

These comments are generally concurred with. The proposed fence does not involve clearing of vegetation and accordingly the proposal satisfies the intent and objectives of Clause 25.

Clause 31 Development adjoining waterbodies

Clause 31 of the TLEP relates to development adjoining water bodies and applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a water body. Clause 31 states that consent must not be granted in respect of such land “within such distance as is determined by the consent authority of the mean-high water mark or top of bank” unless satisfied certain criteria can be met. These criteria include: that the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the riverine or estuarine area or its function as a wildlife corridor or habitat; adequate arrangements for public access to and use of foreshore areas have been made where appropriate and desirable; the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the *Local Government Act 1993* that applies to the land; and the development addresses the likely impact and amelioration measures of biting midge and mosquitoes on residents and tourists.

In all regards the proposed fence is considered to satisfy the provisions of Clause 31. In regards to “adequate arrangements for public access to and use of foreshore areas” the proposed land is privately owned and public access is not considered necessary or desirable at this location. This analysis would be better undertaken within the scope of the proposed redevelopment of the site which will be assessed by the Department of Planning.

For the purposes of this DA, Clause 31 is considered to have been adequately addressed.

Clause 34 – Flooding

The application was referred to Council's Planning and Infrastructure Engineer to specifically consider whether:

- a) the existing fence will have any unacceptable negative impacts during times of flood given the opportunity for grasses etc to get caught in the fence and hence create a barrier to flood waters

Council's Planning and Infrastructure Engineer accordingly responded as follows:

“Council has recently completed its Coastal Creeks Flood Study, which includes the Cudgera Creek - Christies Creek Floodplain. The study confirms the flood liability of the subject land, with a 100 year ARI flood level of 2.5m AHD. Along the fence alignment ground levels vary from around 1-2m AHD. Velocity is very low in this area, at approximately 0.1m/s. As such, the fence is located on land that is classified as "low flow" based on velocity-depth products (i.e. $vxd < 0.3$).

Council's DCP Section A3 - Development of Flood Liable Land places no restrictions on fence construction in low flow areas of Hastings Point. The fence is 1.2m high, wire mesh, supported by star pickets, which is not unusual in both urban and rural settings, and provides for good flood flow compared to masonry, colourbond or timber paling fencing.

Due to the low velocity flow of flood water expected through the fence, the risk of debris build up is not significant, and is unlikely to result in any measurable impact on local flood behaviour.

No objection is raised to the subject application.”

Accordingly the application is deemed to satisfy the provisions of Clause 34 and warrants approval on flooding grounds.

Clause 35 - Acid Sulfate Soils

Whilst the subject site is mapped as Acid Sulfate Soils Class 3 the fence involves the star picket supports to be rammed into the ground and accordingly no soil disturbance has or will occur.

Clause 39A – Bushfire Risk

Clause 39A of the TLEP requires Council to minimise bushfire risk to built assets and people. The proposed fence will not cause a bushfire risk to assets or people and is considered consistent with the Planning for Bushfire Protections Guidelines 2006.

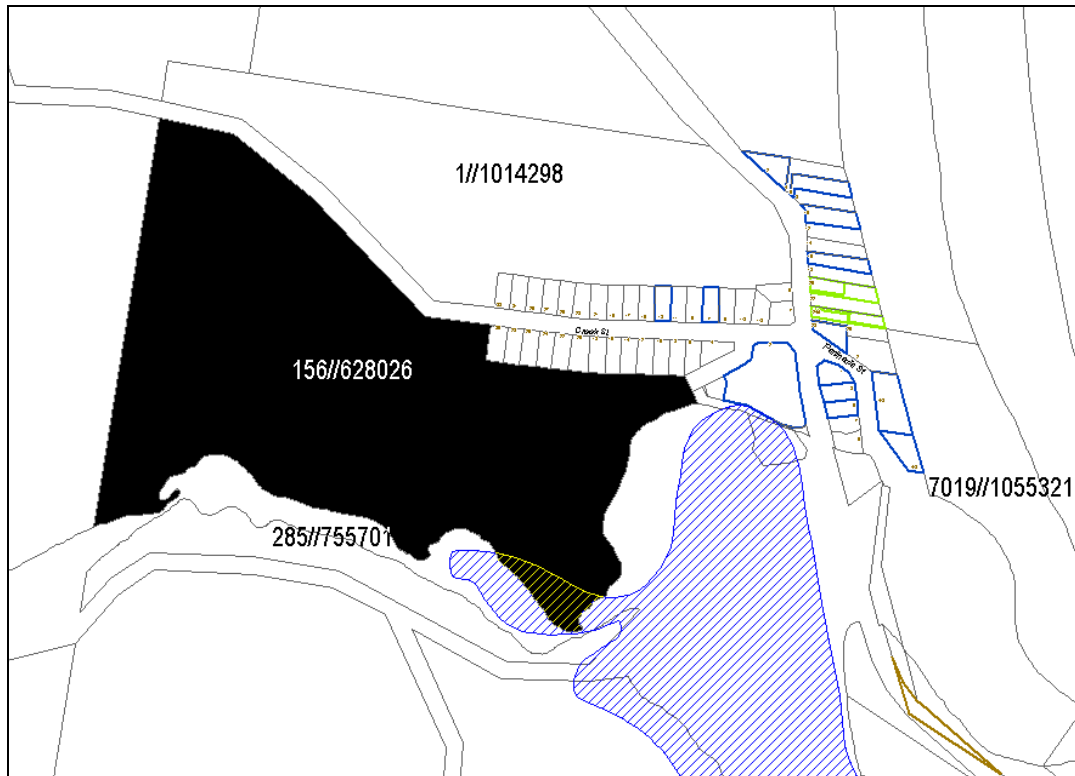
State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

The North Coast REP is a strategic document that does not nominate specific requirements for fencing. Having regard to all the relevant provisions of the SEPP it is considered that the fence is consistent with the provisions of the SEPP.

SEPP No. 14 - Coastal Wetlands

Part of the south eastern corner of the subject site is mapped as SEPP 14 as shown on the below diagram. However, the proposed fence does not extend to this part of the site and accordingly the provisions contained within SEPP 14 are not triggered.



SEPP No 71 – Coastal Protection

The site is affected by SEPP 71 and is partially mapped as a sensitive coastal location (Note: the fence is located within that part of the site mapped as a sensitive coastal location). No referral is required to the Department of Planning however, an assessment against SEPP 71 - Clause 8 (matters for consideration) must be undertaken.

The matters for consideration include (but are not limited to):

- retaining, improving and creating new opportunities for public access to coastal foreshore (includes estuary foreshores);
- avoiding detrimental impact on amenity of coastal foreshores, including overshadowing or loss of views;
- measures to conserve animals, plants, fish and their habitats and any wildlife corridors;
- consideration of coastal processes and coastal hazards; reducing conflict between land-based and water-based activities; water quality the cumulative impact on the environment; and
- The cumulative impacts of the proposed development on the environment

As detailed above the proposed land is privately owned and public access is not considered necessary or desirable at this location. This analysis would be better undertaken within the scope of the proposed redevelopment of the site which will be assessed by the Department of Planning at a later date.

In regards to the impact the proposed fence will have on any natural processes Council's Planning and Infrastructure Engineer and Council's Ecologist have both

recommended the application for approval. The proposed fence is consistent with other fences in the locality and is considered suitable

The proposed development is considered suitable having regard to Clause 8 of the SEPP.

SEPP (Exempt and Complying Development Codes) 2008

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 contains a section setting out the circumstances in which fences are exempt 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)).

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

Draft Tweed LEP 2010

The Draft LEP proposes to re-zone the subject land to part R1 General Residential and part E2 Environmental Conservation Zone.

The objectives of the R1 General Residential Zone are identified as follows:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.

The applicant has stated that:

“The proposed fence is considered as ancillary development to the approved dwelling house located within the site, with respect to the provision of security and safety for both the occupants pets but also from surrounding properties, which have been known to access the site for the purposes of then gaining wider access to the estuary. The proposal is consistent with the objectives of the Zone R1. Given that the proposal is considered ancillary to the approved use, development approval is not required for the construction of a fence within the Zone R1. Nonetheless, we have sought to include this component within this application for reasons of abundant caution.”

The applicant' comments are concurred with in this regard.

The objectives of the E2 Environmental Conservation Zone are identified as follows:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The applicant has stated that:

“The proposed fencing within the Zone E2 is considered to be ancillary to the dwelling house located on the site and as approved by Council, with the fence providing protection and security to the approved dwelling, as it has been apparent that unauthorised access from adjoining properties has been occurring. Whilst no damage or danger has been evident in respect of the dwelling house, it is clear that access has been continually gained over our clients land in order to access the estuary (the interface of which is also located on private lands).

Given that the proposed fencing seeks to limit (by way of physical barrier) access to the interface with the estuary and hence also limit damage to same by way of human and animal intrusion, the fence can only be considered to be consistent with the objectives of the Zone E2.”

Unlike the current 7(a) zoning dwelling houses are permitted with consent in the E2 Environmental Conservation Zone. Therefore the proposed fence could be considered as ancillary to an approved house (on the same block of land) as dwelling houses are not prohibited in this zone.

Having regard to the Draft LEP the proposed development would be considered permissible with development approval.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Part A of this DCP specifies that the objectives for fences are;

- *To define the boundaries between public and private land.*
- *To define the boundaries between neighbouring properties.*
- *To contribute to the streetscape appearance.*
- *To enhance the usability of private open space.*
- *To offer acoustic and visual privacy on busy roads.*

Given this property is a Greenfield site some of these objectives clearly do not apply.

Notwithstanding, the fence will achieve a separation of private and public land and will achieve a separation between adjoining properties. Based on the general compliance with the applicable instrument as discussed within this report the proposed fence is considered capable of conditional approval.

A3-Development of Flood Liable Land

See Clause 34 under the Tweed LEP 2000. The proposed fence is deemed to comply with the provisions of Tweed DCP Section A3.

A10-Exempt and Complying Development

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

Draft Tweed DCP Section B23 – Hastings Point

Draft DCP Section B23 does detail the future character objectives for various precincts. In addition the document encourages front fences along public areas including foreshores that are low and open. Or in the Creek Street precinct open and low fencing or no fences at all

The design controls for fences in the DCP duplicate the objectives as per Tweed DCP A1 and further directly relate to how fences may relate to the adjoining building. The DCP does not cater for fencing of rural allotments or Greenfield sites as is proposed in this instance.

The proposed fencing may only be temporary in nature pending the determination of the Major Project. However should the major project application not proceed, then the fence in its own right is considered capable of approval.

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

NSW Coastal Policy

The 1997 Coastal Policy includes coastal waters and lands one kilometre landward of the open coast high water mark, and land within one kilometre of coastal rivers, lakes, lagoons, estuaries and islands. The subject site is within one kilometre of the ocean and adjoins a coastal estuary. The policy requires that: water quality will be maintained or improved; fisheries habitats protected and restored where possible; and coastal lands and aquatic environments with conservation values will be assessed and appropriate measures put in place to protect them.

The proposed fence will have no bearing on the environmental quality of the adjoining waterway.

(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 & Setting

The proposed fence is considered suitable for the location. It is not a solid a fence but rather appears like any other standard rural type fence. Whilst it is not entirely desirable for there to be so many fences within the same location provided that any approval is conditioned as per the recommendations there does not appear to be adequate reasons to refuse the application.

(c) Suitability of the site for the development

Flora and Fauna

Council's Ecologist has reviewed the application and made the following comments in regards to flora and fauna:

- *the fence is mesh chain attached to star pickets with a strand of barbed wire on the top. There are sections behind houses where there are two fences parallel to each other approximately 35-50 cm apart and with no open area at the base, potentially-likely to act as a trap for some fauna species and could cause injuries to native fauna caught. However such impact is not likely to be significant to warrant refusal of the application but rather the recommended conditions of consent are likely to mitigate any perceived or actual impact;*
- *the development is located within 7(a) habitat protection zoning and is likely to affect the movement of protected, migratory and threatened fauna to varying degrees. However such impact is not likely to be significant to warrant refusal of the application but rather the recommended conditions of consent are likely to mitigate any perceived or actual impact;*
- *the fence is located on what appears to be the boundary of the saltmarsh and open paddock-saltmarsh-grassland, i.e. where saltmarsh once most likely occurred and subsequently filled with saltmarsh material. Saltmarsh plants are evident on both sides of the fence. As per the below recommendation this matter should be deferred to DECCW to investigate whether such works need any approval under the National Parks and Wildlife Act 1974 or the Threatened Species Conservation Act 1995;*
- *the site, including the area in the vicinity of the fence, is almost certainly used by migratory and threatened birds such as bush stone-curlew, beach stone-curlew, and black-necked stork. However such impact is not likely to be significant to warrant refusal of the application but rather the recommended conditions of consent are likely to mitigate any perceived or actual impact;*
- *the fence has barbed wire on the top row, and 'new' barbed wire, presumably from the construction of the fence, was observed dumped on the ground in the 7(a) zone. However such impact is not likely to be significant to warrant refusal of the application but rather the recommended conditions of consent are likely to mitigate any perceived or actual impact; and*

- *the fence is likely to facilitate the growth and spread of weed propagules into the adjoining wetland areas. However such impact is not likely to be significant to warrant refusal of the application but rather the recommended conditions of consent are likely to mitigate any perceived or actual impact. Also as per the below recommendation this matter should be deferred to DECCW to investigate whether such works need any approval under the National Parks and Wildlife Act 1974 or the Threatened Species Conservation Act 1995, and to the Far North Coast Weeds Authority in relation to noxious weeds present on the site.*

Accordingly the application is recommended for conditional approval as follows:

Recommended Conditions of Consent

- 1) *Within 30 days of this consent all barbed wire is to be removed from the fence within the land zoned 7(a) Environment Protection (in accordance with Tweed LEP 2000) to the satisfaction of Council's General Manager or his delegate.*
- 2) *Within 30 days of this consent, all materials associated with the fence construction, including old and/or left-over star pickets and barbed wire are to be removed from the land zoned 7(a) Environment Protection (in accordance with Tweed LEP 2000) to the satisfaction of Council's General Manager or his delegate.*
- 3) *Within 30 days of this consent, four (4) sections (approximately 30 cm wide by 25 cm high) along the bottom of the fence behind the existing houses (where two fences run closely and parallel to each other) are to be provided to allow fauna caught between the two fences to escape. These works are to be undertaken to the satisfaction of Council's General Manager or his delegate.*
- 4) *Within 90 days of this consent, a weed control plan for the prevention of weeds around the fence to the adjacent wetland areas is to be prepared, submitted to Council for approval, and implemented to the satisfaction of Council's General Manager or delegate.*

Furthermore, as the fence was erected in a highly environmentally sensitive area (with the presence of plant species characteristic of Coastal Saltmarsh on both sides of the fence, and known habitat of threatened bird species) without consent, it is considered appropriate to consider the issuing of Penalty Infringement Notice and/or to refer the matter to the DECCW to investigate the need for any permit in relation to works in association with the proposed fence.

Additionally, the site is hosting and facilitating the spread of noxious weeds, in particular Groundsel Bush currently in seed and spreading propagules some distances, and therefore it is considered appropriate that the matter be referred to Far North Coast Weeds Authority.

The above comments have been incorporated into the recommendation for approval.

The Council will need to further determine whether a Penalty Infringement Notice should be issued as a result of the fence being erected without prior development approval. Such options are set out later in this report (under the heading "Options").

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

Department of Environment, Climate Change and Water (DECCW)

The Water Management Act 2000 requires a Controlled Activity Approval for works within 40m of the bed of a designated stream. The proposed fence is not considered to constitute works and is therefore not required to obtain a "controlled activity" permit.

The applicant has not nominated their application as "Integrated Development" and therefore Council can not assess it as such.

However it is recommended to refer the matter to DECCW to investigate whether such works need any additional approvals under the National Parks and Wildlife Act 1974 or the Threatened Species Conservation Act 1995.

It has also been recommended that the matter be referred to the Far North Coast Weeds Authority in relation to noxious weeds present on the site.

Public Submissions

The application was publicly exhibited between 29 March 2010 and 14 April 2010. Council received 10 individual objections opposing the fence, 32 signed form letters opposing the fence, and various petitions opposing general development on Lot 156. The 10 individual objections included one letter from the Hastings Point Progress Association representing parts of the community and one letter from a local solicitor also representing parts of the community. The letter from the Hastings Point Progress Association was accompanied with a video of Lot 156 being slashed of mangrove and saltmarsh, a PowerPoint detailing the historical damage done to this property, photo's of trucks entering Creek Street, petitions opposing the fence, and historical aerial photographs which show the original path of the estuary. The nature of the objections focussed on the following main issues which have each been addressed below:

Extensive Unlawful History to Lot 156;

The subject site has an extensive history in terms of clearing, earthworks and general compliance matters. Notwithstanding this history Council has an obligation to assess the application currently proposed having regard to the permissibility and suitability of the proposal. This report concludes that the fence is capable of development approval.

The site's history will be more relevant to the proposed re-development of Lot 156 which is currently before the state government for determination.

The applicant's justification for the fence is flawed;

The applicant's primary justification for the fence is to keep people out of private land. The applicant has further addressed the objectives of the environmental protection zone to justify the proposal. It is this justification that the objectors seem to oppose given the applicants alleged actions in terms of slashing existing mangroves. Notwithstanding the applicants justifications for the fence Council needs to independently determine whether the construction and or retention of the fence will create significant environmental damage. In determining this Council's Ecologist has concluded that the fence could be capable of approval subject to the recommended conditions of consent.

The fence will create an additional flood hazard;

As detailed within the above report Council's Infrastructure and Planning Engineer has determined that the proposed fence will not create any significant additional flood hazards and therefore the application is capable of approval.

The fence will create an additional wildlife hazard;

As detailed within the above report Council's Ecologist has determined that the proposed fence will not create any significant additional wildlife hazards and therefore the application is capable of approval subject to the imposition of the recommended conditions of consent.

The fence has caused damage to mangroves and saltmarsh;

As detailed within the above report the construction of the fence involved the star picket fence posts being hammered into the ground. This method of installation would create the least amount of damage to mangroves and saltmarsh and is considered a reasonable construction method for this type of fence. This objection does not warrant refusal or further amendment to the recommended conditions of consent

The fence has created a maintenance problem in the 50cm gap between the various fences;

This is considered to be an issue of significant concern. Council raised this matter with the applicant and the applicant responded as follows:

"We propose that the planting of native trees in this 'strip' would align with the proposed urban vegetation vision within the Draft Hastings Point DCP (extract can be seen below) and would ensure privacy of residents and mitigate any maintenance issues. We therefore deem this to be an appropriate proposed way forward in this respect and this arrangement could be implemented by way of a condition of consent, inclusive of the preparation of a landscape plan to Council's satisfaction within say 3 months of any consent granted."



This response was not considered satisfactory and therefore it is recommended that the following condition of consent be imposed:

“Within 90 days of this consent, a weed control plan for the prevention of weeds around the fence to the adjacent wetland areas is to be prepared, submitted to Council for approval, and implemented to the satisfaction of Council’s General Manager or delegate.”

Based on the imposition of this condition this objection does not warrant refusal or further amendment to the recommended conditions of consent

The fence has created an unacceptable visual appearance;

The adjoining properties in some instances may see three layers of fences beyond their home (one of which is their own fence). While this is not entirely desirable the impact on the amenity for those residents affected is considered minor. The adjoining land is privately owned and should not be accessed by people unauthorised to enter such land. If the landowner feels the need to fence their property in the manner proposed provided the fence is lawful and not unreasonable then the fence is considered capable of being approved. In this instance the type of fence being proposed is suitable for the location.

The fence is not permissible in the 7(a) zone;

As detailed within the above report the proposed fence is considered to be lawful and furthermore will be lawful if Draft LEP 2010 is adopted.

The fence has blocked access to the Creek and thus reduced our amenity and property values;

The fence will block access to the Creek from privately owned land. It will not block access to the Creek from public land.

The loss of amenity relates to the residents having to find a lawful means of access to the Creek. This is not considered unreasonable and does not warrant refusal of the application as it is the owners right to restrict access to their own private land.

The loss of property values is not a matter for consideration under the Environmental Planning & Assessment Act

The unauthorised fence should be removed and the applicant's punished for building a fence without development approval.

This report (below) considers whether a Penalty Infringement Notice should be issued. Given the applicant has now sought development consent for the fence and Council staff have recommended conditions of consent which will require action from the applicant there is an argument that achieving compliance with any consent issued by Council is sufficient.

However, should Council want to determine to issue a Penalty Infringement Notice this can be achieved by way of an amendment to the recommendation.

(e) Public interest

Lot 156 has been the subject of great community interest for many years, with a history of rezoning applications, earthworks, and land clearing.

The proposed (existing) fence has attracted many objections from local residents. The reasons for such opposition vary from the history of the subject site to the impact the fence will have on flooding and amenity.

Despite the history of the site Council has an obligation to now consider the merits of the Development Application currently being considered.

Based on a review of all the submissions and a review of the merits of the application it is recommended to approve the application as permitted by the applicable planning legislation.

OPTIONS:

In addition to determining the merits of this application the Council is required to determine whether a Penalty Infringement Notice (PIN) should be issued to the landowner for erecting a fence without approval.

As can be seen from the content of this report it is not easy to identify whether fencing within the confines of an existing property boundary constitute exempt development given the multitude of state and local planning controls.

The applicant has lodged a DA as requested by Council and accordingly the merits of the matter are now being appropriately assessed. Therefore there does not appear to be any material benefit in issuing a PIN in this instance. Notwithstanding should the Council wish to issue a PIN below is a series of options available to the Council in determining this application:

1. Approve the application as recommended without corresponding Penalty Infringement Notices for unauthorised works.
2. Approve the application with corresponding Penalty Infringement Notices for unauthorised works.
3. Refuse the application without corresponding Penalty Infringement Notices for unauthorised works and engage Council's Solicitors to have the fence removed.
4. Refuse the application with corresponding Penalty Infringement Notices for unauthorised works and engage Council's Solicitors to have the fence removed.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unsatisfied with the determination of the application they have a right of appeal to the NSW Land & Environment Court. However, there is no third party appeal rights based on the merits of this application.

Should Council refuse the application and seek the fences removal Council will incur legal expenses to regularise the fence however costs will be pursued if successful.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

This application has assessed the merits of the proposal while considering the possible cumulative impacts associated with a multitude of similar fences in the locality.

Having regard to the permissibility of the fence, the site suitability for the fence and the issues raised within the submissions it is recommended that the fence be approved subject to conditions of consent.

It is further acknowledged that the long term management of the site may be resolved as part of the upcoming Major Project for subdivision of Lot 156 in its entirety however the proposed fence in its own right is capable of 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. Council Report dated 16 February 2010 (ECM 17401109)
-

13 [PR-CM] Major Project Application MP07_0089 for Construction of a Tourist Resort and Associated Community Facilities Comprising 180 Unit/Bungalows, Conference Centre, Restaurant, Bar, Retail Premises, Resort Associated Amenities, Aboriginal Interpretive

ORIGIN:

Development Assessment

FILE NO: DA10/0238 Pt2

SUMMARY OF REPORT:

The purpose of this report is to seek Council's endorsement of the proposed submission to the Department of Planning on the Major Project Application for the tourist redevelopment of Lot 490 at Kingscliff (Department of Planning Reference MP07_0089).

The proposal has been reviewed by Council staff from relevant planning, building, engineering and environmental units across Council.

The officers generally consider the proposal to be consistent with the current part tourist development/part environmental zoning applying to the site, but have requested that the Department considers further addressing issues such as the enforcement of tourist accommodation controls, developer contributions, commitments to improvements to Casuarina Way, and the ecological integrity of the proposed dunal and riparian management plans.

RECOMMENDATION:

That Council endorses that the attached draft submission relating to Major Project Application MP07_0089 be forwarded to the NSW Department of Planning.

REPORT:

Applicant: Leighton Properties Pty Ltd
Owner: Department Of Natural Resources, Tweed Shire Council and Land and Property Management Authority
Location: Lot 489 DP 47021; Lot 500 DP 1095235; Lot 490 DP 1095234, Sutherland Street, Cathedral Court and Casuarina Way, Kingscliff
Zoning: Part 2(f) Tourism, 6(a) Open Space, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), and 7(f) Environmental Protection (Coastal Lands).
Cost: N/A (Department of Planning DA)

BACKGROUND:

Tweed Shire Council was originally the Trustees for this property. In 2004 Council was removed by the State Government as Trustees of this property and subsequently the site is Crown Land managed on behalf of the State of New South Wales by the Land and Property Management Authority (formally Department of Lands).

The State Government appointed a Steering Committee to oversee the preparation of a Plan of Management. The Plan of Management was publicly exhibited and ultimately adopted by the State Government in August 2005.

The Plan of Management covers a total area of 43.4 hectares over three (3) lots viz. Lot 490 DP 1095234, part of Lot 489 DP 47021 and part of Lot 500 DP 1095235. The currently proposed resort premises area comprises 11.67 hectares (or 27%) of the total POM area.

Following the adoption of the Plan of Management the State Government selected (through tender) a preferred developer for some of the land in the POM area which is zoned specifically for tourism development. Leighton Properties Pty Ltd as winner of the tender is now responsible for obtaining all necessary development and building approvals.

Leighton's have since advanced the development of this site by:

- Undertaking a preliminary Environmental Assessment Report (which was lodged with the NSW Department of Planning in July 2008).
- Received the Director General's Requirements (DGR's) for this Environmental Assessment on 14 August 2008 (see attachment).
- Undertaken a stakeholder and community engagement program.
- Resubmitting the Environmental Assessment Report for final assessment.

The proposed development is deemed to come within the ambit of Part 3A where the Department of Planning is the Consent Authority by virtue of SEPP (Major Development) 2005 and its specific provisions relating to project investment value exceeding \$100 million (Schedule 1, clause 17(a)).

THE SITE:

The site is located at the northern end of the Tweed Coast, immediately south of the village of Kingscliff. It is separated from Kingscliff by Cudgen Creek which discharges into the Pacific Ocean nearby. Salt Village, adjoins the southern boundary of the site. The Plan of Management area (and Lot 490) straddles Casuarina Way which is a part of the relocated Tweed Coast Road. Casuarina Way links Kingscliff and the southern Tweed Coast villages (Casuarina, Cabarita Beach, Hastings Point and Pottsville).

The land contained within the Lands Department's Plan of Management is comprised of three (3) lots, viz. Lot 490 DP 1095234, part of Lot 489 DP 47021, and part of Lot 500 DP 1095235. It contains a total area of 43.4 hectares. The proposal also includes works in the Cudgen Creek (for a public pontoon) which is outside of those lots.

The resort premises which is the eastern portion of Lot 490, contains an area of 11.67 hectares and this is the area which is subject to the development rights agreement between the Land and Property Management Authority & Leighton Properties. The remainder of the POM area is the land which is subject to the environmental and public infrastructure works for which Leighton Properties must obtain necessary approvals as well as provide funding.

This report and accompanying documents when referring to the subject land, or parts thereof, use the following terms:

- 'the Plan of Management Area' – the entire 43.4 hectare site which is encompassed by the Lands Department POM (Lot 490 DP 1095234, part of Lot 489 DP 47021 and part of Lot 500 DP 1095235);
- 'resort premises' – the portion of Lot 490 which is subject to the lease agreement, ie. the 'core development area' of 11.67 hectares (part of Lot 490 DP 1095234);
- 'surrounding land' – land within the POM area excluding the 'resort premises' (part of Lot 490 DP 1095234, part of Lot 500 DP 1095235 and part of Lot 489 DP 47021).

Cudgen Creek defines the northern and western extremities of the POM area, while the Pacific Ocean is the eastern boundary, and Salt Village is at the southern boundary.

The resort premises area is between Casuarina Way, which severs Lot 490, and the beach frontage of Lot 500. The resort premises area appears as being relatively flat, but in fact has an undulating dunal topography varying from a maximum of eight (8) metres AHD to one (1) metre AHD. The site slopes at a grade of about 2% from the south east to the north-west. Stormwater flows north through the centre of the site through culverts under Casuarina Way to eventually discharge into Cudgen Creek, which in turn discharges into the Pacific Ocean. Parts of the site are below the Q100 flood level of 2.6 metres AHD.

Extensive tracts of land along this coastal area of South Kingscliff were mined for mineral sands for a period from the 1940's through to the 1980's. However revegetation has occurred. Two wetlands areas protected by State Environmental Planning Policy No. 14 (SEPP14), being wetland numbers 43c and 43d, occur adjacent to the Cudgen Creek margins of the site.

THE PROPOSED DEVELOPMENT:

The development has been designed as a combination of one (1) to two (2) storey integrated resort dispersed within landscaping.

The resort component of the development consists of 180 bungalows/units (with 122 of these units being dual key - see next paragraph for dual key explanation), a conference centre, a restaurant, bar, a retail offering and pool facilities. As part of the development there is a substantial amount of assets offered back for the use of the community. The community facilities include an interpretive/multi-purpose space, a public amenities building including toilets, showers and change rooms, a children's playground, a pontoon, beachside and Creek side car parking, a tennis court, a half basketball court and picnic shelters.

The application as proposed also caters for a dual key arrangement for 122 of the 180 units. This effectively means that 122 of the units can actually be rented out as 244 units not just 122 units. This effectively means that at any one time the site could theoretically be occupied by 302 separate visitor groups.

The following tables are the applicant's summary of the proposed resort development:

RESORT AREA DEVELOPMENT SUMMARY
A. SITE COVERAGE

RESORT BUILDINGS	UNIT NOS.	AREA COVERAGE m ²	TOTAL AREA COVERAGE m ²
ACCOMMODATION:			
Unit Pods	19	167.8	3188.2
Units Pods Accessible	2	181.1	362.2
2 Bed Bungalow	34	134.8	4583.2
2 Bed Bungalow Accessible	4	152.5	610.8
3 Bed Bungalow	44	88.3	3885.2
Beach Side Bungalow	14	195.6	2738.4
Sub Total Unit Pods & Bungalows			15,368
RESORT FACILITIES	1	2180	2180
INTERPRETIVE/MULTI-PURPOSE SPACE	1	150	150
POOL AREA	1	302	302
MAINTENANCE AREA (Including staff amenities)	1	515	515
TOTAL AREA COVERAGE			18,515
RESORT PREMISES AREA			11.67 ha.
SITE COVER RESORT AREA		0.1586	16%

B. FLOOR SPACE

RESORT BUILDINGS	UNIT NOS.	INTERNAL m²	EXTERNAL m²	TOTAL m²
ACCOMMODATION:				
Unit Pods	21x4	274.4	60.3	7028.7
2 Bed Bungalow	38	80.5	53.5	5092.0
3 Bed Bungalow	44	96.9	44	6199.9
Beach Bungalow	14	173.9	149.1	4122.0
Additional for Universal Access Types	(8)			114.0
Sub Total Unit Pods & Bungalows	180			22,956.6
RESORT FACILITIES	-	1100	1080	2180
INTERPRETIVE/MULTI-PURPOSE SPACE	-	110	40	150
POOL AREA	-	302	-	302
MAINTENANCE AREA (Including staff amenities)	-	380	135	515
TOTAL FOR PROJECT				26103.6
FSR BASED ON RESORT PREMISES AREA (11.67 ha.)				0.22:1

Note : Dual key arrangements apply to the 84 units in the unit pods and to the 38 two (2) bedroom bungalows.

In the context of the specific land parcels, essential elements of the project can be described as follows:

- Part Lot 490 (Resort Premises – east of Casuarina Way)
 - Resort accommodation (180 units/bungalows with allowance for 122 units to have a dual key arrangement resulting in a possible 244 units);
 - Central resort facilities (including offices, conference facility, bistro/bar, restaurant, retail area and amenities);
 - Maintenance Area (including maintenance building, staff building and staff car parking area);
 - Resort pool area (including a pool, barbeque area, children's play area and associated buildings);
 - Interpretive/multi-purpose space;
 - Public car parking for the resort facilities;
 - Pedestrian and cycle paths; and
 - Integrated landscaping and stormwater/drainage infrastructure.

- Part Lot 490 (Residual Area – west of Casuarina Way)
 - Cudgen Creek riparian zone rehabilitation and management;
 - Public facilities including:
 - pedestrian/cycle paths;
 - 12 public car parks;
 - bike racks;
 - picnic shelters;
 - pontoon access to Cudgen Creek; and
 - tennis court and ½ basketball court.

- Part Lot 489
 - Environmental rehabilitation;

- Part Lot 500
 - Public car parking, pedestrian paths and cycleway network connection;
 - Formalised public accesses to the beach;
 - Public beachside amenities (toilets, showers, picnic shelters,
 - Children’s playground, circuit training facilities, bike racks, etc.); and
 - Dunal rehabilitation and management.

- Cudgen Creek
 - Pontoon access for non-motorised craft.

In terms of Management the applicant has provided that the long term management of the resort and the surrounding land (any areas of open space or conservation) would be undertaken as follows:

- *The lease requires the lessee to maintain the resort and the surrounding land for the term of the lease (70 years with an option to extend). The maintenance obligations would be the responsibility of the resort operator and a Maintenance Plan (which is to be approved by the Land and Property Management Authority) sets out the lease requirements and the processes to achieve satisfactory standards for maintenance. The Maintenance Plan is to be made available on the project’s webpage once it has been approved by the Land and Property Management Authority.*

- *The Resort Premises - The long term management plan for the development is for the tourism resort to be managed by a resort operator with funding from the resort’s Body Corporate. The development would be privately owned under a strata leasehold or head lease arrangement. No Torrens title subdivision of the resort premises area is proposed. No permanent accommodation is to be or can be provided within the resort. A covenant imposed by the Land and Property Management Authority in combination with conditions in the lease gives formal effect to this restriction.*

- *The Surrounding Land - It is recognised that the Tweed Shire Council is the manager of the Tweed Coast Reserve Trust which has responsibility for the care, control and management of Lots 500 and 489 being part of the Tweed Coast Reserve. The lease confers on the lessee an authority to design, construct and maintain community facilities on these lands.*

The long term management of the re-vegetation and rehabilitation works and required bushfire management works will be undertaken by the tenant as required by the lease.

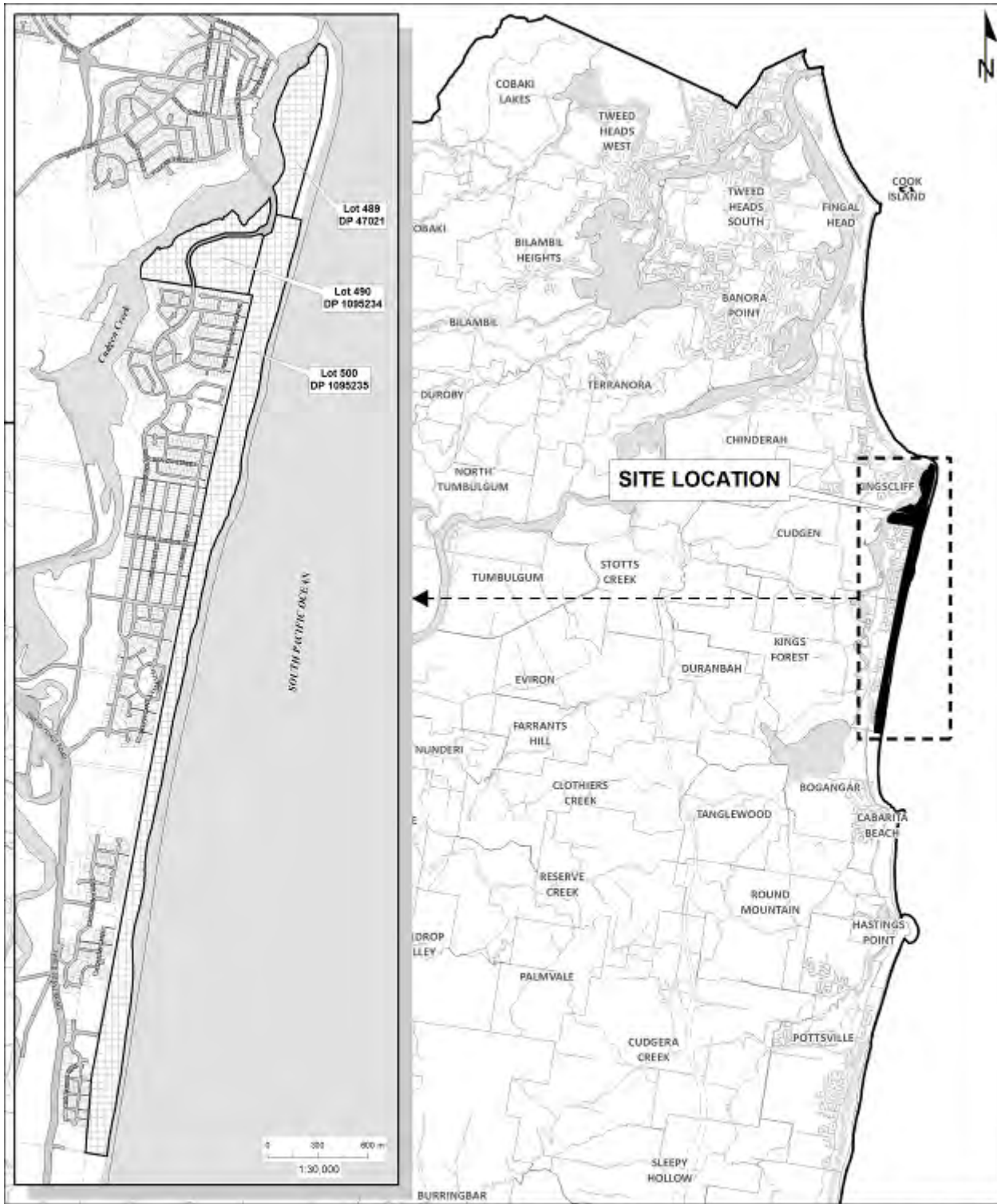
The funding for the maintenance of the surrounding lands would come out of the Body Corporate levies.

Public access to the surrounding land would not be restricted.

Further to the environmental re-vegetation work, the development proposes recreational facilities including a pontoon, picnic shelters, a children's playground, recreation courts and the like. These facilities would be an attractor to the site and would complement surrounding facilities through increasing the number of visitors to the area.

A network of pedestrian and cycle paths are to link the open space areas and recreational facilities; and the facilities would provide resort guests, local residents and visitors to the area with the opportunity to experience and enjoy the Lot 490 Plan of Management site.

LOCALITY PLAN:

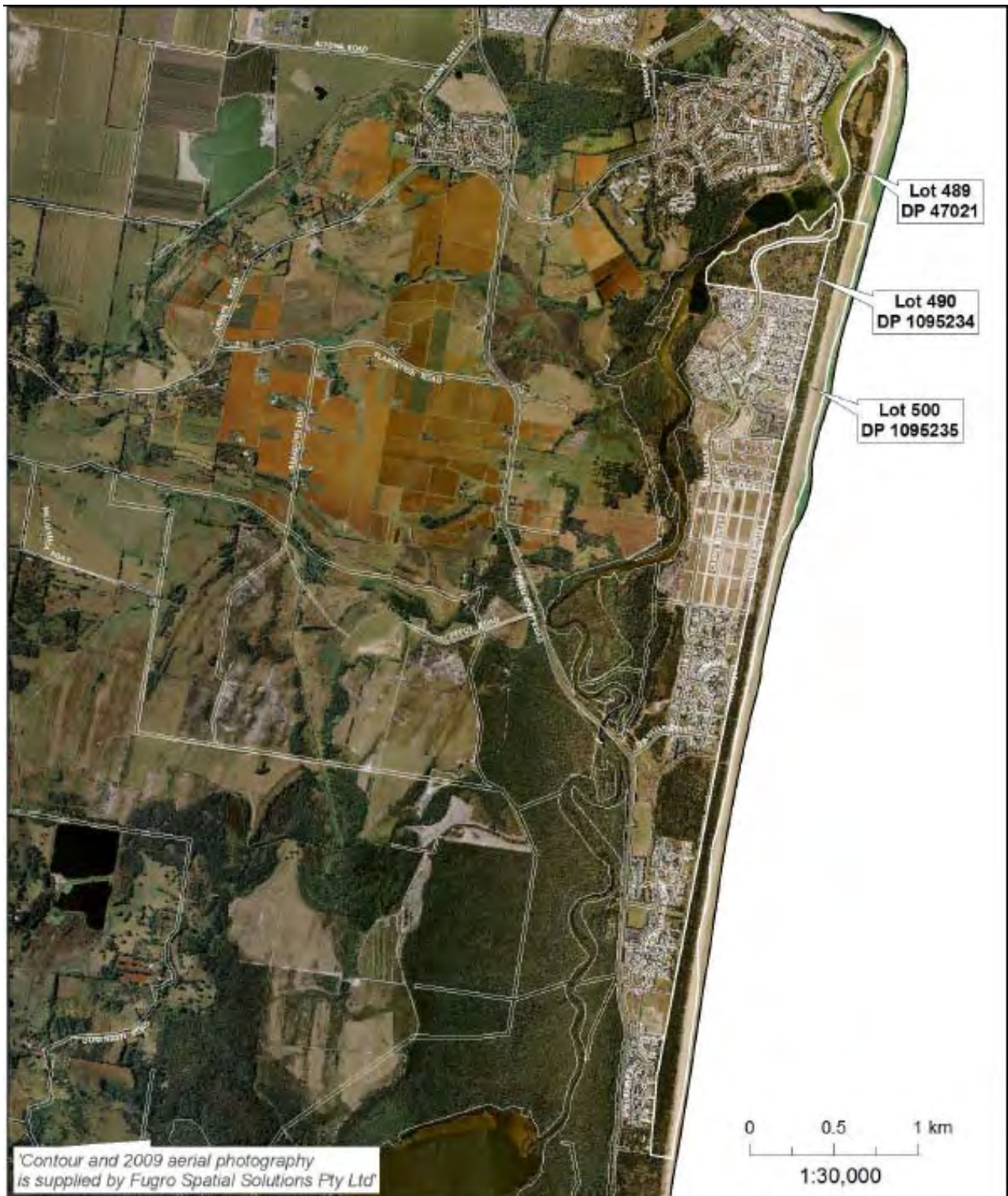


LOCALITY PLAN

Lot 489 DP 47021; Lot 500 DP 1095235; Lot 490 DP 1095234,
Sutherland Street, Cathedral Court, and Casuarina Way, Kingscliff

<p>Filename: L:\year\planning\msd\A4P_B&W_SitePlan.mxd Author: L.Battalio - Planning Returns Unit Date Printed: 02 June, 2010</p>	<p>GDA Coordinate System - MGA Zone 55 Datum - GDA 94</p>	<p>Cadastre: 02 June, 2010 © Dept. of Lands & Tweed Shire Council</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2464 PO Box 870 Murwillumbah NSW 2484 T: (02) 6670 2400 / 1300 282 072 F: (02) 6670 2483 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au</p>	<p>TWEED SHIRE COUNCIL</p>
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AERIAL PHOTOGRAPH:



AERIAL PHOTO - taken October 2009

Lot 489 DP 47021; Lot 500 DP 1095235; Lot 490 DP 1095234,
Sutherland Street, Cathedral Court, and Casuarina Way, Kingscliff

Filename: 2:\aerial\planning\standard maps\contour\regional\regional_aerial.mxd

Author: J Batebaker - Planning Business Unit

Date Printed: 02 June, 2010

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Coordinate System - MGA Zone 56
Datum - GDA 94

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SITE CONTEXT PLANS

JGA JIM GLAZEBROOK
 & ASSOCIATES PTY LTD
 TOWN PLANNING & DEVELOPMENT CONSULTANTS

FIGURE: 3
 PHOTOPLATES OF SITE CONTEXT



AERIAL PHOTOGRAPH VIEWING EAST SHOWING SITE CONTEXT



AERIAL PHOTOGRAPH VIEWING SOUTH EAST SHOWING SITE CONTEXT

CLIENT: Leighton Properties	JOB: Lot 490	DATE: 03/12/2008	SCALE: not to scale
FILE: 490siteplates	IMS: Iovis1,2	SOURCE: LVO Architecture	



SNAPSHOT OF PROPOSED LAYOUT PLANS:





FOR SUBMISSION

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 DATE: _____

MASTER PLAN

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 DATE: _____

LEIGHON PROPERTIES

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 DATE: _____

J M A ARCHITECTS

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 DATE: _____

Key:

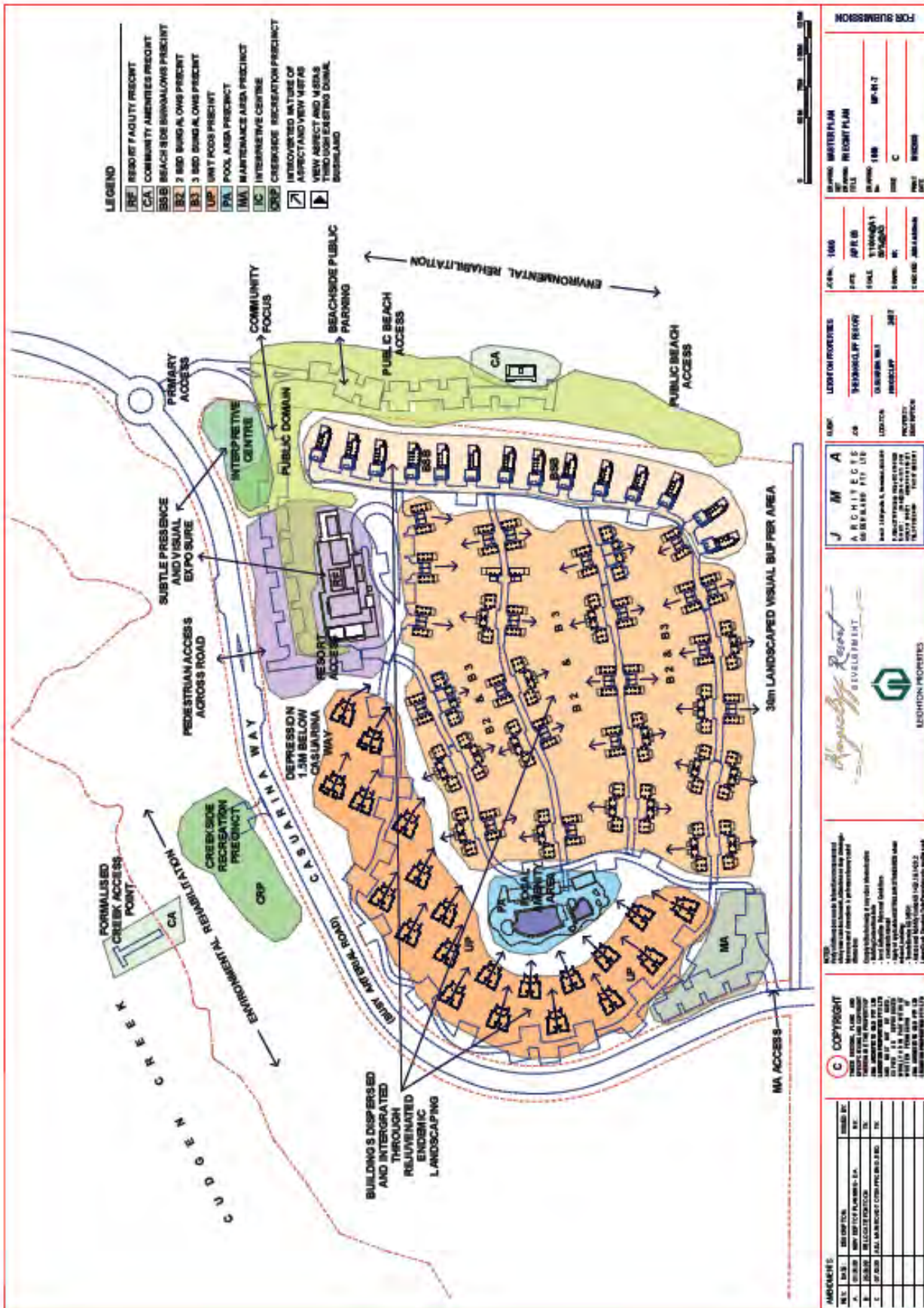
- Proposed house footprints
- Proposed parking spaces
- Proposed landscaped areas
- Proposed roads
- Proposed water features
- Proposed utility lines
- Proposed site boundaries
- Proposed site access
- Proposed site drainage
- Proposed site contours
- Proposed site vegetation
- Proposed site topography
- Proposed site elevation
- Proposed site orientation
- Proposed site location
- Proposed site context
- Proposed site impact
- Proposed site benefit
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- Proposed site severity
- Proposed site significance
- Proposed site importance

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REV.	DATE	DESCRIPTION	ISSUED BY
A	15/06/10	REVISED PLAN	JK
B	15/06/10	REVISED PLAN	JK
C	15/06/10	REVISED PLAN	JK
D	15/06/10	REVISED PLAN	JK
E	15/06/10	REVISED PLAN	JK





KEY PLAN

(A) NORTH SITE ELEVATION
1:500

(B) NORTH SITE ELEVATION
1:500

(C) EAST SITE ELEVATION
1:500

(D) SOUTH SITE ELEVATION
1:500

FOR SUBMISSION

LEGION PROPERTIES & SECTIONS
 PROJECT: 15/03/2009
 DATE: 24/06/2009

LEGION PROPERTIES
 THE INDUSTRIAL RESORT
 TAMMARA WAY
 WINDSHILOUT
 2481

LEGION PROPERTIES
 15/03/2009
 24/06/2009

LEGION PROPERTIES

LEGION PROPERTIES

LEGION PROPERTIES

MEMORANDUM

DATE: 24/06/2009

PROJECT: 15/03/2009

SECTION: 24/06/2009

LEGION PROPERTIES

Angus & Rose

LEGION PROPERTIES

LEGION PROPERTIES

Angus & Rose

LEGION PROPERTIES

LEGION PROPERTIES

Angus & Rose

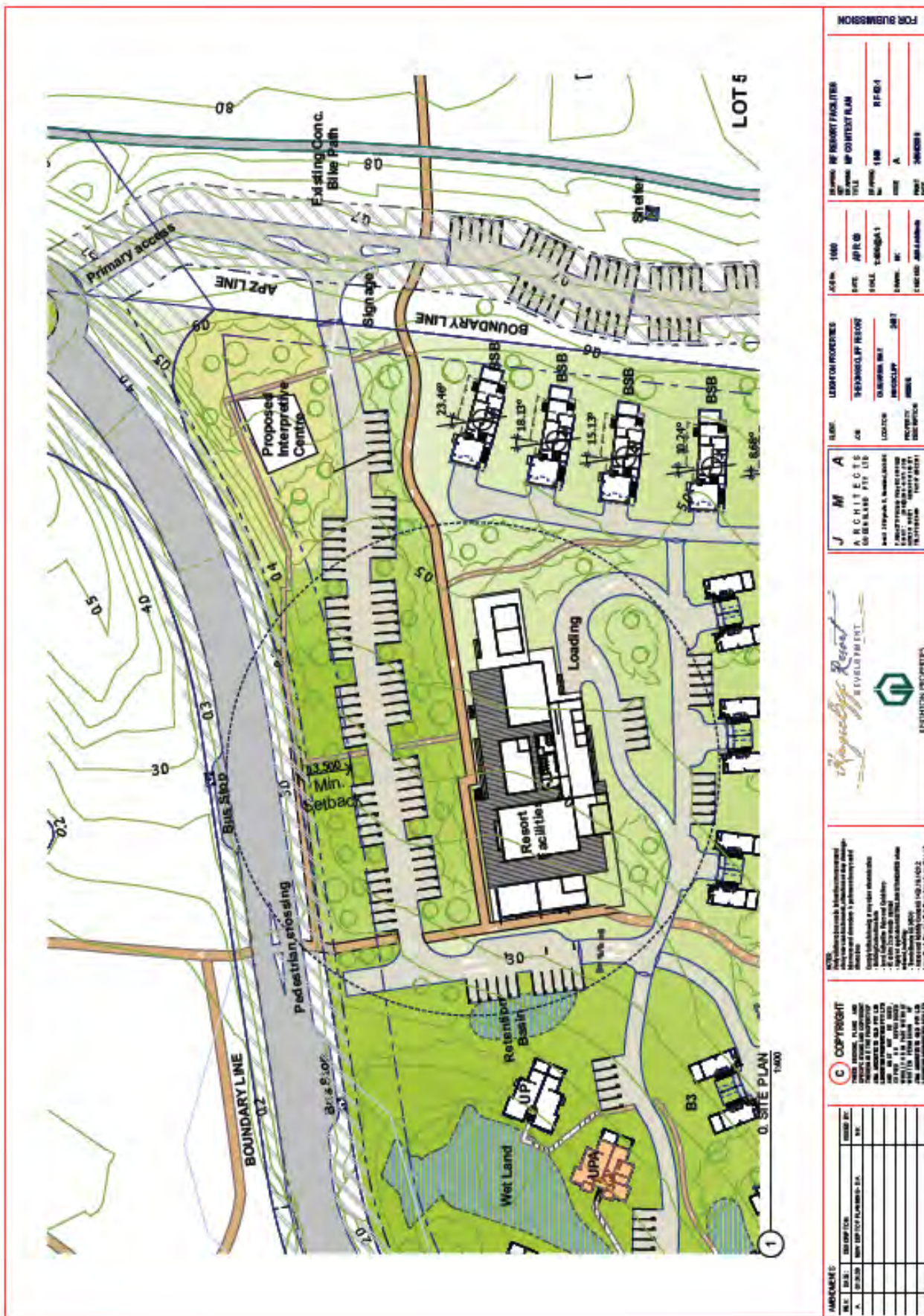
LEGION PROPERTIES

LEGION PROPERTIES

Angus & Rose

LEGION PROPERTIES





<p>AMENDMENTS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>A.</td> <td>20.10.09</td> <td>REVISED PLAN AND DRAWINGS</td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION	A.	20.10.09	REVISED PLAN AND DRAWINGS	<p>FOR SUBMISSION</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>20.10.09</td> <td>REVISED PLAN AND DRAWINGS</td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION	1	20.10.09	REVISED PLAN AND DRAWINGS
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<p>NOTES</p> <p>10/06/2010</p> <p>10/06/2010</p> <p>10/06/2010</p>															
<p>APPENDIX</p> <p>10/06/2010</p> <p>10/06/2010</p> <p>10/06/2010</p>															
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<p>CONTACT</p> <p>10/06/2010</p> <p>10/06/2010</p> <p>10/06/2010</p>															



DRAWING		DATE		BY		FOR	
NO.	REV.	DATE	DESCRIPTION	BY	FOR	NO.	REV.

PROJECT INFORMATION

PROJECT: **CF-AREA SCHEDULE 1200**
 CLIENT: **CF-AREA SCHEDULE 1200**
 DESIGNER: **CF-AREA SCHEDULE 1200**
 DRAWN BY: **CF-AREA SCHEDULE 1200**
 CHECKED BY: **CF-AREA SCHEDULE 1200**
 DATE: **CF-AREA SCHEDULE 1200**

LOGO/PROPERTIES

LOGO: **CF-AREA SCHEDULE 1200**
 PROPERTIES: **CF-AREA SCHEDULE 1200**

FOR SUBMISSION

DATE: **CF-AREA SCHEDULE 1200**
 AREA: **CF-AREA SCHEDULE 1200**
 CODE: **CF-AREA SCHEDULE 1200**
 SHEET: **CF-AREA SCHEDULE 1200**



1 E1 ELEVATION 1:200



2 E2 ELEVATION 1:200



3 E3 ELEVATION 1:200



4 E4 ELEVATION 1:200

NO.	DATE	DESCRIPTION
1	20/05/10	FOR SUBMISSION

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 **LIONTON PROPERTIES**

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DATE	10/05/10
DRAWN BY	M
CHECKED BY	M
PROJECT NO.	207
PROJECT NAME	WOODSIDE
PROJECT LOCATION	
SCALE	1:200
TITLE	REFLECTED ELEVATIONS
DATE	20/05/10

NO.	DATE	DESCRIPTION
1	20/05/10	FOR SUBMISSION

Draft Submission

The subject application placed on public exhibition between 21 April 2010 and 24 May 2010. Council like any other objector was presented with an opportunity to review the proposal and provide comment to the Department of Planning by 24 May 2010. Due to the Council Meeting schedule Council requested an extension of time to report this matter to the Council meeting of 15 June 2010. In this instance the Department of Planning granted this extension request.

The Department of Planning have not paid for Council to undertake any detailed planning, ecological and engineering assessment. Accordingly in accordance with Council's adopted policy on the processing of Major Projects this assessment has only looked at matters that may affect Council in the long term for example developer contributions, and or maintenance as the future asset owner.

Council has not undertaken a detailed ecological assessment and this should be undertaken by the Department of Planning as part of their assessment role as the consent authority.

The application was accordingly circulated to Council Officers with expertise in the following fields:

- Planning
- Traffic
- Infrastructure Engineering
- Water & Sewer Infrastructure
- Natural Resource Management;
- Coastal Hazards;
- Recreational Services
- Environmental Health
- Building Services

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

Major issues raised include the following:

Enforcing Tourist Accommodation

Leighton Properties have lobbied Council and the Department of Planning not to impose length of stay conditions on the tourist units. Leighton's have advised that they will notify potential purchasers that they can not reside in the premises permanently but that they do not want a condition of consent restricting the length of stay.

Council strongly opposes Leighton Properties not having such conditions for length of stay imposed on the proposed development.

On 22 April 2008 Council considered the inconsistent approach to this matter and accordingly resolved as follows:

“That an amendment to the draft Plan (Draft DCP Section A1) be made to the effect that it shall specify that all tourist nominated developments made under that Plan are to include a condition of approval requiring that the nominated use and any incidental residential occupational time limit restrictions thereto are to be registered on the title to the subject land.”

This shows a clear intention from Council to try to rectify the misleading and confusing circumstances surrounding tourist accommodation within the Tweed Shire.

It is strongly requested that the Department of Planning adopt Council's preference for conditions of consent relating to length of stay and a similar condition imposed requiring such restriction to be placed on an 88B Instrument.

The Implications of the Dual Key Provisions and Developer Contributions Generally

The application as proposed caters for a dual key arrangement for 122 of the 180 units. This effectively means that 122 of the units can actually be rented out as 244 units not just 122 units. This effectively means that at any one time the site could theoretically be occupied by 302 separate visitor groups.

The applicant has indicated to Council that if this dual key arrangement generates additional contributions then they may consider amending their application.

Accordingly Council has worked out to the two differing applicable contributions.

Scenario 1 assumes no dual key arrangement (just 180 tourist bungalows – this would require amended floor plans to delete the potential for dual key arrangements) while Scenario 2 includes the applicable contributions if the applicant proceeds with the currently proposed dual key setup.

Scenario 1 - Assumes **no** dual key arrangement – Total Contributions \$3,729,196.14

Scenario 2 - Assumes dual key arrangement as currently proposed in the DA – Total Contributions \$4,552,409.37

Please note the above totals have included the applicable charges under Plan No's 5 (Casual Open Space) and Plan No. 22 (Cycleways) even though works in kind may negate this payment. The applicant will need to demonstrate that the proposed works meet the plans works in kind provisions and that the amount of works in kind exceed the applicable contribution which would make the contribution redundant.

It is requested that the Department of Planning liaise with Council to ensure the most appropriate Contributions are levied for this development.

Casuarina Way Design Standard

Historically the developers of SALT agreed to build that part of Casuarina Way through Lot 490 to a rural standard knowing that should re-development of Lot 490 occur the landowner/developer of Lot 490 would be required to upgrade the road to an urban standard depending on the nature of the development being proposed.

The applicant's proposal has been reviewed and it is understood that Leighton Properties argue that the retention of the existing rural road design for Casuarina Way is justified given that the proposed development does not address the frontage of Casuarina Way. It is further understood that barrier fencing signified in Leighton's development proposal will restrict pedestrian access from the road to designated pathways and entrances, thus minimising the use of this section of road by pedestrians and the need for an urban road cross section with integral kerb and gutter and adjacent footpaths.

Notwithstanding the earlier intention for Casuarina Way through Lot 490, it is agreed that the existing rural cross section is acceptable, provided it is enhanced with the following attributes:

1. Re surface the pavement with Asphaltic Concrete with a 25mm thickness;
2. Provide a concrete edge strip to seal on both sides of Casuarina Way
3. Provide a grass lined table drain consistent with Water Sensitive Urban Design Principals
4. Ensure that Street lighting is compliant with Australian Standards for a rural road.

It will also be necessary to ensure traffic and pedestrian movement across Casuarina Way is restricted to within the nominated crossing areas only as per the proponent's plans and that in all other areas the development fencing and or landscaping will restrict free pedestrian and vehicular movement from the property to the road. The ultimate design of such barriers should have strong regard for urban design implications and safety by design implications.

Water & Sewer Infrastructure

The Environmental Assessment (EA) lodged for this proposed development has not adequately addressed issues that have previously been raised by Tweed Shire Council Water Unit (this includes comments on the proposed development and also the Subdivision Application DA07/0716 previously lodged by the Department of Lands). These include works that would have been required at subdivision stage under the provisions of the Tweed DCP Part B9. It appears that despite Council's advice to the proponents, no commitment to these works are included in the draft Statement of Commitments.

It is noted that proposed public amenity block on Lot 500 is proposed to be serviced by the tourist developments internal water supply and sewerage systems. Unless this land is aggregated with the proposed Lot 1 (Tourist Development Site), this does not comply with the normal requirement to provide separate connections to water supply and sewer.

The attached submission to the Department of Planning identifies all the works required to satisfy Council's Water Unit.

Maintenance, Public Liability and Guaranteed Public Access

Clarification is needed regarding the long term maintenance responsibilities for the following facilities and areas

- Facilities proposed to be fully accessible by the general public, as described in the Environmental Assessment (section 3.1 Development Summary) and also in a separate document (Community Facilities Plan as found on Leighton properties website) that was not included in the application.

- Open space areas indicated as catering to members of the general public, including Lot 500, Lot 489 and the part of Lot 490 west of Casuarina Way. These areas include the riparian area and dunal areas.

It is currently Council's understanding that all such facilities and land will be the responsibility of the lessee for the period of the lease, being 70 years.

Surf Life Saving Provisions

The submitted Kingscliff Resort Surf Lifesaving Management Plan' is not acceptable in its present form. As submitted, the plan does not adequately address risk to life arising from the increased usage of nearby beaches arising from this development. It does not propose any form of practical support for the 2 adjacent Surf Life Saving Clubs, nor is it proposed to provide surf lifesaving services in the area of the resort.

The applicant has previously been advised that to address risk to life from surfing activities associated with this development, they must, in particular, fully consult with **Surf Life Saving Australia (SLSA)**, as well as the two adjoining local surf life saving clubs (SALT and Cudgen Surf Life Saving Club's), to determine the beach safety risks associated with the development, and to identify appropriate ways to manage these risks. The TSC Beach Safety Liaison Committee is also an important component of local beach safety decisions and should be consulted. The submitted Surf Lifesaving Management Plan makes no reference to such consultations having been undertaken. No approval or support for this development can be provided until this matter has been adequately addressed.

In particular, the 'Tweed Shire Council Coastal Risk Assessment and Treatment Plan 2008' prepared by Surf Life Saving Australia must be **reviewed and amended** to incorporate the changed access and beach use patterns the development will bring.

Until these risks to life are addressed, this development cannot be supported.

The submitted 'Kingscliff Resort Surf Life Saving Management Plan' is to be amended following the above consultation, and must provide more acceptable ways to manage beach safety issues adjacent to the resort. Should a financial contribution to the existing surf life saving services at Salt or Kingscliff be recommended, an appropriate amount must be determined and such report must include a mechanism by which this can occur. Please note that S94 Contributions is no longer an option following the State Government review of Contributions.

In this regard if a monetary contribution is recommended any special legal agreements designed to allow the Lot 490 developer to support surf life saving in the area should consider that the manager of Lot 490 is the Department of Lands, not Council or Tweed Coast Reserves Trust.

It is further noted that the official name for the beach in the location of the resort is not the one given by the proponent. The correct name according to the Geographic Names Board and Tweed Shire Council is South Kingscliff Beach, not Bogangar Beach. It is likely the name described in the SLSA publication the proponent consulted is out of date. The correct beach names were gazetted in 2008.

Community Facilities

It is desirable that a document similar to the 'Kingscliff Resort Community Facilities Plan' is included with the Development Application to ensure the Department of Planning, Council and other agencies considering the development application are fully informed on the nature of community facilities to be provided.

The EAR and associated documents list the community facilities to be provided (section 3.2), and indicative locations for these facilities have been provided, however greater detail on the actual location and design of these facilities will be required in the approval process.

A community facilities plan is required that clearly sets out ownership, management and maintenance responsibilities for all of the community facilities in perpetuity, and considering the intended timeframes for resort leases. Council must be a party to this facilities plan as the public authority for infrastructure and trustee for the Crown Lot 500. If measures are unsatisfactory to Council, facilities must be removed from Lot 500 and located within the resort development on Lot 490 for ongoing management by the lessee.

Note that public infrastructure has to date been limited within Lot 500 to public beach accesses and minor sections of cycleway/pathway for other developments to the south. More intensive facilities such as carparking and amenities have been provided outside of the 7(f) zone on development land that is subsequently dedicated to Council.

Coastal Hazards

The applicants report relies heavily upon the 2001 Tweed Shire Coastline Hazard Study and subsequent Tweed Coastline Study and Management Plan (2005). There are a few mistakes in the information provided and new information to be taken into account.

The applicant should be required to review this data and amend their application accordingly.

Adequacy of the Ecological Assessment Dunal and Riparian Management Plans

A staff review of the submitted plans has raised issues with the applicant's assessment. In summary the issues include:

- The ecological assessment does not consider the impact of loss from the removal of Coast Banksia on the food source for the Blossom Bat;
- The ecological assessment provides information on the area of Horsetail She-oak forest that would be lost as a result of the development but provides no information on the actual food source that would be lost (i.e. number and size of Horsetail She-oak trees) for the Glossy Black Cockatoo.
- Within the Riparian Management Area, placement of infrastructure should be minimised and except for providing a single access point to Cudgen Creek, no infrastructure (including cycleway, shelter sheds, active or passive recreational facilities and carparking) should be sited within the 50m buffer zone of SEPP 14 Coastal Wetlands and Cudgen Creek.

- The proponent proposes to locate part of the APZ, public parks, community amenities, shelters, circuit training station, carparking, playground, beach access road, 3 beach access tracks and the cycleway within the Dunal Management Area (or Lot 500). This should be minimised to be more consistent with other coastal developments.
- The content within the Dunal Management Plan and the Riparian Management Plan need to be amended to address the matters raised in the attached submission to the Department of Planning.

The attached letter to the Department further includes other issues that should be addressed by the applicant and or the consent authority.

OPTIONS:

1. That Council endorse the key themes in the attached draft submission to the Department of Planning on the Application for Lot 490.
2. That the Council proposes an alternative draft submission to the Department of Planning on the Application for Lot 490.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Council has the opportunity to make a submission to the Department of Planning on the proposed Application for Lot 490.

Various internal experts have reviewed the Environmental Assessment Report recently on public exhibition. These comments have been collated into the attached draft submission.

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au 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 Submission to the Department of Planning (ECM 17406624)
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14 [PR-CM] Development Application DA09/0685 for a Two (2) Lot Subdivision at Lot 2 DP 772129, Hogan's Road, Bilambil

ORIGIN:

Development Assessment

FILE NO: DA09/0685 Pt1

SUMMARY OF REPORT:

At its meeting on 18 May 2010, Council considered an application to undertake a two (2) lot rural subdivision of a 95.23 hectare parcel of land zoned 1(a) Rural in Bilambil.

Council Officers recommended refusal of the application, however, the Council resolved as follows:

“that this item be deferred for further consultation and Workshop with Council.”

Since the previous meeting a Councillor workshop was held on 25 May 2010.

The original report has been resubmitted for Council's determination.

RECOMMENDATION:

That Development Application DA09/0685 for a two (2) lot subdivision at Lot 2 DP 772129, Hogans Road, Bilambil be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards.**
- 2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with State Environmental Planning Policy (Rural Lands) 2008 as the proposal will result in:**
 - development being incompatible with surrounding agricultural uses,**
 - potential to create land use conflicts**
 - the proposed subdivision not supporting or enhancing the agricultural production of the site.**
- 3. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 1(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not protect the rural character and amenity;**

4. Pursuant to Section 79C(1)(a)(i) the development proposal in seeking a subdivision for a residential purpose is not consistent with Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, as the proposed Lot 2 is below the minimum requirement of 40 hectares.
5. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed.
6. Pursuant to Section 79C(1)(e) the proposed development will result in a development with a dwelling house located on an undersized allotment (Lot 2) that does not enjoy a dwelling entitlement.
7. Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest as the development would create an undersized lot (Lot 2) in the 1(a) Rural zone.

REPORT:

Applicant: Mr B Ricker
Owner: Ricker Pastoral Company Pty Ltd
Location: Lot 2 DP 772129, Hogans Road, Bilambil
Zoning: 1(a) Rural
Cost: N/A

BACKGROUND:

Council is in receipt of a development application to undertake a two (2) lot rural subdivision of a 95.23 hectare parcel of land zoned 1(a) Rural in Bilambil.

Proposed Lot 1: Having an area of approximately 76.17 hectares with a frontage to Hogan's Road. This proposed lot also contains an existing dwelling house. However, a search of Council's records has revealed that this dwelling has no Council approval.

Proposed Lot 2: Having an area of approximately 19.06 hectares and a frontage to Cavendish Road (unformed) and access is via an existing right of carriageway located off Duroby Creek Road. This proposed lot contains an existing dwelling house approved by Council via DA86/028 on 25/3/1986

Clause 20 of the Tweed Local Environmental Plan 2000 allows for a minimum lot size of 40ha in the 1(a) zone; therefore, proposed Lot 2 does not comply with the development standard for subdivision in the zone. The application as proposed would result in an approximate 52% variation to the development standard.

It is considered that the lot as it currently exists (95.23ha) would easily enable a two lot subdivision that complies with the minimum lot size of 40ha in the 1(a) zone. However, the applicant states that the purpose of the non-compliant subdivision is to create two allotments of land capable of maintaining the rural character of the area and ensuring the protection of a scenic ridgeline and quality vegetation/wildlife corridor within the locality.

As Lot 2 is not complying with Clause 20 an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) and the concurrence of the Department of Planning (DoP) was required.

The DoP wrote to Council on 17 December 2009 (copy attached) stating that they were concerned that if they were to approve concurrence of the application, a real potential exists for proposed Lot 1 to be further subdivided at some future date. Should this occur, it is considered likely that the end result would be contrary to the aims and objectives of the zone as well as the planning principles of the State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP).

The DoP also enclosed with the response two (2) suggested options which Council was required to discuss with the applicant. These options proposed Lot 2 to be increased to 27 ha or 38 ha.

Council Officers referred these options to the applicant on 18 December 2009. The applicant responded via a letter dated 26 February 2010 (copy attached) stating that they do not wish to amend the application to either of the two options. This response was referred to the DoP for their further consideration.

On 26 March 2010, Council received a response from the DoP advising that Concurrence has been granted to vary the 40 ha subdivision development standard contained in Clause 20 of the Tweed LEP to permit the creation of an allotment of 19.06 ha. The DoP advised that Concurrence was granted in this instance for the following reasons:

- The proposed subdivision does not raise any issues of state or regional significance, and
- The agricultural viability of the proposed Lot 1 will be maintained.

The DoP also stated that *“it is difficult for concurrence to be refused based on the impact of future subdivision potential.”*

Council Officers disagree with these reasons and consider that the opportunity for potential subdivision is in fact a due planning consideration and is contrary to the aims and objectives of the zone as well as the planning principles of the Rural Lands SEPP.

Notwithstanding this, Council’s Development Engineer has raised concerns regarding proposed Lot 2 gaining lawful access. It must be noted that Cavendish Road is not a formed road. However, an existing right of carriageway nearby is also known as “Cavendish Road” and properties which are benefited and burdened by this right of carriageway use “Cavendish Road” as their address.

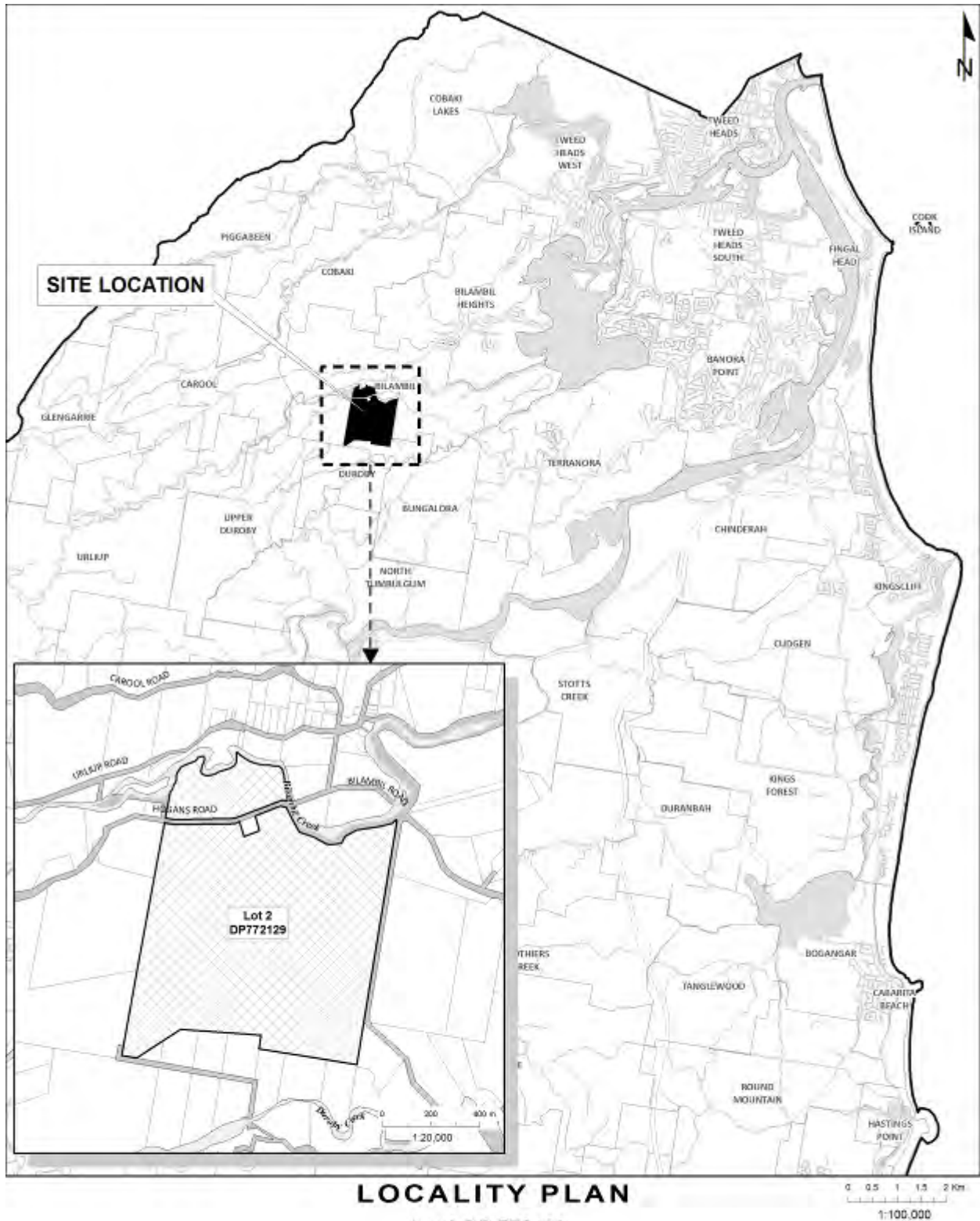
Council’s Development Control Plan Section A5 – Subdivision Code states that the maximum number of allotments to share in a right of carriageway access is five (5) allotments. Nine (9) allotments are already currently benefited or burdened by the right of carriageway and as such the subdivision does not alter this existing situation.

The subject land is described as Lot 2 DP 772129 and is known as Lot 2 Hogans Road, Bilambil. The subject site is of an irregular shape with a northern frontage to Hogans Road and an eastern frontage to Cavendish Road which is unformed. The land has a total site area of 95.23 hectares.

As discussed, the site contains two dwellings. One dwelling is located in the northern portion of the site and has access to Hogans Road. A search of Council’s records has revealed that this dwelling does not have the prior approval of Council and therefore is unlawful (this has also been confirmed by the applicant). A second dwelling also exists in the southern portion of the site, and currently gains access via an existing right of carriageway located off Duroby Creek Road. This dwelling house was approved by Council via DA86/028 on 25/3/1986.

The land that comprises proposed Lot 1 has previously been used for grazing; however, the land is currently used primarily as a macadamia crop with some continued grazing. The land that comprises proposed Lot 2 constitutes the southern part of the subject land and is made up of densely vegetated natural bushland. Access between the two proposed lots is restricted due to the steepness of the slope that makes up the northern boundary of proposed Lot 2. The surrounding area is characterised by a mixture of small and large rural holdings.

SITE DIAGRAM:



LOCALITY PLAN

Lot 2 DP 772129,
Hogans Road, Bilambil


0 0.5 1 1.5 2 Km
1:100,000

Filename: z:\esr\planning\mtd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 04 May, 2010

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GDA  Cadastre: 04 May, 2010
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Coordinate System - WGA Zone 58
Datum - GDA 94 DO NOT SCALE
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DEVELOPMENT PLANS: Existing Lot Layout

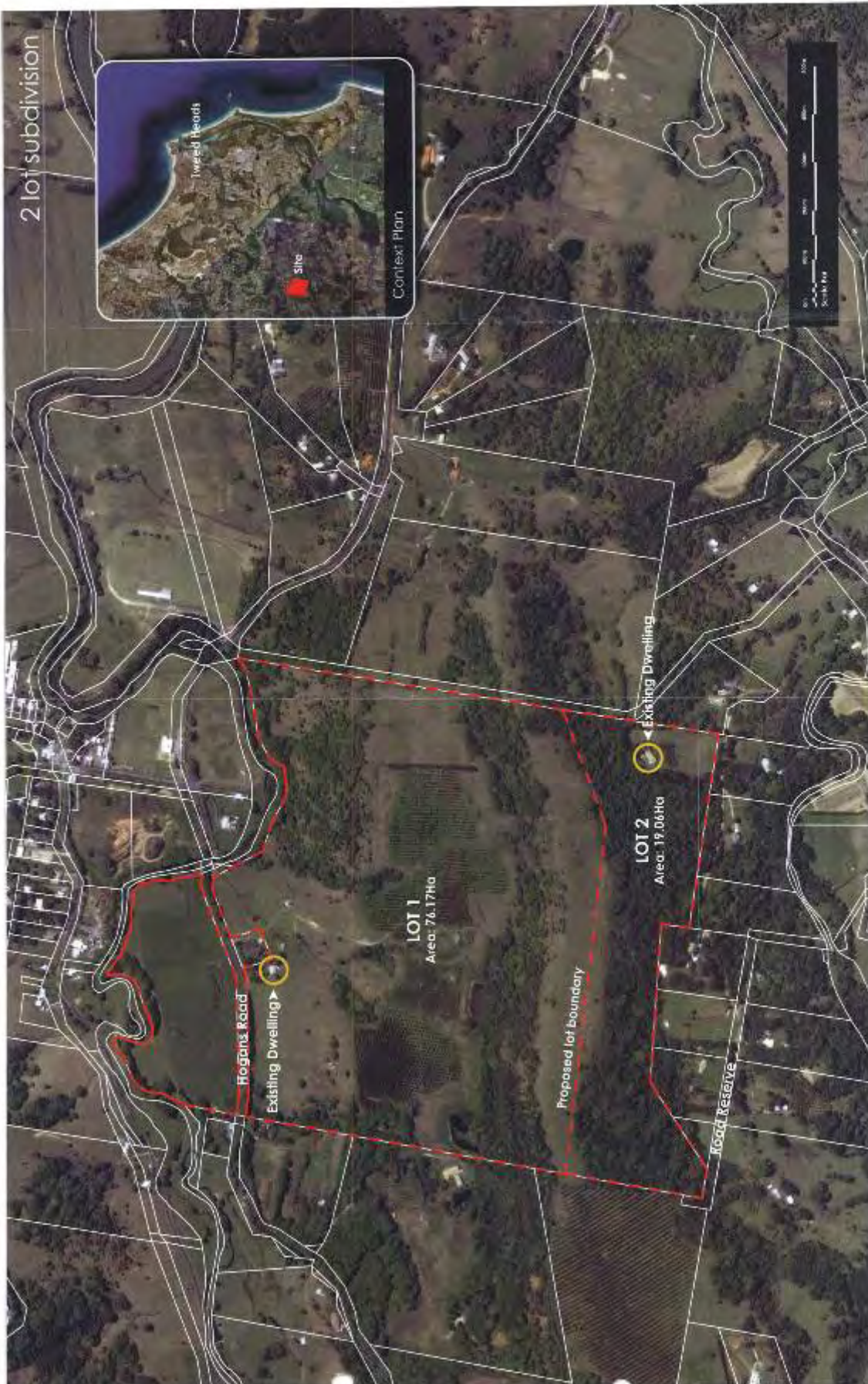


RICKER PASTORAL - 2 LOT SUBDIVISION
EXISTING SITE

CLIENT:
DATE: SEPTEMBER 2009
DRAWN: JB

PLANIT
PLANNING & CONSULTING

Proposed Lot Layout



CLIENT: ROCKEN PASTORAL - 2 LOT SUBDIVISION
DATE: SEPTEMBER 2009
DRAWN: JJ

PLANIT
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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 proposed development is considered not to be consistent with the aims of the Tweed Local Environmental Plan. The proposed development is not 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." The proposed development is for a two lot subdivision which does not comply with the development standards contained within the Tweed Local Environmental Plan 2000.

The proposed development is significantly non-complying with the Tweed LEP; therefore, it is considered not to be in keeping with the aim of the plan.

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 considered to have minimal impact on the environment and in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8(c) - Cumulative Impact

Clause 8(1)(c) Cumulative Impact: The proposed development, if approved, would be considered to create an adverse cumulative impact in the Shire. The Tweed Shire currently has a number of properties that have similar situations. The approval of this application would encourage other non conforming applications to be lodged. Therefore, the proposed development if approved would establish an adverse cumulative impact in the Shire.

Clause 11 - Zone objectives

The subject land is zoned 1(a) Rural. The objectives of the 1(a) Rural zone include:

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 proposed subdivision's configuration and proposed lot sizes will have a significant impact on the agricultural potential of the site, particularly for Lot 1 as Lot 2 will be used for the purpose of a rural residential allotment. This configuration may lead to rural land use conflicts which will result in the rural character and amenity being compromised.

Also, approval of an allotment substantially below the development standard, that will then allow the potential lawful creation of an additional allotment, contradicts the objective of protecting rural character and amenity by allowing the creation of smaller holdings that cannot be suitably used for agricultural pursuits.

The proposal is therefore not consistent with the relevant zone objectives.

Clause 15 - Essential Services

Water supply is 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 40 hectares in the 1(a) zone. The proposed lots 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

The proposed subdivision will result in proposed Lot 2 being under the minimum allotment size, and therefore, should the application be approved Lot 2 will 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 dwelling to remain lawful, existing use provisions will allow the continuation of previous rights to have a dwelling house on the parcel of land. However, this may create some restrictions should the owners of these allotments intend on doing future development or building works.

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.

The proposed subdivision will create an undersized allotment (proposed Lot 2) that will not have any agricultural viability and will essentially be a rural residential allotment. Also, approval of this subdivision will potentially lead to further subdivision of proposed Lot 1 which will affect the continuance and potential productive sustainable activities to be undertaken on the property.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard identified within Clause 20 (2)(a) of the Tweed LEP, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(a) zone.

Clause 20(2)(a) states:

(2) 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 underlying objectives of the development standard are to prevent the fragmentation of rural land, ensure the scenic and natural environments are protected and maintain agricultural viability.

The SEPP 1 objection relates to proposed Lot 2 being below 40 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 consistency with the aims of the SEPP.

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

- *The proposal clearly identifies two distinct and separate landforms within the existing rural allotment, with one land area (proposed Lot 1) lending itself to continued rural/agricultural land use, whereas the land area of proposed Lot 2, due to the constraints of very steep slopes to either side of a ridge and significant remnant vegetation across this ridge, is unlikely to be considered suitable for agricultural pursuits now or in the future. Taking this into consideration the subdivision design has seen the location of the proposed boundary following approximately the line of the vegetation to the northern toe of the slope of the ridge. This ensures that all of the existing cleared and economically viable agricultural land is contained within the boundary of proposed Lot 1.*
- *The proposal is considered to be sustainable in that to maintain the land area of proposed Lot 2, within the existing site area, is costly to the land owner as the small cleared area of the site that contains the dwelling and a small number of macadamia trees cannot be accessed from the area of the site that will become Lot 1. To gain access to this part of the site south of the ridge requires a trip of approximately 4.5km by road in one direction. This along with having to maintain the additional dwelling, fencing and this cleared area south of the ridge is an expense that is not considered by the proponent to economically viable into the future and affects the land owners ability to continue to operate the greater land area north of the ridge, as finances are unnecessarily expended maintaining the area south of the ridge for no return.*
- *The subdivision design also ensures that the larger proposed land parcel (Lot 1) cannot be later subdivided as the design provides for a land area of 76.17 hectares and the Rural 1(a) zoning requires subdivided land to have a minimum allotment size of 40 hectares. To further subdivide this land parcel would not be considered appropriate and would not meet the objectives of Clause 20 of the LEP as much of this area is unconstrained land in regard to agricultural use.*
- *The land area that is considered useable for present and future agricultural activities is wholly contained within proposed Lot 1 which ensures that this land is not fragmented and provides for the continuance of the use of this land for agricultural pursuits.*
- *It is clear that the proposed subdivision would not fragment ownership of rural land that would adversely affect the continuance of sustainable agricultural units within the locality.*

- *The existing site currently contains two dwellings. One dwelling is located along Hogans Road with access to this road and the other is located with access via Cavendish Road. These two dwellings are separated by the ridge to the south of the site and neither dwelling can be accessed from the other through the site due to the steep slopes of the ridge and existing dense vegetation on these slopes. Essentially these two dwellings are contained within different catchments divided by the ridge line. The dwelling on Hogans Road is contained within that catchment associated with Bilambil Creek and the dwelling on Cavendish Road is within that catchment associated with Duroby Creek.*
- *It is not considered that this proposed subdivision would generate pressure to allow isolated residential development as both dwellings already exist and the two areas of the existing site either side of the ridge essentially function as if they were two separate properties. The area south of the ridge is characterised by smaller rural residential land holdings. Many of these allotments do not contain agricultural pursuits but are largely covered with native vegetation and this would be the case with proposed Lot 2, although some potential remains for small scale rural/agricultural activities on this proposed lot.*
- *It is submitted that the proposed subdivision design protects both the ecological and scenic values of the land. The scenic values of the site are recognised as the heavily vegetated slopes of the ridgeline which dominates the site and is visible to many locations within the Bilambil Creek Catchment and the Duroby Creek catchment. The ecological values of the site are also largely contained within this area of the site which is proposed to be contained almost entirely within proposed Lot 2. The existing vegetation will be maintained as no clearing of vegetation is required or proposed under this application.*
- *Through this subdivision the upper slopes of the ridge will be protected, as the only area not constrained by the steepness of the slope has already been cleared in the southwest corner (location of the dwelling on proposed Lot 2) and it would be inappropriate to clear any of the steep sloping areas for any agricultural purpose. By subdividing this area of scenic and ecological importance from the area containing proposed Lot 1 this will ensure that cattle are not encroaching into this remaining pocket of healthy bushland as the boundary will be fenced.*

By separating proposed lot 2 from the remainder of the site through this subdivision the lot will essentially become a rural residential allotment similar to many of the smaller allotments along Cavendish Road. This in itself will ensure the protection of the scenic and ecological values of this area of the site to the locality along with the fact that the majority of the area of proposed Lot 2 is severely constrained in regard to topography and existing vegetation.

- *The proposal further protects the ecological value of the land by maintaining a large lot in proposed Lot 1, which has pockets of vegetation on the steeper lower slopes north of the ridge. The size of the Lot to be maintained will ensure that these pockets of vegetation can also be retained whilst leaving ample area of land for continuing agricultural pursuits.*

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 objection 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.*

Comment:

It is considered that all the reasons outlined above do not attest the development standard as being unreasonable or unnecessary as the existing allotment being 95.23 ha is large enough to allow a two lot subdivision to be compliant with Council's subdivision development standard being 40 ha. It is clearly evident that the applicant has disregarded Council's development standard to enable the land to be configured to allow for future subdivision potential.

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

The aims of the policy are as follows:

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

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

Comment:

The proposed development will affect the proper management, conservation of natural resources and the promotion and co-ordination of the orderly and economic use of the land as it is fragmenting productive rural land for the purpose of configuring allotments to allow for potential future subdivision. The proposed departure is significant and granting consent to such would be inconsistent with the aims of the Policy.

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

Comment:

The proposed non-compliance raises matters for state and regional planning. On a state level the DoP has gazetted SEPP (Rural Lands) 2008, which gives directions for Councils when considering an application to which the SEPP applies. Approval of an allotment substantially below the development standard which will then allow for the potential lawful creation of an additional allotment contradicts the rural planning and subdivision principles within the SEPP. This has been discussed in greater depth below.

Also, on a regional level, approval of this subdivision will undermine the integrity of the Tweed LEP 2000 and create a precedent through the creation of an undersized allotment from a lot that currently exceeds the minimum lot size.

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

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

Comment:

Whilst the comments are noted from the applicant, the creation of a substantially undersized allotment is contrary to the objectives of the zone and the development standard, particularly when there is sufficient land area to allow two compliant lot sizes. It is considered that the proposal is likely to create conditions that will cause the fragmentation of rural land.

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

Comment:

The underlying objective and purpose of the standard is to restrict lot sizes so as not to cause the fragmentation of rural land. The submission of an undersized allotment when a compliant size can be achieved is considered unnecessary in this case.

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

Comment:

If compliance was required, the underlying purpose would be achieved.

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

Comment:

The creation of a non-conforming lot size when a conforming lot size can easily be achieved is seen to undermine the integrity of the Tweed LEP 2000 and accordingly, it is not considered reasonable or necessary to vary from the minimum lot sizes established within Clause 20(2)(a). The creation of an undersized lot from a lot that currently exceeds the minimum lot size will set an undesirable precedent.

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

Comment:

The zoning of the area is appropriate and the surrounding locality has rural character and agricultural uses have been established.

SEPP (Rural Lands) 2008

The land is within the 1(a) Rural 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 not consistent with the rural planning principles as the lot configuration does not promote and protect opportunities for current and potential productive and sustainable economic activities.

Also, it is considered that the creation of an undersized allotment is not in the social, economic and environmental interests of the community as it will create unwanted precedence.

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 proposed undersized allotment is not considered to be in accordance with the Clause 8 rural subdivision principles as the subdivision will lead to unnecessary land fragmentation because a compliant lot size is achievable.

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 continually throughout this report, approval of an allotment substantially below the development standard, which will then allow for the potential lawful creation of an additional allotment, contradicts the rural planning and subdivision principles within the SEPP. Approval of this application will almost ensure a third dwelling will be able to be built on the subject land which is likely to have a significant impact on adjoining land uses and may cause potential land use conflicts.

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

Council is preparing a new Shire-wide Local Environmental Plan based upon the NSW Department of Planning LEP Standard Instrument template. The Draft Tweed Local Environmental Plan 2010 (draft LEP) was placed on public exhibition from 27 January to 31 April 2010.

The draft LEP proposes to rezone the subject site from 1(a) Rural to RU2 Rural landscape. The objectives of the RU2 zone include:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land, such as bush foods, forestry, crafts and the like.*

The subdivision development standard is to be unchanged and will remain as 40 ha. It is considered that the proposed subdivision will not achieve the objectives of the zone as it will compromise the rural landscape character of the land.

Also, as part of these reforms, the use of SEPP 1 will be superseded by Clause 4.6 of the draft LEP which contains provisions to enable exceptions to development standards within the draft LEP.

Clause 4.6(6) states:

Consent must not be granted under this clause for a subdivision of land in zone ...RU2... if:

- a) *The subdivision will result in 2 or more lots of less the minimum area specified for such lots by a development standard, or*
- b) *The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Therefore, as proposed Lot 2 is to be only 19.06 ha, Council would not be able to consider the application as submitted as the proposal has a variation of 52%.

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

Tweed Development Control Plan

A5-Subdivision Manual

Council's Development Engineer has reviewed the application with respect to the provisions of Section A and has advised the following:

With regard to access, the application states within their Statement of Environmental Effects that:

“Proposed Lot 1 will gain access from Hogans Road, while proposed Lot 2 will gain access off Cavendish Road. Both of these roads are sealed rural roads” and “Cavendish Road is not wholly contained within the dedicated road reserves in this area.”

The above statements are incorrect as Cavendish Road is not a formed road. However, an existing right of carriageway nearby located off Duroby Creek Road is also known as “Cavendish Road” and properties which are benefited and burdened by this right of carriageway use “Cavendish Road” as their address.

Council’s Development Control Plan Section A5 – Subdivision Code states that the maximum number of allotments to share in a right of carriageway access is five (5) allotments. It is noted that Deposited Plans 246020 & 566611 (adjoining properties to the south of the subject lot) both have a right of carriageway created in 1974 servicing 9 different allotments the proposed subdivision does not alter the current access arrangements and are considered acceptable.

(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 15 December 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

Investigation of the likely impacts of the proposal upon the built or natural environment is not considered to be required in light of the concerns detailed earlier in this report.

(c) Suitability of the site for the development

Given the earlier comments detailed within this report, the subject land is not suitable for the development as proposed.

(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 proposed subdivision is considered to compromise the public interest as it is not in accordance with both State and Local planning policies and the subdivision will create an undersized allotment to potentially create an additional allotment.

OPTIONS:

1. Determine the application in accordance with the recommendation.
2. Support the proposal and request appropriate conditions for approval be submitted to the next Council Meeting.

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:

Should the recommendation of this report not be upheld, no direct policy implications will occur, however a precedent will be set for similar applications to be approved.

CONCLUSION:

Council Officers consider that approval of an allotment substantially below the development standard, will allow for the potential lawful creation of an additional allotment, thus the proposal is contrary to the zone objectives and the rural planning and subdivision principles within State and Local Environmental Planning Policy Frameworks.

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 Department of Planning dated 17 December 2009 (ECM 15981438)
 2. Letter from the applicant dated 26 February 2010 (ECM 15980433)
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15 [PR-CM] Development Application DA09/0649 for the Demolition of Existing Structures and Construction of a Six (6) Storey Multi Dwelling Housing with Basement Carparking at Lot 7 DP 232124, No. 4 Endeavour Parade, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA09/0649 Pt

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. It is difficult to quantify the degree to which the standard is varied on a percentage basis, as it involves foreshore shadow.

The SEPP No. 1 variation relates to Clause 32B(4)(a) of the North Coast Regional Environmental Plan (REP) 1988 which states that Council shall not consent to the carrying out of development consent on urban land at Tweed Heads *if carrying out the development would result in beaches and adjacent open space being overshadowed before 3pm midwinter (standard time) or 6:30pm midsummer (daylight saving time).*

The proposed building will result in some afternoon shadowing of the adjacent linear park and cycleway, from approximately 2pm midwinter and approximately 3pm midsummer. However, the resultant impact on the amenity of the open space is considered minor.

The applicant seeks consent for the demolition of the existing single storey multi-unit building containing four dwellings and the erection of a new six storey multi-dwelling housing building comprising five units and basement car parking for twelve vehicles.

The application requires concurrence pursuant to the Clause 51 of the North Coast REP 1988. However, Council has an instrument of assumed concurrence for this purpose. It was therefore not necessary to refer the application to the Department of Planning for concurrence purposes.

The application did not meet the criteria to be assessed by the Joint Regional Planning Panel (JRPP). The capital investment value is less than \$10 million and although the proposed building is located within Coastal Land (SEPP 71 Coastal Zone) at greater than 13m in height, it complies with the 6-storey height limit as set out in Clause 16 of the Tweed Local Environmental Plan 2000.

The proposal was placed on public exhibition and 20 submissions were received within the notification period.

Having considered all issues raised by the submissions, in addition to the statutory assessment, the proposed development is recommended for conditional approval.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed, and**
- B. Development Application DA09/0649 for the demolition of existing structures and construction of six (6) storey multi dwelling housing with basement carparking at Lot 7 DP 232124, No. 4 Endeavour Parade Tweed Heads be approved subject to the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and:**
 - Project No 5404 Plan No 2DA.01 Rev 1 (Basement) prepared by Pat Twohill Designs Pty Ltd and dated 27 January 2010**
 - Project No 5404 Plan No 2DA.02 Rev 1 (Level 1) prepared by Pat Twohill Designs Pty Ltd and dated 27 January 2010**
 - Project No 5404 Plan No 2DA.03 Rev 1 (Level 2, 3, 4) prepared by Pat Twohill Designs Pty Ltd and dated 27 January 2010**
 - Project No 5404 Plan No 2DA.04 Rev 1 (Level 5) prepared by Pat Twohill Designs Pty Ltd and dated 27 January 2010**
 - Project No 5404 Plan No 2DA.05 Rev 1 (Level 6) prepared by Pat Twohill Designs Pty Ltd and dated 27 January 2010**
 - Project No 5404 Plan No 2DA.06 Rev 1 (Roof Level) prepared by Pat Twohill Designs Pty Ltd and dated 27 January 2010**
 - Project No 5404 Plan No 2DA.09 Rev 2 (North Elevation) prepared by Pat Twohill Designs Pty Ltd and dated 2 March 2010**
 - Project No 5404 Plan No 2DA.10 Rev 2 (South Elevation) prepared by Pat Twohill Designs Pty Ltd and dated 2 March 2010**
 - Project No 5404 Plan No 2DA.11 Rev 1 (East Elevation / West Elevation) prepared by Pat Twohill Designs Pty Ltd and dated 27 January 2010,**

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0015]

3. 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]

4. The applicant shall arrange for a site inspection to be carried out with Council's Environmental Health Officer and key representatives involved in the dewatering activity including consultants and personnel responsible under any Dewatering Management Plan approved by Council's General Manager or his delegate. Such site inspection shall be arranged and carried out prior to the commencement of any offsite dewatering activity occurring.

[GEN0180]

5. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

6. Any proposed fence or gate structure erected across the 3m wide stormwater easement is to be a maximum height of 1.2m and is to be attached to supports located beyond the easement or is to be readily removable in the event that Council requires access to the easement. Any such fence or gate structure is to be permeable to allow the passage of flood flows (minimum 90% void space), or be attached in a manner that will allow the fence or gate to collapse under flood flow.

[GENNS01]

7. Management of construction waste, ongoing waste management during site occupation and garbage collection arrangements shall be in accordance with the Waste Management Plan (report no. 2009.113) prepared by HMC Environmental Consulting Pty Ltd and dated 22 March 2010.

[GENNS02]

8. No structures are to be located on the roof.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. The developer shall provide 12 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCC0065]

10. **Section 94 Contributions**

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges 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:

3.9 Trips @ \$656 per Trips \$2558
(\$596 base rate + \$60 indexation)

S94 Plan No. 4

Sector1_4

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 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. 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 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

(b) Shirewide Library Facilities:	
2.125 ET @ \$792 per ET	\$1683
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
(c) Bus Shelters:	
2.125 ET @ \$60 per ET	\$128
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
(d) Eviron Cemetery:	
2.125 ET @ \$120 per ET	\$255
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
(e) Extensions to Council Administration Offices & Technical Support Facilities	
2.125 ET @ \$1759.9 per ET	\$3739.79
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(f) Cycleways:	
2.125 ET @ \$447 per ET	\$950
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
(g) Regional Open Space (Casual)	
2.125 ET @ \$1031 per ET	\$2191
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
(h) Regional Open Space (Structured):	
2.125 ET @ \$3619 per ET	\$7690
(\$3619 base rate + \$0 indexation)	
S94 Plan No. 26	
(i) Tweed Heads Master Plan:	
1 MDU @ \$1047 per MDU	\$1047
(\$1047 base rate + \$0 indexation)	
S94 Plan No. 27	

[PCC0225]

11. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP4: 1.35 ET @ \$10709 per ET	\$14457.20
Sewer Banora: 2.5 ET @ \$5146 per ET	\$12865

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[PCC0265]

12. 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]

13. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for 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]

14. 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]

15. The site shall be filled such that it complies with Section A3 – “Development of Flood Liable Land” of Council’s consolidated Tweed Development Control Plan and graded at a minimum of 1% so that it drains to Endeavour Parade. Where necessary, perimeter drainage shall be provided to ensure minimal impact on adjoining properties. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding or runoff impacting on neighbouring properties.

A plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.

All fill and cut batters and retaining walls shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

16. 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]

17. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL2.60m AHD in accordance with Tweed Shire Council Development Control Plan Part A3 - Development of Flood Liable Land. This immunity shall be provided at all accesses including external stairs to the basement car park. The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (onsite and adjacent) is protected against pump failure. Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 “*National Plumbing and Drainage – Part 3.2: Stormwater Drainage – Acceptable Solutions*”

[PCC0685]

18. 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]

19. 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) Removal of existing laybacks and the construction of a new driveway access in accordance with Council's "Driveway Access To Property – Part 1 – Design Specification".
- (b) Construction of vertical face kerb and gutter (with associated sub-surface) along the full frontage of the existing allotment to Endeavour Parade, on an approved alignment, to Tweed Shire Council specifications.

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

- Road works
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

20. 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]

21. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

22. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.
 - (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.

[PCC1155]

23. 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]

24. The carwash bay shall be bunded to prevent contamination of basement stormwater. Treated carwash runoff shall be discharged to the sewer (if levels permit) and shall be subject to a separate Trade Waste Application prior to the issuing of a Construction Certificate.

[PCCSN01]

PRIOR TO COMMENCEMENT OF WORK

25. 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]

26. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

32. 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 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]

33. 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]

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

[PCW0985]

35. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

37. 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]

38. 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.

$L_{Aeq, 15 \text{ min}}$ 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.

$L_{Aeq, 15 \text{ min}}$ 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]

39. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

40. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.

[DUR0235]

41. 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]

42. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

[DUR0445]

48. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

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

[DUR0815]

50. 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]

51. Provision to be made for the designation of 1 durable and pervious car wash-down area/s. The area/s must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0975]

52. 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]

53. 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]

54. 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]

55. 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]

56. 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]

57. 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]

58. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

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

[DUR1925]

60. 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]

61. **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]

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

[DUR2085]

63. 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]

64. **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. A screened, graded and drained garbage storage area shall be provided within the boundary.**
[DUR2205]
65. **Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.**
[DUR2315]
66. **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]
67. **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]
68. **An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.**
[DUR2505]
69. **Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.**
[DUR2515]
70. **Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.**
[DUR2535]
71. **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]
72. **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]

- 73. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter.**

[DUR2615]

- 74. The area below the spa is to be graded, drained and ventilated.**

[DUR2795]

- 75. The names and 24 hour contact phone numbers of the site manager, project manager and all other persons provided with responsibilities under the provisions of the Amended Dewatering Management Plan for 4 Endeavour Parade, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC2009.113) shall be provided to Council's Environmental Health Officer prior to the commencement of dewatering operations.**

- 76. Prior to the commencement of de-watering operations an examination of the quantity of pre-existing sediment within the stormwater drainage network that is intended to receive the de-watering discharge shall be undertaken by methods considered acceptable to Council's Stormwater Maintenance Engineer. Closed circuit television (CCTV) footage and a report of the findings of the examination shall be provided to Council's Stormwater Maintenance Engineer prior to the commencement of de-watering operations.**

- 77. Prior to the commencement of de-watering operations the applicant or their nominated representative shall consult with Council's Stormwater Maintenance Engineer in respect to the most appropriate method of connection of the de-watering system to Council's stormwater drainage system. The applicant or their nominated representative shall comply with any and all directions as may be provided by Council's Stormwater Maintenance Engineer.**

- 78. All dewatering operations shall be carried out in accordance with the provisions of the Amended Dewatering Management Plan for 4 Endeavour Parade, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC2009.113). A copy of the Plan shall be provided to the site manager, project manager and all other persons provided with responsibilities under the provisions of the Plan. In addition a copy of the Plan shall be kept onsite while dewatering operations are being carried out.**

79. Hourly inspections extending over a 24 hour period of the stormwater discharge network that is receiving dewatering discharge shall be undertaken at the responsibility of the project manager during rainfall events. If the combined stormwater and dewatering flows are exceeding the capacity of the stormwater network, dewatering must temporarily cease until the peak flows from the catchment have subsided.
80. The frequency of the monitoring regime for the various parameters as listed within Section 14 of the Amended Dewatering Management Plan for 4 Endeavour Parade, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC2009.113) shall be increased at the direction of Council's Environmental Health Officer.
81. Upon completion of the dewatering operations, the applicant shall arrange for an inspection of any dewatering connection point to Council's stormwater system with Council's Stormwater Maintenance Engineer. The applicant shall comply with any directions issued by Council's Stormwater Maintenance Engineer in respect to the dewatering connection point.
- [DURNS01]
82. Swimming pool and spa pumps, air conditioning units, heat pump water systems and any other mechanical plant and equipment shall be located and installed so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

83. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.
- [POC0005]
84. Prior to the issue of an Occupation 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 civil works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act as set out in Councils 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 Occupation 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.

[POC0165]

85. 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]

86. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

87. 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]

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

[POC0745]

89. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

90. 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]

91. All landscaping is to be completed in accordance with the approved plans at the developer's expense prior to the issue of an occupation certificate.

[POCNS01]

92. 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) Restrictions as to user in the event of flood events to ensure access for residents of lower floor units to PMF (probable maximum flood) flood free refuge areas located in the upper floor units.

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.

[POCNS02]

USE

93. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

94. All wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

95. 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]

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

[USE1305]

97. All externally mounted air conditioning units, heat pump water systems, swimming pool and spa pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive or intrusive noise to any occupant of neighbouring or adjacent premises.

[USENS01]

98. Swimming pool and spa pumps, air conditioning units, heat pump water systems and any other mechanical plant and equipment shall not be operated should it be heard in a habitable room of a residence during restricted hours or at any other time should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USENS02]

GENERAL TERMS OF APPROVAL UNDER SECTIONS 89, 90 & 91 OF THE WATER MANAGEMENT ACT 2000 (Water use approval, water management work approval or activity approval under Part 3 of Chapter 3)

- All works shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.

- All works are to be constructed in accordance with Report HMC 2009.113 Dewatering Management Plan March 2010 and/or with conditions of development consent.
- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorized under the Native Vegetation Conservation Act 1997, if applicable.
- All precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works shall be taken.
- The water extracted shall not be used for any purpose other than temporary construction dewatering.
- Any water extracted by the works must not be discharged into any watercourse or groundwater if it would pollute that water.
- Polluted water shall not be discharged into a river or lake other than in accordance with the conditions of a licence granted under the Protection of the Environment Operations Act 1997.
- Tailwater drainage shall not be allowed to discharge onto adjoining roads, Crown land or other persons land, or into any river as defined in the Water Act 1912, or a groundwater aquifer, by surface or sub-surface drains or pipes or any other means.
- Water must not be discharged unless the ph of the water is between 6.5 and 8.5, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the Council's sewerage treatment system.
- The ph of any water extracted must be tested prior to the commencement of discharge and at least twice daily thereafter and a record kept of the date, time and result of each test in the site log.
- Works used for the purposes of the conveying, distributing or storing water from the dewatering work shall not be constructed or installed so as to obstruct the free passage of floodwaters flowing in, to or from a river or lake.
- Authorised officers of the NSW Office of Water (NOW), or any other duly authorized officer, must be granted unrestricted access to the works either during or after construction, for the purpose of carrying out any inspection or test of the works and its fittings or to take samples of water or material in the work.

- Any works deemed necessary by NOW for the protection or proper maintenance of the works, or for the control of the water extracted or prevention of pollution of groundwater, shall be undertaken on instruction to do so.
- A record shall be maintained of the actual volume of groundwater pumped (in kilolitres or megalitres) from the dewatering works, the discharge rate (in litres per second) and duration of pumping (number of days) and this information is to be provided to NOW if and when requested.
- A record shall be maintained of the actual volume and quality of any tailwater generated by the dewatering and this information is to be provided to NOW if and when requested.
- A record shall be maintained of the groundwater levels beneath and around the construction site throughout the duration of the dewatering and for a period of at least two (2) months following cessation of the required pumping, and this information is to be provided to NOW if and when requested.
- NOW may request the provision of interim information relating to the records described in the above three (3) conditions at any time during construction.

REPORT:

Applicant: Coraljet Pty Ltd
Owner: Coraljet Pty Ltd
Location: Lot 7 DP 232124, No. 4 Endeavour Parade Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$4,000,000

BACKGROUND:

History

2004

- A development application was lodged with Planning NSW for a six storey residential development on the subject site. During the assessment of that application, a number of issues were raised by Council and the Department. Council issues related to engineering matters while the Department's concerns focused on reflectivity and shadow.
- At the time, the owner chose to withdraw the application prior to determination and therefore pursuant to Clause 52 of the Environmental Planning and Assessment Regulation 2000, the development application is taken to have never been made.

2005

- SEPP 71 was amended and the provisions of that SEPP regarding the Minister as the consent authority were transferred to SEPP (Major Projects) 2005. The latter SEPP, by virtue of Schedule 2 made the proposed development which comprised a building of greater than 13m in height) a project to which Part 3A of the EP&A Act 1979 (as amended) applied.

2008

- Council's Development Assessment Panel (DAP) was addressed on 11 July in relation to an amended development proposal for the site comprising a six storey building with basement car parking for 12 vehicles. The amended scheme addressed issues raised by Council in 2004.
- A submission pursuant to Clause 6 of the SEPP (Major Projects) 2005 was forwarded to the Department of Planning on 18 August.

2009

- The Minister advised on 29 January that the proposal was a project to which Part 3A of the Act applies pursuant to Schedule 2 Clause 1(1)(g)(i) of the SEPP (building greater than 13m in height).
- A Preliminary Assessment Report and Request for the Director General's Requirements were lodged on 17 April.
- The Director General's Environmental Assessment Requirements were issued by the Department of Planning on 19 May.

- SEPP (Major Projects) 2005 was amended on 17 July to be known as SEPP (Major Development) 2005. Provisions regarding the types of development that the Minister was to be the consent authority for (by virtue of Schedule 2) were amended. The amended SEPP no longer related to buildings of greater than 13m in height within a 'sensitive coastal location'. Notwithstanding this, the Ministerial declaration that the project was one which Part 3A of the EP&A Act applies, remained.
- A request for revocation of the declaration was lodged with the Department of Planning on 6 August.
- The Major Project application was withdrawn and the Minister's declaration that the project was a Major Project to which Part 3A of the Act applies, was revoked on 21 August.
- The current development application, under Part 4 of the EP&A Act 1979 (as amended) was lodged with Council on 16 October 2009, as the consent authority.

The Subject Site

The site is legally described as Lot 7 DP 232124 and has a total site area of 913.17m². It is located on the eastern side of Endeavour Parade within 100m of the mean high water mark of the Tweed River. The site has an irregular shape. The northern and southern boundaries are consistent at 50.292m. However, the eastern boundary adjoining the foreshore reserve is considerably narrower at 12.668m than the western street frontage of 23.38m.

The site is relatively level with surface levels ranging from RL 2.0 AHD to RL 2.5m AHD. The narrow path to the north of the existing building is retained at RL 3.0m AHD. A 3.05m wide stormwater easement benefiting Council is located within the property along the extent of the southern boundary.

The existing structure on site comprises a single storey, brick and tile multi unit building containing four dwellings (2 x 2 bedroom; 2 x 1 bedroom) dating back to a 1970's construction. It is nearing the end of its economic life.

Vegetation on site includes various species of trees and shrubs, none of which retain any significant ecological status.

The Proposed Development

The proposed development includes:

- Demolition of existing structures on site
- Erection of a six storey multi dwelling housing building comprising five (5) units and basement car parking for twelve (12) vehicles
- Associated site works, landscaping, fencing and provision of facilities.

The applicant states:

“The building comprises an attractive contemporary design that provides strong vertical and horizontal articulation through the use of cantilevered balconies, shaded spaces and variation in cladding materials. The proposed building has been designed to achieve full compliance with the prevailing planning controls and seeks to optimise the residential amenity of the units for future residents while minimising potential impacts on adjoining properties including the foreshore reserve.”

Basement

The basement is set clear of the 3m wide stormwater easement running parallel to the southern boundary and provides a total of 12 onsite car spaces (including 2 designated visitor spaces – one of which doubles as a car wash bay) and storage rooms associated with the five units. Electrical and fire service provisions are also located at basement level.

Existing material will have to be excavated and removed from site to accommodate the basement and building foundation construction.

Ground Level / Level 1

The proposed ground levels will match existing ground levels.

Pedestrian access is directed from Endeavour Parade to the lift lobby area. This access is continued through the site along the southern boundary to access the adjacent foreshore reserve. The communal swimming pool located at the eastern end of the site is accessed through stairs from the basement.

A four-bedroom apartment is located on this level along with courtyards and decks to the north, south and east which are accessible from the bedrooms and main living areas.

Levels 2, 3 and 4

The floor plan of the building for these levels is similar to that below, but provides three bedrooms.

Levels 5 and 6

These levels comprise a two level penthouse with four bedrooms in a functional layout. The roof terrace is accessed from the upper level of the penthouse and includes a plunge pool, roof top garden area and an observation deck.

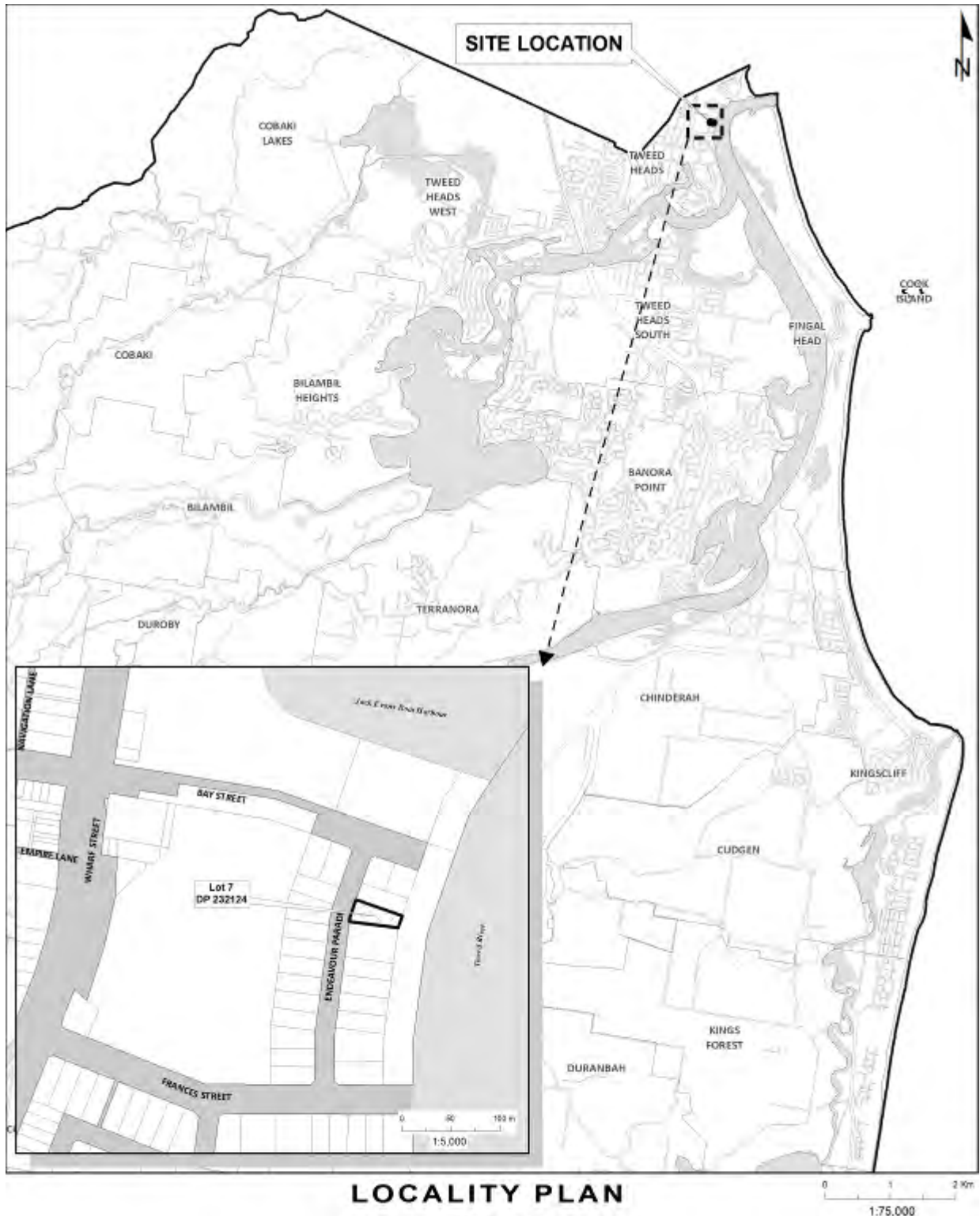
Public Submissions

The application was advertised and notified to adjoining owners for a period of 30 days given the proposal's status as integrated development. During the exhibition period, 20 submissions were received. An assessment of the submissions has been undertaken elsewhere in this report.

Summary

Having regard to the site's characteristics, the site history, zoning, intended use, proximity of similar residential development and environmentally sensitive land, amenity issues and an assessment against SEPP 1 and Tweed LEP 2000, the proposed demolition of existing structures and construction of six (6) storey multi dwelling housing with basement carparking is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 7 DP 232124
 No.4 Endeavour Parade, Tweed Heads

Filename: z:\veer\planning\mxd\AAP_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 02 June, 2010

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 Datum - GDA 94

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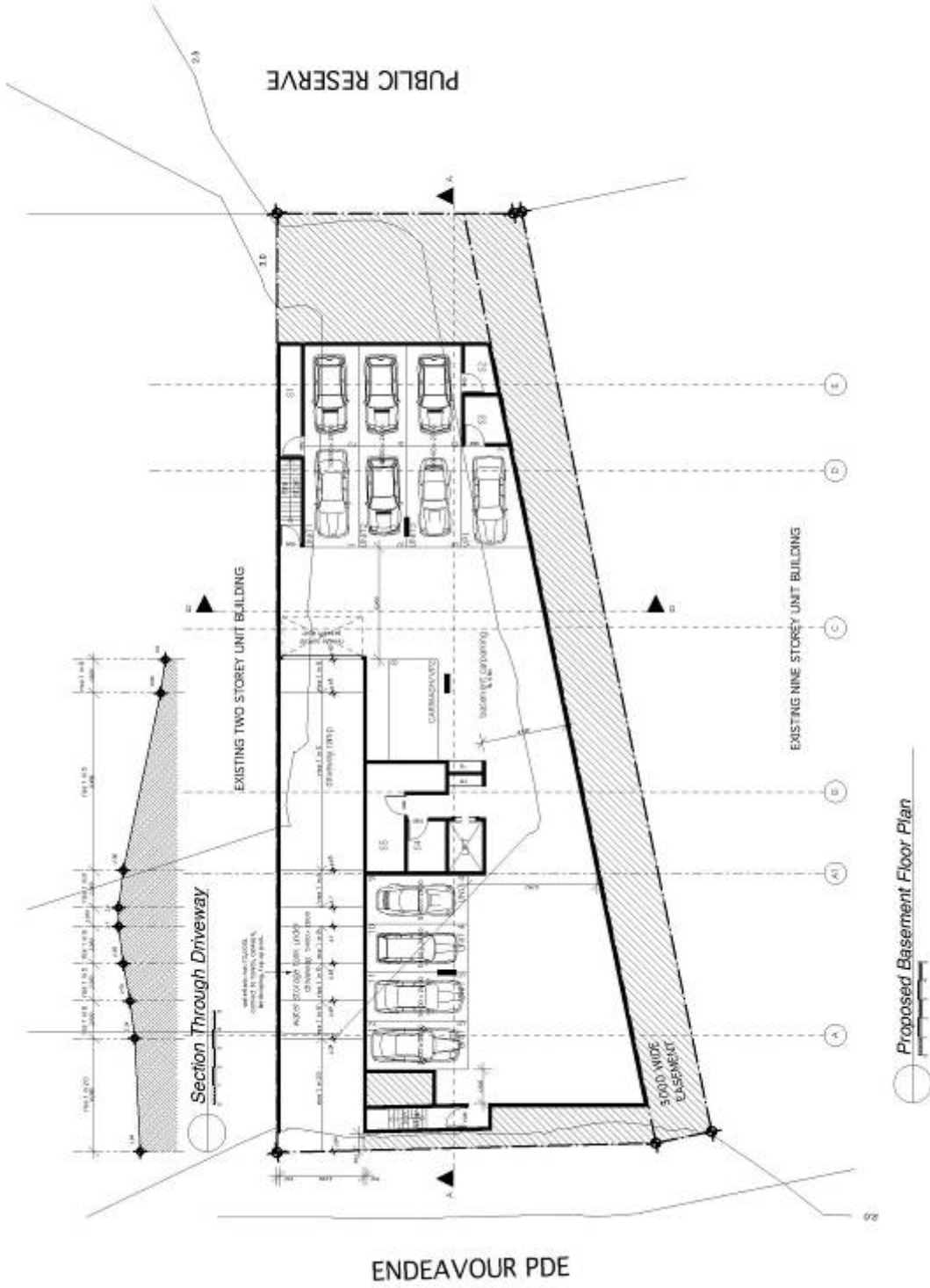
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 Murrumbidgee NSW 2484
 PO Box 810
 Murrumbidgee NSW 2484
 T: (02) 6670 2400 / 1300 260 872
 F: (02) 6670 2483
 W: www.tweed.nsw.gov.au
 E: planningreform@tweed.nsw.gov.au



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North	As Shown
Author	INTEGRAL DESIGN PTY LIMITED
Client	INTEGRAL DESIGN PTY LIMITED
Project No.	2009.01
Sheet No.	1



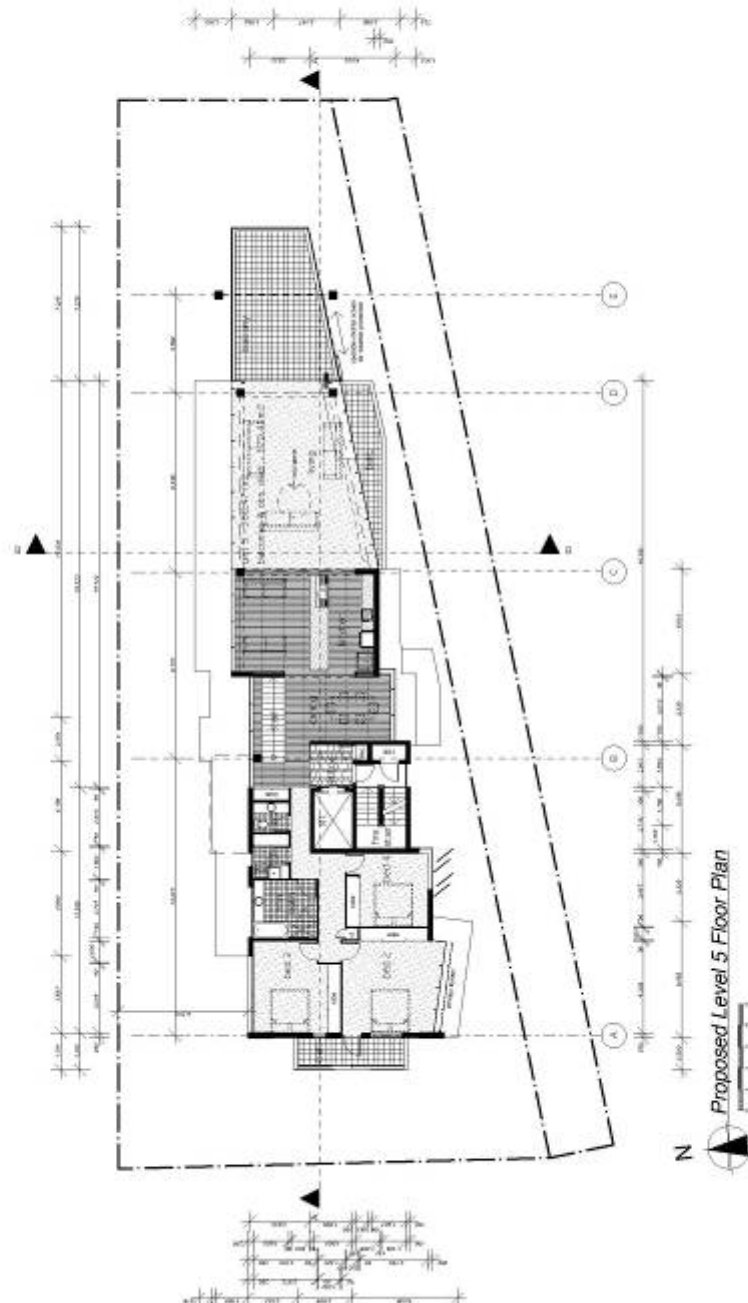
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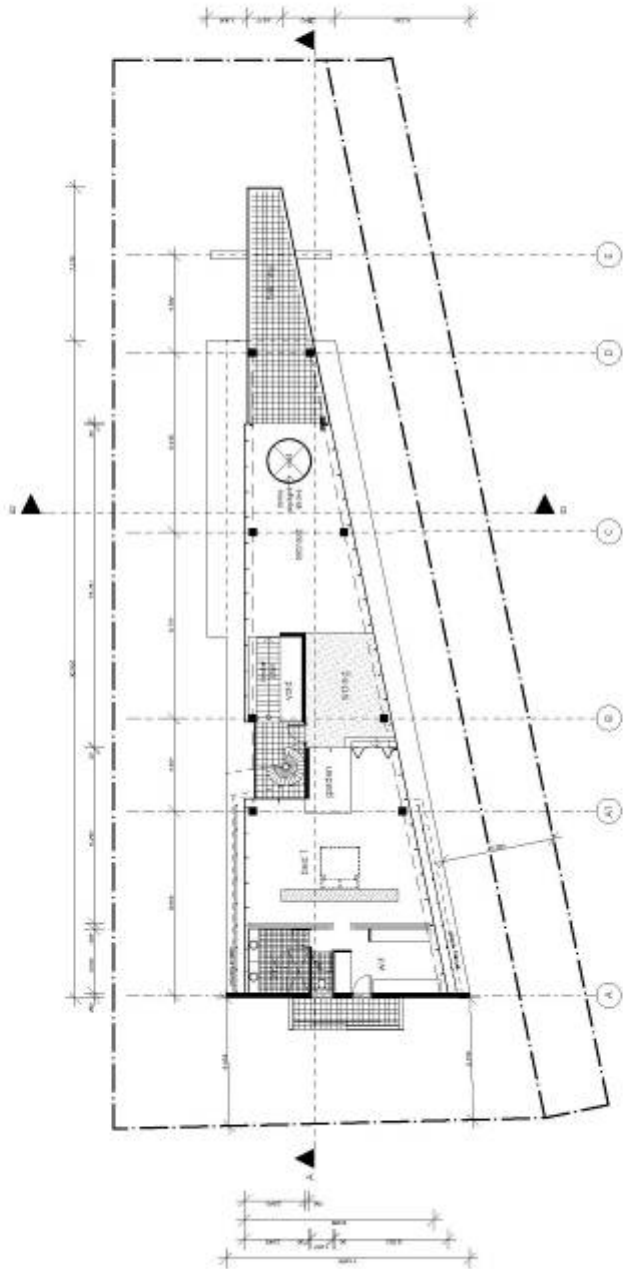
DATE: 11/20/2009
 TIME: 11:30 AM
 USER: JACOBSON, J
 PROJECT: 2009-0001

PROJECT NO: 5484
 DRAWING NO: 2DA.04
 SHEET NO: 1



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DATE: 15/06/2010
 PROJECT: 5404
 DRAWING NO: 2/DA.05
 SHEET NO: 1



N
 Proposed Level 6 Floor Plan

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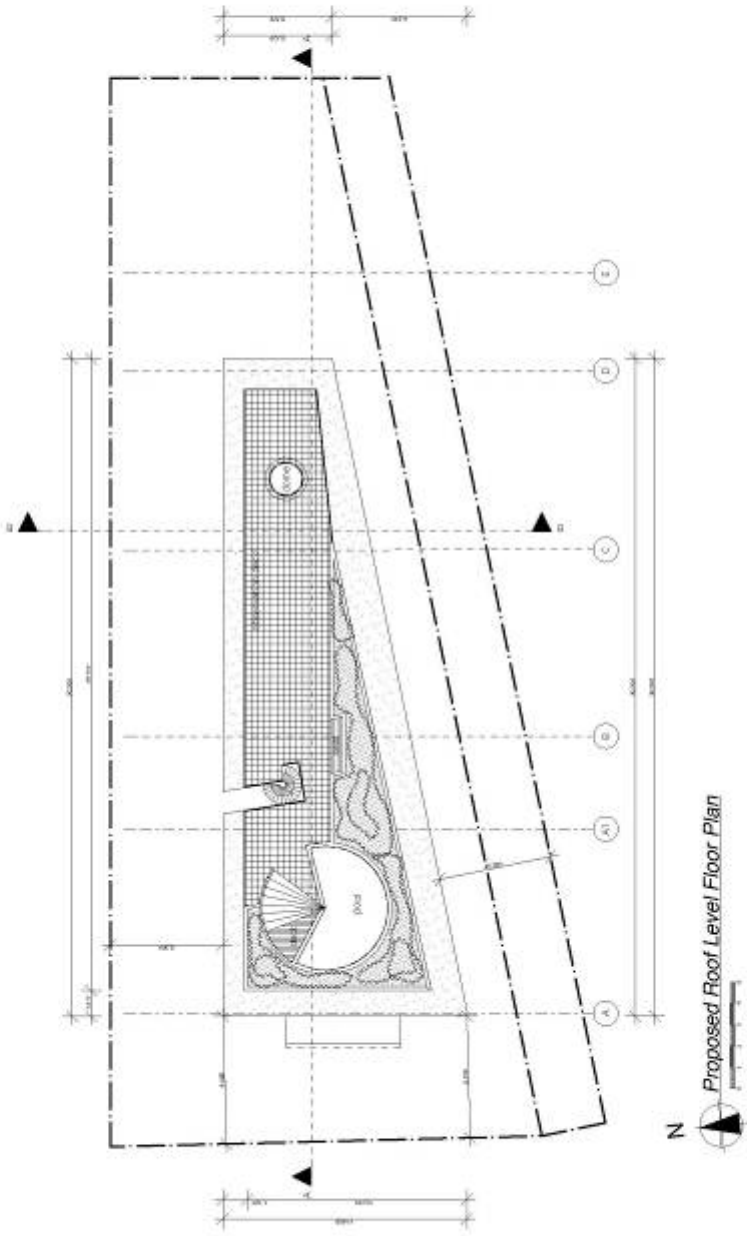
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Drawn by: **5494** Checked by: **2DA08** Date: **1**

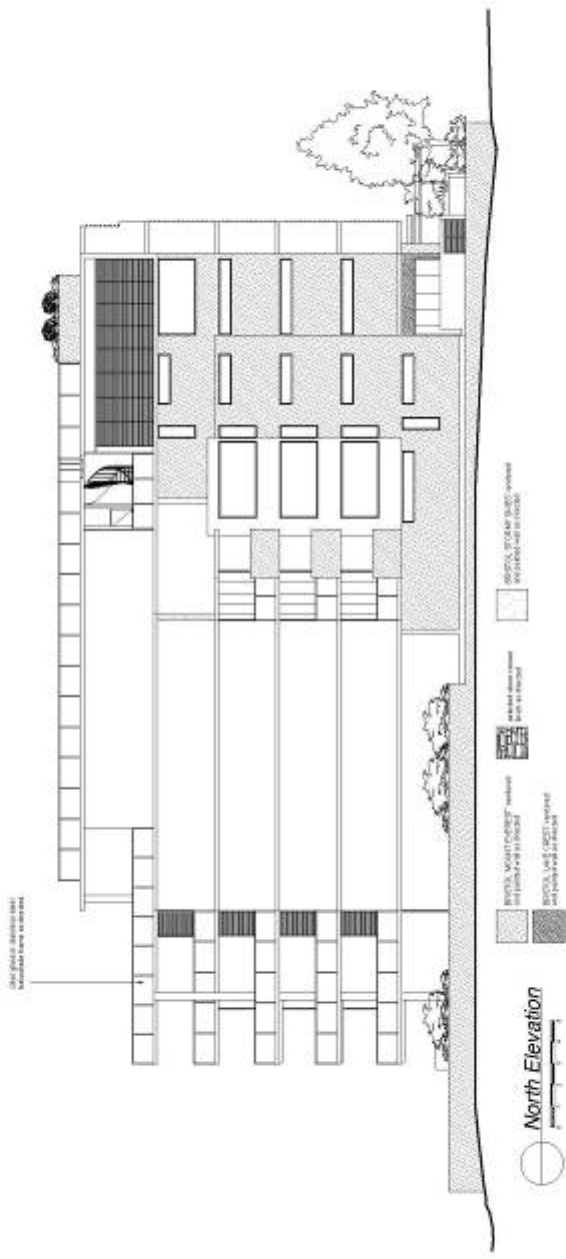
McConnell Douglas Architects
 100 South Beach Road, Suite 100, Brisbane, QLD 4005
 Phone: (07) 3292 1234 Fax: (07) 3292 1235
 Email: info@mcconnell-douglas.com.au

Project No: **11100**
 Drawing No: **2DA08**
 Title: **Proposed Roof Level Floor Plan**

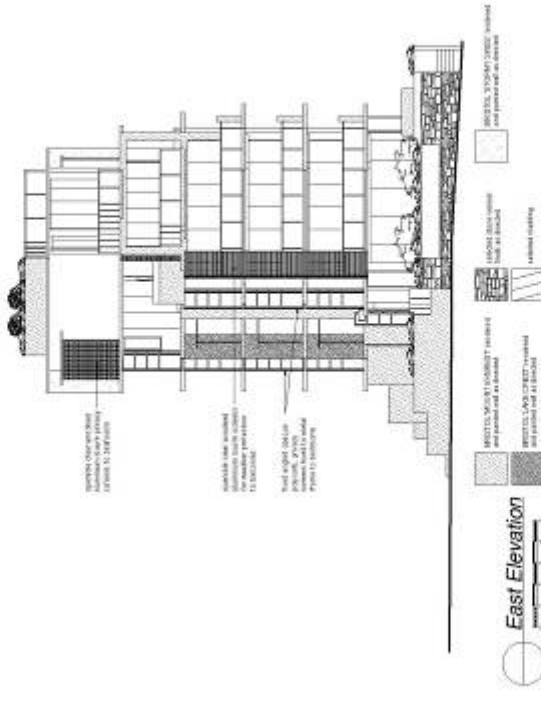
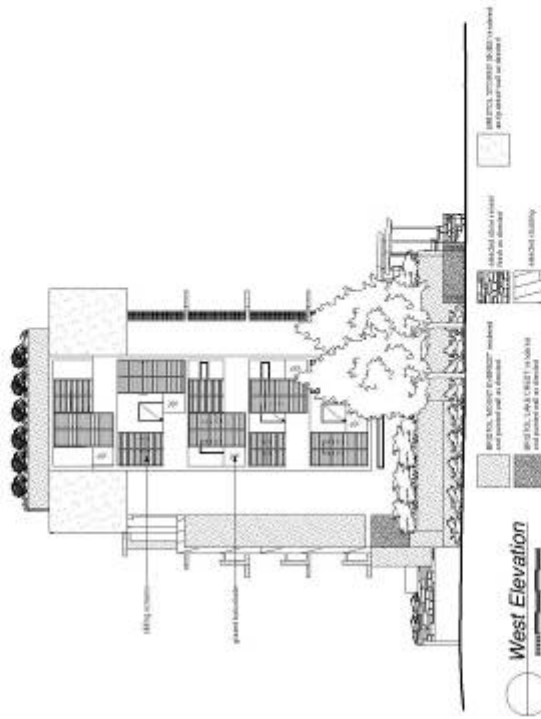


Plans with all amendments will have been prepared by the architect and approved by the Council. The Council is advised that the plans are subject to the provisions of the Resource Management Act 1991 and the Resource Management Regulations 1992. The Council is advised that the plans are subject to the provisions of the Resource Management Act 1991 and the Resource Management Regulations 1992. The Council is advised that the plans are subject to the provisions of the Resource Management Act 1991 and the Resource Management Regulations 1992.

Date: 15/06/2010
 Project Name: North Elevation
 Drawing No: 5404
 Revision: 2/DA.09
 Scale: 1:100
 Drawn by: J. Smith
 Checked by: J. Smith
 Date: 15/06/2010



<p>PLEASE NOTE: All dimensions are given unless otherwise stated. All dimensions are given in millimetres unless otherwise stated.</p> <p>THESE PLANS ARE THE PROPERTY OF THE ARCHITECT AND ARE NOT TO BE REPRODUCED OR USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.</p> <p>THESE PLANS ARE THE PROPERTY OF THE ARCHITECT AND ARE NOT TO BE REPRODUCED OR USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.</p> <p>IT IS THE RESPONSIBILITY OF THE CLIENT TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.</p> <p>THE ARCHITECT'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED AND DOES NOT EXTEND TO ANY OTHER MATTER.</p> <p>THESE PLANS ARE THE PROPERTY OF THE ARCHITECT AND ARE NOT TO BE REPRODUCED OR USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.</p> <p>IT IS THE RESPONSIBILITY OF THE CLIENT TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.</p> <p>THE ARCHITECT'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED AND DOES NOT EXTEND TO ANY OTHER MATTER.</p>	<p>DATE: 15/06/2010</p> <p>PROJECT NO: 11302</p> <p>CLIENT: [REDACTED]</p> <p>PROJECT NAME: [REDACTED]</p> <p>ARCHITECT: [REDACTED]</p> <p>SCALE: 1:50</p> <p>DATE: 15/06/2010</p> <p>PROJECT NO: 11302</p> <p>CLIENT: [REDACTED]</p> <p>PROJECT NAME: [REDACTED]</p> <p>ARCHITECT: [REDACTED]</p> <p>SCALE: 1:50</p> <p>DATE: 15/06/2010</p> <p>PROJECT NO: 11302</p> <p>CLIENT: [REDACTED]</p> <p>PROJECT NAME: [REDACTED]</p> <p>ARCHITECT: [REDACTED]</p> <p>SCALE: 1:50</p>
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SHADOW DIAGRAMS:

These plans, all documents and maps, when taken together with the information provided in the accompanying documents, constitute the entire content of the application for the proposed development. No other documents, plans, maps, or information are to be used in connection with the application. The applicant is responsible for providing all necessary information and documents to support the application. The applicant is also responsible for providing all necessary information and documents to support the application. The applicant is also responsible for providing all necessary information and documents to support the application.

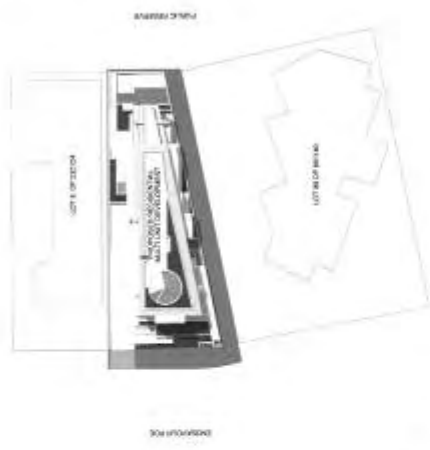
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Project No: **5404**

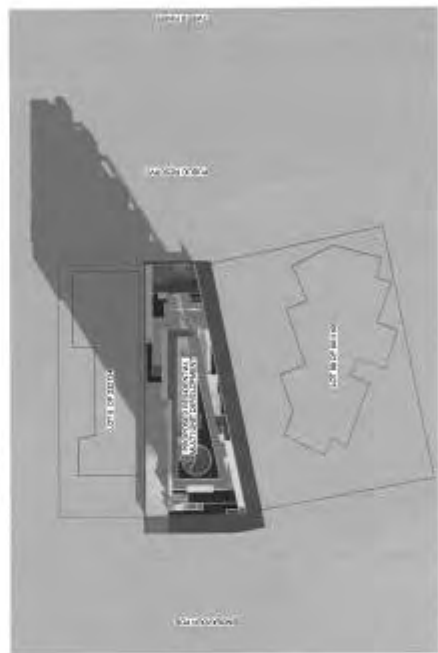
City: **20A.12**

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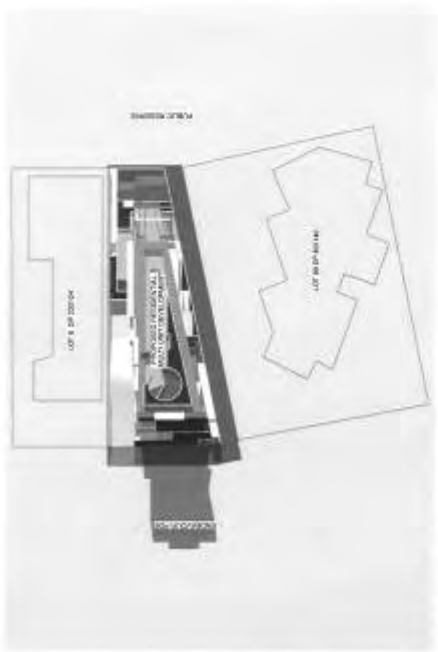
DATE: **DEC 21, 2009**



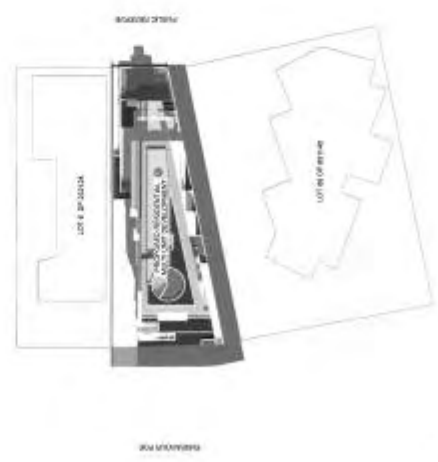
DEC 21/ 12 MIDDAY



DEC 21/ 6PM



DEC 21/ 9AM



DEC 21/ 3PM

PHOTOMONTAGE:

PHOTOMONTAGE



View from Endeavour Parade



View from Public Reserve

These plans of submission will be made known to the public under the provisions of the Access to Information Act (ATIA) and the Access to Information Regulations (A.T.I.R.), subject to the exemption provisions contained in the Access to Information Act and the Access to Information Regulations.

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DATE: 2010/05/18

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Project Name: [Redacted]
 File No.: [Redacted]
 Date of Issue: [Redacted]
 Issued By: [Redacted]
 Issued For: [Redacted]
 Plan No.: 5404
 County No.: 200A.16
 Date of Issue: 2010/05/18

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan 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”*.

Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The proposed development is considered to meet the provisions of Clause 4 by way of maximising the density of the property whilst being compatible with the existing and future streetscape and amenity of the area.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Appropriate conditions of consent have been applied, which will ensure that the proposed development will not significantly impact upon the surrounding structures. As such, the proposed development is considered to meet the provisions of Clause 5 of the LEP.

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 proposed development is considered to meet the primary objective of the zone by way of optimum utilisation of the site, whilst taking into account environmental constraints. The proposal generally complies with Clause 8(a).

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

The proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

Clause 11 - Zone objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 2(b) Medium Density Residential under the provisions of the LEP. The primary objective of the zone is to:

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

The subject application is for multi dwelling housing, and is considered to achieve acceptable design outcomes. The application can subsequently be considered to satisfy the primary objective of the zone and is therefore compliant with Clause 11.

Clause 15 - Essential Services

The objective of Clause 15 is to ensure that development occurs in an orderly manner and that development does not occur without adequate provision of essential services such as water and facilities for effluent disposal. The site is in an established residential area and has been assessed by Council's Development Assessment Engineer who has advised that connection to all essential services is available.

Clause 16 - Height of Building

The objective of Clause 16 is to regulate the height of development relative to its locality. The subject site is affected by a 6 storey height limit. The proposal is six storeys in height and as such complies with the provisions of this clause.

Clause 17 - Social Impact Assessment

The objective of Clause 17 is to ensure proper consideration of development that may have a significant social or economic impact and deems that where a proposal is likely to have a significant social or economic impact it must be accompanied by a socio-economic impact statement. The proposal is for infill multi dwelling housing and is not considered to have a significant social or economic impact. The proposal is subsequently compliant with Clause 17 of the LEP.

Clause 33 – Obstacles to Aircraft

Clause 33 requires Council to consider any current Obstacle Limitation Surface Plan or procedures for aircraft navigation services – aircraft operations plans prepared by the airport operator which has been notified to Council.

The Obstacle Limitation Surface (OLS) for the Tweed Heads area is RL 49.5m AHD. The proposed building has a maximum height of approximately 20.25m AHD and will allow for construction cranes to operate well below the OLS. As such, the application was not required to be referred to the Gold Coast Airport.

Clause 34 - Flooding

The proposed site is flood liable with a design flood level of RL 2.6m AHD. It is indicated within the proposal that the ground level of the proposed building will provide minimum floor levels of RL 3.7m AHD. It also states that the basement car park will have a floor level of RL 0.6m AHD with all entries to the basement car park being above RL 3.1m AHD. This is considered acceptable.

The PMF level for the site is RL 3.3m AHD (2005 Flood Study) and the results of the 2009 Flood Study may indicate higher levels. However, the higher upstairs floor levels will be above the PMF level and therefore provide satisfactory PMF refuge.

A Section 88B instrument will be required to ensure a suitable "restriction as to user" which allows access for residents of the lower floors to the higher floor level properties.

Clause 35 - Acid Sulfate Soils

The subject site is land classified as Class 2 Acid Sulfate Soils. Clause 35 states that Council cannot grant consent to works below the ground surface or works by which the water table is likely to be lowered unless it has considered a preliminary soil assessment.

Council's Environment & Health Unit has noted that the current surface level in the vicinity of the lift well is 2.4m AHD. Excavation of the basement to 0.5m AHD (1.8m) and an additional 1.8m for the lift well would require a total excavation depth of 3.6m in this area.

Additional sampling was undertaken in the vicinity of the proposed lift well. Acid sulphate soil is not considered a constraint for the site based on the sampling results. The proposal satisfies the provisions within Clause 35 of the LEP.

Clause 39 – Remediation of Contaminated Land

Council's Environmental Health Unit concluded that checks of the Tweed Heads topographic maps and aerial photographs did not reveal any potentially contaminating activities at the site. No cattle dip sites are present within 200m of the site. Therefore, contamination is not considered a constraint for this development and the proposal complies with SEPP 55.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

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

The proposal will not impede public access to the foreshore.

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

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

Clause 33: Coastal hazard areas

The subject site is not located within any mapped Coastal Hazard areas, nor is the site within any specific management areas identified within Council's Coastline Management Manual.

Clause 43: Residential development

Clause 43 contains provisions relating to residential development. The proposed density is considered to be a reasonable response to the existing land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Further, the existing road widths are satisfactory for the proposal and a detailed sedimentation and erosion control plan will be applied in relation to the construction. The proposal is considered to be consistent with the relevant provisions of Clause 43 of NCREP 1988.

Clause 51: Directors concurrence for tall buildings

This Clause states that Council shall not, without the concurrence of the Director, grant consent to a development application for the erection of a building over 14m in height.

The proposed building reaches a height of 20.251m, which is the greatest distance measured vertically from any point on the building to the natural ground level immediately below that point.

As the proposed building will exceed 14m from natural surface level to the highest part of the building, the Director General's concurrence is required.

However, Tweed Shire Council has an instrument of assumed concurrence and as such, it was not necessary for the application to be referred to the Department of Planning for this purpose.

Clause 81: Development adjacent to the ocean or a waterway

This clause states that Council shall not consent to a development application for development on land within 100m 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.

The proposed development is located on an allotment separated from the Tweed River by a 30m wide buffer of waterfront open space. This buffer has been designed to provide continual public access south from Jack Evans Boat Harbour to all aspects of the Terranora Inlet.

The proposal is consistent with the objectives of this clause as it does not interfere with the provision of the foreshore open space, nor does it detract from the amenity of the waterway. The proposal is consistent with the relevant foreshore management plan applying to the area.

SEPP No. 1 - Development Standards

The SEPP 1 Objection relates to the proposed development overshadowing the adjacent foreshore reserve, pursuant to Clause 32(b) of the North Coast Regional Environmental Plan 1998. Section 4 of Clause 32(b) states:

‘4 Council must not consent to the carrying out of development :

- (b) Elsewhere in the region, if carrying out of the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time)’.*

The proposal results in the overshadowing of the reserve immediately adjacent to the site. This section of the reserve is part of a pedestrian and cycleway link from Jack Evans Boat Harbour all the way around the coastal section of Tweed Heads to the south.

The applicant has acknowledged that the proposed development will result in overshadowing of the reserve prior to 6.00pm midsummer and prior to 3pm midwinter. A diagram is attached that indicates the extent of overshadowing.

Having regard for the underlying objective of the development standard, that is to protect the recreational integrity of foreshore open space areas, the applicant has submitted the following in support of the SEPP 1 objection:

“Compliance with the foreshore shadow development standard would preclude the type of high density residential development intended for the site as expressed by the zoning and objectives of the 2(b) zone under the Tweed LEP 2000 and the prevailing 6 storey height limit.

The proposed building will result in some afternoon shadowing of the linear park and cycleway however due to the nature of the foreshore open space and the temporal and casual uses of the space due to the lack of a beach or direct access to the river, the resultant impact on the amenity of the open space is considered minor.

In this case, strict compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

It is submitted that strict adherence to the development standards contained in Clause 32B(4)(a) of this Instrument relating to overshadowing of beaches and foreshore open space areas is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- At 6:30pm midsummer shadows cast by the proposed buildings, which encroach onto the foreshore reserve are relatively narrow and therefore affects only a small portion of the reserve;*
- At the stated time, the shadows cast by the proposed building would not extend to any beach areas and therefore will not impact on sunbathers and surfers;*
- The shadow does not impact on any areas used by the public for formal recreational activities;*
- The shadow cast by the building is similar to that cast by the buildings located on the adjacent properties.*

We conclude that the proposed residential unit building comprising 5 units does not raise any matters of Regional Planning significance and there is considered to be no public benefit in maintaining the standard.

The proposal is compliant with the 6 storey height limit which applies to the site and presents a narrow edge to the north/south axis, resulting in minimal shadow.

Accordingly, in the circumstances of this case, non-compliance with the development standard is well founded. We conclude that upholding the Objection is considered to be in the public interest and consistent with the objects of the Act."

Council 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 objectives of the NCREP are achieved despite the variation to the development standard. The objectives of the NCREP relate to the enhancement of the visual quality of the coastal environment, the provision for appropriate recreational use of beaches, the protection of water quality of the coastal environment, to minimise risks to people and property resulting from coastal processes and changes to coastal processes resulting from development, and to encourage retention of natural areas and regeneration of those natural areas which are already degraded.

The shadow appears to be restricted to a small part of the foreshore reserve that is not used for formal recreational activities, swimming, sunbathing or surfing. The proposal will not detract from the visual quality of the coastal environment nor will it affect the use of the area for cycling and pedestrian activities.

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.

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 32B of the NCREP is not considered to raise any matter of significance for State or regional planning.

The proposal is situated adjacent to a foreshore reserve. The area to be in shadow does not contain permanent facilities or equipment in which people would use to congregate. In this instance there would be little public benefit by maintaining the development standard, the remaining section of the 6(a) land will continue to be used for recreational purposes.

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

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

SEPP No. 55 - Remediation of Land

Clause 7 of this policy provides that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council's Environmental Health Unit concluded that checks of the Tweed Heads topographic maps and aerial photographs did not reveal any potentially contaminating activities at the site. No cattle dip sites are present within 200m of the site. Therefore, contamination is not considered a constraint for this development and the proposal complies with SEPP 55.

SEPP No. 65 - Design Quality of Residential Flat Development

The applicant has submitted a Design Verification and statement addressing the 10 design principles under SEPP65. The following comments are provided on these design principles.

Context

The development is considered to be consistent with the desired future character of the area. The applicant has submitted that the development has been designed in regard to the geographical context in which it is located and the natural and built features of the area. The context is based on the development's relationship to Tweed Heads and the redevelopment of the locality for high density purposes.

The building has been designed to address both Endeavour Parade and the Tweed River and is of a contemporary design that will not detract from the surrounding built environment. The proposed building addresses the reserve by placement of balconies and living areas along the frontage to activate the park interface and contribute to the desired residential high density context. The street is addressed by placement of balconies along the frontage.

Each façade of the proposed building responds to its orientation by provision and careful detailing of sunshading and privacy screen devices, window configurations and blank and stepped walls. External walls are progressively coloured and shaded to provide articulation and visual interest. The entry wall is identified by decorative metal cladding to provide a sculptural effect.

Scale

The proposed building bulk and height is in keeping with the scale of development of the adjacent Sirius apartments to the south and recent developments in Ivory Crescent including Ivory Place and Waterline apartments.

The façade treatment is articulated and detailed to enhance the visual impact, reduce large expanses of uninterrupted walls and ensure mutual privacy by screening large windows and balconies where overlooking adjoining properties and providing privacy screening where necessary.

The building will be progressively stepped in with height to reduce building bulk and comply with the building height envelope. The proposed ground floor entry awning will establish a human scale at street level, whilst providing shelter and shade for users and define the entry to the building.

Built Form

The proposed design achieves a built form that is consistent with the desired future character of the area as set out in the relevant development controls. The building alignments are consistent with neighbouring developments and generally conform with the building plane envelopes on each side.

There is a minor encroachment of the envelope by protruding concrete slabs that provide weather protection. These encroachments do not adversely impact on neighbouring properties either by increased overshadowing or loss of privacy and can be justified on the grounds that they improve indoor comfort.

Density

The proposed building seeks to maximise the residential density available on the site without compromising the residential amenity of the proposed apartments. All apartments will have optimum views and aspect in respect to their height.

Resource Energy and Water

The applicant has submitted Nat HERS and BASIX certificates demonstrating the development is sound in terms of energy efficiency. The design of the development has been developed to maximize solar energy and natural ventilation.

Landscaping

Landscaping forms an integral part of the proposal. At ground level, deep planting zones are proposed along the reserve frontage. These areas will be planted with native species including trees, screening shrubs and native ground covers. The purpose of this landscaping is to contribute to the greening of the riverfront and provide privacy for the ground floor unit and pool area.

Along the side and street boundaries, planter boxes on top of the podium slab provide a visual screen between neighbouring properties and facilitate mutual privacy.

Appropriate conditions of consent have been imposed to ensure that landscaping will be completed prior to occupation of the development.

Amenity

The proposed development contains appropriate room sizes and shapes, solar access, natural ventilation, visual and acoustic privacy, indoor and outdoor space and efficient layouts.

Safety and Security

The proposed development achieves safety and security for the public domain as windows and balconies provide natural surveillance. Additional security measures are incorporated in the internal design including access to the carpark, lift lobby and an intercom to screen visitors.

Social Dimension

The proposed building will provide an additional five high quality apartments in an area where there is strong demand for such apartments close to the town centre and associated facilities.

Aesthetics

The footprint reflects the arrangement of internal spaces into two major zones: the living area zone at the river side and the sleeping zone at the street end, bridged by the service core. Building aesthetics are composed of:

- elements such as facades, balconies, walls, columns, windows, roofs, sunshades and privacy screens
- materials such as masonry, glazing and metalwork
- textures such as cement render, paintwork and metal cladding and colours.

External columns are clearly defined on the balconies while windows, sunshades and privacy screens reflect the prevailing aspect responding to the environment.

Facades are stepped with height and coloured in muted greys and whites graded to assist in reducing the appearance of building bulk and to articulate the structure. Generally lighter colours are proposed with increasing height.

The proposal considers energy efficiency, landscape, amenity, safety and social context and is considered to be of good design quality.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality. It will not restrict public access to the foreshore.

SEPP (Major Projects) 2005

The applicant had lodged a development application with Planning NSW under the then provisions of SEPP 71 (overshadowing of coastal reserve) in 2004.

In 2005, SEPP 71 was amended and the provisions of that SEPP regarding the Minister as the consent authority were transferred to SEPP (Major Projects) 2005. The latter SEPP, by virtue of Schedule 2 made the proposed development which comprised a building of greater than 13m in height) a project to which Part 3A of the EP&A Act 1979 (as amended) applied.

SEPP (Major Projects) 2005 was amended on 17 July 2009 to be known as SEPP (Major Development) 2005. Provisions regarding the types of development that the Minister was to be the consent authority for (by virtue of Schedule 2) were amended.

The amended SEPP no longer related to buildings of greater than 13m in height within a 'sensitive coastal location'. Notwithstanding this, the Ministerial declaration that the project was one which Part 3A of the EP&A Act applies, remained.

The applicant requested a revocation of the declaration on 6 August 2009.

Subsequently, the Major Project application was withdrawn and the Minister's declaration that the project was a Major Project to which Part 3A of the Act applies, was revoked on 21 August. The applicant was free to lodge a development application with Council as the consent authority under Part 4 of the EP&A Act 1979.

SEPP (Building Sustainability Index: BASIX) 2004

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

Tweed Coastline Management Plan

Council Officers have reviewed the proposal and advised it is consistent with the plan. The proposed development is significantly clear of any hazard lines and the subject site is not located within any specific management areas identified within the Coastline Management Plan.

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

The shire-wide Draft Tweed City Centre Local Environmental Plan 2009 has recently been on exhibition. The draft zone is R3: Medium Density Residential. The proposed Residential Flat Building is a 'child' form of 'Residential' development which is permissible in the relevant zone under Item 3 through its omission in Item 2 or 4. There is a proposed 22m height limit on development in this proposed zone. There is no minimum lot size, but a desired Floor Space Ratio of 1.8:1. The proposed development meets these criteria.

Land Use Controls:

R3

3 Permitted with consent

Attached dwellings; Boarding houses; Child care centres; Community facilities; Group homes; Health Consulting Rooms; Home Industries; Kiosks; Multi-dwelling housing; Neighbourhood shops; Places of public worship; Seniors housing;

Any other development not specified in item 2 or 4

Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

This Development Control Plan does not apply to the proposed six-storey development. An assessment of the adequacy of the residential design is presented above under SEPP 65 – Design Quality of Residential Flat Development.

A2-Site Access and Parking Code

The section requires the provision of two (2) car spaces per 3 or more bedroom unit, as well as one (1) visitor space per four units. As a result, twelve (12) on-site car spaces are required. The development plans indicate a total of ten (12) spaces within the basement.

Tandem spaces for Units 1, 2 and 3 are provided and double spaces for Units 4 and 5 are provided. One visitor space doubles as a car wash bay.

Council's Development Engineer is in support of this configuration, subject to the tandem spaces being allocated to a specific unit.

A3-Development of Flood Liable Land

The proposed site is flood liable with a design flood level of RL 2.6m AHD. It is indicated within the proposal that the ground level of the proposed building will provide minimum floor levels of RL 3.7m AHD. It also states that the basement car park will have a floor level of RL 0.6m AHD with all entries to the basement car park being above RL 3.1m AHD. This is considered acceptable.

The PMF level for the site is RL 3.3m AHD (2005 Flood Study) and the results of the 2009 Flood Study may indicate higher levels. However, the higher upstairs floor levels will be above the PMF level and therefore provide satisfactory PMF refuge.

A Section 88B instrument will be required to ensure a suitable "restriction as to user" which allows access for residents of the lower floors to the higher floor level properties.

A9-Energy Smart Homes Policy

The proposal is consistent with the SEPP (BASIX) requirements and the subsequent requirements of the DCP.

B2-Tweed Heads

The proposed multi dwelling building is located within the Tweed River Precinct (one of three High Density Residential Precincts) the objectives of which are:

- to develop the precincts primarily as high density residential areas which respect existing residential amenity
- provide additional choice in housing accommodation to cater for an increasing variety of household types
- facilitate an increased residential population in proximity to the sub regional centre of Tweed Heads to maximise economic and social benefits
- promote the efficient use of residential land
- develop a streetscape that reflects the climate, topography and lifestyle of the locality.

It allows for a range of building heights from 50m AHD (Seascape) to six storeys (most of the residential area) to a small patch with a two-storey height. The precinct contains many old buildings, such as the multi unit building on the site that is proposed to be demolished. The Tweed River Precinct is known to contain the more modern buildings in the High Density Residential Precincts.

An assessment of the proposal against the provisions of DCP B2 reveals that it is in compliance with the relevant development controls in relation to building envelope, resultant shadow, view corridors, design guidelines and open space.

The proposed multi-dwelling housing is not inconsistent with the objectives of this DCP or the overall vision for Tweed Heads.

Tweed Heads Master Plan

The Master Plan establishes a vision for the Town Centre of Tweed Heads. It presents the desired future character for Tweed Heads and provides urban guidelines for each precinct together with indicative plans and sections to illustrate the principal planning objectives and design intent. The proposed application is generally consistent with the objectives and numerical requirements as detailed in the Plan.

The proposed multi dwelling building is located within the high density residential 'Riverside' precinct. This precinct is intended to encourage high density development in accordance with maximum height controls, which, in this instance, is six storeys.

The site is not located within the significant view corridors identified in the Master Plan between Razorback and Flagstaff Hill.

The Master Plan is not a statutory document but it does include urban design principles that are relevant to the individual precincts. The proposed development is not inconsistent with any of the urban design principles for the Riverside High Density Residential precinct.

Tweed City Centre Draft DCP

The subject site is located within the land to which this draft DCP applies in Tweed Heads within the Tweed River Precinct. Provisions within this plan supplement those within the draft Tweed City Centre LEP which has been addressed previously in this report.

This plan repeals Section B2 of the Tweed Shire DCP (as addressed above) and does not apply to any development lodged but not finally determined before the commencement of the plan.

The desired character of the Tweed River Precinct is for a built form that maximises view sharing with higher buildings away from the riverfront and lower along the river. Residential buildings are to have generous balconies and roof terraces and be surrounded by landscaping elements.

The draft DCP caters well for mixed use developments and commercial developments. Infill residential developments of a solely residential nature are unlikely to comply with mixed use controls, especially if on irregular shaped, narrow allotments such as the subject site.

The proposed development has an average front setback of approximately 6m however the basement and service areas are located within the setback. The draft DCP specifies a desired setback of 4m as the predominant building line with a street frontage height between 15-20m. Other provisions generally apply to the commercial core and mixed use zone.

The draft DCP recommends that SEPP 65 – Design Quality of Residential Development be applied in assessment of multi dwelling housing. SEPP 65 has been addressed previously in this report.

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

Clause 92(a) Government Coastal Policy

The subject site is located within the Coastal Zone and as such the provisions of the Coastal Policy apply to the site. The proposed development is consistent with the objectives of the Coastal Policy.

Clause 92(b) Applications for demolition

The subject application proposes demolition of the existing dwelling and garage structures on site. This has been assessed by Council's Building Unit and deemed to be acceptable.

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

Context and Setting

The subject site is located within a well established medium density residential area of Tweed Heads. The locality primarily consists of multi dwelling houses arranged in apartment building / flat format. Tall buildings along the foreshore such as 'Seascape' (over 20 storeys), 'Sirius' (8 storeys) and 'Nassau' (six storeys) are located within 80m to the north and 160m to the south of the subject site. As such, the proposed development is considered to be consistent with the desired character of the surrounding area.

Access, Transport and Traffic

The proposed development has frontage to Endeavour Parade which is an asphalt sealed road pavement in good condition. The horizontal alignments, vertical alignments and cross section profile are considered satisfactory.

There are currently four (4) layback accesses / driveways servicing the subject site. These are to be removed and a kerb and gutter is to be constructed along the full frontage of the site in conjunction with the construction of a new driveway and associated layback kerb as required by the proposed development.

Proposed vehicular access to the subject site ramps up to achieve flood immunity level at RL 3.1m AHD before ramping down to the car parking spaces at basement level (RL 0.6m AHD).

The 2(b) Medium Density zoning of the subject site suggests that the local road network is capable of accommodating the additional traffic demand generated by the proposed development.

Noise

A general noise condition is to apply during construction and demolition works. The development will include a communal swimming pool, spa heated with electric heat pump, separate plunge pool for the penthouse, water tank (70,000L) beneath the driveway and air conditions. General conditions are to apply.

Demolition

On site is a single storey block of four (4) units of brick construction with a tiled roof. A slab on ground is present along with domestic style vegetation. A pre-demolition testing report for the subject site was submitted. All results were below the limit of reporting. Contamination as a result of pesticide application beneath the slab is not considered a restraint.

Cumulative Impacts

The proposed development is not considered to instigate any cumulative impact as the desired height limit for the subject site and surrounding locality is six storeys. It would be difficult for a building of that height not to cast any shadow of the adjoining foreshore reserve.

It is clearly the intention of planning policy to develop the local area in accordance with the abovementioned height objectives.

(c) Suitability of the site for the development

Surrounding Land Uses/Development

To the north of the subject site is an older style, two storey residential flat building with frontage to Endeavour Parade and two older style, three storey residential flat buildings with frontage to Bay Street. Further to the north on the opposite side of Bay Street is the 23 storey 'Seascape' residential building which is located adjacent to the Jack Evans Boat Harbour.

To the east of the site is the grassed foreshore reserve which forms the western bank of the Tweed River. This reserve contains a pedestrian and cycleway link. This land is separated from the river by a boulder wall which edges the river. No beach or other access is provided to the water's edge which is located approximately 2m below the level of the cycleway. Further to the east on the opposite side of the river is Letitia Spit and Fingal Beach.

The impact of the building on the adjacent foreshore cycleway area is minimised due to the long and narrow shape of the building which is oriented on an east/west axis and the provision of generous setbacks from the northern and southern boundaries.

To the south of the site is the eight storey, multi unit building known as 'Sirius'. Further to the south are a number of one to three storey residential flat buildings and the seven storey multi unit building 'Nassau' located to the north of Frances Street.

To the west on the opposite side of Endeavour Parade are a number of one to four storey residential flat buildings. Further to the west are the Tweed Centro Shopping Centre and other commercial buildings associated with the Tweed Heads City Centre.

Site Design and Internal Design

The design of the proposed multi dwelling building optimises the site opportunities by appropriate orientation for solar access, views and natural cross ventilation. The proposed building provides a maximum of only one dwelling per floor to provide for optimum natural light and ventilation and to allow the most practical and energy efficient orientation and design of each unit.

The proposal also respects the privacy of the existing and likely future development on the surrounding properties. This is addressed by way of appropriately dimensioned windows and balconies along with privacy screens where required. The privacy screens have been designed to be an integral part of the external appearance of the building.

Site Drainage

The proposed development has sufficient grades to convey stormwater and roof water to the Endeavour Parade road kerb and gutter and the site will continue to drain via overland flow to the street. On-site detention is not required.

Natural Hazards - Groundwater

Further sampling of groundwater and a detailed groundwater quality report was required to be submitted by the applicant. The report was to include details of the proposed treatment systems.

This was supplied by the applicant, thus satisfying requirements from the Environmental Health Unit.

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

Public Authority Submissions Comment

This application was identified as integrated development under Sections 89, 90 and 91 of the Water Management Act 2000 and was referred to the Department of Environment, Climate Change and Water (DECCW) for consideration in relation to water use approval, water management work approval / activity approval under Part 3 of Chapter 3.

Conditional approval was granted by DECCW with the inclusion of a schedule of conditions to be included in any development consent granted.

Public Submissions Comment

The proposal was exhibited for 30 days from Wednesday 18 November to Friday 18 December 2009. A total of 20 submissions were received. The issues raised within the submissions have been summarised below:

Summary of Issues

- Block of land is too small for the development
- Parking and traffic congestion and impact upon refuse collection
- Height limit of 6 storeys sets a precedent being inconsistent with all other zoning in the Precinct for lots fronting the river and should be 4 storeys only
- Side setback of 3m not acceptable for a tall building
- Close proximity of proposal to 'Sirius' building causing overshadowing, creation of wind tunnels and intensification of strong winds
- Overshadowing of foreshore open space before 3pm in mid winter and by 6:30pm in summer
- Loss of solar access, privacy and views to 'Sirius' building
- Contrary to government policy discouraging intensification of development in coastal risk areas
- Construction noise and lack of construction vehicle parking
- Construction of the building will not cater for increasing population in Tweed Heads as price of units will be too high
- Asbestos issues (demolition)
- Development may not be completed leaving a part finished building

Applicant's Response:

Increased Traffic & Air Pollution

The proposed development comprises demolition of the existing units on the site and the erection of a new building comprising 5 units over 6 storeys. The proposal provides compliant car parking for residents and visitors within the site. The net increase of residential units on the site is not considered likely to contribute to unreasonable increase of traffic or air pollution created by the 'additional cars'.

Wind Tunnel Effect

The proposed building will comprise 6 storeys and will be located approximately 12m from the adjoining building. The site may be subject to winds which are typical of this area from time to time, however the proposed building is considered to be similar to many others recently constructed or approved within the immediate area. The proposed building is considered to provide generous side boundary setbacks and is considered unlikely to result in any unreasonable wind effects on the locality.

Private Impact and Proximity to 'Sirius'

The proposed development of the site has been demonstrated to comply with the planning controls which apply to the site. In an urban area which encourages high density development it is inevitable that sites will be developed which will affect the present separation or lack of buildings on adjacent sites. The proposed development which comprises less than one unit per floor has been specifically designed to maximise privacy. Measures incorporated in the design include the orientation and layout of rooms, the location of private open space decks, provision of fixed louvers to protect privacy, sensitive rooms and generous side setbacks. In this regard the proposed development is unlikely to result in any unreasonable privacy impacts on adjoining properties.

Overshadowing

The proposed building is located within a high density residential precinct. The recently released Draft Tweed Heads City Centre LEP 2009 indicates that the new height limit for this site will be 22m, which would facilitate a seven storey building design on the site. The proposed building complies with the statutory height limit of six (6) storeys (TLEP 2000) and building envelope (TDCP 2007 Section B2 – Tweed Heads). The Shadow Diagrams show the shadow impacts of the proposed 6 storey development. A SEPP 1 objection accompanied the Development Application in relation to foreshore shadow.

The shadow diagrams indicate that shadow impact at midsummer will not affect adjoining properties until approximately 4pm. At this time, the building will begin to cast shadow across the property to the north of the site.

At midwinter the proposed building will cast shadow over the property to the south. However, the communal open space and units below the proposed building height (and the shadow cast downward by the sun angle) will remain predominantly unaffected through to midday.

In the context of the surrounding development and the high density residential planning controls applying to the site, the design of the proposal is consistent with the anticipated development of this site and the immediate area. The proposal divides generous setbacks to the southern boundary and therefore maintains reasonable solar access to the 9 storey building located on that site.

Views

As stated the proposed development complies with the applicable planning controls applying to the site. It is unreasonable for the residents of the 9 storey building to the south of the site to expect to retain a view across the subject site where it represents the anticipated development of that land. In this regard the proposed building is not designed 'in front' of the building to the south, rather it is located 'beside' that building. Accordingly the primary view from that land to the south is to the east and not to the north. The proposed development will maintain generous side setbacks and a view corridor along the boundaries toward the primary view to the east. The submissions in relation to the effect on views are not considered to have any determining weight.

Climate Change

The subject site is not located within any area identified on the Tweed Shire Council Coastline Hazard Definitions Study and is therefore not subject to any coastal erosion hazard. In addition, the proposed building design has addressed the 1 in 100 design flood including freeboard for minimum residential floor levels and refuge for the probable maximum flood (PMF) event. The proposed development is not in any immediate risk due to climate change or coastal hazard.

Building Height 4 Storeys

The site has a statutory building height limit of 6 storeys. The recently released Draft Tweed City Centres LEP 2009 indicates that the site is to have a new building height limit of 22m. This new height limit would facilitate a building of 7 storeys on the subject site. Therefore, the consideration of a lower building height is not relevant to this application.

Council Assessment:

The applicant has adequately addressed issues raised in the abovementioned submissions. It is clear that the size of the allotment is adequate to cater for five multi dwelling units – being an actual increase of only one unit in comparison to the existing single storey building currently on the site.

Similarly, the modest increase in density of the site will result in a minor increase in traffic movements and requirements for refuse collection.

The height limit for the subject site and allotments within the Tweed River Precinct is predominantly six storeys. The proposal is well within the desired height limit and does not set a precedent for development that is permitted within the locality.

The boundary setbacks are consistent with building envelope controls as set out in the relevant development control plans and SEPP 65. The building has been designed carefully to respect solar access and privacy to adjoining development.

The proximity of the building to the adjacent 'Sirius' building is in direct correlation to the existing setback on that property. The setback increases as the land moves eastwards. Setbacks are considered to be appropriate for the site given the constraint of a 3m easement on the southern boundary.

Overshadowing is considered consistent with a permissible development on the subject site with a height limit of six storeys. The Sirius building enjoys views to the east and the proposal is consistent with view sharing policy.

The proposal is consistent with State government policy in relation to the site density. The subject site is not considered to be located in a coastal risk area.

There will be some disturbance whilst the building is constructed but this is considered normal for any development and surely was the case when the adjoining eight-storey Sirius building was constructed.

The building increases the number of units from four to five and provides larger 'family' sized units that will most likely be sold at the top end of the market. Although the density of the site is not increasing significantly, the proposal provides an alternative market option that satisfies the need for a variety of residential unit sizes to be available in the Tweed Heads area.

Asbestos issues have been dealt with by Council's Environmental Health Officers and the application has been conditioned accordingly to ensure safety standards are met when dealing with the removal of this material.

Whether or not the development proceeds has no bearing on the issue of development consent for a lodged development application. This is a matter for the applicant and/or the owner of the site to contend with.

Council has statutory measures to ensure that the development proceeds to completion once it has commenced. There is little risk of the building being part finished.

Overall, the development represents a high quality design for the irregular shaped allotment and minimises the degree of overshadowing and impact upon adjoining development. The submissions raise valid concerns that the applicant has anticipated by the careful design of the proposed multi dwelling building.

(e) Public interest

Despite the issues raised by the submissions, the proposed development is considered to be in the public's interest.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au 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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16 [PR-CM] Development Application DA10/0146 for a Granny Flat Above Existing Garage at Lot 1 DP 848877, No. 12 Elizabeth Street, Fingal Head

ORIGIN:

Development Assessment

FILE NO: DA10/0146 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application that seeks consent for the construction of a granny flat at 12 Elizabeth Street, Fingal.

The proposed development raises issues in relation to density, and car parking provisions. However, the areas of non-compliance are considered minor and do not detract from the appropriateness of the building for the site. The density provision of the Tweed Local Environmental Plan is a non-compliance resulting from the addition of a secondary dwelling to a site which has 530m² which results in there being a density of less than one dwelling per 450m². This non-compliance has been accompanied with a SEPP 1 objection which adequately demonstrates that the non-compliance is acceptable in this instance as the building is a minor granny flat. As the variation is greater than 10% the Council is required to determine the application as per the Department of Planning Requirements.

There were no submissions as a result of the notification period. It is therefore considered that there were no issues with the proposal to warrant further amendment or refusal of the application.

The following report addresses the issues and reasons for recommending approval of the proposed development.

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 51A of Tweed Local Environmental Plan 2000 regarding multi dwelling housing densities in zone 2a be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA10/0146 for a granny flat above existing garage at Lot 1 DP 848877, No. 12 Elizabeth Street, Fingal Head be approved subject to the following conditions:**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1 of 7, 2 of 7, 3 of 7, 4 of 7, 5 of 7, 6 of 7 and 7 of 7 prepared by Parameter Designs and dated 24 February 2010, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

4. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. The footings 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]

PRIOR TO COMMENCEMENT OF WORK

6. 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]

- 7. 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]

- 8. 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]

- 9. Prior to commencement of work on the site any required erosion and sedimentation control measures are to be installed, where required, to the satisfaction of the Principal Certifying Authority.

[PCW0985]

10. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

12. 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]

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

[DUR0245]

14. 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]

15. 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]

16. 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]

17. 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]

18. 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]

19. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

20. 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]

21. 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]

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

[DUR2505]

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

[DUR2515]

24. A new overflow relief gully is to be provided 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 if the overflow relief gully which serves the existing dwelling will not protect the new dwelling.

[DUR2545]

25. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

26. 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]

27. 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]

28. A restriction is to be placed on the title of the land prior to the release of the occupation certificate under the provisions of the Conveyancing Act 1919 identifying that subdivision of the dual occupancy is not permitted.

[POCNS01]

USE

29. 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]

REPORT:

Applicant: Mr M Bygott
Owner: Mr M Bygott and Mrs PM Bygott
Location: Lot 1 DP 848877, No. 12 Elizabeth Street Fingal Head
Zoning: 2(a) Low Density Residential
Cost: \$45,000

BACKGROUND:

Council is in receipt of a development application that seeks consent for the construction of a granny flat at 12 Elizabeth Street, Fingal Head.

The proposed development involves the erection of a secondary dwelling as a first floor addition to the detached garage. The design of the proposed secondary dwelling is structurally independent of the garage and will utilise piered foundations to relate to the existing topography of the site and minimise site disturbance.

The proposed secondary dwelling will provide an additional 46.39m² of gross floor area (GFA) as well as private open space decks. Access to the secondary dwelling is via a ramp along the southern side.

The subject site is of an irregular shape with frontage to Elizabeth Street to the north-west and Bambery Street to the south east. The site has a total site area of 530m². The property slopes down from Bambery Street to Elizabeth Street. Vehicular access to the site is via Elizabeth Street which will not change as a result of this application.

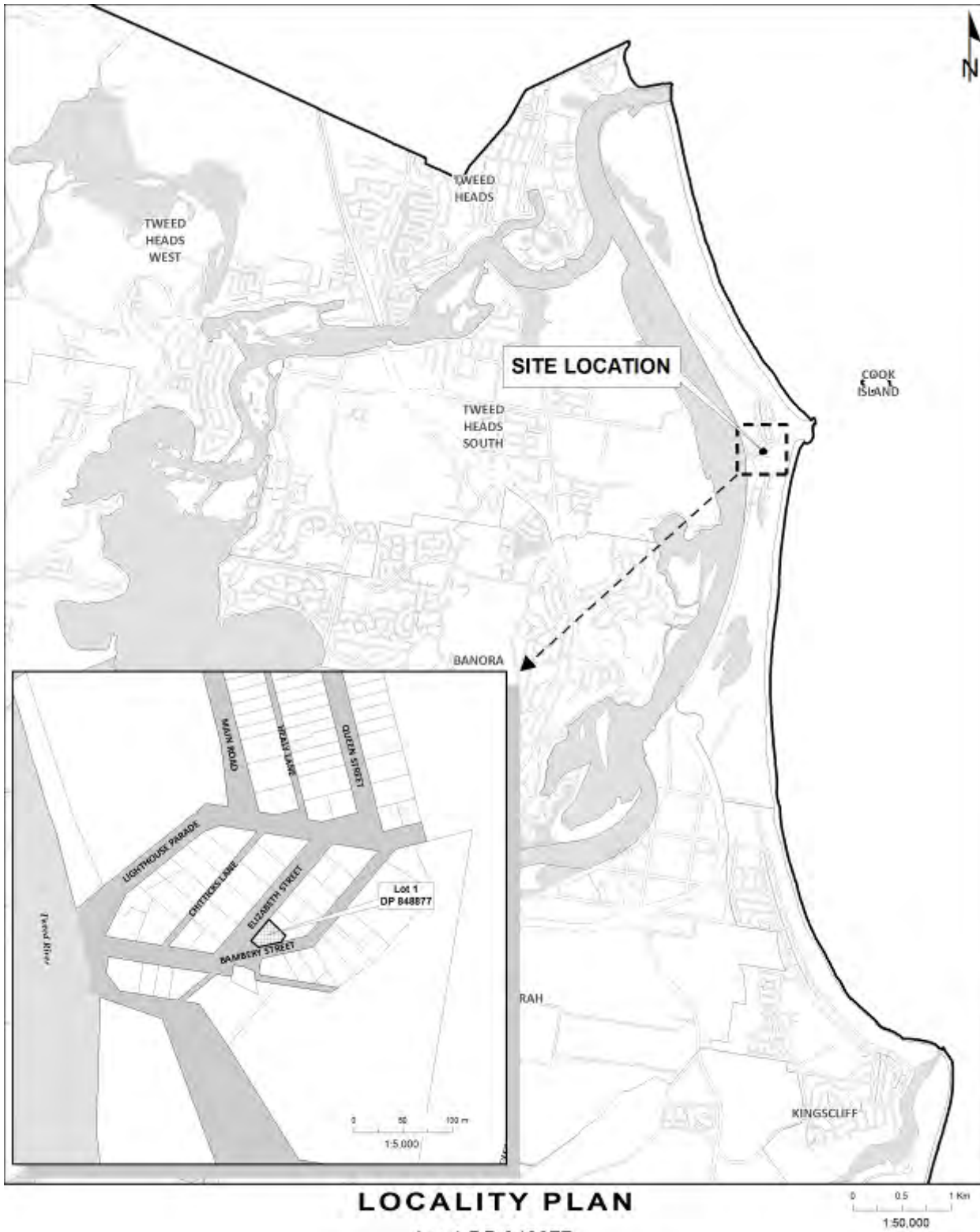
The adjoining property to the north east of the site comprises a detached dwelling at 9 Bambery Street. Immediately to the south and east is Bambery Street and immediately to the west is Elizabeth Street. Further to the southeast on the opposite side of Bambery Street are a mixture of detached dwellings and dual occupancy developments. To the west of the site are detached dwellings and unit buildings extending down the slope to Fingal Road and the river foreshore.

The proposed development involves a number of requested variations to a number of design criteria applicable to granny flat housing in the Fingal locality. Detailed assessments of the non-compliances are noted later in this report.

The proposed development raises issues in relation to density, and car parking provisions. However, the areas of non-compliance are considered minor and do not detract from the appropriateness of the building for the site. The density provision of the Tweed Local Environmental Plan is a non-compliance resulting from the addition of a secondary dwelling to a site which has 530m² which results in there being a density of less than one dwelling per 450m². This non-compliance has been accompanied with a SEPP 1 objection which adequately demonstrates that the non-compliance is acceptable in this instance as the building is a minor granny flat.

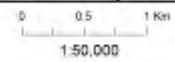
The proposed development was advertised for a period of two (2) weeks, during which no objections were lodged against the application.

SITE DIAGRAM:



LOCALITY PLAN

Lot 1 DP 848877
No.12 Elizabeth Street, Fingal Head



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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 01 June, 2010

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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastral: 01 June, 2010
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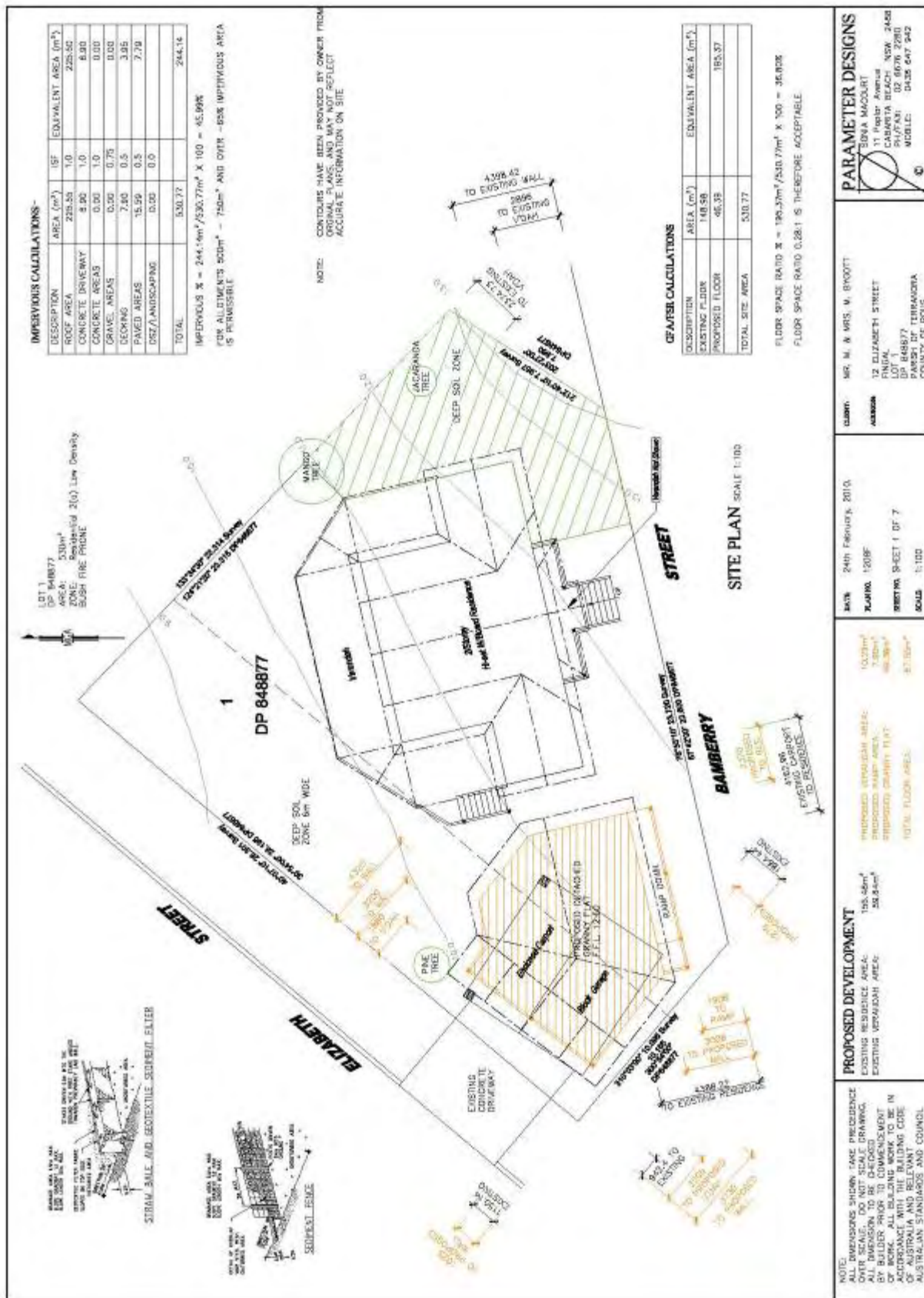
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Civic and Cultural Centre
3 Tambourine Road
Merrimoolah NSW 2486
PO Box 818
Merrimoolah NSW 2484
T: (02) 6670 2400 / 1300 282 672
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TWEED
SHIRE COUNCIL

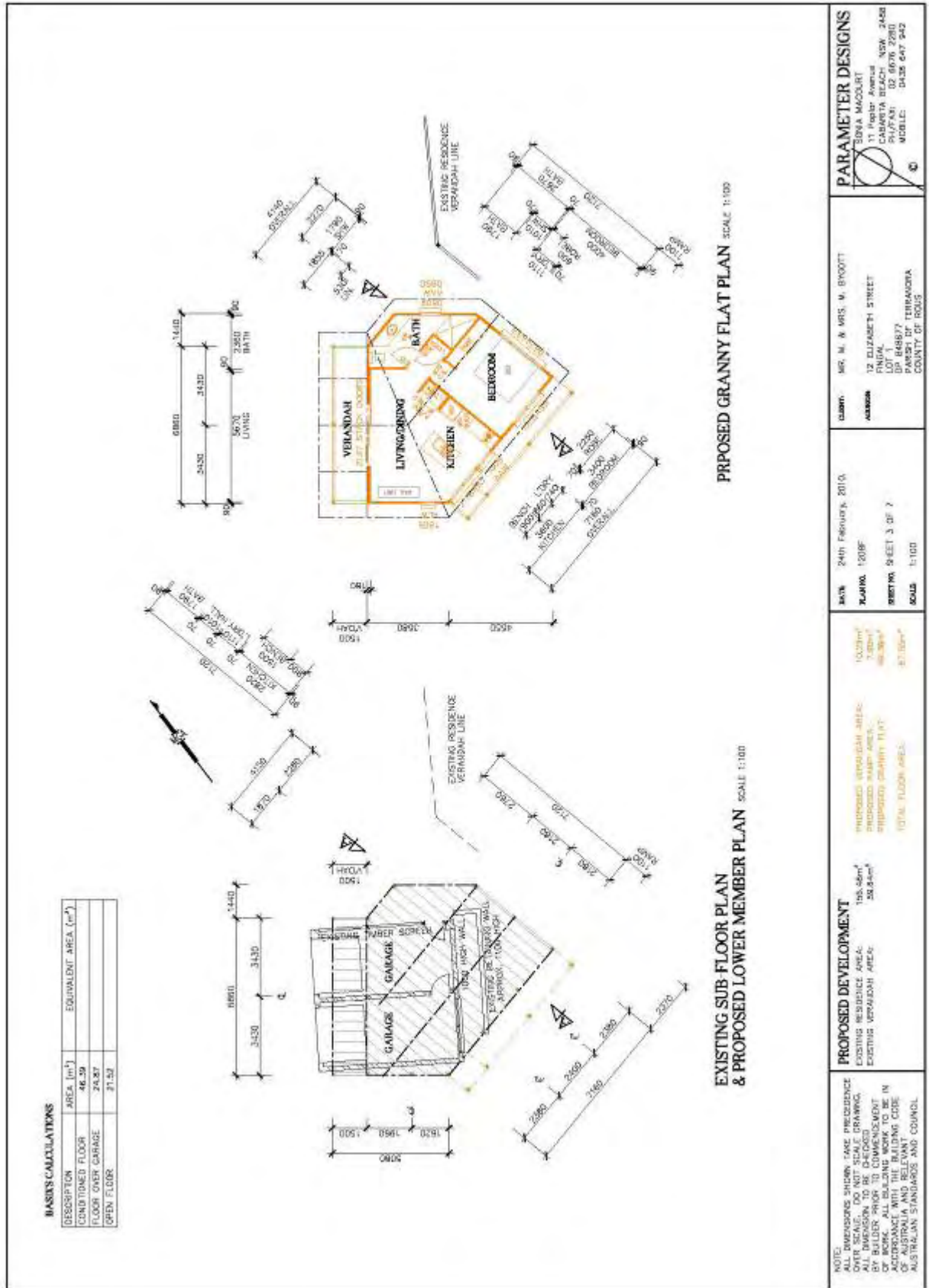
DEVELOPMENT PLANS:



EXISTING LOWER FLOOR PLAN SCALE: 1:100

EXISTING UPPER FLOOR PLAN SCALE: 1:100

<p>NOTE: ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. THIS DRAWING IS FOR INFORMATION ONLY. BY READER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL</p>	<p>PROPOSED DEVELOPMENT EXISTING RESIDENCE AREA: 195.56m² EXISTING VERANDAH AREA: 59.24m² PROPOSED VERANDAH AREA: 100.21m² PROPOSED WARD AREA: 7.50m² PROPOSED GUEST AREA: 48.39m² TOTAL FLOOR AREA: 411.90m²</p>	<p>DATE: 24th February, 2010 KLINGLING: 1:2018 REVISION: SHEET 2 OF 7 SCALE: 1:100</p>	<p>CLIENT: MR. M. & MRS. M. D'ROTT ADDRESS: 12 ELIZABETH STREET LINDAL DP 848877 PARISH OF TERRAMORA COUNTY OF ROUS</p>
<p>PARAMETER DESIGNS SARA MACCORT 11 Poplar Avenue CABERETA BEACH NSW 2432 95/7631 02 8676 2200 MOBILE: 0425 647 942</p>			



PROPOSED DEVELOPMENT

EXISTING RESIDENCE AREA: 195.58m²
 EXISTING VERANDAH AREA: 59.84m²
 PROPOSED DEVELOPMENT AREA: 100.29m²
 PROPOSED GARAGE AREA: 7.80m²
 PROPOSED GRANNY FLAT: 49.29m²
 TOTAL FLOOR AREA: 371.80m²

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EXISTING RESIDENCE AREA: 195.58m²
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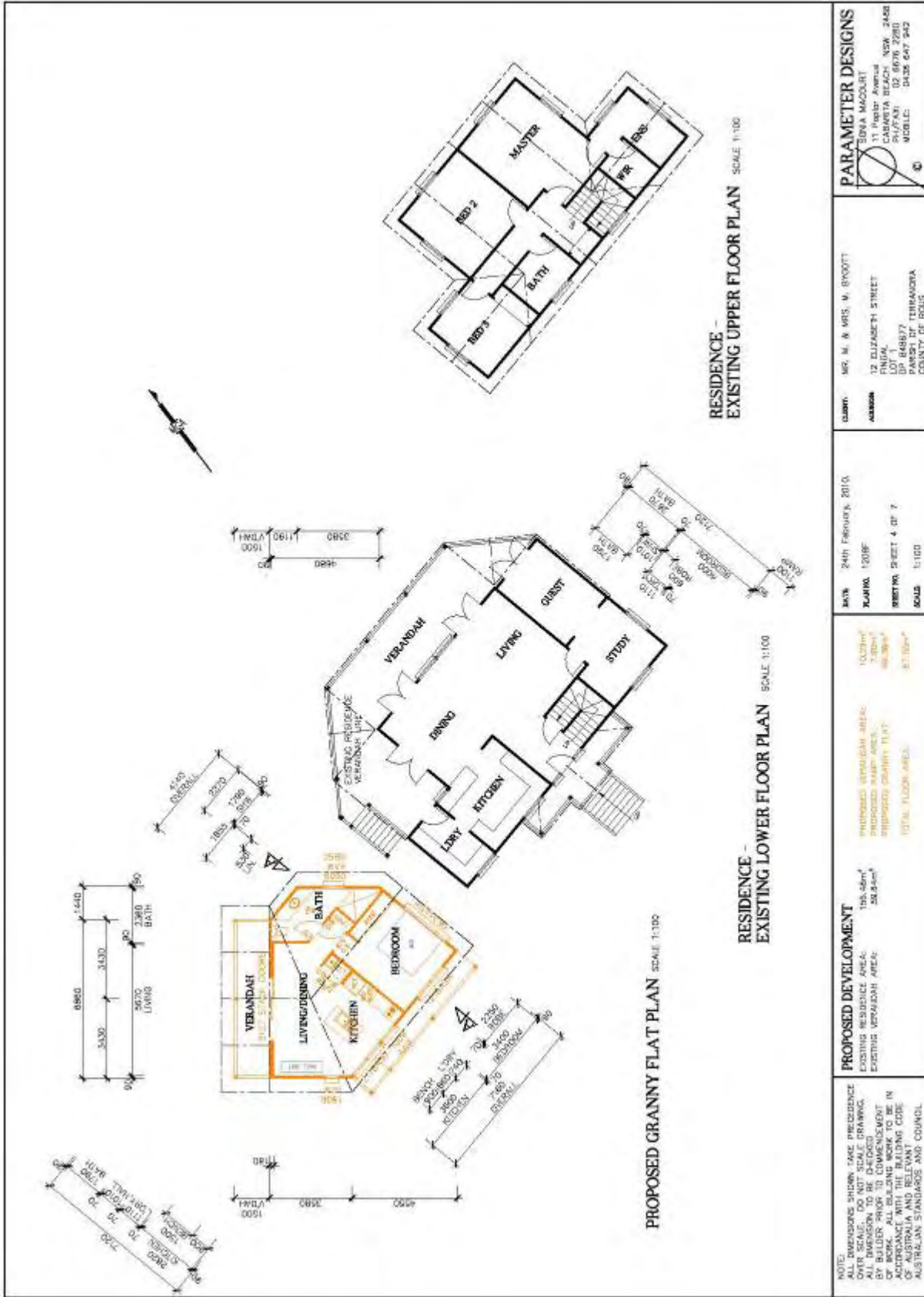
PARAMETER DESIGNS

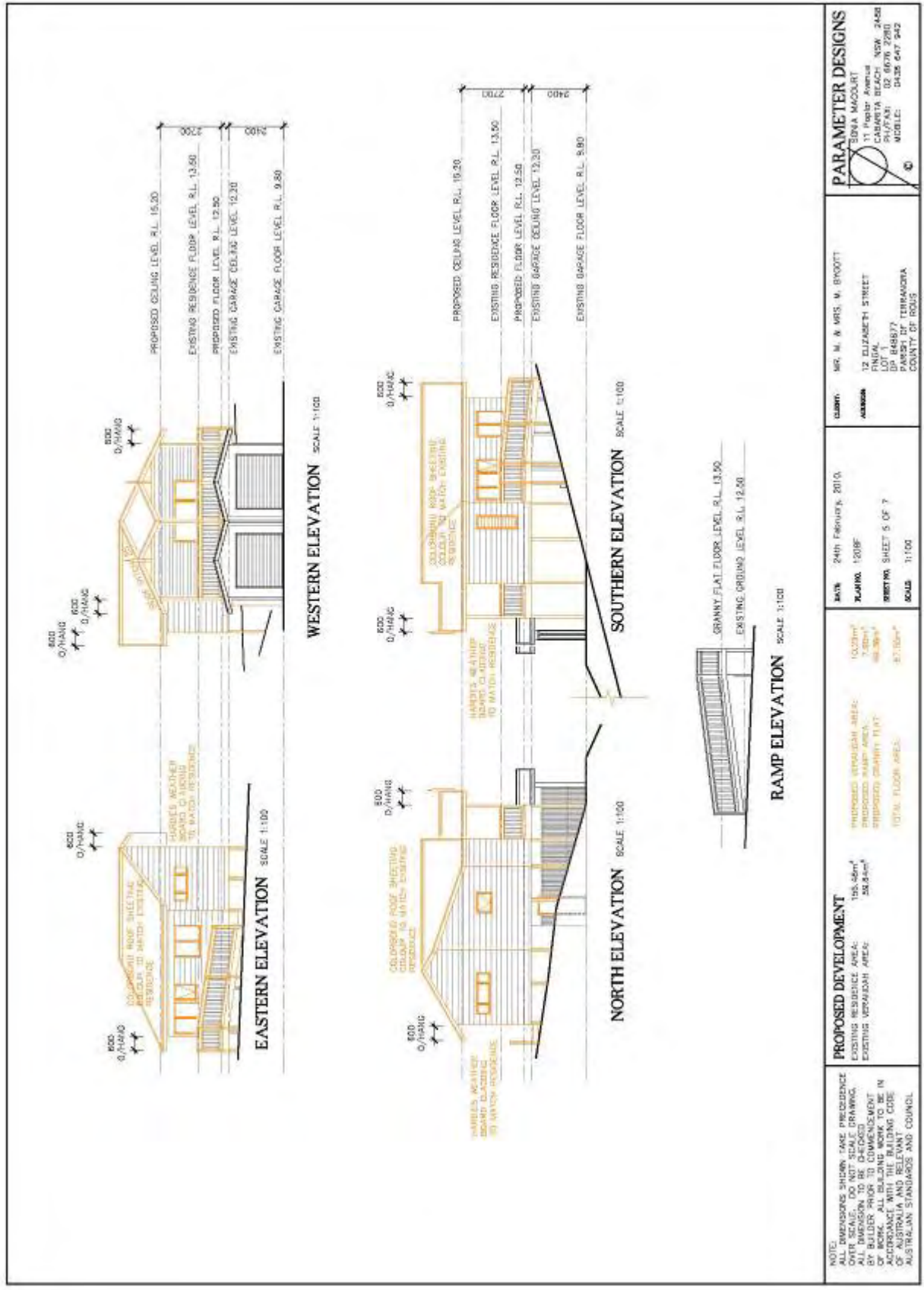
SONIA MACCORT
 11 Poplar Avenue
 CABARITA BEACH NSW 2450
 PH/FAX: 02 8676 2281
 MOBILE: 0435 647 942

DATE: 24th February 2010
 DRAWN: 1:100P
 SHEETS: 9 SHEET 3 OF 7
 SCALE: 1:100

CLIENT: MR. M. & MRS. W. BYWOOD
 ADDRESS: 12 ELIZABETH STREET
 FINLAY
 ID: 848877
 PARCEL ID: TERRAMORA
 COUNTY OF ROLLIS

NOTE:
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 ALL WORK TO BE ACCORDANT WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL





<p>PARAMETER DESIGNS SONIA MACCARTHY 11 Pipera Avenue CABARITA BEACH NSW 2450 PH/FAX: 02 8676 2281 MOBILE: 0435 647 942</p>	<p>CLIENT: MR. M. & MRS. W. BYROOTT ADDRESS: 12 ELIZABETH STREET FINLAY OTTUMBA ID: 849877 PARISH: ST TERESA'S COUNTY: OF RIVERINA</p>	<p>DATE: 24th February 2010 DRAWING: L2018 SHEET: SHEET 5 OF 7 SCALE: 1:100</p>	<p>PROPOSED DEVELOPMENT EXISTING RESIDENCE AREA: 195.58m² EXISTING VERANDAH AREA: 59.84m² PROPOSED VERANDAH AREA: 100.29m² PROPOSED WARE AREA: 7.20m² PROPOSED GARAGE FLOOR: 48.29m² TOTAL FLOOR AREA: 471.80m²</p>
<p>NOTE: ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSIONS TO BE CHECKED ON SITE FOR ACCURACY. ALL DIMENSIONS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL</p>			

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan 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”*.

Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

Council’s Strategic Plan 2004 – 2024 references effective control of new development and redevelopment as a key element of the Plan, with development controls being implemented ‘fairly and rigorously’ in order to minimise adverse impacts of development. The Plan notes that developers will be...‘*expected to adhere to planning controls as part of their contribution towards achieving more sustainable development*’.

The subject proposal results in a granny flat development to form part of Fingal. The small scale proposal is consistent with the vision for the shire.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The proposal is consistent with the aims and the ecological sustainable development principles outlined within the plan.

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.*

The subject proposal is unlikely to result in an unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole.

Clause 11 - Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 2(a) Low Density Residential under the provisions of the LEP. The primary objective is to:

- *Provide for and maintain a low density residential environment with a predominantly detached housing character and amenity*

The subject site is zoned 2(a) Low Density Residential. Granny Flat developments are permissible in the zone with consent.

The primary zone objective relates to the provision of predominantly detached dwelling housing which achieves good design outcomes. The applicable secondary objective refers 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 objective.

The applicant has provided the following:

“Development for the purposes of multi dwelling housing is permissible, with consent, in the 2(a) zone. The proposal is entirely consistent with the primary zone objective in that the building achieves appropriate low residential density and will result in a detached housing character and amenity.”

The applicant’s response in relation to the objectives of the zone is supported in this instance. The site has been maximised and developed efficiently given the constraints affecting the site. This is demonstrated further throughout this report.

Clause 15 - Essential Services

Clause 15 of the TLEP requires the provision of essential services to be available to the site prior to any consent being granted. The subject land has all essential services available.

The subject site is serviced with water, sewer, stormwater, power and telecommunications infrastructure. Accordingly, the proposal complies with the provisions of this clause.

Clause 16 - Height of Building

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. The subject site is affected by a 2 storey limitation. In accordance with the definition of a storey as per the TLEP 2000, the proposal represents a 2 storey development.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The criteria for a socio-economic assessment to be provided is 50 units for multi dwelling housing. Therefore, the applicant has not provided an assessment in this regard.

Clause 35 - Acid Sulfate Soils

The site is classified as "Class 5" on Council's Acid Sulphate Planning Maps. Accordingly sampling and testing or a Management Plan is required for "works within 500 metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent Class 1, 2, 3 or 4 land."

Given the relative levels of the site in relation to the water table and the minimal site disturbance, sampling and testing or an Acid Sulphate Soil Management Plan is not required in this instance.

Clause 39A - Bushfire Protection

The subject site has a small section to the south which is affected by the Bushfire Prone Land Map and is identified as being the Bushfire Buffer Zone. The application was referred to the Local Rural Fire Service for comment who had no objections to the proposal.

Clause 51A - Multi Dwelling Housing in the 2(a) Zone

Clause 51A of the Plan contains requirements relating to the density of development within the 2(a) zone. The Clause aims to control the density of multi dwelling housing and permits the erection of one dwelling per 450m² of site area.

The subject site has a total area of 530m² and with two dwellings located on the site it will result in a density of one dwelling per 265m² which is below the requirement. As such, a State Environmental Planning Policy No. 1 Objection addressing the variation to the development standard in Clause 51A of Tweed Local Environmental Plan 2000 was included with the application and addressed further below.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

The provisions of Clause 32B of the REP relate to the proposal include the NSW Coastal Policy 1997, Coastline Management Manual, 1990, North Coast Design Guidelines and overshadowing. The applicant has provided the following assessment.

“NSW Coastal Policy, 1997

This section will be addressed under SEPP 71.

Coastline Management Manual, 1990

The land is not affected by coastal processes as it is outside of the 100 year erosion line.

North Coast Design Guidelines

The key guidelines have been included in the design of the proposed buildings, particularly in relation to the building form, cladding materials, solar access and energy efficiency.

Overshadowing

Insofar as Clause 32B(3)(b) is concerned, the proposed building will not result in overshadowing of the a foreshore reserve.”

Clause 33: Coastal hazard areas

Clause 33 refers to development on coastal lands and requires the Consent Authority to take into account the provisions of the Coastline Management Manual, whilst also requiring that disturbed foreshore areas be rehabilitated and that access points across foredune areas be confined to specific points. The proposal has no direct implications or relevance in this regard.

Clause 43: Residential development

As a granny flat development, the proposed density is considered to be a reasonable response to the land use character of the area. It is considered that the SEPP No. 1 Objection as discussed further below will result in a development which will not create any adverse physical impacts upon the locality. Further, a sedimentation and erosion control plan will be enforced in relation to the construction.

The proposal is considered to be consistent with the relevant provision of Clause 43 of NCREP 1988.

SEPP No. 1 - Development Standards

SEPP No. 1 enables Council to assume the Director’s concurrence to a variation to a development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case.

The area of non-compliance relates to the density provisions set out in Clause 51A of the Tweed Local Environmental Plan 2000.

As discussed previously the applicant has submitted a SEPP No. 1 to vary the density provision on the subject site. The applicant's complete justification is duplicated below:

Applicant's submission:

The Courts have consistently emphasised that there is no single determinative test for assessing a SEPP 1 Objection. However, it has become usual practice in recent years to apply the "underlying object test" and to use the formulation suggested by Lloyd J in Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79.

In Wehbe v Pittwater Council [2007] NSW LEC 827, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 part test for consideration of a SEPP 1 Objection set out in Winten Property Group Ltd v North Sydney Council (2001).

The Chief Judge suggests that a consent authority must be satisfied of three matters before a SEPP 1 Objection can be upheld:

- (1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- (2) That the granting of consent is consistent with the aims of SEPP 1.*
- (3) That Clause 8 matters (in SEPP 1) are satisfied ie.*
 - Whether non-compliance raises matters of State or Regional planning significance.*
 - The public benefit of maintaining the planning controls.*

Each of the three key matters is addressed in turn, as follows:

- 1. That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The Chief Judge advised that the requirement to demonstrate that an objection is well founded and that the approval of the objection may be consistent with the aims of the policy could be satisfied in any one of the following ways:

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- (ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*

- (iii) *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- (iv) *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- (v) *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

We submit that the underlying objective or purpose of the standard is not relevant to the development given the provision of Clause 22(4)(a) of SEPP (Affordable Rental Housing) 2009 which clearly overrides the subject standard for the purpose of a Secondary Dwelling so long as the subject site has an area of at least 450m².

As the proposal is for a Secondary Dwelling and the subject site does have an area exceeding 450m², by applying the provisions of Clause 22(4)(a) of SEPP (Affordable Rental Housing) 2009 compliance with the development standard within the LEP is unnecessary in the circumstances of this case.

2. That the granting of consent is consistent with the aims of SEPP 1.

The aims and objectives of the Policy (SEPP 1) are as follows:

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

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 is in the following terms:

“(a) to encourage:

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

Compliance with the one dwelling per 450m² development standard would preclude the development of the site in accordance with the density control of Clause 22(4)(a) of SEPP (Affordable Rental Housing) 2009, which effectively allows 1 primary dwelling and 1 secondary dwelling (total 2 dwellings) on a lot of 450m² (ie. not less than 1 dwelling per 225m²).

In this case, strict compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the recently gazetted State Environmental Planning Policy that specifically addresses the density for Secondary Dwellings.

3. That clause 8 matters (in SEPP 1) are satisfied i.e.

- **Whether non-compliance raises matters of State or regional planning significance.**
- **The public benefit of maintaining the planning controls.**

In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.

State or Regional Planning Significance

Tweed Local Environmental Plan 2000 provides for local controls only and therefore it is submitted that the variation to the development standard would not raise any matters of State or Regional Planning Significance. Indeed, a variation would not be inconsistent with matters of State or Regional planning significance in that SEPP (Affordable Rental Housing) 2009 at Clause 22(4)(a) effectively provides that the residential density should not exceed 1 dwelling per 225m².

The proposed development has a site area of 530m² and therefore an actual density of 1 dwelling per 265m², which is not inconsistent with this State Environmental Planning Policy.

It is therefore considered that the proposal does not raise any matters contrary to State or Regional planning policies.

Public Benefit

The proposed development comprises a Secondary Dwelling (Granny Flat) as a first floor addition to an existing detached garage. The subject land comprises established landscaping which will be retained in the development. The proposed building will be located below the height of the existing landscaping and has been designed to be consistent in materials and appearance to the Primary Dwelling.

The proposed dwelling will not be capable of being separately subdivided and therefore will provide variety and additional stock of affordable rental accommodation in Fingal Head.

We therefore conclude that the proposed development does not raise any matters which would be contrary to maintaining the public benefit of these planning controls.

Assessment of the Applicant's Submission

The NSW Land and Environment Court has established a new test to determine the appropriateness of a SEPP 1 application. The Chief Justice stated that:

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

The Chief Justice then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Where the grounds of objection are of a general nature and would be applicable to many sites in the locality, approval of the objection may create an adverse planning precedent. Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area.

Clause 51A of the Tweed LEP 2000 aims to ensure that the density of development is appropriate to its location, surrounding development and environmental characteristics of the land.

The objective of the standard is to control the density of multi dwelling housing within the 2(a) zone. It is considered that the proposed development is consistent with the scale of existing developments. The addition of a secondary dwelling will be utilised for a granny flat and will not be able to be subdivided and sold off as a separate dwelling. It is therefore seen that the objective of the standard is maintained as the site will continue to be utilised for low density residential purposes.

The applicant has not submitted any complying drawings as the site currently complies with the standard as it is a single residential detached dwelling. If compliance was required then no granny flat would be permissible on the site.

The proposed density of the development will not significantly affect any adjoining property having regard to privacy, view sharing or overshadowing. The building itself will impact on these amenity issues, however it is not the non-complying component of the building that generates these issues. These issues are discussed further under the A1 assessment below.

Having regard for the applicants SEPP 1 justification and the Courts assessment criteria, the proposed SEPP 1 is considered reasonable in the circumstances. Therefore it is recommended that the SEPP1 objection be supported and concurrence to the variation to the density provisions be assumed in this instance.

SEPP No. 55 - Remediation of Land

The applicant has provided a preliminary contamination assessment in accordance with SEPP No. 55. It is highly unlikely that the site would pose a risk of contamination. The proposal is considered to be consistent with the relevant provisions of both Clause 39 of TLEP 2000 and SEPP No.55.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to satisfy the matters for consideration. Specifically it is considered that the type, bulk, scale and size of the proposed development is appropriate for the location. Further detail is provided later in this report which supports the argument that the proposed development is suitable for the subject site.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 applies to the site and includes provisions in relation to the erection of Secondary Dwellings as either Complying Development or development that may be carried out with consent. Since the subject site is affected by the buffer of a potential bushfire hazard, the proposal cannot be processed as Complying Development.

Clause 22 of the SEPP is as follows:

“22 *Development may be carried out with consent*

1. *Development to which this Division applies may be carried out with consent.*
2. *A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.*
3. *A consent authority must not consent to development to which this Division applies unless:*
 - a. *the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*
 - b. *the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*
4. *A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:*
 - a. *site area if:*
 - (i) *the secondary dwelling is located within, or is attached to, the principal dwelling, or*
 - (ii) *the site area is at least 450 square metres,*
 - b. *parking if no additional parking is to be provided on the site.*
5. *A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).”*

The proposal is a secondary dwelling to which Part 2, Division 2 applies. The proposal will result in the existing Primary Dwelling and the proposed Secondary Dwelling and no other dwellings.

The proposed Secondary Dwelling is detached from the Primary Dwelling and the subject site has a site area of 530m². The proposal will maintain the existing car parking accommodation on the site but no additional car parking is to be provided.

Accordingly, the proposal fully complies with Clause 22 of the SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates were submitted demonstrating that the proposal meets the required targets.

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

The Tweed Local Environmental Plan 2010 was on public exhibition from 27th January 2010 until 30 April 2010. In this Draft LEP the site is within the R2 – Low Density Residential Zone. Within the R2 zone a Granny Flat is permitted with consent. It is therefore considered that the proposal complies with the intent of the Draft Tweed LEP 2010.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The development application was submitted to Council with minor variations to Section A1 of the DCP. The applicant provided an assessment on the following:

1. Section A1 Design Control 2 – Sight Configuration: Impermeable Site Area: Control c.
2. Section A1 Design Control 2 – Sight Configuration: Above Ground External Living Spaces, Balconies and Terraces Control a.
3. Section A1 Design Control 3 – Setbacks: Front Setback (Building Lines), Control b.

Assessment of the Applicant's Variations

Impermeable Site Area

The applicant has not provided a rainwater tank for the proposal for the purpose of rainwater to be reused. The applicant stated that Rain water tanks are not required to comply with BASIX. It is considered that it would be onerous to require a rainwater tank for a minor granny flat. It is therefore considered that the applicants request for a variation be approved in this instance.

Above Ground External Living Spaces

The minimum depth of an outdoor living area as outlined in the DCP is 2.5m wide. The proposed open space deck will provide dimensions of 1.5m x 6.86m providing an area of 10.29m².

The proposal complies with the overall area, but does not meet the minimum depth dimension. The proposed private open space is considered to be justified on the basis that the proposal is for a secondary dwelling of modest proportions and that the proposal has been designed to minimise disturbance on the external appearance of the existing structures. Sufficient open space areas are available on the subject site to cater for the proposed. It is therefore considered that the applicants request for a variation be approved in this instance.

Front Setback (Building Lines)

The applicant has provided the following:

“The proposal is within the established village of Fingal Head. Immediately to the northeast of the site is a highset dwelling known as No. 9 Bamberry Street, which appears to be setback within 900mm of the Bamberry Street frontage. Several other dwellings in Bamberry Street are also setback between 900mm and 1.5m from the frontage. Two detached dwellings with frontage to Elizabeth Street also provide front setbacks of less than 6m, with one being approximately 900mm.

The proposal is not a conventional Dual Occupancy. The proposal is a Secondary Dwelling or “Granny Flat” that cannot be separately subdivided. It is also relevant to note that the proposal is designed on top of the existing detached garage which is setback only 942mm from the front boundary and 1150mm to the secondary frontage.”

A site inspection has been undertaken and it is considered that the applicant's statement regarding setbacks is accurate. The configuration of the site and the size of the road reserve surrounding the subject site results in the setback having a minimal affect on the locality. There is a road reserve to the south of the site which is approximately 10m wide. It is considered that the applicants request for a variation be approved in this instance.

It is noted that the proposed Gross Floor Area of the Granny Flat is 46.39m² which is below the 60m² maximum as outlined in Section A1, Part B of the DCP. It is also less than 40% of the total floor area of both the granny flat (46.39m²) and the primary dwelling (162m²). The proposal is therefore exempt from payment of contributions in accordance with Section 94 of the *Environmental Planning and Assessment Act, 1979* and Section 64 of the *Water Supply Authorities Act, 2000*.

A condition requiring the creation of a restriction as to user on the Lands Title, in accordance with the *Conveyancing Act 1919*, for the purposes of prohibiting subdivision of the development will be imposed on any development consent in line with Section A1, Part B of the DCP.

A2-Site Access and Parking Code

It is not proposed to alter either the access arrangements or the number of car parking spaces on the site. Two garage spaces will remain available on the site as a result of the proposed development.

This proposal is supported by the provisions of Clause 22(4)(b) of (SEPP (Affordable Rental Housing) 2009 which states that “a consent authority must not refuse consent to development to which this Division applies on either of the following grounds: **parking** if no additional parking is to be provided on the site.”

It is therefore considered that the proposal complies with Section A2 of the Development Control Plan.

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

Clause 92(a) Government Coastal Policy

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

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

Context and Setting

There are no further impacts associated with the proposal in addition to those previously discussed.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed design and configuration of the development is considered to be consistent with the desired land use character and pattern. The suitability of the site for the proposed development has been demonstrated by way of general consistency with the environmental planning instruments and development control plan.

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

The application was an exhibition for fourteen (14) days commencing Wednesday 6 April 2010. During this period there were **no** submissions received.

(e) Public interest

Despite the issues raised in the submissions, it is considered that the proposal is not contrary to the wider public's interests.

OPTIONS:

1. Assume concurrence and approve the development application with conditions.
2. Refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicants have a right of appeal in the NSW Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development incorporates minor variations to the applicable planning controls. However, having assessed the merits of the application and the objections received in regards to this application the proposal is considered suitable for conditional approval as recommended.

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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17 [PR-CM] Accreditation of Council Building Surveyors

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

The purpose of this report is to advise Council of recent changes to legislation which commenced 1 March 2010 that introduced a framework for the accreditation of Council employees who undertake building certification work on behalf of Council and to request that Council support a recommendation for the accreditation of the 11 Council staff within Councils Building and Environmental Health Unit that are currently undertaking building certification work.

RECOMMENDATION:

That:

- 1. Council supports the recommendation for each of the Building Surveyors currently employed by Tweed Shire Council to be accredited at levels appropriate to their level of experience, and**
- 2. Delegation is provided to the General Manager for the purposes of Section 5(1A) of the Building Professionals Act 2005, under the provisions of Section 377 of the Local Government Act 1993 to endorse each of applications for accreditation.**

REPORT:

Overview of accreditation system

On 1 March 2010 legislation was introduced under the Building Professionals Amendment Act and the Building Professionals Amendment Regulation which enabled the Building Professionals Board (BPB) to issue certificates of accreditation to employees of Council who carry out building certification work and commencing 1 September 2010 all certification work done by Councils in New South Wales will be required to be undertaken by accredited certifiers.

These changes have been proposed for several years by the Board in an effort to try and achieve one system of accreditation for all buildings certifiers, whether they work for a Council or work within the private sector.

The aim of the single system of accreditation is to set minimum standards for all certifiers in relation to qualifications, experience and professional development. All certifiers will work to the same code of conduct and will be subject to similar standards of accountability. The New South Wales system will be aligned with those of other states and these changes will progress with national licensing reforms as these reforms are advanced by the Council of Australian Governments (COAG).

All accredited certifiers are and will be accredited under a scheme administered by the Building Professionals Board (BPB). The accreditation Scheme specifies the certification work certifiers are authorised to do and sets a Code of Conduct that certifiers must work to. It should be noted that annual accreditation fees are also proposed for each employee of Council that is accredited, however the Board has resolved that the first year of accreditation for Council accredited certifiers will be free and the Board has allowed for a reduced fee, being \$250.00, in the following two years until 2013. A recent discussion with the BPB to determine what possible increase in fees may eventuate beyond 2013 identified that it is not proposed to have any significant increase in accreditation fees for Council accredited certifiers.

Accreditation for Council accredited certifiers has been broken up into four categories, Category A1, A2, A3 and A4 and level of accreditation is based on the individuals experience and qualifications, A1 being the higher level of accreditation. It will be a prescribed condition that Council accredited certifiers operate within the limitations of their respective accreditation and may only undertake work on behalf of a Council. Furthermore Council has its own internal system procedures, policies and protocols that regulate staff and control what individual staff members can or cannot do. This system and the various tiers of delegation provides the necessary checks and balances in relation to processes and procedures and ensures certain responsibilities and standards of work are maintained and acts as a secondary checking mechanism particularly in relation to more complicated approvals or controversial matters.

Maintaining accreditation will be dependant on the individual undertaking a continual professional development (CPD) program and Council holding the required insurance. With respect to insurance, no changes are envisaged to the cover already held by Council and recent advice provided by the BPB indicated that Council's general insurance will cover the actions of Council accredited certifiers acting in "good faith" on behalf of Councils. With regard to the CPD scheme it should be noted that the majority of Building Surveyors currently employed by Council have operated under a similar CPD program managed by the Australian Institute of Building Surveyors (AIBS) to maintain their annual accreditation with the institute and therefore as the scheme proposed by the BPB will be almost identical to that currently implemented by the AIBS the consequences of this proposal will have little if any additional impact on Council and/or its employees.

In regard to the accreditation of the 11 building surveyors currently employed by Council and based on the level of experience held by staff it is envisaged that under this scheme a number of officers will be eligible to obtain Category A1 - Accredited Certifier - Building Surveying Grade 1, a number will be eligible to obtain Category 2 –Accredited Certifier – Building Surveyor Grade 2 and two officers will be eligible to obtain Category A3 – Accredited Certifier – Building Surveyor Grade 3. As part of the required process each officer will be required to complete the relevant application form and answer a series of questions to identify their levels of experience and qualifications (a standard application form together with guidelines have been developed by the BPB which covers each of the Categories). A declaration will then need to be signed by the applicant to declare that the particulars provided are true and correct. Section 5(1A) of the Building Professional Act provides that an application to carry out certification work on behalf of Council may not be made except on the recommendation of a Council and therefore it is a requirement that once the application form has been completed by the Building Surveyor the form then requires endorsing by the General Manager or his delegate recommending accreditation and for that individual to work as an accredited certifier to undertake certification work on behalf of Council at a particular level if Council is satisfied that the applicant has demonstrated satisfactory experience for that level.

Once the application is completed and endorsed the application must then be forwarded together with the recommendation from the officer employing Council to the BPB for determination. Once assessed and a certificate of accreditation is issued the certifier will be required to renew their certificate each year but will not need to be reassessed against the requirements of the accreditation scheme unless they want to have any specific conditions removed or they wish to apply to obtain a higher level of accreditation.

A recent update from the BPB in relation to the accreditation of Council employees indicated that as of May 2010 six Councils have obtained accreditation of staff and that the Board has continued to receive applications for accreditation.

Reproduced below are extracts from two circulars from the BPB which outline the responsibilities for Councils and the responsibilities for Council accredited certifiers.

Responsibilities for Councils

Councils have a number of obligations in relation to Council accredited certifiers.

- From 1 September 2010, all building certification work undertaken by Councils must be undertaken by an accredited certifier. Building certification work includes the issue of complying development certificates, construction certificates, occupation certificates, compliance certificates and the carrying out of mandatory “critical stage” inspections of building work.
- All building certification work carried out on behalf of a Council needs to accord with the EP&A Act and EP&A Regulation.
- All building certification work must be undertaken by an accredited certifier with the appropriate level of accreditation (A1, A2, A3 or A4), having regard to any specific conditions of accreditation.
- Council accredited certifiers need to comply with the Code of Conduct contained in the Board's Accreditation Scheme, take part in the Board's Continuing Professional Development (CPD) program and satisfy the conflict of interest requirements under the *Building Professionals Act 2005*.
- In recommending an officer for accreditation, Councils must consider the requirements of the Board's Accreditation Scheme, the relevant assessment guidelines for each category and the applicant's qualifications and experience.
- Councils have specific record-keeping obligations and need to record the name and accreditation number of each certifier; the date of their commencement or engagement by the Council and the date of cessation of these terms; and a brief description of each project where the certifier carried out certification work on behalf of the council.
- Councils need to notify the Board when a certifier commences employment with a council and when a certifier ceases to be employed by the council.
- Councils need the relevant insurance to cover the individual accredited certifier employed by the Council.

Comments

Other than the requirement for accreditation, the cost of accreditation for each employee, the need to record the name and accreditation number of each certifier and the need to notify the Board when a certifier ceases to be employed by Council there appears to be little change in the current responsibilities and processes undertaken by Council. With respect to the need for Councils to record information on projects undertaken by individual certifiers, Councils information management software already provides this function recording all information relating to various applications, assessments and approvals together with inspection information and the officer who undertakes the various processes.

Responsibilities for Council accredited certifiers

Council accredited certifiers will have a number of obligations once accredited.

- Accreditation will only cover certification work undertaken on behalf of a Council. Council accredited certifiers can carry out work on behalf of any Council in NSW but cannot undertake work in a private capacity.
- Any certification work carried out on behalf of a Council must accord with the EP&A Act and EP&A Regulation.
- Council accredited certifiers must operate within the limitations of their accreditation (Categories A1, A2, A3 or A4) and in accordance with any special conditions.

- Council accredited certifiers need to meet the 13 requirements of the Code of Conduct of the Building Professionals Board's Accreditation Scheme. The Code of Conduct presents the principles to guide the behaviour, standards of conduct and professionalism expected from accredited certifiers when undertaking certification work. This code is in addition to the Code of Conduct under the *Local Government Act 1993* and applies only to Council accredited certifiers undertaking certification work on behalf of a Council.
- Council accredited certifiers can undertake certification work on developments where they have been involved in the assessment or determination of a related development application or complying development certificate. It is considered a conflict of interest if the certifier is involved in determining an application where they are involved in the design of or carrying out of work on that aspect of the development;
 - they are the applicant or related to the applicant;
 - they are related to anyone involved with the design or construction of that aspect of the development; or
 - they have a financial interest in any aspect of the development.
- Council accredited certifiers will undertake a Continuing Professional Development (CPD) program and will be subject to the Board's disciplinary procedures.

Comments:

Council officers currently work in accordance with the regulatory requirements prescribed under the Local Government Act, Environmental Planning and Assessment Act, Environmental Planning and Assessment Regulations, relevant Council Codes and Policies and within the various levels of delegation. The majority of officers also currently undertake a CPD program to maintain accreditation with the Australian Institute of Building Surveyors and while each officer will obviously need to familiarise themselves with any other matters prescribed under the BPB requirements it is considered that other than fulfil the mandatory requirements for annual accreditation the impact of these requirements on individuals will be minimal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

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18 [PR-CM] Asbestos Management Policy - Version 1.0

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

At its meeting of 16 March 2010, Council resolved to publicly exhibit a Draft Asbestos Management Policy for the Tweed Shire for a period of 28 days. The public exhibition was conducted in accordance with Council's resolution and no submissions were received.

The Policy has been prepared primarily to respond to recommendations of the NSW Ombudsman's Office.

It is therefore recommended that Council adopt the Asbestos Management Policy.

RECOMMENDATION:

That Council adopts the attached Draft Asbestos Management Policy Version 1.0.

REPORT:

In response to an officers' report, Council resolved the following at its meeting of 16 March 2010:

“That:

- 1. The draft Asbestos Management Policy Version 1.0 be exhibited for a period of 28 days in accordance with Section 160 (2) of the Local Government Act 1993.***
- 2. A further report is presented to Council, which is to include any submissions made, following the exhibition period.”***

The background to the need for the Policy was as follows:

The NSW Ombudsman's Office undertook an investigation into how asbestos is dealt with in New South Wales. As a result of these investigations the Ombudsman has made a number of suggestions in accordance with Section 31AC of the Ombudsman Act 1974:

- 1. Council review its policies, practices and procedures to ensure they comply with the relevant legislation and WorkCover NSW guidelines.*
- 2. Council review the contents of its web site and in relevant publications to ensure they contain information relating to asbestos which includes:*
 - a. council's roles and responsibilities in relation to asbestos,*
 - b. licencing requirements for asbestos removals,*
 - c. local council requirements for demolitions and renovations of buildings containing asbestos,*
 - d. council regulatory measures in place to ensure compliance when demolitions and development are carried out, and*
 - e. links to relevant government web sites containing up to date information on dealing with asbestos.*

In response to the Ombudsman's suggestions, an Asbestos Management Policy has been drafted, which complies with relevant legislation and WorkCover NSW guidelines and is included in this report.

As a further response, Council has implemented an Asbestos - Community Information page accessible from the Planning/Building Development, Environmental Health and Community sections of the website. The Asbestos – Community Information is accessible from the following link www.tweed.nsw.gov.au/asbestos and contains information on:

- a. Council's roles and responsibilities in relation to asbestos;*
- b. Licensing requirements for asbestos removals;*
- c. Council requirements for demolitions and renovations of buildings containing asbestos;*

- d. *Regulatory measures in place to ensure compliance when demolitions and development are carried out; and*
- e. *Relevant links*

The draft policy for asbestos management was placed on exhibition for a 28 day period as resolved. The exhibition period has now ended and a recent check of Councils records has identified that no submissions were received in relation to the exhibited draft policy. It is now recommended that Council consider the adoption of the policy as per the Version 1 draft attached to this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

If adopted, the Draft Asbestos Management Policy will become a Policy of Council.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Copy of Draft Asbestos Management Policy Version 1.0 (ECM 17392459)
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19 [PR-CM] Joint Regional Planning Panels - Review by the Department of Planning

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

The purpose of this report is to inform Council of the recent release of a series of documents relating to the NSW Department of Planning's review of the initial operation of the Joint Regional Planning Panels (JRPPs), and to seek a Council position in response to a related letter from the NSW Minister for Planning regarding a proposal to delegate the determination of certain JRPP development applications to Council staff.

JRPPs and their assessment of regionally significant developments became effective through State Government legislation on 1 July 2009. In preparation for the commencement of the new system, Tweed Council appointed two panel members (and an alternate) to represent Council on the Northern Region JRPP. To date, Tweed Council has received three regionally significant development applications, all of which are yet to be reported to the JRPP.

The Department of Planning's review of its JRPP system includes an analysis of the initial performance and procedural efficiency of all of the NSW Panels. Arising from this review, a series of recommended actions have been identified with the main objective of efficiency improvements.

Within these recommended actions, the most critical of these to participating NSW Councils are the proposals to establish delegations to Council officers, **not the elected Council**, of certain types of development applications that are currently determined through the JRPPs. To this effect, by letter dated 18 May 2010, the NSW Minister for Planning has requested Council to indicate whether it is willing to accept this new form of delegation to Council officers.

An interim response has been sent to the Minister advising him that Council's current staff delegations for the determination of development applications (DAs) does not entirely align with the Department of Planning's proposed system of delegation of certain JRPP DAs to Council officers, and that Council consideration of this matter is necessary.

Council's current adopted delegations to staff for the determination of DAs is as follows:

“All development applications with a value of more than \$10 million and subdivisions involving more than 50 lots are to be reported to Council for determination”.

The officers have reviewed the Department of Planning's proposed system of delegated determination, and are of the opinion that they are well equipped to handle the determination, and see the broader benefits of a number of the JRPP applications being returned back to a Council based assessment and determination. However, they are also very conscious of the fact that this new system will exclude the elected Councillors from the decision making of these JRPP applications, some of which would exceed the threshold of Council's current adopted DA delegations.

The recommendation to Council therefore provides Council with the options of advising the Minister of whether or not it supports the new system of JRPP officer delegation (Options A and B). Option B supports the return of certain JRPP applications for the determination by Council officers only, in accordance with Council's current policy of DA delegations.

The recommendation also includes a Council request to the Minister to clarify whether those areas of the Tweed Shire already the subject of detailed Development Control Plans and Locality Plans are suitable to enable further delegatory powers of determination to be offered to Council officers in those locations.

RECOMMENDATION:

That:

- 1. Council endorses that the Mayor writes to the NSW Minister for Planning in response to his letter dated 18 May 2010 relating to the review of the State Government's Joint Regional Planning Panels, advising him either:**

OPTION A

That Council does not support the use of Council officer delegations for the determination of regionally significant developments as outlined in the above correspondence; or

OPTION B

That Council supports the return of certain Joint Regional Planning Panel applications for the determination by Council officers, only in accordance with Council's current adopted policy of development application delegations, as outlined in this report; and

- 2. Further to the correspondence referred to in Item 1, that Council requests the Minister to clarify whether those areas of the Tweed Shire already the subject of detailed Development Control Plans and Locality Plans are suitable to enable further delegatory powers of determination for certain Joint Regional Planning Panel development applications to be offered to Council officers in those locations.**

REPORT:

Background

Introduction of the JRPP System

The NSW State Government introduced new legislation to facilitate the commencement of Joint Regional Planning Panels (JRPPs) to determine regionally significant developments and other planning matters, effective from 1 July, 2009.

[State Environmental Planning Policy \(Major Development\) 2005](#) provides the relevant legislative framework to identify those development types that are to be determined by JRPPs. A relevant extract from the SEPP is provided below:

“13B General development to which Part applies

- (1) *This Part applies to the following development:*
 - (a) *development that has a capital investment value of more than \$10 million,*
 - (b) *development for any of the following purposes if it has a capital investment value of more than \$5 million:*
 - (i) *affordable housing, air transport facilities, child care centres, community facilities, correctional centres, educational establishments, electricity generating works, electricity transmission or distribution networks, emergency services facilities, health services facilities, group homes, places of public worship, port facilities, public administration buildings, public ferry wharves, rail infrastructure facilities, research stations, road infrastructure facilities, roads, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, wharf or boating facilities,*
 - (c) *Crown development that has a capital investment value of more than \$5 million,*
 - (d) *development for the purposes of eco-tourism facilities that has a capital investment value of more than \$5 million,*
 - (e) *designated development,*
 - (f) *subdivision of land into more than 250 lots.*
- (2) *This Part also applies to development that has a capital investment value of more than \$5 million if:*
 - (a) *a council for the area in which the development is to be carried out is the applicant for development consent, or*

- (b) *the council is the owner of any land on which the proposed development is to be carried out, or*
- (c) *the development is to be carried out by the council, or*
- (d) *the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).*

13C Coastal development to which Part applies

This Part applies to development within the coastal zone for any of the following purposes:

- (a) *caravan parks and tourist and visitor accommodation:*
 - (i) *in the case of development wholly or partly in a sensitive coastal location outside the metropolitan coastal zone—that provide accommodation (or additional accommodation) for 10 persons or more, or*
 - (ii) *in the case of development wholly or partly in a sensitive coastal location in the metropolitan coastal zone—that provide accommodation (or additional accommodation) for 100 persons or more, or*
 - (iii) *in the case of development outside a sensitive coastal location that is not connected to an approved sewerage treatment work or system—that provide accommodation (or additional accommodation) for 25 persons or more,*
- (b) *buildings or structures (other than minor alterations or minor additions to existing buildings or structures) that are greater than 13 metres in height, excluding any building that complies with all development standards relating to the height of such a building set by a local environmental plan that applies to the land on which the building is located,*
- (c) *subdivision of land into more than 5 lots but not more than 100 lots, if more than 5 of the lots will not be connected to an approved sewage treatment work or system,*
- (d) *subdivision for residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location) into more than 25 lots but not more than 100 lots,*
- (e) *subdivision for rural-residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location) into more than 5 lots but not more than 25 lots.”*

JRPP Regions

Six regions have been established, covering metropolitan and regional areas of NSW.

JRPPs have been established for the Northern, Hunter-Central Coast, Southern, Sydney Metropolitan East and Sydney Metropolitan West regions (aligned with existing Department of Planning boundaries). Members of the existing Planning Assessment Commission (PAC) are currently proposed to undertake JRPP functions in the Western Region. The JRPP provisions do not apply in the City of Sydney, where the Central Sydney Planning Committee (CSPC) will continue to function.

Tweed Shire Council is located within the Northern Region.

Membership of JRPPs

Each JRPP consist of five members as follows:

State Members: Three State members appointed by the Minister, each having expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration. One of the State members is appointed as the Chairperson of the JRPP.

Council Members: Two council members, and an alternate have been appointed by each council that is situated in a part of the state for which a JRPP is appointed. At least one council nominee is required to have expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. The council members participate in JRPP matters when they are located in their local government area.

Following an earlier Expressions of Interest process, Tweed Council, at an Extraordinary Meeting held on 30 June, 2009, resolved to appoint the following people as Tweed Council's Panel representatives on the Northern Region Joint Regional Planning Panel:

Robert Quirk
Dr Ned Wales
Stephen Grimes (Alternate)

Tweed JRPP Development Applications

To date, Tweed Council has received the following JRPP development applications.

- DA09/0661. Lot 224 DP 1075237 and Lot 2 DP 1042119 Casuarina Way, Casuarina. 174 Lot subdivision including 170 residential lots and associated subdivision works including roads, infrastructure cycleway and landscaping.
- DA09/0727. Lot 193 DP 1014329, 34 Monarch Drive Kingscliff. Additions to existing manufactured home estate (Noble Lakeside Park) including 45 new manufactured home sites, construction of community hall and facilities and extension of internal roads.
- DA10/0133. Lot 2 DP 619871 No. 35-37 Morton Street, Chinderah. Utilise the approved warehouse building for the purpose of a waste management facility processing up to 30,000 tonnes per annum of kerbside recyclables.

Council officers are still making their assessment and expect to submit reports to the Northern Region JRPP within the next 1-2 months.

Recent Review of JRPP System by the NSW Department of Planning

The NSW Department of Planning recently released documentation relating to a review of its JRPP system. The documents include:

- “Joint Regional Planning Panels – Interim Review of Operation – April 2010”
- “Joint Regional Planning Panels – Operational Procedures – April 2010”

Both of these documents contain matters most immediate to Councils, and are included as attachments to this report.

Other documents including a Complaints Handling Policy, Code of Conduct and relevant planning circulars are available on the Department of Planning web site www.planning.nsw.gov.au.

In a recent letter to Council, the Department of Planning has summarised the main elements of the JRPP Review as follows:

“The Review

The Review shows that the total value of all Development Applications (DAs) lodged with the Regional Panels in the first 9 months is \$2.69 billion. The average time for determinations by Regional Panels for the period of the Review was 114 days, which is a significant improvement on 2008-09 State-wide average of 249 days for development over \$5 million. While early positive results are encouraging, the Review has identified a growing number of DAs currently under assessment for 6 months or more. These figures highlight the need for the Panel Secretariat and the Panel Chairs to work proactively with local councils to ensure assessment reports are submitted for determination in a timely way.

Revised Operational Procedures

The Department has updated the Operational Procedures to further detail specific operational requirements, particularly in regard to monitoring of applications, briefing meetings, reporting and decision making. The Review indicated that the Department, the Panel Secretariat and Regional Panels must better manage delays in the assessment process by being more active in monitoring applications and assisting councils to resolve problems hindering the finalisation of the assessment report.

The updated Operational Procedures provide a new toolbox of measures to better manage delays in the assessment of applications. Councils will be asked to provide and “Application Status Report” for all DAs that have been lodged for 70 days. The Status Report will detail the progress on the processing of the DA to date, with a commitment to a final reporting time frame. The Department will also arrange for one of its project delivery managers to liaise directly with State agencies where a delay in obtaining agency concurrence or advice is identified as an impediment to a council completing an assessment report.

Changes to the Code of Conduct

The revised Code of Conduct clarifies that, where appropriate reporting arrangements are in place to ensure that there is no conflict in the staff member's duties, it is possible for council staff to be members of a Regional Panel. Furthermore, the Code of Conduct reiterates Regional Panel members are required to disclose all interests that may be relevant to the activities of the Regional Panel.

Complaints Handling Policy

Following consultation with the Independent Commission Against Corruption and the New South Wales Ombudsman, the Minister has approved the Complaints Handling Policy for the Joint Regional Planning Panels."

Within these recommended actions, the most critical of these to participating NSW Councils are the proposals to establish delegations to Council officers, **not the elected Council**, of certain types of development applications that are currently determined through the JRPPs.

To this effect, the by letter dated 18 May 2010, (see attachment to this report) the NSW Minister for Planning has requested if Council is willing to support a 12 month trial of this new form of delegation to Council officers.

An interim response has been sent to the Minister advising him that Council's current staff delegations for the determination of development applications (DAs) does not align with the Department of Planning's proposed system of delegation of certain JRPP DAs to Council officers, and that a further Council consideration of this matter is necessary.

In the words of the Minister in his letter:

"I am also proposing that the Regional Panel Chairs delegate Regional Panel applications on three circumstances where your Council has agreed that these applications will be determined by appropriate senior staff and not by the full Council or Council Committee, consistent with the theme of depoliticising the planning system:

Straightforward Applications

The proposed delegations will allow Council to determine regionally significant applications where there have been no objections received, and the assessment report recommends approval (either with or without conditions). The delegation will not apply to applications where the Panel Chair advises Council in advance that the delegation will not apply to a particular application.

Designated Development

The proposed delegation will allow Council to determine designated development with a Capital Investment Value of \$5 million or less, which is currently determined by a Regional Panel. The delegation would apply regardless of whether there have been objections received, provided the assessment report recommends approval (with or without conditions). The delegation will not apply to applications where the Panel Chair advises Council in advance that the delegation will not apply to a particular application.

Area and Precincts

The proposed delegation will allow Council to determine regionally significant applications located in particular areas and precincts where detailed planning has occurred, regardless of whether there have been objections received, provided the proposed development is strictly in accordance with identified key planning controls, and where the assessment report recommends approval (with or without conditions). The delegation will not apply to applications where the Panel Chair advises Council in advance that the delegation will not apply to a particular application.

The Department requests Council to identify and provide details on areas within Council's Local Government Area, such as Business Parks, which have detailed planning controls that clearly outline what development is appropriate. Where such controls are in place, the Department will consider delegating regionally significant applications to Council to determine. Council should include details of past and possible future applications in these precincts or areas to illustrate the utility of this delegation."

The Minister's letter also identified that separate legislation is being prepared to return the determination role for Section 96 modification applications relating to JRPP DAs back to Councils.

In responding to the Minister's officer delegation proposal, it should firstly be pointed out that Council's current adopted delegations to staff for the determination of DAs is as follows:

"All development applications with a value of more than \$10 million and subdivisions involving more than 50 lots are to be reported to Council for determination".

In considering the proposed trial for the "*Straightforward Applications*" and "*Designated Development*", involving the assessment of JRPP applications, whilst the officers believe they are administratively and technically well equipped to handle the determination of these applications, it is acknowledged that a number of these applications would be likely to exceed Council's current DA delegation threshold. Furthermore, whilst the officers can see the broader benefits of certain JRPP applications being returned back for Council determination, they are also conscious of the fact that this new system would exclude the elected Councillors from the decision making for these applications.

The recommendation to Council therefore provides Council with the options of advising the Minister of whether or not it supports the new system of JRPP officer delegation (Options A and B). Option B supports the return of certain JRPP applications for the determination by Council officers only, in accordance with Council's current policy of DA delegations.

The Minister's request for Councils to identify "Area and Precincts" suitable for further JRPP officer delegations, is another difficult task for Council officers to complete, without the prior consultation of the elected Council. In a review of this request, the Council officers are of the view that the majority of Tweed Council's urbanised areas have detailed planning controls to adequately guide development assessment of the various JRPP development types. Possible suggested areas are the Kings Forest and Cobaki Lakes redevelopment sites, which will be accompanied by detailed Development Codes. The same could be said for the well established DCP controls for the coastal redevelopment sites of Salt, Casuarina, Seaside City, Koala Beach, and Seabreeze Pottsville, as well as locality based controls for Cabarita/Bogangar, Terranora and Tweed Heads. It has therefore been recommended that Council request to the Minister to clarify whether those areas of the Tweed Shire already the subject of detailed Development Control Plans and Locality Plans are suitable to enable further delegatory powers of determination to be offered to Council officers in those locations.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Council will need to consider its current adopted officer delegations for the determination of development applications.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. A letter from the Minister for Planning, the Hon Tony Kelly MP, dated 18 May 2010 requesting a Council response to new JRPP officer delegation (ECM 17248989)
 2. Copy of Department of Planning document - "Joint Regional Planning Panels – Interim Review of Operation – April 2010" (ECM 17248998)
 3. Copy of Department of Planning document - "Joint Regional Planning Panels – Operational Procedures – April 2010" (ECM 17249004)
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20 [PR-CM] State Emergency Services/Unlimited Arts - Development of Site

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

Lot 682 DP41192 Pioneer Parade, Banora Point, is crown land for the purpose of public recreation and under the management of the Banora Point (R89237) Reserve Trust as notified by Government Gazette on 12 July 1974. The affairs of the Trustee are managed by Tweed Shire Council. The existing uses of the site are shared between the State Emergency Service Tweed Heads Unit and Tweed Unlimited Arts. This report presents a concept plan for future development of the site for consideration.

This report also addresses the matters raised as a Notice of Motion at the Council meeting of Tuesday 16 February 2010.

RECOMMENDATION:

That Council:

- 1. Endorses the permanent location of the State Emergency Service Tweed Heads Unit and Tweed Unlimited Arts on Lot 682 DP 41192 Pioneer Parade, Banora Point.**
- 2. Requests from the Land and Property Management Authority to create an additional purpose of the reserve for emergency service facilities to ensure the long term tenure of the State Emergency Services facility.**
- 3. Prepares a works schedule and a Section 94 Plan for the support of State Emergency Services in Banora Point, Murwillumbah, Pottsville and an outpost at Kings Forest.**

REPORT:

Lot 682 DP 41192 Pioneer Parade, Banora Point, is crown land for the purpose of public recreation and under the management of the Banora Point (R89237) Reserve Trust as notified by Government Gazette on 12 July 1974. The affairs of the Trustee are managed by Tweed Shire Council. The use of the site is shared between the State Emergency Service (SES) Tweed Heads Unit and Tweed Unlimited Arts.

Under the provisions of the *State Emergency Service Act 1989* (the *Act*) the functions of the SES is to protect persons from dangers to their safety and health, and to protect property from destruction or damage, arising from floods, storms and tsunamis. They are the combat agency for these emergencies and co-ordinate the evacuation and welfare of affected communities. They carry out rescue operations, assist other emergency service organisations and recovery management. Section 17 of the *Act* requires a council of a local government area to provide (free of charge) suitable training facilities and storage and office accommodation for the SES. These requirements are in addition to the 11.7% annual monetary contribution payable by Council out of its consolidated fund.

In 2009, discussions were held with the SES Richmond Tweed Region Controller, to determine future accommodation needs based on the projected population growth within the Tweed and in consideration of the NSW SES Standards of Covers. The outcome of these discussions identified the Tweed Heads Unit location as a focal point for SES services in the Tweed Heads area. It determined that the SES Tweed Heads Unit required some additional garaging and storage capacity but most importantly an upgrade of the operations centre to allow it to coordinate major flood and severe weather response operations requiring all agency support and control of significant SES Out of Area assistance resources. The Tweed Heads location is in the most urbanised part of the shire with the most significant flood, storm, coastal inundation and Tsunami threats and developing the SES Tweed Heads Unit to a level three capacity will preclude the need to duplicate that capability elsewhere in the Shire.

Within the current financial year alterations and addition are proposed at the SES Tweed Heads Unit. The total project value is \$120 000 with a \$50 000 subsidy to be provided by the SES. These works are considered stage 1 with further works required once more funds are secured.

In addition future funding needs have been identified within the 7-year plan for a Unit to be located within the Kings Forest area. Following discussions with the SES last year it has been concluded that should the SES Tweed Heads Unit site be upgraded to the required capacity a separate unit at Kings Forest will not be required with possibly an outpost to garage equipment deemed necessary to support the growth from the coastal population.

As part of the discussions with the SES, Tweed Unlimited Arts (TUA) was approached to consider its future on the site. TUA have been based at the site for approximately 30 years and occupies the original Terranora school building, cottage and operates a public gallery from the original Banora Point post office building that was relocated onto the site. TUA offer a variety of arts and craft services and classes for all age groups including persons with disabilities. TUA have formed a co-operative relationship with the SES Tweed Heads Unit offering to vacate their buildings for use during emergency events as was the case in the May 2009 severe storm event. The TUA has also expressed a desire to extend their services offered to the Tweed community on the site.

A concept plan has therefore been developed to accommodate the needs of both the SES Tweed Heads Unit and TUA (see Attachment 1). It is recommended that the Council adopts the concept plan thus allowing each organisation to remain on-site and to pursue their future needs with the knowledge of the security of tenure.

Should Council support the concept plan a request to the Land and Property Management Authority to create an additional Reserve purpose will be necessary prior to any further development preparations being undertaken as the current purpose is for public recreation only. Therefore it is recommended that this request be undertaken as soon as possible to secure tenure for the Service.

Further to the above, following a recent workshop with the State Emergency Service (SES) at Council Meeting Tuesday 16 February 2010 Cr K Milne successfully motioned that a Council report be brought forward outlining the following four matters:

1. Consideration of the need for an improved SES Control Centre identified by the SES, to the standard of the new Lismore Control Centre (\$1.5M), and options for providing funding in Council's upcoming and future budgets for a such a facility.

This report addresses the provision of future facilities for the State Emergency Service of the Tweed Shire.

A Section 94 Contributions Plan is to be developed for consideration to fund the provision of required SES facilities due to future population growth.

2. Options for enhancement of emergency infrastructure funds due to the high risk flooding category of the Tweed as outlined by the SES.

In July 2009 the NSW Government introduced a new emergency services funding model. It included the SES within the same contributory funding structure as the NSW Fire Brigades (NSWFB) and NSW Rural Fire Service (NSWRFS). Therefore from the 2009/10 financial year council's statutory contributions to the NSWRFS and NSWFB was reduced from the existing 13.3% and 12.3% respectively and is now a standard 11.7% for all three emergency services. The State Government contribution rose from 13% for the NSWRFS and 14% for the NSWFB to 14.6% to all three emergency services.

Council's estimated Emergency Service Levees for 2009/10 therefore:

NSWFB	\$334,330
NSWRFS	\$162,895
NSWSES	<u>\$33,764</u>
	\$530,989

Council's SES voluntary contributions \$121 336 (excluding capital works proposed for Pottsville and Tweed Heads).

Recently Council has been advised that redevelopment of the funding methodology has been undertaken by the SES and will be calculated on population base. The revised model is to be phased in over a 5 year period commencing 1 July 2010.

To date formal written notification of the dollar amount has not been provided to Tweed Shire Council.

The emergency service levees are in addition to the statutory obligations of Council under the provisions of the *State Emergency Services Act* Section 17 requiring a council of a local government area to provide (free of charge) suitable training facilities and storage and office accommodation for the SES.

Council currently meets its statutory obligations to the SES, consults openly with the organisation as to their strategic infrastructure needs and now awaits advice from the SES as to the statutory funding obligations into the future.

3. Any other emergency services infrastructure responsibilities under Council's jurisdiction.

Point 2 above provides information as to the financial contributions to the three emergency service organisations, as required of Council, under the provisions of their respective Acts.

In addition Council makes voluntary contributions annually to a number of volunteer organisations, and for the 2009/10 year, to:

Volunteer Marine Rescue (Point Danger)	\$11,440
Australian Volunteer Coast Guard Association (Kingscliff)	\$11,440
Volunteer Rescue Association	\$23,942
Careflight	\$10,500
Surf Life Saving	<u>\$12,800</u>
	\$70,122

Council had previously provided capital works funding to the Surf Life Saving through Contributions Plan 16 however following the review this Plan has been closed and the current works schedule being finalised.

Council also provides maintenance to a number of Council owned/controlled buildings housing emergency service organisations and considers requests for contributions to capital works.

4. Consideration of advertising the evacuation centres and evacuation routes on the Council website.

The *State Emergency and Rescue Management Act* is the Act that provides the legislative basis for co-ordination of emergency preparedness, response and recovery operations. The Act provides for the preparation of a State Disaster Plan (Displan) and subordinate plans to ensure a co-ordinated response for necessary operations; the establishment of Emergency Management Committees at State, District and Local Government levels; and arrangements for controlling emergency operations. Accordingly, the Displan devolves control and co-ordination of emergency operations and the responsibility for preparedness, response and recovery to the lowest possible level but lays out a structure by which these resources may be augmented by District and State resources if the Local level resources cannot cope. The Local level committees are responsible to the District level committees and in turn District level committees are responsible to the State level.

A resource list of local evacuation centres is the responsibility of, and maintained by, the Tweed Shire Local Emergency Management Committee. Under the provisions of the Act the Committee is chaired by a senior representative of Council and Council provides executive support to the Committee however the Committee is not a Council Committee.

The nomination of an appropriate evacuation centre, taken from the resource list, in response to an emergency is the responsibility of the relevant combat agency (lead emergency service organisation) and/or Local Emergency Operations Controller at that time. It is dependent on the hazard presented, the needs of the evacuees and is in consideration of the criteria of the evacuation centre. Once an evacuation is called the combat agency is responsible for the safety and welfare of the evacuees and therefore any consideration for an evacuation is not taken lightly.

Community members may be placed at further risk should they move to an advertised evacuation centre where an evacuation has not been called, where an advertised evacuation centre no longer operates or has been subject to damage or further risk due to the emergency event.

The State Emergency Management Committee does not support the advertising of evacuation centres therefore the Tweed Shire Local Emergency Management Committee does not make the resource list of evacuation centres publicly available.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. EH09001 Concept Plan (ECM 16079401)
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21 [PR-CM] Extinguishment of an Existing Easement for Batter Variable Width at Lot 1147 DP 1115395 Seabreeze Boulevard, Pottsville

ORIGIN:

Development Engineering

FILE NO: DA4420/276 Pt48

SUMMARY OF REPORT:

Council has received an application for the extinguishment of an existing 'Easement for Batter Variable Width' which benefits Tweed Shire Council, and burdens Lot 1147.

The easement is no longer required.

A copy of the current survey plan, original survey plan creating the easement, and the relevant sheet of the 88B instrument, are attached.

RECOMMENDATION:

That:

- 1. Council approves the extinguishment of the Easement for Batter Variable Width twelfthly referred to in the Section 88B instrument annexed to DP 1072580, subject to the applicant meeting all survey, legal and Conveyancing costs; and**
- 2. All documentation be executed under the Common Seal of Council.**

REPORT:

The easement was originally created in 2004 by DP 1072580, as part of the early stages of the Seabreeze Estate. It ensured retention of an earth batter which was essential for the creation of an open drain that leads to Wetland 2. At that time, much of the bulk earthworks for the Seabreeze Estate was not completed, but major stormwater infrastructure still needed to be provided.

The existing ground levels and the multiple stages of construction for Seabreeze hampered the implementation of the overall stormwater design for the estate, which relied on the completion of bulk earthworks for full functionality. The required levels for the drainage channel leading to Wetland 2 were similar to existing ground levels, therefore to create a channel on flat land a berm had to be created. The crest of this berm formed the boundary line (between the Drainage Reserve that contains the open channel and Wetland 2, and private property), with the 'rear' of the berm in private property. This rear batter of the berm is the area covered by the easement now requested to be extinguished.

Since that time the developer has completed bulk earthworks for the estate, including filling of all the land behind the original berm. The original berm has now been merged with the site filling, leaving only the batter leading down to the open channel.

There is no longer any batter to protect, and the adjoining finished ground levels are now fixed at a higher level – due to minimum ground level requirements as nominated by consent conditions.

It is considered that extinguishment of the easement will not disadvantage Council nor affect the functionality of the open drainage channel or Wetland 2.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Original easement per DP 1072580 (sheet 3) and Original 88B instrument per DP 1072580 (sheet 3) (ECM 17347594)
-

22 [PR-CM] Pottsville Industrial Lands - Rezoning Application

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2000/85 Pt1 (related file: GT1/LEP/2006 Pt8)

SUMMARY OF REPORT:

The purpose of this report is threefold as it provides a status report and seeks Council's resolution in respect of the following matters:

- Draft LEP 85 – Pottsville Employment Land; including a recommendation to excise certain highly constrained and vegetated land from the area subject of the rezoning, as well as the ability for Council Officers to negotiate an agreement with the landowner and applicant in respect of revegetation and maintenance of the land previously cleared, and
- The breach of Tweed Tree Preservation Order 2004, affecting part of the site, and
- Progress by the Department of Environment, Climate Change and Water (DECCW) in investigating damage to the Aboriginal cultural heritage scar tree.

The report concludes that it is necessary to deal with the alleged breach of the Tree Preservation Order 2004 (TPO) and the damage to the scar tree prior to the assessment and reporting of the rezoning application being finalised. The preferred option for managing the vegetation clearing is negotiation with the landowner for the preparation of a revegetation management plan, prior to the rezoning application being progressed, as this is likely to provide a better environmental outcome than might otherwise occur through legal proceedings.

In addition, the vegetation management and site constraints, which have not been duly reflected in the amended rezoning application, necessitate the excision of that part of the site constrained to better enable the rezoning of the less constrained land to proceed.

Council's support is sought to redefine the boundary area of the land subject to the draft rezoning and to enable Council Officers to negotiate a revegetation management outcome for the site, with the landowner.

RECOMMENDATION:

That:

1. **ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(e) and Section 10A(g) of the Local Government Act 1993, because it contains information that would, if disclosed:**
 - (e) **prejudice the maintenance of law**

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
2. Council endorses the boundary redefinition of the land subject to the rezoning as identified in Annexure 1 – Excluded Area, contained in this report, being that land bordered with a heavy red line.
 3. Council defers proceeding with legal action in relation to vegetation clearing on the basis of the landowner agreeing to a revegetation management strategy in accordance with Resolution No. 4 below.
 4. Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85).
 5. Land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land.

REPORT:

During assessment of the rezoning proposal and investigation of the site it was revealed that a substantial number of mature trees had recently been removed from an area of land covered by Council's Tree Preservation Order 2004 (TPO), and that a significant Aboriginal heritage scar tree had been set alight. These matters were reported to the Council meeting of 15 December 2009, where Council resolved the following:

“RESOLVED 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.*
- 3. The rezoned land is to be rolled over into the new Local Environmental Plan as Industrial Land in accordance with its designation in the Far North Coast Regional Strategy.*

PART B – ALLEGED BREACH OF TWEED LOCAL ENVIRONMENTAL PLAN 2000

- 4. 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.*
- 5. 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.*
- 6. 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.*
- 7. That the Full Council receives regular briefings and/or updates on the outcome as they come to hand with regard to Part B recommendations 4 and 5 from the General Manager and/or the Director Planning and Regulation.”*

Because of the complexity of each issue subject of the 15 December 2009 resolution, this current report is prepared in three sections, addressing:

1. The rezoning application;
2. Alleged breach of Council's Tree Preservation Order 2004 (TPO), and
3. Alleged wilful damage of a significant Aboriginal heritage scar tree.

The conclusion to this report will however require these matters to be brought together to form recommendations relevant to all three issues.

PART A – THE REZONING APPLICATION

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, as follows:

“RECOMMENDED that Council:

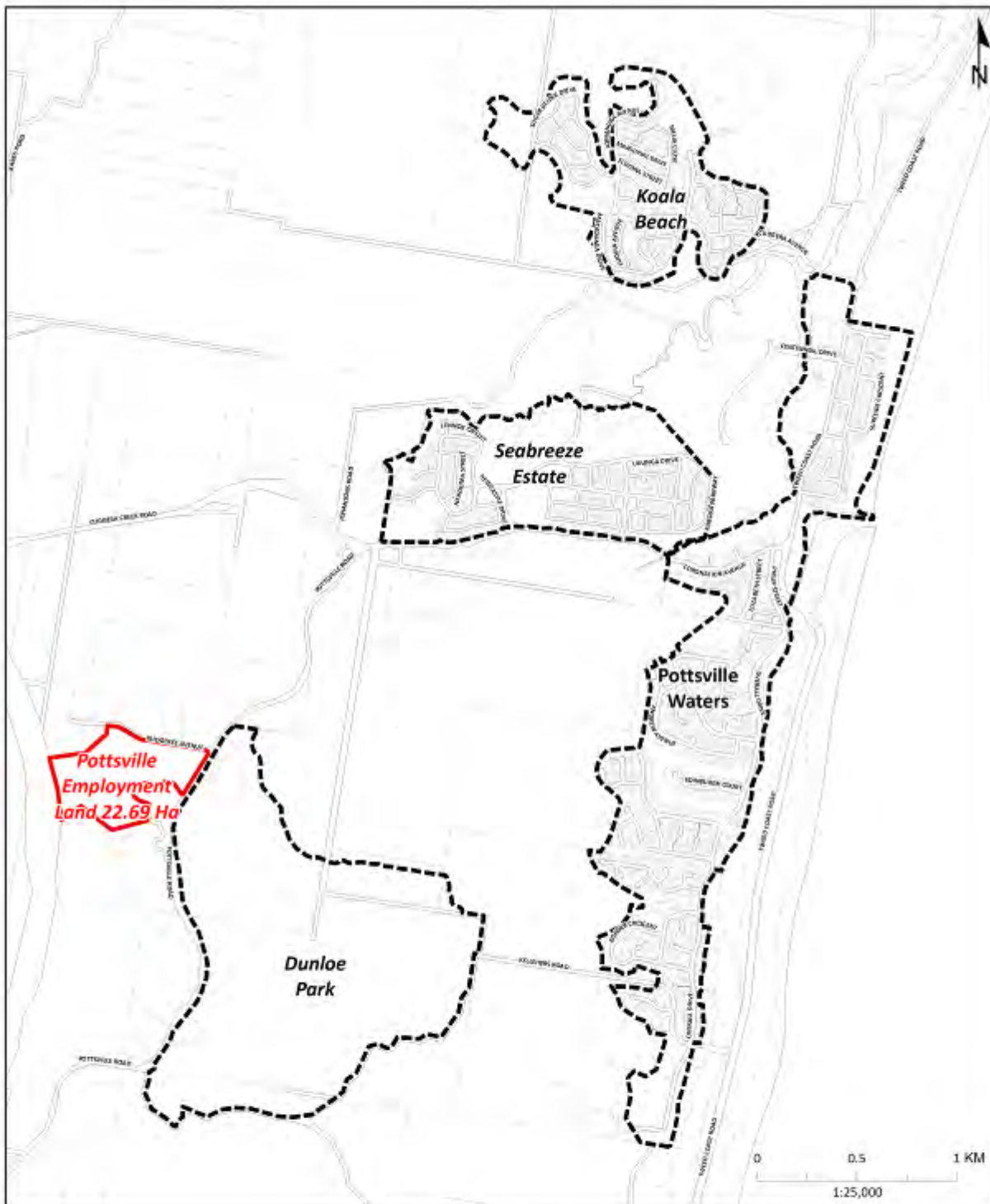
1. *Advises the Department of Planning that it intends to prepare a draft Tweed Local Environmental Plan Amendment for Lot 12 DP 1015369, Lot 4 DP 753328, Lot 1 DP 215998, Lot 1 DP 1080884 Pottsville Road, Pottsville, in accordance with Section 54 of the Environmental Planning and Assessment Act.*
2. *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 & 3) adjoining and to the north (refer to Annexure 4).

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, however, the proposed Stage 2 land is not identified in the FNCRS and cannot be advanced until such time that the FNCRS is amended to include this land. This would most likely occur as part of the Department's review of the Strategy, which is scheduled in 2012.



Pottsville Employment Land
Locality Plan

Filename: z:\esri\planning\mxd\Pottsville\Pottsville Industrial Land.mxd

Author: J.Bachelor - Planning Relations Unit

Date Printed: 9 October, 2009

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Coordinate System: MGA Zone 56
Datum: GDA 84

Cadastral: 9 October, 2009
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Figure 1 – Extent of Draft LEP 85 Area Boundary (shown in red)

Revised rezoning submission received

Following detailed discussion with the applicant and request for further information, Planit Consulting lodged a revised document on 25 August 2009. Further meetings have been held between Council officers and the proponent to resolve a number of major concerns with the proposal, which included:

- vegetation management;
- effluent disposal;
- geotechnical matters;
- stormwater management, and,
- land tenure and access to public land.
- significant land forming constraints.

Further revised submission received

In response to Council's continuing concerns with significant issues affecting the site, Planit consulting supplied a further revised document on 5 May 2010.

While Council officers have consistently raised concerns about the extension of development into the steep heavily constrained and vegetated southern section of the site the current proposal persists with the previous layout design. It is proposed to totally remove the mature trees along the southern boundary, as well as, the construction of a batter to the southern boundary. The re-contoured site design will result in the batter having a height, in part, in excess of 40 metres. Refer to Figure 3 below for proposed lot layout for the site.

Identification of heavily constrained land or vegetation of high ecological value

The steep, highly constrained land to the south of the site (refer to Annexure 1), and land containing vegetation of high ecological status has been identified in a number of studies, including:

1. The Far North Coast Regional Strategy 2006 (FNCRS) (See Annexure 2);
2. The Tweed Urban and Employment Land Release Strategy 2009 (TU&ELRS) (See Annexure 3);
3. The Tweed Vegetation Management Strategy 2004 (See Annexures 9 and 10);
4. Tweed Tree Preservation Order 2004 (See Annexure 7);
5. Original rezoning submission, and
6. Sub-consultant's report in Rezoning Submission.

The Far North Coast Regional Strategy 2006 (FNCRS)

The FNCRS is the leading regional plan identifying potentially suitable land for urban purposes, including and employment generating development. The Strategy clearly states in relation to all identified potential release areas that *“Not all land identified can be developed for urban purposes. All sites will be subject to more detailed investigations to determine capability and future yield”*.

Apart from the clear directive to undertake assessment of the capability for ‘all’ sites, the relevant map covering this site clearly identifies that steep and vegetated land to the south of the site is land with “indicative high level constraints – urban”.

The Tweed Urban and Employment Land Release Strategy 2009 (TUELRS)

The TUELRS was adopted by Council on 17 March 2009, in compliance with and in part because of the requirement of the FNCRS for councils to prepare local growth management strategies prior to rezoning further land for residential, commercial and industrial uses.

The aims of the TUELRS include:

- Compliance with the FNCRS to prepare a Local Growth Management Strategy;
- Comply with the North Coast Regional Environmental Plan, 1988 (cl.39) in relation to Council preparing a commercial expansion strategy, and
- Ensure that the limited “greenfield sites” available in the Tweed Shire are developed to their maximum capability without compromising the quality of the natural or living environment.

While the TUELRS has extended the potential future boundaries of potential urban development on land adjoining this site, the steep, heavily constrained land to the south has been excluded from any proposed future developable land envelope, refer Annexure 3.

The Tweed Vegetation Management Strategy 2004 (VMS)

The VMS identifies vegetation on the site as being of both high ecological status and high vulnerability. It was, in part, the translation of the findings of the Vegetation Management Strategy 2004 which lead to the definition of vegetation boundaries implemented in the E2 Environmental Protection zone in the Draft Tweed LEP 2010.

Tweed Tree Preservation Order 2004

Consistent with the findings of the Tweed Vegetation Management Strategy 2004, high ecological value and high susceptibility vegetation present on the site was included in the proposed E2 Environmental Conservation zone which has been carried forward and included within the Draft Tweed LEP 2010.

Original rezoning submission

The application documentation states in the initial report that *"Slopes greater than 14 degrees are likely to have geological constraints and are susceptible to mass movement and high to very high erosion hazard. In addition, slopes greater than 14 degrees can cause installation and management problems for sewerage and water systems. With particular reference to employment lands, steeper slopes also make vehicular access difficult and unsustainable."*

This evaluation of the potential development constraint of the land, particular in the south of the site, is generally consistent with the issues raised by Council officers in respect of the proposed development, which does not reflect those constraints except by way of proposing mass earthworks to create a flatter building envelope.

Sub-consultant's report in Rezoning Submission

Geotechnical assessment of the site, as presented in Appendix J of the application documentation's original report makes several references to the potential for instability of deep excavations, including:

- Proposed deep excavations could be susceptible to instability and requires further investigation;
- Surface mapping indicates that a soil and weathered rock cover exists over the development area. A near vertical face will not be stable in areas of deep cover material, and,
- "... The defect orientations may lie unfavourably to the proposed excavation orientations and maybe susceptible to wedge type and toppling failures. Analyses are required to determine a suitable batter angle in the bedrock.

Implications of alleged breach of Council's TPO and damage to Aboriginal heritage scar tree

Notwithstanding the need for a final resolution on the proposed effluent disposal and other constraining issues, the rezoning application is approaching the point of being referred to the Department of Planning for a section 65 certificate (public exhibition); however, matters relating to the alleged breach of Council's TPO 2004 and alleged wilful damage of the Aboriginal heritage scar tree, discussed in detail below, and suitability of the heavily constrained southern section of the site have caused a delay in the assessment and resolution of the application.

The recommendations in this report are targeted at ensuring a positive environmental outcome and for ensuring that heavily constrained land is not inappropriately rezoned for urban purposes. This strategy will enable the remainder of the site to be progressed more efficiently through the rezoning process.

Removal of heavily constrained land from the rezoning proposal

While a revised proposal has been received from the proponent, it is substantially the same as the original proposal, which requires extensive earthworks and land re-contouring. These works will necessitate the removal of significant mature trees from a substantial part of the site, including trees protected by Council's TPO, and within land identified in the draft Tweed LEP 2010 as environmental protection.

Although supportive of the use of the land for employment purposes Council staff have consistently raised issues about the consistency and appropriateness of the proposed rezoning and development proposal in relation to:

- The Far North Coast Regional Strategy 2006;
- Tweed Urban and Employment Land Release Strategy 2009;
- The Tweed Vegetation Management Strategy 2004;
- Council's Tree Preservation Order 2004, and,
- The applicant's own documentation to Council.

On 7 July 2009 Planit Consulting was advised of correspondence from the Department of Planning, as discussed below, which identified a number of matters requiring consideration relating to the level of detail required to determine the sites suitability for employment development purposes.

The Director General of the Department of Planning, advised in their correspondence of 29 June 2009 that "in view of the high level constraints attached to the subject land there is a need to address the following issues prior to my consideration of an authorisation for the draft plan under section 65 of the Act", and proceeded to list key issues. Of immediate relevance to this report is the following:

- The significance of the high and medium value biodiversity, steep slopes and wet landscapes. Mitigation measures or offsets to address those constraints including a review of the boundaries with the possible exclusion of areas unsuitable for development having regard also to the Far North Coast Regional Strategy

The advice from the Department is and has been consistently applied by Council Officers and in-part has contributed to the recommendations provided in this report.

As discussed in sections B and C below, investigations have occurred and advice received regarding potential litigation for alleged breach of Council's TPO 2004, and alleged wilful damage of the Aboriginal heritage scar tree. At this stage these matters have not been concluded and may not be finalised for some time. Deferral of determination of the rezoning proposal has been dependant upon conclusion of these matters.

Exclusion of the heavily constrained land to the south of the site will facilitate:

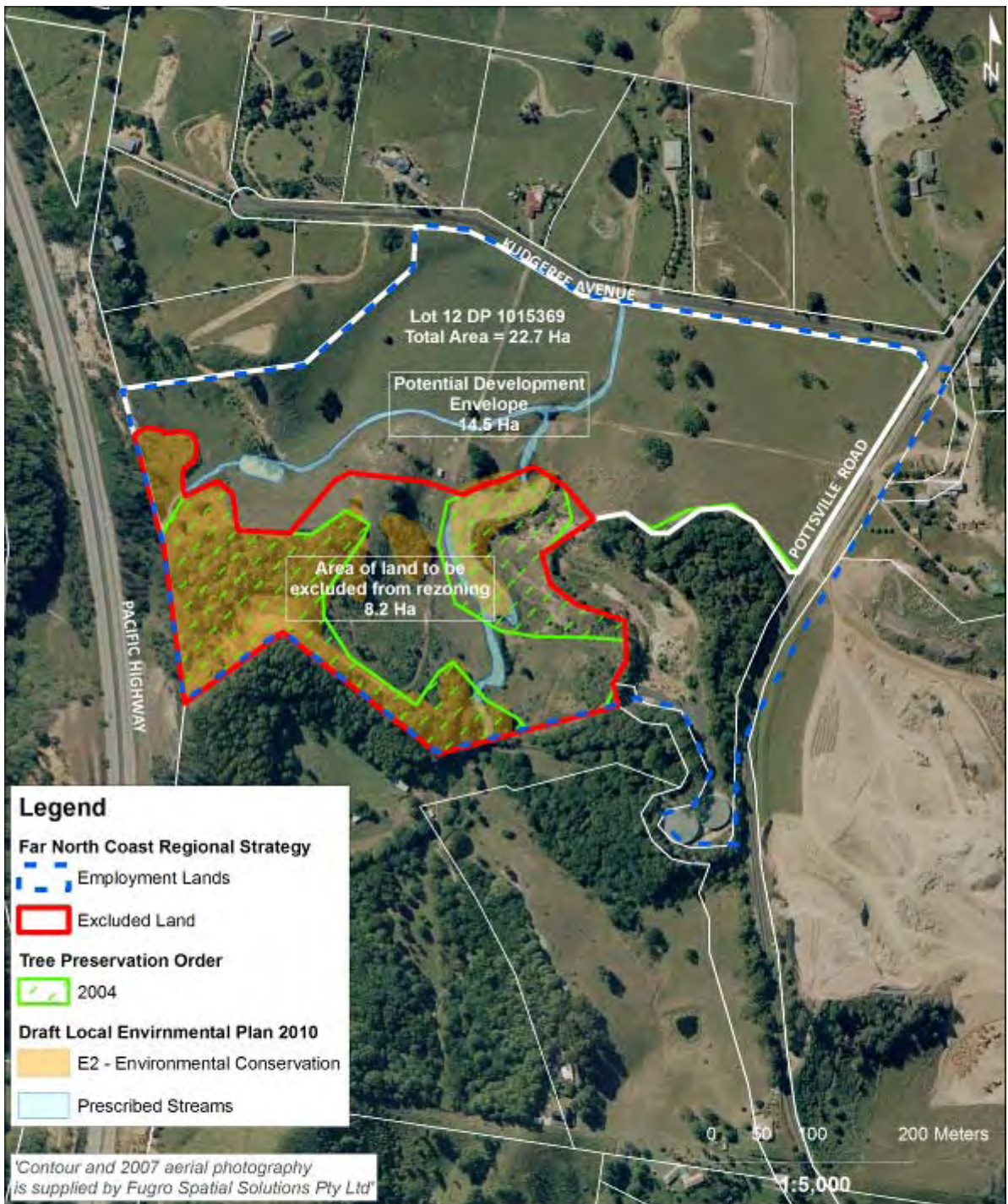
- progress of the rezoning submission;

- protection of vegetation of recognised ecological status;
- allow continuing investigations regarding breach of Council's TPO;
- allow DECCW investigations into burning of the scar tree to be finalised, and,
- negotiations with the applicant and land owner regarding vegetation 'trade-off' areas and rehabilitation and revegetation of other land.

In consideration of the extent of recognised constraints, and potential adverse impact of development of the steep, timbered land to the south, and in an attempt to progress the rezoning application expeditiously, land on the southern section of the site, generally with slopes in excess of 18 degrees which includes that land covered by Council's TPO 2004 and contains the 'scar tree' has been identified as that land recommended for removal from the rezoning submission, revegetated and protected for environmental conservation purposes.

As such, and given the extensive resources already committed by Council officers in attempts to negotiate a more appropriate development envelope, it is now recommended that land identified in Figure 1 below as highly constrained and generally unsuitable for urban development be excised from the area of the rezoning proposal.

Figure 2 below illustrates the area of land to be excised from the rezoning proposal and set aside for revegetation, and environmental conservation purposes.



Legend

Far North Coast Regional Strategy

- Employment Lands
- Excluded Land

Tree Preservation Order

- 2004

Draft Local Environmental Plan 2010

- E2 - Environmental Conservation
- Prescribed Streams

'Contour and 2007 aerial photography is supplied by Fugro Spatial Solutions Pty Ltd'

AERIAL PHOTO - taken June 2007

**Pottsville Employment Land Rezoning Submission
Area of Land to be Excluded from Zoning**

Filename: z:\far\planning\projects\pottsville\excluded land.mxd	Author: J Batchelor - Planning Reform Unit	Date Printed: 02 June, 2010
<p>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 indirect or consequential damage) and costs which may be incurred as a result of data 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 excavations a 'Call before You Dig' enquiry must be made by calling 1100. The information contained in this document remains valid for 30 days only from the date of supply.</p>	<p>GDA</p> <p>Cadastral: 02 June, 2010 © Dept. of Lands & Tweed Shire Council</p> <p>Coordinate System: MGA Zone 56 Datum: GDA 84</p> <p>DO NOT SCALE COPY ONLY - NOT CERTIFIED</p>	<p>Civic and Cultural Centre 3 Turungalum Road Murrumbidgee NSW 2484 PO Box 810 Murrumbidgee NSW 2484</p> <p>TWEED SHIRE COUNCIL</p> <p>T: (02) 6670 2400 1300 282 072 F: (02) 6670 2438 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au</p>

Figure 2 Land to be excised from rezoning envelope area

PART B – POTENTIAL BREACH OF COUNCIL’S TPO

Council’s TPO 2004 covers a relatively small area of land within the Shire; however it does cover land where vegetation has been recognised as being under significant threat from urban development, particularly along coastal land east of the Pacific Highway. In part, as an attempt to prevent pre-emptive clearing prior to implementation of Draft LEP Amendment 21, TPO 2004 was implemented.

While the property has been identified as potential employment land in a number of strategies, including The *Far North Coast Regional Strategy 2006*, and Council’s *Tweed Urban and Employment Land Release Strategy 2009*, the southern section of the site is constrained by both steep slopes and vegetation of conservation value, as identified by these strategies, which have either excluded that part of the property or noted the indicative high level constraints. Refer to ANNEXURES 2 and 3.

The significance of vegetation on the site is evidenced in:

- The Tweed Vegetation Strategy 2004;
- Protection under Council’s 2004 Tree Preservation Order, covering the southern section of the site;
- Proposed rezoning of the subject land to E2 Environmental Conservation in Draft LEP 2010; and,
- Construction of a vegetated land bridge across the Pacific Highway to facilitate connectivity of the landscapes either side of the highway.

Loss of a substantial number of trees, burning of dead trees and poisoning of vegetation was first noted when Council staff visited the site in early July 2009. 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 (see Figure 3 below).

Of particular concern was a fire that was burning the trunk of a moderately sized live Brushbox tree, as the fire appeared to have been purposely constructed against the tree’s trunk. This matter will be further discussed in Section C of this report.

The owners were requested to show cause as to why the vegetation had been removed and damaged, to which they provided a written response but failed to adequately show cause or justification for the loss of a significant area of timber.

In accordance with Council’s resolutions of 15 December 2009, Council’s solicitor, Lindsay Taylor Lawyers was approached to seek advice as to options to pursue litigation for an alleged breach of Council’s TPO. At this stage it is believed that any litigation would be affected against the landowner (Tagget) and associated parties, separate to the applicant for the rezoning (Heritage Pacific).

Legal advice received (refer to Confidential Attachment) has lead Council staff to conclude that in the particular circumstances of this case it would be more expeditious and would likely yield a better environmental outcome to pursue a negotiated settlement with the applicant who has already put forward options for a trade-off to compensate for loss of vegetation, and revegetation of additional land not covered by the TPO. However, it remains the case that until vegetation-related matters are concluded finalisation of the assessment of the rezoning application cannot occur.



Figure 3: Aerial photograph showing tree cover in 2007 and location of 'scar' tree.

PART C – DAMAGE to ABORIGINAL HERITAGE SCAR TREE

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.

This led to Council resolving at its 15 December 2009 meeting: *"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"*.

Consistent with Council's resolution, documentation was forwarded to the Department of Environment, Climate Change and Water (DECCW) on 21 December 2009.

As of 1 June 2010 DECCW has advised that they are continuing their investigations and have not provided an indication as to how long it will be before their deliberations are concluded.

As with pursuit of legal action regarding alleged breach of Council's TPO, while this matter remains unresolved no determination of the rezoning proposal is possible.

Inclusion of the 'scar' tree, adjoining trees, and steep land on which they stand within the bounds of steep, vegetated land to be excluded from the rezoning proposal will facilitate progress of the rezoning and on-going action relating to vegetation issues mentioned above.

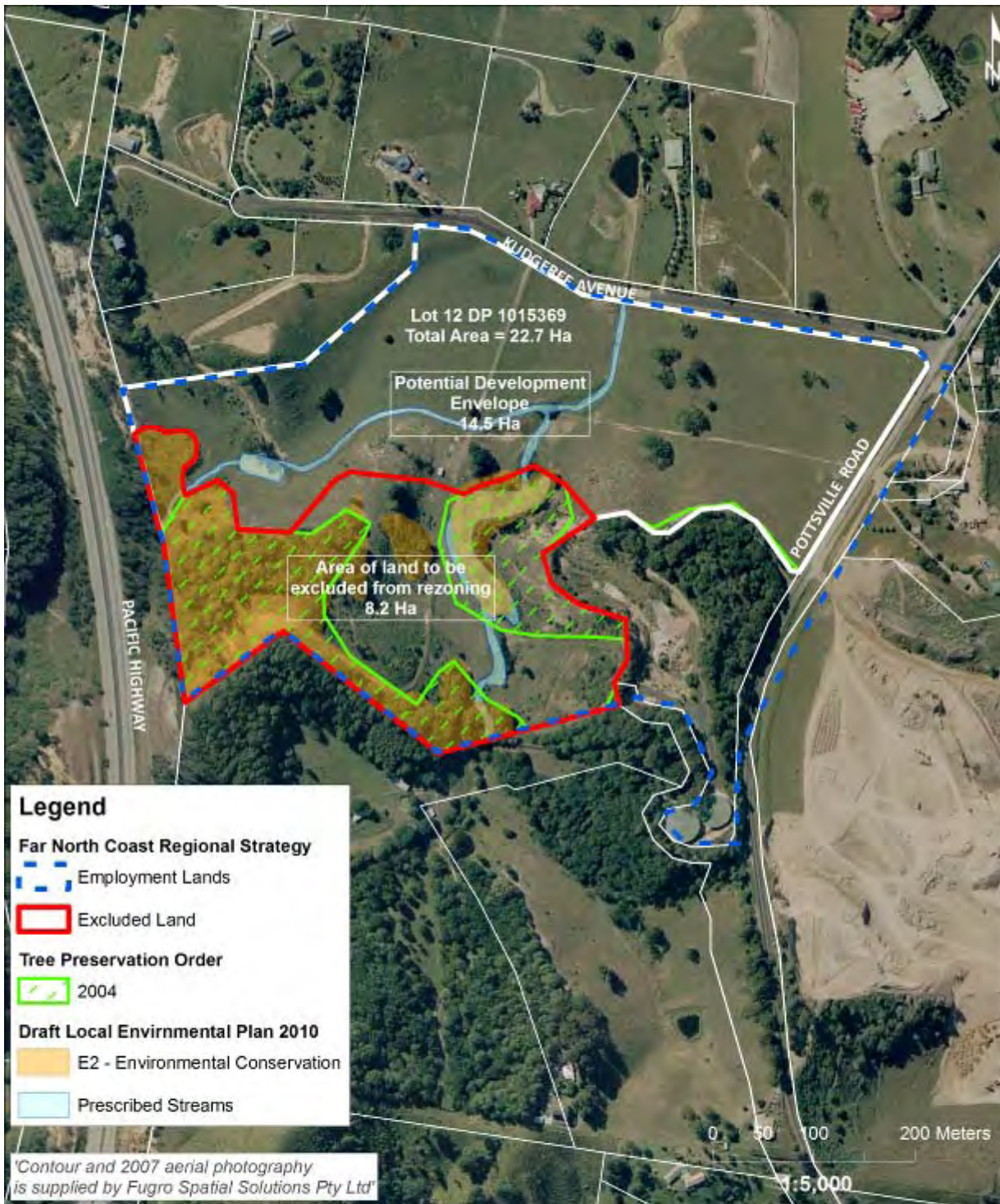
Relationship between potential action under Tweed LEP 2004, rezoning application, and DECCW investigation

The alleged breach of Council's TPO and damage of the Aboriginal heritage scar tree involves the registered landowners (Tagget); however, the rezoning application was lodged by Planit Consulting Pty Ltd on behalf of Heritage Pacific Pty Ltd. These two matters are, for the purposes of the parties involved, at this stage, unconnected.

Notwithstanding that the parties are 'unconnected' the matters affecting the site are interrelated. Finalising matters relating to alleged unlawful breach of the Tweed LEP, and the scar tree have been a priority, as they have the potential to impact any development of the site. This has created some difficulty for the applicant of the rezoning because they are unable to finalise the boundaries, or footprint of the proposed rezoning.

For this reason, it is recommended that the southern section of the site, identified as having indicative high level constraints; the subject of continuing action and investigation for alleged breach of the TPO, and alleged wilful damage of the scar tree, be excised from the area of land relating to the rezoning proposal.

ANNEXURE 1 – Area of land proposed to be excised from the rezoning submission



AERIAL PHOTO - taken June 2007
Pottsville Employment Land Rezoning Submission
Area of Land to be Excluded from Zoning

Filename: z:\0601\planning\projects\pottsville\excluded lands.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 02 June, 2010

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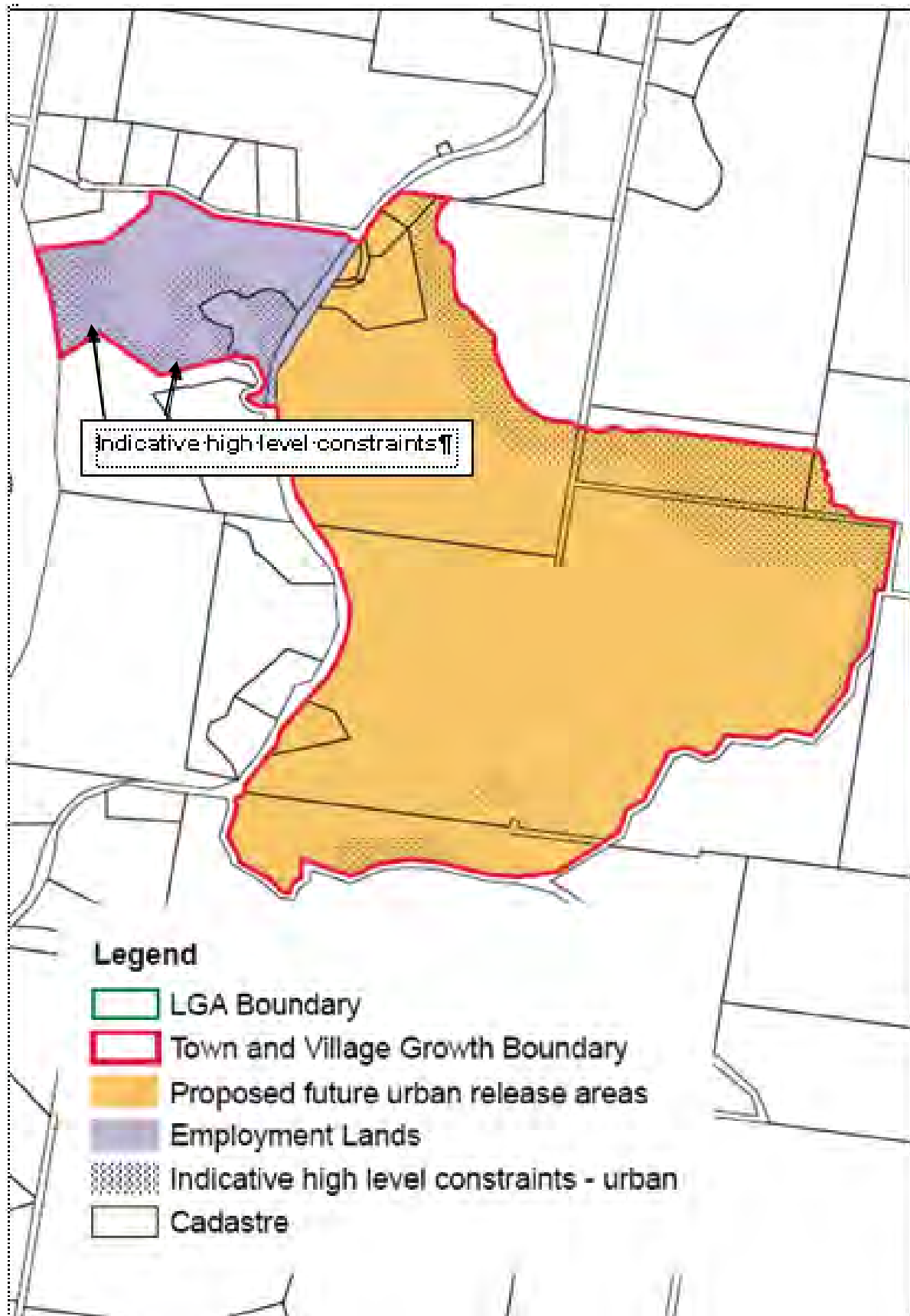
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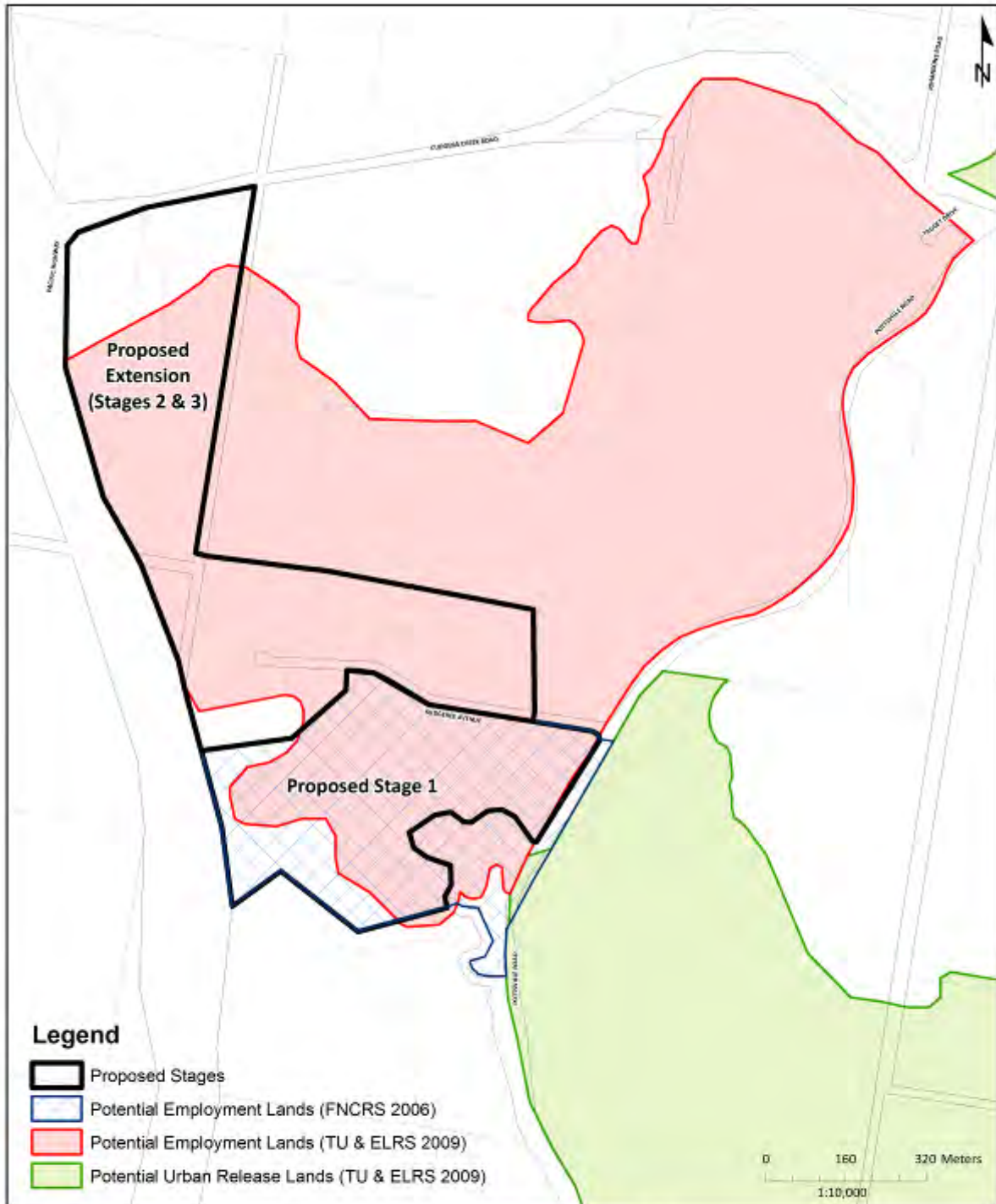
ANNEXURE 2 – Extract from the Far North Coast Regional Strategy 2006 showing “indicative high level constraints” on the southern and eastern boundaries of the site.



ANNEXURE 3 – Extract from Tweed Urban and Employment Land Release Strategy 2009 (Figure 17) showing exclusion of vegetation on the southern portion of Lot 12 DP 1015369



ANNEXURE 4 – Boundaries of the Pottsville Employment Land Rezoning Submission & Other Studies



Pottsville Employment Land Rezoning Submission & Other Studies

Filename: z:\vesh\planning\mxd\pottsville\pottsville Employment Land2.mxd	Author: J.Batcheelor - Planning Referrals Unit	Date Printed: 12 October, 2009
<p><small>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 damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance only and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations 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.</small></p>	<p>GDA</p> <p>Cadastre 12 October, 2009 © Dept. of Lands & Tweed Shire Council</p> <p>Coordinate System: MGA 2000 55 Datum: GDA94</p> <p>DO NOT SCALE COPY ONLY - NOT CONTROL</p>	<p>Tweed Shire Council PO Box 816, Murwillumbah NSW 2484</p> <p>Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>

ANNEXURE 5 – Aerial photograph of the site 2009



ANNEXURE 6 – Aerial photograph of the site 2009



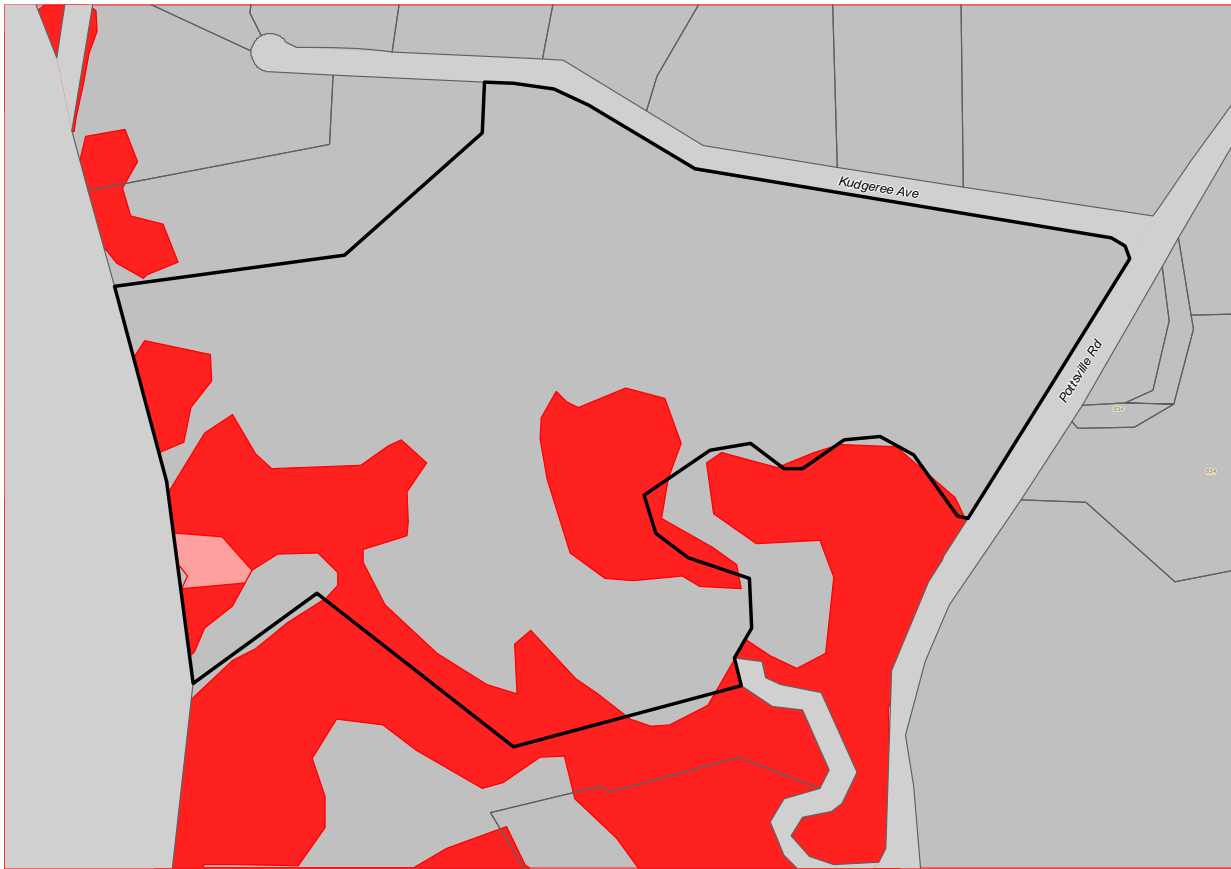
ANNEXURE 7 - TSC Tree Preservation Order 2004 showing land affected



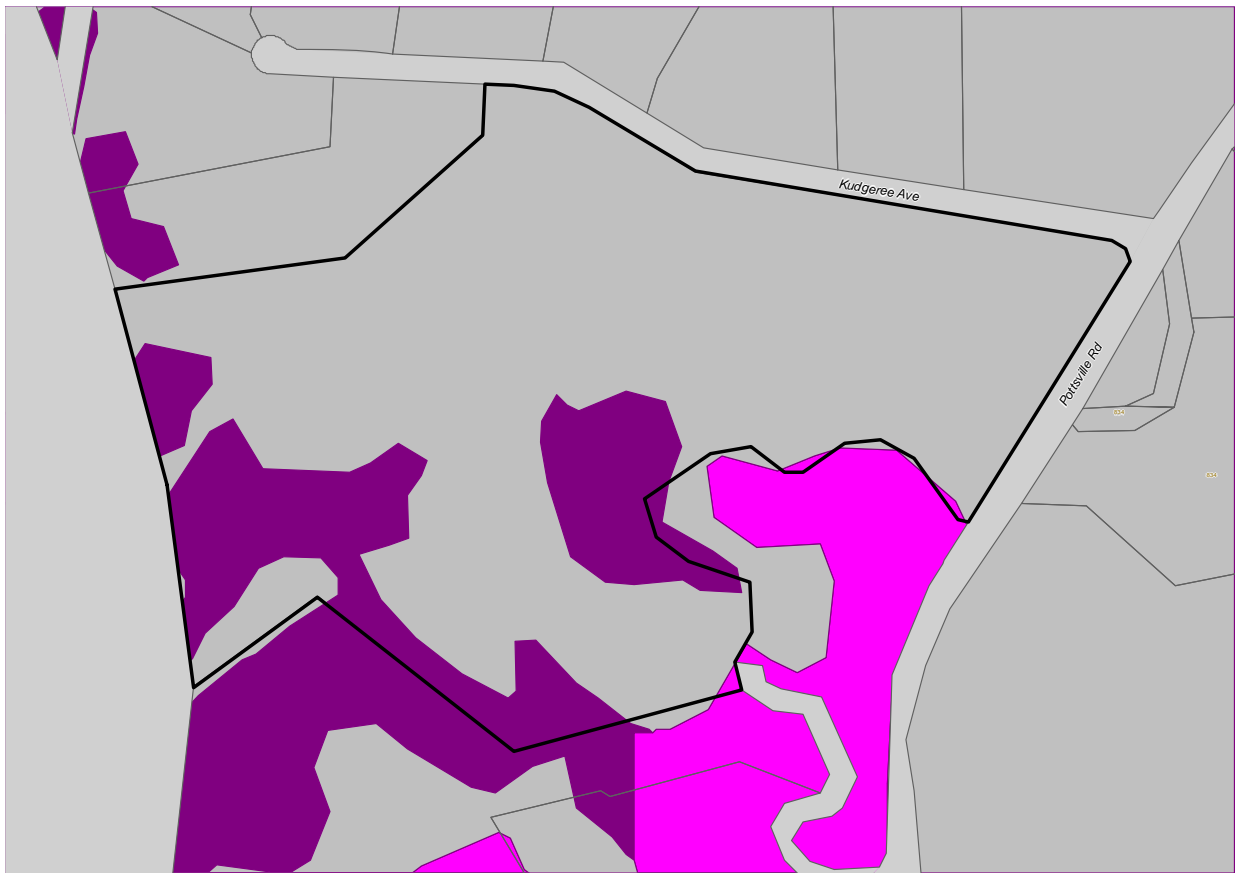
ANNEXURE 8 - Aerial photo showing trees present in 2007



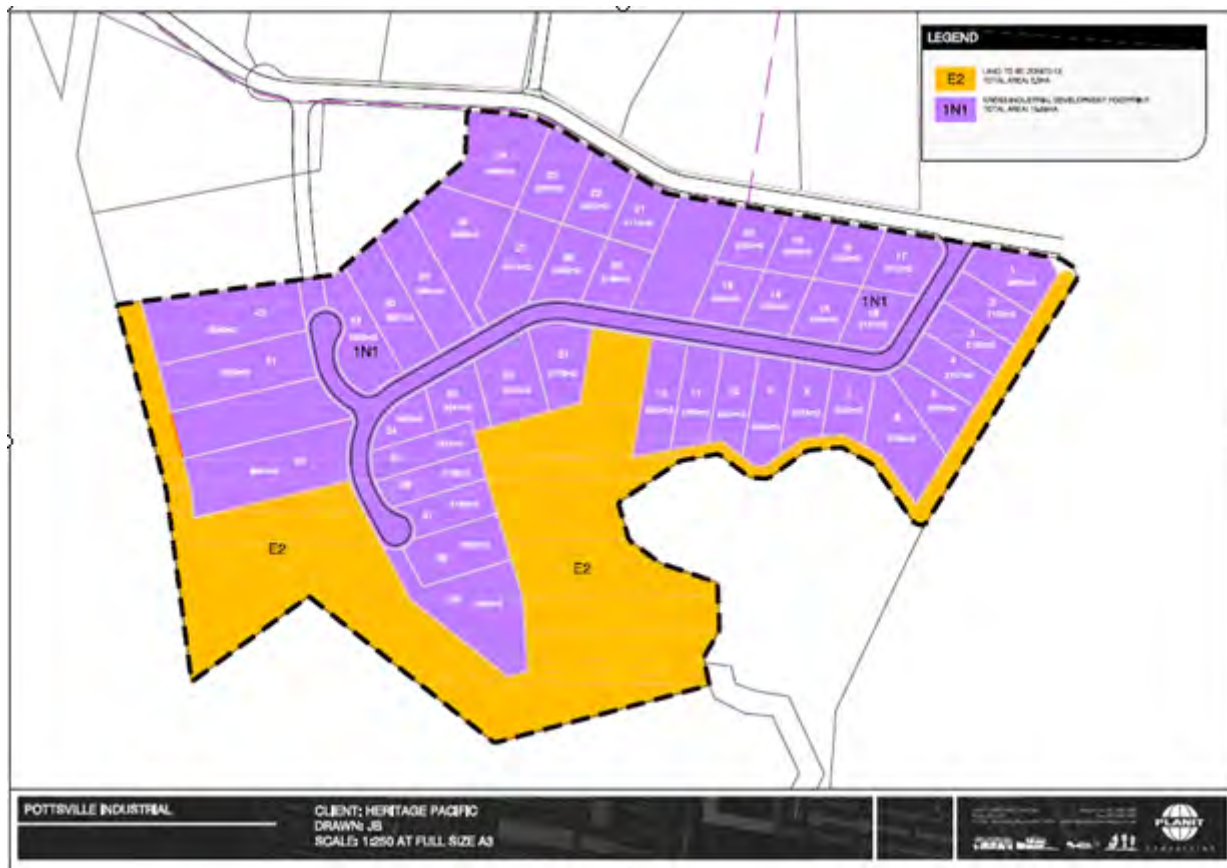
ANNEXURE 9 – Vegetation of high ecological status (Tweed VMS 2004)



ANNEXURE 10 – Vegetation of high vulnerability (Tweed VMS 2004)



ANNEXURE 11 – Proposed subdivision layout



CONCLUSION

The progress of this rezoning application has been impacted by a number of significant issues, including sewerage provision, geotechnical constraints, and loss of vegetation protected by Council's TPO, and burning of the Aboriginal heritage scar tree, which have been identified in a number of strategic planning documents and the applicant's own submission to Council.

Council's resource commitment to the rezoning application to-date is substantial and is largely attributable to the rezoning proposals apparent failure to acknowledge and respond to the significant constraints of the southern section of the site.

Given the on-going nature of investigations into the alleged breach of the TPO and burning of the scar tree, as well as those constraints referred to above, it is seen as essential to the progress of the rezoning application to redefine the boundary of the area subject to rezoning. This will enable the rezoning of the less constrained land and the vegetation management issues to be progressed concurrently, and more efficiently.

To facilitate the progression of the rezoning and an appropriate resolution to the land clearing this report recommends that the legal action be deferred to allow Council officers opportunity to negotiate a suitable revegetation management outcome with the landowner. Should this not occur Council will have recourse to legal proceedings for a breach of the TPO and may also cease to proceed with the rezoning of the land. This will be the subject of a future report if required.

Council officers are waiting on advice from the DECCW with respect to the scar tree, and will report back to Council on the advice received. It is considered that excising the constrained land off from the rezoning proposal will also enable this matter to be resolved concurrently and independent of the rezoning.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to proceed with legal proceeding in respect of the breach of the Tree Preservation Order 2004 further legal costs will be incurred. The recommendations of this report which seek to avoid litigation of this matter will minimise further legal costs and would likely result in a better environmental outcome.

Further, should Council not proceed to excise off that part of the site identified as heavily constrained and unsuitable for rezoning for urban purposes additional resource costs are likely to arise through complications arising and associated with the rezoning of environmentally constrained land.

POLICY IMPLICATIONS:

The clearing of vegetation on land where the TPO applies is permissible only with consent. The policy impact arising from pursuing a negotiated outcome is seen to be positive as it reinforces the objectives of the TPO in respect of vegetation retention and maintenance. There is no guarantee that any successful legal proceeding will result in the revegetation of the site over a fine or the same extent that could be negotiated with the landowner on the basis of not proceeding with the rezoning application.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. **Confidential Attachment** – Legal Advice from Lindsay Taylor Lawyers dated 1 March 2010 regarding Alleged Breach of Council's Tree Preservation Order - Lot 12 DP 1015369, Kudgerie Avenue, Cudgera Creek (ECM 17457132)
-

23 [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 May 2010 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.	DA09/0751
Description of Development:	Two (2) stage dual occupancy
Property Address:	Lot 9 Sec 6 DP 17606 No. 5 Moss Street, KINGSCLIFF
Date Granted:	20/05/2010
Development Standard to be Varied:	Clause 16 - Heights of Buildings
Zoning:	2(b) Medium Density Residential
Justification:	<p>The control in relation to number of storeys is a development standard. The building height exceeds two (2) storeys and an actual height exceeding 9m.</p> <p>Compliance has been demonstrated with the setback requirements of Hungerford Lane, which is the primary visual interface for the development with adjacent public areas.</p> <p>The proposal presents as a two (2) storey form to Hungerford Lane.</p> <p>The proposed three (3) storey area is effectively screen by existing remnant vegetation located along the eastern boundary.</p> <p>The proposal will appear as two (2) useable storeys only, with the lay person unlikely to be able to decipher whether the proposal is three (3) storeys in part.</p> <p>The proposal steps down the slope and adopts urban design principles such as are promoted within Section A1 of the TDCP 2008.</p> <p>There are a significant number of existing buildings, inclusive of adjacent structures, that provide a form incorporating three (3) storeys and more. The latter has a significant bearing on the character of the area as it currently stands and can only lead to the conclusion that the proposal, with its minor 3 storey elements, will not be inconsistent with the current character.</p>
Extent:	19.4% of the dwellings external length.
Authority:	Tweed Shire Council

DA No.	DA09/0787
Description of Development:	Addition & renovation to dual occupancy
Property Address:	Lot 285 DP 542540 No. 68 Sutherland Street KINGSCLIFF
Date Granted:	27/05/2010
Development Standard to be Varied:	Clause 32B(4)(b) – overshadowing
Zoning:	2(b) Medium Density Residential
Justification:	Overshadowing of the foreshore
Extent:	Greater than 10%
Authority:	Tweed Shire Council

DA No.	DA09/0815
Description of Development:	Four storey dwelling house, inground swimming pool including SEPP1 objection to three storey height limit
Property Address:	Lot 3 DP 1074375 No. 581 Piggabeen Road PIGGABEEN
Date Granted:	24/05/2010
Development Standard to be Varied:	Clause 16 - Heights of Buildings
Zoning:	1(a) Rural
Justification:	<p>A relatively small portion of the northern most area of the master bedroom and attached ensuite is considered to be four storeys in height as the foundation area directly below exceeds 1.5 metres in height for approximately the last 2 metres of the building.</p> <p>The height of the proposed building is not considered to be unreasonable on the basis that:</p> <p>Only a relatively small section (20m²) of the proposed dwelling exceeds the height requirement.</p> <p>Topography and vegetation on site are anticipated to act as screening for the proposed dwelling.</p> <p>Nearest adjoining dwelling houses are 250 metres to the west through dense vegetation, 480 metres to the north through vegetation and 210 metres to the east through vegetation. The nearest house to the south is in excess of one kilometre.</p> <p>Rural area with inherent expectation for larger buildings.</p> <p>Sunlight will still be accessible to adjoining properties with no overshadowing anticipated because of distances from building site.</p> <p>Building designed with minimal cut and fill, as per current best practice and Tweed DCP design controls, which has created a larger and higher foundation area.</p>
Extent:	Only a relatively small section (20m ²) of the proposed dwelling exceeds the height requirement
Authority:	Tweed Shire Council

DA No.	DA10/0060
Description of Development:	Boundary alteration
Property Address:	Lot 1 DP 868372 & Lot 3 DP 868372 No. 2609 Kyogle Road, KUNGHUR
Date Granted:	20/05/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural
Justification:	<p>Boundary adjustment which results in two (2) allotments that do not meet the minimum lot size of 40 ha required by clause 20 of TLEP.</p> <p>Reasoning:</p> <ul style="list-style-type: none"> - potentially facilitate a more efficient economic use of the land for agricultural purposes as the larger land holding would be used by a recognised primary producer for cattle grazing. - Not cause a loss in available land for agricultural purposes. - Not involve subdivision of rural lands for the purposes of creating additional lots or give rise to pressure for future subdivision. - Not give rise to any land use conflict
Extent:	Variation from 40ha greater than 10%. Combined lots equal 27.32ha. Size of lots won't change only configuration.
Authority:	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

24 [CNR-CM] Creative Industries - Art Licencing and Lessons

ORIGIN:

Director Community and Natural Resources

SUMMARY OF REPORT:

Council's Cultural Plan has an "Employment and Economic" theme with an objective "to identify the potential links between cultural and economic activities within the Tweed Shire, and to maximise the benefits to the community." Council and the NSW Department of Industry and Investment have been approached by members of the arts community to assist in the development of a new local business opportunity based around the licensing and sale of Artwork via the internet and the promotion of local artists and the area through recorded and televised art lessons.

To further this proposal it is considered that the next stage of the project is the development of a plan that will analyse the potential market and opportunities, to identify and establish an appropriate business model. It is estimated that the Business Plan will cost in the order of \$10,000 to \$15,000.

The NSW Department of Industry and Investment have indicated that the project would be eligible for funding subject to a formal application and that such funding would involve the preparation of a Business Plan on a 50/50 basis. The Department would need to be involved in the development of the terms of reference for the business plan.

This proposal provides an opportunity for local artists to export their artwork and the right to use that artwork in a global market. There is also the opportunity to provide international exposure to this region, the environment and the artists that live and work here.

RECOMMENDATION:

That Council:

- 1. Contributes up to \$7,500 from the Art and Culture program in the 2009/2010 budget for the preparation of an Art Licensing and Lessons Business Plan.**
- 2. Makes application to the NSW Department of Industry and Investment for matching funding.**

REPORT:

Council's Cultural Plan has an "Employment and Economic" theme with an objective "to identify the potential links between cultural and economic activities within the Tweed Shire, and to maximise the benefits to the community". Council and the NSW Department of Industry and Investment have been approached by members of the arts community to assist in the development of a new local business opportunity based around the licensing and sale of Artwork via the internet and the promotion of local artists and the area through recorded and televised art lessons.

To further this proposal it is considered that the next stage of the project is the development of a plan that will analyse the potential market and opportunities, to identify and establish an appropriate business model. It is estimated that the Business Plan will cost in the order of \$10,000 to \$15,000.

The NSW Department of Industry and Investment has indicated that the project would be eligible for funding subject to a formal application and that such funding would involve the preparation of a Business Plan on a 50/50 basis. The Department would need to be involved in the development of the terms of reference for the business plan.

This proposal provides an opportunity for local artists to export their artwork and the right to use that artwork in a global market. There is also the opportunity to provide international exposure to this region, the environment and the artists that live and work here.

There are current members of the Arts community who have been actively and very successfully involved in art licensing and TV promotion in North America for approximately three years. It is proposed to introduce this concept to Australia focusing on the Tweed and environs. Many artists in this region have languished through their inability to establish a comprehensive system of marketing. It is envisaged that this business proposal will open new doors for these artists and in so doing create a greater awareness of this region and its rich biodiversity and tourist appeal. The greater exposure of art education through a film series and web site from which interested art enthusiasts can purchase DVDs and downloads of the various segments will provide a wide range of employment on an ongoing basis.

It has been established that this area has the highest per capita number of artists, both visual and performing, in any part of New South Wales. Many have achieved high levels of professionalism but have not attained the level of success they deserve. This concept offers a rare opportunity to reach a much wider audience and potential markets not previously considered.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There are funds available in the current Art and Culture budget to support this initiative.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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25 [CNR-CM] EC2010-031 Annual Supply and Delivery of Pressure Pipe and Various Water Service Fittings

ORIGIN:

Contracts/Water

SUMMARY OF REPORT:

This report outlines the tender for EC2010-031 Annual Supply and Delivery of Pressure Pipe and Various Water Service Fittings with a two year contract period commencing 1 July 2010 until 30 June 2012. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Schedules included in **CONFIDENTIAL ATTACHMENT A**.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:-

- The following tenderers, with prices contained in the attached schedules (Attachment A), be awarded supply contracts for the Annual Supply and Delivery of Pressure Pipe and Various Water Service Fittings for the period 1 July 2010 until 30 June 2012.**

Schedule	Supplier	Schedule	Supplier
Sch A: Water Service Fittings	Elster Metering, J H Williams, TwdHds Plumbing	Sch B: Meters, Backflow Devices	Elster Metering, Tyco Water
Sch C : Main Pipe	Tyco Water	Sch D: DWV RRJ Sewer Pipe	Vinidex
Sch E DWV Solvent Joint Sewer Pipe	J H Williams	Sch F: Sewer Rising Main	Tyco Water
Sch G RRJ Sewer Fittings	Vinnidex	Sch H: Poly Pipe	Crevet Pipelines
Sch I Copper Pipe	J H Williams	Sch J: Misc Items	Crevet Pipelines, Twd Heads Plumbing

Sch K: Hyd & Valve Blocks, Meter Boxes	Tyco Water Elster Metering	Sch L:Water Main Valves	Tyco Water , Promains Crevet Pipelines
Sch M: DI Fittings	Tyco Water , Twd Hds Bolt Supplies, Crevet Pipelines		

2. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:

Background

Council tender EC2010-031 Annual Supply and Delivery of Pressure Pipe and Various Water Service Fittings closed on the 14 April 2010. The supply contract period is for a two year period commencing 1 July 2010 until the 30 June 2012.

The various pressure pipe types and water service fittings offered in the tender are materials held as stock items in Council's Depot store and used in the maintenance of the Shire's water and sewerage systems.

The tender was separated into 13 sections with prices requested for approximately 290 items.

Supply contracts can be let in their separable portions or as a whole contract or any combination of the separable portions.

Tenders Received

A total of 11 responses were received to tender EC2010-031 Annual Supply and Delivery of Pressure Pipe and Various Water Service Fittings and were generally very competitively priced.

Submissions were received from the following suppliers:

Tweed Heads Plumbing Supplies
J H Williams
Tweed Bolt Supplies
Aussie Fasteners
Vinidex
Crevet Pipelines

Elster Metering
Valvoco Industries
P&L Pipelines
Tyco Flow Control
Promains

Selection Criteria

Selection Criteria are:

- Price
- Quality assurance
- Guaranteed delivery service
- Demonstrated capability to perform services as specified
- Relevant experience with contracts of a similar nature

Tender Evaluation

A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on conforming prices received, it is recommended that the following suppliers be awarded supply contracts for the period 1 July 2010 until the 30 June 2012.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2010/2011 Budget for the Annual Supply and Delivery of Pressure Pipe and Various Water Service Fittings.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. **Confidential Attachment** - EC2010-031 Annual Supply and Delivery of Pressure and Various Water Service Fittings (ECM 17439976)
-

26 [CNR-CM] EC2010-051 Supply and Delivery of Water Treatment Chemicals and Gases

ORIGIN:

Contracts/Water

SUMMARY OF REPORT:

This report outlines the tender for EC2010-051 Supply and Delivery of Water Treatment Chemicals and Gases with a supply contract period of two years commencing 1 July 2010 until 30 June 2012. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the following submissions:

Supplier	Schedule	Description
Orica	Schedule A	Chlorine Gas
Air Liquide Australia	Schedule B	Carbon Dioxide Gas
Quantum Group	Schedule C	Hydrofluosillic Acid
Unimin	Schedule D	Hydrated Lime
Omega	Schedule E	Citric Acid
Omega	Schedule F	Sodium Bisulphite
James Cumming	Schedule G	Powder Activated Carbon
BASF	Schedule H	Polymer
Omega	Schedule I	Sodium Hydroxide
Omega	Schedule J	Liquid Aluminium Sulphate
Ionics	Schedule K	Sodium Hypochlorite
Orica	Schedule L	Magnesium Hydroxide

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:-

- 1. The tenders from Orica Watercare (Schedules A & L), Air Liquide (Schedule B), Quantum Group (Schedule C), Unimin (Schedule D), Omega (Schedules E,F,I &J), James Cumming (Schedule G), BASF (Schedule H), Ionics (Schedule K) be accepted as per pricing in the Schedules for the period 1 July 2010 to 30 June 2012.**

2. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:**Background**

Tenders closing 5 May 2010 have been called for the supply and delivery of the following Water Treatment Chemicals for the period 1 July 2010 until 30 June 2012. The chemicals are to be used in Council's water and waste water treatment plants and swimming pools.

The range of chemicals offered to tender are as follows:

Schedule A	Chlorine Gas
Schedule B	Carbon Dioxide Gas
Schedule C	Hydrofluosillicic Acid
Schedule D	Hydrated Lime
Schedule E	Citric Acid
Schedule F	Sodium Bisulphite
Schedule G	Powder Activated Carbon (PAC)
Schedule H	Polymer
Schedule I	Sodium Hydroxide
Schedule J	Liquid Aluminium Sulphate
Schedule K	Sodium Hypochlorite
Schedule L	Magnesium Hydroxide

The following selection criteria and weightings to be used in the evaluation of the tender submissions are as follows:

Criteria	Weighting
Tendered rates	60%
Quality assurance	10%
Guaranteed delivery period	10%
Demonstrated capability to perform service	10%
Relevant experience with contracts of a similar nature	10%

Tenders Received

A total of 14 responses were received for tender EC2010-051 Supply and Delivery of Water Treatment Chemicals and Gases. Submissions were received from the following suppliers:

Air Liquide Australia
 Orica
 Chemplus Australia
 BASF Chemicals
 James Cummins & Assoc
 Onimin
 BOC Gases Ltd
 Late tender: Activated Carbon Technologies

Nowra Chemical Manufacturers
 Ionics
 Quatum Chemicals
 Omega chemicals
 Redox
 AEA

Tender Evaluation

The Tender Evaluation was conducted by Council's Tender Panel, consisting of Council's Assist Water and Waste Water Engineer, Senior Headworks Operator and Engineering Admin Supervisor.

A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on the evaluation contained in the confidential attachment, it is recommended that the following Tenderers be accepted for the Supply and Delivery of Water Treatment Chemicals and Gases.

Supplier	Schedule	Description
Orica	Schedule A	Chlorine Gas
Air Liquide Australia	Schedule B	Carbon Dioxide Gas
Quantum Group	Schedule C	Hydrofluosillicic Acid
Unimin	Schedule D	Hydrated Lime
Omega	Schedule E	Citric Acid
Omega	Schedule F	Sodium Bisulphite
James Cumming	Schedule G	Powder Activated Carbon
BASF	Schedule H	Polymer
Omega	Schedule I	Sodium Hydroxide
Omega	Schedule J	Liquid Aluminium Sulphate
Ionics	Schedule K	Sodium Hypochlorite
Orica	Schedule L	Magnesium Hydroxide

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2010/2011 Budget for the Supply and Delivery of Water Treatment Chemicals.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

- 1. Confidential Attachment A - EC2010-051 Supply and Delivery of Water Treatment Chemicals (ECM 17440991)**

27 [CNR-CM] Lease to Crown Castle International - Hospital Hill Reservoir - Lot 2 DP 1044176 - Karramul Street Murwillumbah

ORIGIN:

Design/Water

SUMMARY OF REPORT:

Crown Castle International is an infrastructure provider and provides sites to communications and mobile telecommunications companies to occupy its sites.

The company owns an existing telecommunications facility adjacent to the Hospital Hill Reservoir at Karramul Street, Murwillumbah.

The subject facility is a tower constructed within a fenced compound that straddles both Council Land, Lot 2 in DP 1044176 and Crown Land, being Lot 7011 in DP 1058669.

The company has secured tenure for the area within the Crown Land and are seeking to enter into a lease with Council for that area within Lot 2.

RECOMMENDATION:

That :

- 1. Council approves entering into a lease with Crown Castle International for an area of approximately 40.5m² within Lot 2 in DP 1044176 being the area within the fenced compound adjacent to the Hospital Hill reservoir at Karramul Street, Murwillumbah for a term of five years with three options of five years each, subject to reaching agreement on the annual lease fee and commercial arrangements.**
- 2. All legal and registration costs are to be borne by Crown Castle International.**
- 3. All documentation is executed under the Common Seal of Council.**

REPORT:

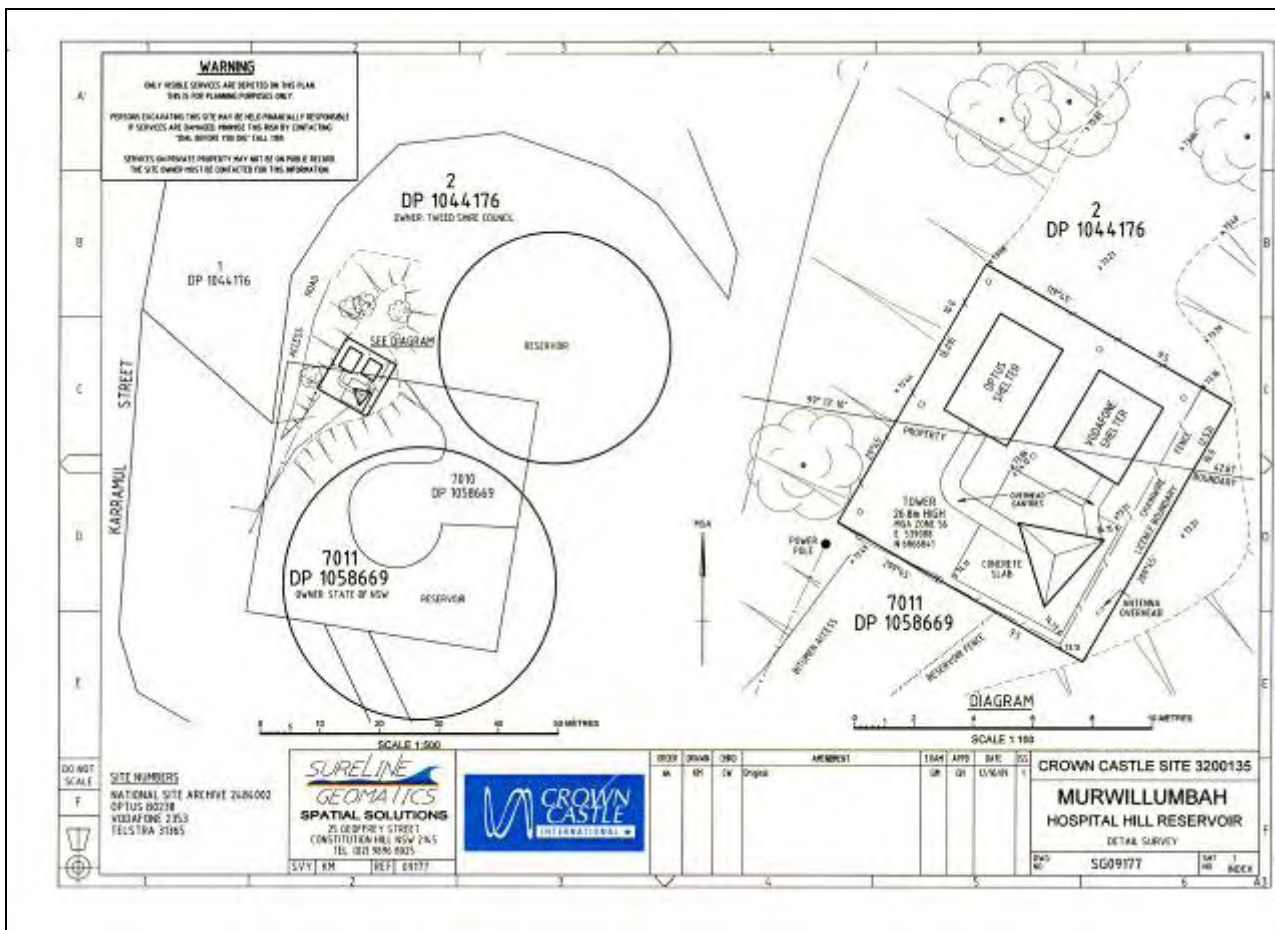
Crown Castle International is an infrastructure provider and provides sites to communications and mobile telecommunications companies to occupy its sites.

The company owns an existing telecommunications facility adjacent to the Hospital Hill Reservoir at Karramul Street, Murwillumbah.

The subject facility is a tower constructed within a fenced compound that straddles both Council Land, Lot 2 in DP 1044176 and Crown Land, being Lot 7011 in DP 1058669.

The company has secured tenure for the area within the Crown Land and are seeking to enter into a lease with Council for that area within Lot 2.

The plan below shows the compound straddling the boundary between Lot 2 and Lot 7011:



Crown Castle intend to sub-lease to Optus and Vodafone for the equipment shelters that have been built within the compound. Council has no records of agreements with Optus or Vodafone for these facilities, presumably, agreements have been made with the Crown.

Crown Castle are seeking a 30 year term and have offered a rental of \$7000 per annum with annual CPI increases.

Council may recall that a valuation was obtained for a proposed lease to Telstra who intended to construct an equipment shelter within the fenced compound. Telstra ultimately did not agree upon the rental determined and constructed their shelter within the adjacent Crown Land.

The valuation, dated 9 December 2009, determined that the rental for their equipment shelter, requiring a leased area of approximately 5.5 m², was \$10,000 per annum with annual increases of 4%.

Crown Castle are seeking an area of approximately 40.5 m², which contains equipment shelters that will generate a rental income for Crown Castle. In this regard, it is recommended that should Council approve entering into a lease with Crown Castle, that the rental be negotiated to reflect the market rental.

An area of 5.5 m² at \$10,000 per annum equates to \$1818 per m², hence a greater area of 40.5 m² would result in a rental of \$73,629 per annum. It is expected that Crown Castle would not accept this amount, in light of their offered amount of \$7000 per annum.

It is suggested that the sum of \$25,000 per annum be sought, as this amount reflects rental income for equivalent areas at other reservoir sites in the Tweed Shire. It could also be argued that this amount takes into account the income that Crown Castle will derive from the existing infrastructure at the site.

It is recommended that Council approve entering into the lease, to formalise the occupation of the land by both Vodafone and Optus, on terms that are to be finalised.

Crown Castle are seeking a term of 30 years, however, it is recommended that an initial term of five years be offered with three further five year terms. Generally Council enters into leases with telecommunication companies on this basis, and it is recommended that this term be offered to Crown Castle.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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28 [CNR-CM] Riverbank and Marine Waste Collection

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

Council at its meeting of 18 May resolved as follows:

"that a report be brought forward to the next meeting on the riverbank and marine waste issue with advice from an appropriate organisation such as the local seabird rescue, if necessary, on the significance of this issue in the local Tweed context, and depending on this advice, consider this issue for inclusion in the upcoming budget and as part of Council's waste collection management policies."

The following report is prepared in response to the above resolution.

This report is limited to litter and solid waste items, it does not look at the broader issues of dissolved pollutants such as nutrients.

The greatest contribution of marine debris is from land based sources and is transported to waterways and the ocean predominantly via the stormwater drainage system. Therefore, it is considered that the most effective method for Council to contribute to the management of this problem is through stormwater quality control measures.

In addition, it is vital for Council to continue education and awareness initiatives and support community initiatives such as Clean Up Australia Day.

RECOMMENDATION:

That the report on Riverbank and Marine Waste Collection be received and noted.

REPORT:

This report is provided as a discussion point for the issue of riverbank and marine waste management. This discussion paper is limited to litter and solid waste items, it does not look at the broader issues of dissolved pollutants such as nutrients.

A number of possible actions are included for consideration by Council as ways to move forward on the issue of riverbank and marine waste.

Identifying the Problem

Riverbank and marine debris can be identified as coming from a number of sources. These include:

- Direct deposit from littering and dumping
- Marine sourced – dumped, swept or blown off vessels
- Land-based sources – littering, dumping, poor waste management practices which are then transported into waterways usually via stormwater drainage networks
- Natural Events such as flooding and storms will transport debris into waterways

It has been identified that over 80% of marine debris comes from land based sources. Marine debris from stormwater runoff includes street litter (eg. cigarette butts), food packaging, beverage containers, and other material that might have washed down a stormwater drain.

The *Keep Australia Beautiful National Litter Index Annual Report 2008-2009* provides reliable base line data on litter across Australia. The National Litter Index counts are conducted in November and May each year and sites are divided into eight site types:

- Beaches
- Car Parks
- Highways
- Industrial
- Recreational Parks
- Residential
- Retail
- Shopping Centres

Each count records all items of litter present. From the number of items volumes of litter are estimated using well established conversion factors.

This base data is then collated to provide trend comparisons between items and volumes within material types and across the various site types. The results for NSW found the following:

- The most littered sites surveyed in NSW were generally industrial locations, car parks and highway sites.
- Cigarette butts were the most frequently identified item, however they are a small portion of the overall litter volume.
- Plastic litter objects contributed the largest amount of volume to the litter stream.
- Paper/paperboard objects contributed the second largest volume to the litter stream.

Items and volume estimates per 1,000m² within NSW identify the following site characteristics across the respective site types surveyed in 2008/09:

- Industrial sites were associated with both large numbers of items as well as large estimated litter volumes
- Car parks and retail sites were associated with high numbers of items but lower estimated volume totals
- Highways and residential sites were associated with both moderate numbers of items and moderate estimated volume totals
- Beaches, recreational parks and shopping centres were associated with lower levels of items and lower estimated volume totals

(*Keep Australia Beautiful National Litter Index Annual Report 2008-2009*, Prepared for: Keep Australia Beautiful National Association, July 2009)

Australian Seabird Rescue (ASR) has recently completed a report on marine debris incidences in the northern rivers region for the Northern Rivers Catchment Management Authority (NRCMA). A copy of this report is being sought from the NRCMA and will be made available on request.

The major site specific issues identified by Australian Seabird Rescue (Keith Williams, Project Manager, ASR, pers. comm.) include abandoned fishing lines in trees, on power lines and among rocks at popular fishing areas. Also of concern is the increasing level of soft plastics found in marine turtles.

Mr Williams (ASR, pers.comm.) considers that the most useful contribution for Councils to the marine debris issue, given the land based source of the majority of litter, is to continue to install and maintain stormwater litter traps (source control) and undertake education initiatives. Mr Williams was of the opinion that litter collection on riverbanks was best undertaken as community initiatives such as Clean Up Australia Day.

Addressing the Problem

Several options are available to address riverbank and marine waste. A combination of these would provide the most effective outcome and would be best determined through development of an integrated strategy.

The *Litter Prevention Strategy for Western Australia 2009-2014* identifies seven key areas for priority actions:

- auditing and evaluation;
- policy and legislation;
- education, information and training;
- enforcement;
- physical intervention;
- incentives; and
- stakeholder responsibility.

This strategy contains a number of actions under each key area and provides for an effective integrated approach.

The North East Waste Forum (NEWF) is currently developing a toolkit and policy for member Councils on the specific issue of illegal dumping. This will provide useful input into a wider strategy.

Activities to Date

Council adopted the Tweed Urban Stormwater Quality Management Plan (TUSQMP) in April 2000. Several high priority actions from this Plan have been implemented to date. Council is shortly to review this plan including a review of Development Design Specification D7 – Stormwater Quality.

As part of the implementation of the TUSQMP several litter traps and open drain improvement projects were retrofitted on existing stormwater systems in high priority urban areas of Tweed to improve stormwater quality flowing into waterways.

Council trialled the use of “Tangler Bins” installed adjacent to high use fishing areas. These post-mounted small bins were placed specifically for the disposal of fishing line. These have since been removed due to limited success, placement of litter other than fishing line and high cost of maintenance. Other options that may provide greater success include placement of general rubbish bins at these sites, where appropriate. Also continuing programs to increase awareness and education on the need to dispose of fishing line and bait bags responsibly as part of an overall litter management strategy.

Council continues to support initiatives such as Clean Up Australia Day which most often concentrate on areas such as beaches and banks of waterways.

A dive company has recently approached the NRM and Waste Management Units of Council to provide practical support (provision of bins and bags) for a community clean up of a portion of the Tweed River by volunteer divers. This should occur in June / July and similar projects have been supported by Council in conjunction with Clean Up Australia Day.

Possible Actions

Possible actions for consideration to reduce riverbank and marine debris include:

- A detailed survey be undertaken to identify specific waste and litter issues in Tweed Shire. There is some data available from previous projects which could be expanded to provide useful base line information.
- Develop and implement a Litter Management Strategy for Tweed Shire.
- Council to consider adoption of the NEWF toolkit and policy for illegal dumping when made available.
- Investigate hot spots for fishing line entanglements and provide for a maintenance program of these areas. Energy suppliers would have to be included in areas where power lines are involved. A budget and suitable staff and equipment would need to be identified.
- Complete an audit of the Tweed Urban Stormwater Quality Management Plan 2000 and continue to retrofit and maintain stormwater quality improvement devices in high priority locations. This has predominantly been done through external funding and grants to date with no provision for ongoing maintenance of these facilities. A substantial budget allocation would be required for this action.
- Continue, and improve, the requirements for a high standard of stormwater quality management from all development and redevelopment, particularly in industrial and commercial sites.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Stormwater quality improvement works require substantial capital and ongoing maintenance costs.

Removal of fishing line entanglements would require a budget for periodic maintenance (say six monthly) but require high level of appropriate safety equipment and plant and liaison with Country Energy.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

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29 [CNR-CM] Tweed Coast Koala Advisory Group - Community Membership

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

Following the call for expressions of interest this report seeks approval for community representation on the Tweed Coast Koala Advisory Group, which is formed to advise Council on the preparation of a comprehensive Koala Plan of Management for the Tweed Coast.

RECOMMENDATION:

That Council approves the community membership of the Tweed Coast Koala Advisory Group as:

- **Lorraine Vass representing Friends of the Koala Inc.**
- **Jenny Hayes representing Team Koala Inc.**
- **Ralph Kraemer**
- **Rhonda James**
- **Simon Graham**
- **Anita Mudge**

REPORT:

At its meeting of 20 April 2010 Council resolved to call for nominations for community representation on the Tweed Coast Koala Advisory Group to guide the preparation of a Comprehensive Koala Plan of Management for the Tweed Coast. One representative each is sought from a koala care/welfare group and a koala conservation/environment group and a further three representatives are sought from the general community.

Expressions of interest for the abovementioned representatives were invited during May 2010. A total of 14 expressions of interest were received for the five positions with these nominations being reviewed by the two Council officers on the advisory group and the Department of Environment, Climate Change and Water who have part funded the project and will also be represented on the advisory group.

In relation to the koala care/welfare group position, Friends of Koala Inc. nominated their current president Lorraine Vass. Friends of Koala Inc. are the peak group responsible for koala care, rehabilitation and welfare on the NSW north coast.

In relation to the koala conservation/environment group three nominations were received. It is recommended that Jenny Hayes representing Team Koala Inc. be appointed to this position.

In relation to the individual community representatives the following are recommended for appointment to the advisory group:

- Ralph Kraemer
- Rhonda James
- Simon Graham
- Anita Mudge

Although it was anticipated that only three individual community members would be represented on the advisory group, the selection committee were of the view that the aforementioned four nominees would provide optimal input from a broader area of community representation without unnecessarily duplicating expertise from community group, Council and State Agency representation on the advisory group.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. **Confidential Attachment** - Copies of Nominations (ECM 17458267)
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30 [CNR-CM] Jobs Fund Project 'Building the Environmental Capacity of Tweed Valley Farmland' - Works on private property

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

On 5 November 2009 Council accepted the \$489,589 contract offered by Department of Education, Employment and Workplace Relations (DEEWR) to undertake the project: **Building the Environmental Capacity of Tweed Valley Farmland**. The project aim is to implement rehabilitation of farm waterways such as cane drains or modified creeks, through planting and maintenance of 10km of riparian vegetation while creating and retaining employment in local agriculture related industries, specifically the ecological restoration and horticultural industries.

To date a number of sites have been identified for rehabilitation and the cooperation of the relevant landholders has been sought. The proposed work includes the supply and installation of native plants and maintenance of the sites for two years to ensure a 95% survival rate.

The purpose of this report is to seek Council's approval to use the Jobs Fund funding to undertake rehabilitation works on the private land detailed in this document.

RECOMMENDATION:

That Council approves the expenditure \$50,217 as detailed in the Jobs Fund funding agreement to undertake rehabilitation works on private land as detailed in the report.

REPORT:

On 5 November 2009 Council accepted the \$489,589 contract offered by Department of Education, Employment and Workplace Relations (DEEWR) to undertake the project: **Building the Environmental Capacity of Tweed Valley Farmland**. The project aim is to implement rehabilitation of farm waterways such as cane drains or modified creeks, through planting and maintenance of 10km of riparian vegetation while creating and retaining employment in local agriculture related industries, specifically the ecological restoration and horticultural industries.

It is anticipated that the project will deliver the following environmental and socio-economic outcomes:

Environmental -

- Improved catchment water quality
- Decrease overland water runoff and soil loss
- Reduced chemical input in sensitive areas.
- Enhance fish/aquatic habitat.
- Offers carbon sequestration capacity to increase farm emission offsets

Socio-Economic -

- Create a position as a Sustainable Agriculture Project Officer and develop skills in sustainable agriculture management in the Tweed
- Generate and/or retain jobs in the local horticultural and ecological restoration industries and to allow them the capacity to provide training to build local skills base.
- Facilitate valuable flow-on effects for the fisheries industry and tourism industry through improved water quality.
- Increase farmland profitability by minimising the costs associated with weed control, erosion, soil acidity, and problems caused by acid sulfate soils.

Council's Sustainable Agriculture Officer has identified a number of priority sites for rehabilitation and has liaised with the relevant landholders and sought their cooperation. The table below outlines details of identified sites and landholders to date.

The proposed work includes the supply and installation of native plants and maintenance of the site for two years to ensure a 95% survival rate.

The purpose of this report is to seek Council's approval to use the Jobs Fund funding to undertake rehabilitation works on the sites detailed below.

Surname	Location	Total costs (\$)
Grippio	Condong	31,117
Farrell	Condong	2,250
Quan	Tygalgah	10,800
Shannon	Mooball	4,500
Mitchell	Tumbulgum	1,550

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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31 [CNR-CM] 2010-2011 North East Waste Forum – Annual Operational Plan

ORIGIN:

Waste Management

SUMMARY OF REPORT:

Council at its meeting on 18 May 2010 resolved to endorse the North East Waste Forum (NEWF) Memorandum of Agreement. The Memorandum of Agreement outlines the functions of the Member Councils, one of which is to adopt an annual operational plan and budget. Delegates of each Member Council have developed an annual operational plan and budget for 2010-2011 which aims to deliver projects that reduce waste to landfill, improve the quality and quantity of recycling streams, improve knowledge and data capture relating to waste management and resource recovery, and develop waste avoidance behaviours. The annual operational plan is funded from the Department of Environment Climate Change and Water (DECCW) and Member Council contributions. The 2010-2011 annual operational plan contains many consistencies with Council's Domestic Solid Waste Strategy, and will assist Council in managing and improving resource recovery.

RECOMMENDATION:

That the 2010-2011 North East Waste Forum Annual Operational Plan be endorsed.

REPORT:

Council at its meeting on 18 May 2010 resolved to endorse the North East Waste Forum (NEWF) Memorandum of Agreement. The Memorandum of Agreement outlines the functions of the Member Councils, one of which is to adopt an annual operational plan and budget. Delegates of each Member Council have developed an annual operational plan and budget for 2010-2011 which aims to deliver projects that reduce waste to landfill, improve the quality and quantity of recycling streams, improve knowledge and data capture relating to waste management and resource recovery, and develop waste avoidance behaviours. The annual operational plan is funded equally from the Department of Environment Climate Change and Water (DECCW) and Member Council contributions. The 2010-2011 annual operational plan contains many consistencies with Council's Domestic Solid Waste Strategy, and will assist Council in managing and improving resource recovery. The annual operational plan and budget is outlined in Table 1.

The NEWF is funded by Member Council contributions (\$180,197.15) and DECCW (approximately \$180,000). The additional spend in the 2010-2011 annual operational plan is on a project aimed at identifying additional infrastructure in the region to responsibly manage household hazardous waste. DECCW commitment to waste management is guided by the Waste Avoidance and Resource Recovery Strategy (WARR Strategy) 2007. The annual operational plan has been developed to meet the broad objectives of the WARR Strategy and the identified priorities of the Member Councils.

The 2010-2011 annual operational plan contains many consistencies with Council's Domestic Solid Waste Strategy, and will assist Council in managing and improving resource recovery.

The annual operational plan forms part of the funding application to DECCW each year.

Table 1 – 2010/2011 NEWF Annual Operational Plan

Milestone	WARR 2007 Focus Area	Program	Funding Sought	Total Estimated Program Value
1	All	Administration and Coordination of NEWF <ul style="list-style-type: none"> Undertake all forum related administration and management functions Development and production of the Delivery Program, Annual Operational Plan and Budget Direction and supervision of contractors Implementation of contracts Prepare and distribute Annual Report Undertake NEWF communication including website, meetings, newsletter 	\$33,875	\$67,750
2	Reducing Commercial & Industrial Waste	Business Waste Reduction Project <ul style="list-style-type: none"> Support new identified businesses in implementing waste reduction initiatives Maintain business waste reduction activities for identified businesses Collate existing case studies and other tools and distribute and promote to relevant business and industry groups 	\$27,750	\$55,500
3	Reducing Construction & Demolition Waste	C & D Waste Project <ul style="list-style-type: none"> Production of a revised Waste DCP Investigation into the management (acceptance and handling) of asbestos 	\$5000	\$10,000
4	Support Waste Reduction in Regional and Rural NSW	RENEW NSW <ul style="list-style-type: none"> RENEW NSW membership and participation 	\$9000	\$18,000

5	Reducing Illegal Dumping and Litter	Litter and Public Place Waste Project <ul style="list-style-type: none"> Investigate litter and illegal dumping resources and provide toolkit and policy for Member Councils to implement 	\$5000	\$10,000
6	Reducing Municipal Waste	Residual Waste Composition Audit Project <ul style="list-style-type: none"> Project management of audit process on behalf of member Councils Production of summary document/media for Council's use in public arena 	\$6250	\$12,500
7	Reducing Municipal Waste	Contamination Management Project <ul style="list-style-type: none"> Inspect domestic recycling bins and green organic bins for contamination and provide feedback on prevalence and trends of contamination Physically tag and report to Member Council's gross contamination in recycling and green organics bins Production of summary document/resources/media for Council's use in public arena 	\$20,625	\$41,250
8	Other Specific Waste Streams (Organics)	Organics and Emissions Project (landfill) <ul style="list-style-type: none"> Production of a report on the economic and emission incentives of removing organics from the landfill waste stream and impacts on frequency of collection 	\$22,500	\$45,000

9	Other Specific Waste Streams (Hazardous Waste)	<p>Hazardous Waste Project</p> <ul style="list-style-type: none"> Investigate feasibility of introduction of additional sub-regional hazardous waste stores Operate existing hazardous waste stores 	\$35,000*	TOTAL: \$70,000*
10	Other specific waste	<p>Specific Waste Project</p> <ul style="list-style-type: none"> Investigate and report on specific waste streams as those identified in WARR Strategy that may present opportunities for reuse or reprocessing 	\$2500	\$5,000
11	Extended Producer Responsibility	<p>Product Stewardship Project</p> <ul style="list-style-type: none"> Produce documentation on Member Councils combined efforts in reprocessing electronic waste Deliver documentation to relevant bodies to promote Member Councils work in this area 	\$2500	\$5,000
12	Better Knowledge and Data	<p>Training and Skills Enhancement Project</p> <ul style="list-style-type: none"> Provide landfill operator training for Member Councils operational staff 	\$5000	\$10,000
13	Education	<p>Waste Avoidance and Education Project</p> <ul style="list-style-type: none"> Develop, administer, utilise and maintain waste avoidance resources (The Green House) Love Food Hate Waste facilitation Coordinate landfill open days Deliver education components of projects 	\$37,500	\$75,000

14	Better Knowledge and Data	Regional Infrastructure Mapping Project <ul style="list-style-type: none"> Produce a report on landfill and resource recovery infrastructure in the region 	\$1250	\$2,500
15	Better Knowledge and Data	Financial Assurance Project <ul style="list-style-type: none"> Determine ramifications of new financial assurance policy Produce submission to Department 	\$1250	\$2,500
		TOTAL	\$215,000	\$430,000

* Additional spend in the 2010-2011 annual operational plan.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council commits \$45,496.45 as a Member Council contribution to NEWF, funded from the waste management budget.

POLICY IMPLICATIONS:

Consistencies with the 2007 Domestic Solid Waste Management Strategy

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

32 [CNR-CM] Policy - Waiving of Disposal Fees Policy (Waste Management)

ORIGIN:

Waste Management

SUMMARY OF REPORT:

At its meeting on 20 April Council resolved to place the Waiving of Disposal Fees Policy on public exhibition for 28 days. The Policy defines the organisations who can apply for waiving of landfill disposal fees, and outlines the procedures for application and the conditions of approval. The exhibition period has expired, with two written submissions being received.

RECOMMENDATION:

That Council adopts the Waiving of Policy, Disposal Fees (Waste Management).

REPORT:

At its meeting on 20 April Council resolved to place the Waiving of Disposal Fees Policy on public exhibition for 28 days. The Policy defines the organisations who can apply for waiving of landfill disposal fees, and outlines the procedures for application and the conditions of approval. The exhibition period has expired, with two written submissions being received.

One submission from the Tweed Coast Community Baptist Church supported the Policy, with the organisation clearly within the limitations of the Policy. A second submission from the Tweed River Agricultural Society Ltd requested that the Policy be amended to include yard and property cleanups following flood damage, in particular from the Murwillumbah Showgrounds. Condition (g) of the Policy clearly states that yard or property cleanup waste will not be permitted. On the basis that Council can offer some flexibility in disposal costs when a natural flood disaster has been declared this amendment to the Policy is not supported by Council Officers.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Reduced income from Stotts Creek Resource Recovery Centre due to the in-kind support nature of this Policy

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Policy - Waiving of Disposal Fees - Waste Management (ECM 14319622)
-

33 [CNR-CM] Request for "In Kind" Support/Waive Fee

ORIGIN:

Community & Cultural Services

SUMMARY OF REPORT:

Council has received requests from various organisations asking that Council provides in-kind support/waives the fees for room hire. Details of the requests are reproduced in the body of this report.

In accordance with Section 356 of the Local Government Act 1993 - Donations, Council resolved on 6 October 2004 that:-

".... in future, all donations made by Council, whether in cash or in kind, be made by way of a resolution of Council."

RECOMMENDATION:

That Council:-

- 1. With reference to the request from Quota International of Tweed Heads/Coolangatta Inc declines the request for a reduction of fees for hire of Tweed Heads Civic Centre for the Twin Towns Craft Fair on 16 and 17 July 2010.**
- 2. With reference to the request from Tweed Australian South Sea Islander Community Inc provides the South Sea Islander Room free of charge for the Recognition Day on 25 August 2010 and provides the Tweed Heads Civic Centre for a reduced fee of \$185 being 50% of the full fee of \$370 for the Recognition Day dinner on 25 August 2010, and that Council's support is recognised with the following acknowledgement " This programme has been supported by Tweed Shire Council".**
- 3. With reference to the request from Tweed Gold Coast Family History & Heritage Association Inc declines the request for a reduction of fees for hire of Tweed Heads Civic Centre and South Sea Islander Room for the annual Antique Fair to be held from 6 to 8 August 2010.**

REPORT:

Council has received requests from various organisations asking that Council provides in-kind support/waives the fees for room hire. Details of the requests are reproduced as follows:-

Organisation Name	Request	Est \$ Amount of Waiver	Recommendation	Meet Guidelines?
Quota International of Tweed Heads/ Coolangatta Inc	Request fee be reduced for hire of the Tweed Heads Civic Centre on 16 and 17 July 2010 for the annual Twin Towns Craft Fair	\$0	That the request be declined as the Applicant charges a stallholders fee and an entrance fee.	No
Tweed Australian South Sea Islander Community Inc	Request fee be waived for hire of Tweed Heads Civic Centre and South Sea Islander Room on 25 August 2010 for the Recognition Day celebrations	\$185	That the fee be reduced to \$185 being 50% of the full fee of \$370.	Yes
Tweed Gold Coast Family History & Heritage Association Inc	Request fee be reduced for hire of the Tweed Heads Civic Centre and South Sea Islander Room on 6, 7 and 8 August 2010 for the annual Antique Fair	\$0	That the request be declined as the Applicant charges as stallholders fee and an entrance fee.	No

A copy of each of the requests is reproduced below.



**Quota International of
Tweed Heads/Coolangatta Inc**
P O Box 511 Coolangatta Qld 4225

President: Michele Jovanetic 07 5590 7197

Secretary: Janet Ahrens 07 5524 2198

“TWIN TOWNS CRAFT FAIR”

Mayor Warren Polglase
Tweed Shire Council
P O Box 816
MURWILLUMBAH NSW 2484

TWEED SHIRE COUNCIL	
FILE No.	DOC. No.
RECD 17 MAY 2010	
ASSIGNED TO: <i>David Brennan</i>	
DATE:	PLACE

*Please respond, thank you.
Mayor has noted.*

Dear Mayor Warren

Quota International of Tweed Heads/Coolangatta Inc will hold its 10th annual Twin Towns Craft Fair at the Tweed Heads Civic Centre on Friday 16th and Saturday 17th July 2010.

The money raised from the 2010 Twin Towns Craft Fair will be donated to local charities. The major recipient will be the Bilambil Rural Fire Brigade.

It would be very much appreciated if the Tweed Shire Council would give consideration to a reduction in the hall hire cost for the use of the Tweed Heads Civic Centre.

David

Thank you for your ongoing support of Quota,

Yours in Quota Service

Jean Collier
Jean Collier
CHAIRMAN Craft Fair Committee
Phone 07 5536 2891
Email: jeancollier@bigpond.com.au
6 May 2010

*Agreement to
DAVID
MD*

Tweed Australian South Sea Islander Community Inc.
ARBN 070-714-733



PO Box 1220
Kingscliff 2487

CIVIC CENTRE - TWEED HEADS - HIRE
FLAG - INCL RAISING CEREMONIES
SOUTH SEA ISLANDER MATTERS

TWEED SHIRE COUNCIL	
TITLE No:	DONATIONS
DOC. No:	
REC'D:	27 MAY 2010
ASSIGNED TO:	CORBETT, G
HARD COPY	<input type="checkbox"/>
IMAGE	<input checked="" type="checkbox"/>

20 May 2010

The General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH 2484

Dear Sir,

On the 25 August 1994 the Federal Attorney-General, in a statement to the House of Representatives, formally recognised Australian South Sea Islanders as a distinct ethnic group with its own history and culture. Our association is planning recognition day celebrations, and are holding a flag raising ceremony at the Cudgen memorial grounds, followed by a dinner that evening. Funding for this event has been approved and we would like to request the council assist in sponsoring this event by waiving the fees for the hire of the "South Sea Island Room" and the Auditorium at the Tweed Heads Civic Centre on the day.

Our celebrations include a function in the South Sea Island Room from 8.00am-2.00pm followed by an evening dinner in the Auditorium. We would need to begin preparations in the Auditorium from 3.00pm. We have confirmed with council that the both the Auditorium and South Sea Island Room are available on this day.

Yours Faithfully


Lance Skinner
Secretary

***Tweed Gold Coast Family History
& Heritage Association Inc***

PO Box 6729 Tweed Heads South 2486

Attention Mr Gary Corbett

*Tweed Shire Council
PO Box 816
MURWILLUMBAH 2484*

Donations

TWEED SHIRE COUNCIL
No: CIVIC CTR - TH - HEE
DOC. No:
DATE: 31 MAY 2010
ASSIGNED TO: CORBETT, G
HARD COPY <input type="checkbox"/> IMAGE <input checked="" type="checkbox"/>

28 May 2010

Dear Mr Corbett,

On behalf of the Tweed Gold Coast Family History and Heritage Association Inc. Committee, I would like to enquire the cost of hiring the Auditorium and South Sea Island Room, for this year's Antique Fair, to be held 7th and 8th August 2010 at the Tweed Heads Civic Centre, and also for the 6th August so the dealers may be able to setup their displays for the Fair.

Will the Council be able to help us, as they have in the past eleven years, regarding the reduced cost of the hire, as we are a non-profit organisation and this is our only fund raising event for the year.

We also ask for the advertising signs, announcing the Fair, to be placed outside the Civic Centre for two weeks before the Fair and if we could place 10 small signs at strategic places within the shire from Friday 6th to Sunday 8th.

Yours faithfully

Ducie Hood.

*Ducie Hood
President & Fair Organiser*

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should requests be approved for the waiving of fees for room hire, the income for the meeting room will be impacted by the amount of the fee reduction.

Should requests for "in kind" support be approved, this will impact on the costing of Council's involvement in the activity.

POLICY IMPLICATIONS:

In considering this request, reference should be made to:-

Festivals Policy.

Donations Policy.

Guidelines for Fee Reduction, Auditoriums, Meeting Rooms and Halls.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Nil

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

34 [EO-CM] EC2010-032 Annual Supply of Ready Mixed Concrete

ORIGIN:

Contracts

FILE NO: EC2010-032

SUMMARY OF REPORT:

This report outlines the tender for EC 2010 032 Annual Supply of Ready Mixed Concrete with a twelve (12) month contract period commencing 1 July 2010 until 30 June 2011. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the tender of Holcim Australia Pty Ltd for the Annual Supply of Ready Mixed Concrete to areas 1,2 and 3.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:

1. The tender from Holcim Australia Pty Ltd be accepted at the rates tendered for the Annual Supply of Ready Mixed Concrete for the period 1 July 2010 until 30 June 2011.
2. The **ATTACHMENT A** be treated as **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:

Background

Council Tender EC2010-032 Annual Supply of Ready Mixed Concrete closed on 14 April 2010. The tender sought prices for the supply and delivery of ready mixed concrete for maintenance and construction purposes in various mix types and quantities across the Shire. The supply contract is for the period 1 July 2010 until 30 June 2011.

Tenders Received

A total of four (4) responses were received for tender EC2010-032 Annual Supply of Ready Mixed Concrete.

Submissions were received from the following suppliers:

Hymix	Areas 1 & 2
Holcim Australia	Areas 1,2 & 3
Brims	Areas 1,2 & 3
Boral	Area 1

Selection Criteria

In evaluating the tender submissions consideration was given to tendered rates, order placement procedure, previous performance and quality assurance.

Tender Evaluation

A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on tendered rates , it is recommended that Tenderer Holcim Australia Pty Ltd be accepted as the contract supplier of Ready Mixed Concrete for the period 1 July 2010 until 30 June 2011.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2010/2011 Budget for EC2010-032 Annual Supply of Ready Mixed Concrete.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. **Confidential Attachment A** - EC2010-032 Annual Supply of Ready Mixed Concrete (ECM 16962159).
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35 [EO-CM] EC2010-034 Supply Contract for the Supply and Spraying of Bituminous Surfacing at Various Locations

ORIGIN:

Contracts

FILE NO: EC2010-034

SUMMARY OF REPORT:

This report outlines the tender for EC2010-034 Supply and Spraying of Bituminous Surfacing at Various Locations with a two year contract period commencing 1 July 2010 until 30 June 2012. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the tender of RPQ Spray Seal Pty Ltd for EC2010-034 Supply and Spraying of Bituminous Surfacing at Various Locations.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:

- 1. The tender from RPQ Spray Seal Pty Ltd be accepted at the rates tendered as the primary contractor for the period 1 July 2010 until 30 June 2012.**
- 2. The ranking of contractors to be as follows:**
 - (2) Pioneer Road Services**
 - (3) Boral Asphalt**
 - (4) SRS Roads Pty Ltd.**

3. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:

Background

Tenders closing 14 April 2010 have been called for the Supply Contract for Sprayed Bituminous Surfacing at Various Locations. The supply contract will be for a two (2) year period commencing 1 July 2010 until 30 June 2012.

Tenders Received

A total of four (4) responses were received for tender EC2010-034 Supply and Spraying of Bituminous Surfacing at Various Locations.

Submissions were received from the following contractors:

Boral Asphalt

RPQ Spray Seal Pty Ltd

SRS Roads Pty Ltd

Pioneer Road Services Pty Ltd

Selection Criteria

Price and ability to delivery service when required.

Tender Evaluation

A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on prices received, appropriate level of resources and demonstrated performance history it is recommended that Tenderer from RPQ Spray Seal Pty Ltd be accepted as the principal contractor for the Supply and Spraying of Bituminous Surfacing at Various Locations.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2010/2011 Budget for Supply and Spraying of Bituminous Surfacing at Various Locations.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. **Confidential Attachment A** - EC2010-034 Supply Contract for the Supply and Spraying of Bituminous Surfacing at Various Locations (ECM 17443231).
-

36 [EO-CM] EC2010-037 Coastal Creeks Floodplain Risk Management Study and Plan

ORIGIN:

Planning & Infrastructure

FILE NO: EC2010-037

SUMMARY OF REPORT:

This report outlines the tender for EC2010-037 Coastal Creeks Floodplain Risk Management Study and Plan. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the tender of BMT WBM Pty Ltd for EC2010-037 Coastal Creeks Floodplain Risk Management Study and Plan.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:

- 1. The tender from BMT WBM Pty Ltd be accepted to the value of \$230,058 excluding GST to undertake the Coastal Creeks Floodplain Risk Management Study and Plan.**
- 2. The General Manager be authorised to approve variations up to 20% of the contract amount.**
- 3. The ATTACHMENT A be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.**

REPORT:

Background

Tenders have been called for a consultant to undertake the Floodplain Risk Management Study and Plan for the Coastal Creeks area, from South Kingscliff to Wooyung, including the Cudgen, Cudgera and Mooball Creek floodplains. This follows completion of the Coastal Creek Flood Study at the end of 2009, and continues the floodplain risk management process prescribed by the NSW Floodplain Development Manual. This process is already underway for the Tweed Valley floodplain, under a separate consultancy.

According to the consultant brief, the objectives of the engagement are two-pronged:

- Preparation of a Floodplain Risk Management Study (FRMS), which assesses and optimises strategies aimed at reducing the impact of flooding to both existing and future development in the study area.
- Preparation of a Floodplain Risk Management Plan (FRMP), which details how flood prone land within the study area is to be managed, by adopting the preferred scheme from the FRMS.

Tenders Received

Due to the specific nature of the consultancy and the floodplain risk management industry, three firms were invited to tender, being:

1. BMT WBM
2. Sinclair Knight Merz (SKM)
3. Bewsher Consulting

In accordance with Council policy, the tender was also publicly advertised. Tenders closed on Wednesday 14 April 2010.

Three (3) complying tender submissions were received by the end of the tender period. Each tender consisted of a principle consultant, with sub-consultants (shown in brackets) as follows, in alphabetical order:

1. BMT WBM (Bewsher Consulting, Don Fox Planning)
2. SKM (Bewsher Consulting, Don Fox Planning)
3. Water Technology (GeoLINK, McGarry & Eadie)

Selection Criteria

1. Relevant experience – 20%
2. Technical and management skill of study team – 25%
3. Understanding of brief and proposed methodology – 30%
4. Price – 25%

Tender Evaluation

The Tender Evaluation was conducted by Council's Tender Panel, consisting of Council's Planning and Infrastructure Engineer and Flooding and Stormwater Engineer, and the Senior Natural Resource Officer from the Department of Environment Climate Change and Water (DECCW). A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on the criteria assessed and as detailed in the tender evaluation report, it is recommended that the contract for the Coastal Creeks Floodplain Risk Management Study and Plan be awarded to BMT WBM, for a lump sum price of \$230,058 (plus GST).

Details of BMT WBM, SKM and Water Technology relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by the Evaluation Committee.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council has accepted a government grant of \$140,000 under the Natural Disaster Mitigation Program (NDMP) for the subject study. As NDMP grants are subject to 1:1:1 (Commonwealth:State:Local Government) funding, Council's required contribution to the project is \$70,000, totalling \$210,000 for the project. Based on BMT WBM's contract price, Council will need to seek a grant variation from Emergency Management NSW for the project. In the unlikely event that the variation is not supported, the additional funding can be sourced from other Council sources (e.g. unspent loan funds, 7 year plan).

POLICY IMPLICATIONS:

The Coastal Creeks Floodplain Risk Management Study and Plan will involve a review of existing Council Floodplain Policy, with amendments and improvements likely as part of the Plan.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. **Confidential Attachment A** - EC2010-037 Coastal Creeks Floodplain Risk Management Study and Plan (ECM 17259792).
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37 [EO-CM] EC2010-038 Provision of Services for Pavement Linemarking

ORIGIN:

Contracts

FILE NO: EC2010-038

SUMMARY OF REPORT:

This report outlines the tender for the Provision of Pavement Linemarking Services to Council. The service contract will be for a two (2) year period commencing 1 July 2010 until 30 June 2011. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the tender of Linemarking Australia for the Provision of Pavement Linemarking Services for a two (2) year period commencing 1 July 2010 until 30 June 2011.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:

- 1. The tender from Linemarking Australia be accepted at the rates tendered as the provider of Pavement Linemarking Services to Council for a two (2) year period commencing 1 July 2010 until 30 June 2012.**
- 2. The ATTACHMENT A be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.**

REPORT:

Background

Tenders closing 14 April 2010 have been called for the supply of Pavement Linemarking Services on Council's road network for the period 1 July 2010 until 30 June 2012. The tender called for the provision of standard linemarking services and the application of Thermoplastic road markings.

Tenders Received

Following the close of tenders a total of two (2) submissions had been received.

Submissions were received from:

Linemarking Australia Pty Ltd Allstate Linemarking

Selection Criteria

Assessment Criteria	Weighting
Tendered rates submitted	50%
Level of appropriate resources	5%
Management methodology	5%
Contractor's team and experience	10%
Demonstrated capability to perform the service as specified	20%
Relevant experience with contracts of a similar nature	10%

Tender Evaluation

A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

Based on the evaluation contained in the confidential attachment, it is recommended that Tenderer Linemarking Australia Pty Ltd be accepted as the contract provider of Pavement Linemarking Services to Council. The service contract will be for a two (2) year period commencing 1 July 2010 until 30 June 2012.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2010/2011 Budget for the Provision of Linemarking Services to Council.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. **Confidential Attachment A** - EC2010-038 Provision of Services for Pavement Linemarking (ECM 17004884).
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38 [EO-CM] EQ2010-040 Supply of Selected Materials

ORIGIN:

Contracts

FILE NO: EQ2010-040

SUMMARY OF REPORT:

This report outlines the tender for EQ2010-040 Supply of Selected Materials with a contract period from 1 July 2010 until 30 June 2011. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Report included in **CONFIDENTIAL ATTACHMENT A**.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:

1. **The contracts for the supply of Selected Materials for the period 1 July 2010 until 30 June 2011 be awarded to the following suppliers:**

ITEM	SUPPLIER
Geotextile Material	Geofabrics Australia
Reinforcing Mesh	JH Williams
100mm Dia Slotted/Socked Agriculture Pipe	JH Williams
100mm Dia Slotted Agriculture Pipe	JH Williams
Premix Cement	JH Williams
General Purpose Bagged Cement	JH Williams
Herbicides	Rural Buying Service
Concrete Surrounds	Rocla
300mm – 1050mm Concrete Pipes	Rocla
Concrete Headwalls	Rocla
Concrete Kerb Inlets	Rocla
Welding Rods	JH Williams
Padlocks – Keyed alike	JH Williams
90mm PVC Stormwater Pipe	JH Williams
Form Ply	Bunnings
Woven Silt Film / Silt Stop	Tellam Civil Products

2. The ATTACHMENT A be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:

Background

Quotations closing 14 April 2010 were called for the supply of Selected Materials into Council's Murwillumbah Depot Store for the period 1 July 2010 until 30 June 2011.

The supply contracts are called on an annual basis for selected large dollar turnover items purchased for issue through Council's Store.

Items offered to tender are as follows:

Geotextile Material	Herbicides
Reinforcing Mesh	General Purpose Bagged Cement
Premix Cement	90mm PVC Stormwater Pipe
100mm Dia Slotted Agriculture Pipe	100mm Dia Slotted / Socked Agriculture Pipe
300 mm – 1050mm Dia Concrete Pipes	Concrete Surrounds
Concrete Headwalls	Concrete Kerb Inlets
Welding Electrodes	Form Ply
Padlocks – Keyed alike	Woven Silt Film / Silt Stop

Tenders Received

A total of nine (9) responses were received for tender EQ 2010 040.

Submissions were received from the following suppliers:-

Tellam Civil Products	Humes /Holcim Australia
Rural Buying Service	ABC Brick Sales
Rocla	Geofabrics Australia
Bunnings Group Ltd	Williams Group Australia Pty Ltd
Reinforced Concrete Pipes Australia	

Selection Criteria

- Tendered rates submitted
- Level of appropriate resources
- General performance history
- Relevant experience with contracts of a similar nature
- Local Preference considerations

Tender Evaluation

A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on the conforming prices received and previous supply history considerations, it is recommended that the following suppliers be awarded supply contracts for the period 1 July 2010 until 1 July 2011:

ITEM	SUPPLIER
Geotextile Material	Geofabrics Australia
Reinforcing Mesh	JH Williams
100mm Dia Slotted/Socked Agriculture Pipe	JH Williams
100mm Dia Slotted Agriculture Pipe	JH Williams
Premix Cement	JH Williams
General Purpose Bagged Cement	JH Williams
Herbicides	Rural Buying Service
Concrete Surrounds	Rocla
300mm – 1050mm Concrete Pipes	Rocla
Concrete Headwalls	Rocla
Concrete Kerb Inlets	Rocla
Welding Rods	JH Williams
Padlocks – Keyed alike	JH Williams
90mm PVC Stormwater Pipe	JH Williams
Form Ply	Bunnings
Woven Silt Film / Silt Stop	Tellam Civil Products

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2009/2010 Budget for EQ 2010 040 Supply of Selected Materials.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. **Confidential Attachment A** - EQ2010-040 Supply of Selected Materials (ECM 17012208).
-

39 [EO-CM] Land Acquisition for Road - Palmvale Road, Palmvale

ORIGIN:

Design

SUMMARY OF REPORT:

Council has allocated funds to proceed with the upgrade of the school bus route along Palmvale Road, Palmvale. In the course of surveying the existing road boundaries it was discovered that there was an historical anomaly whereby part of the existing road was actually formed over several parcels of land fronting Palmvale Road.

To correct this anomaly Council proposed to the respective landowners that the area in question be acquired by Council and dedicated as road reserve. The plan of land proposed to be acquired for Road under the *Roads Act* 1993 has been registered as DP 1151832 showing Lot 1 (Land in 2/610215), Lots 2-5 (Land in 133/755698) and Lot 6 (Land in 11/852575) as the land to be acquired as public road. Lots 7-11 are public road proposed to be closed and transferred as compensation to the affected landowners.

Council at its meeting of 19 January 2010 agreed to pay monetary compensation to the owner of Lot 13 in DP 1151832, previously Lot 2 in DP 610215, for the acquisition of Lot 1 in DP 1151832.

In lieu of monetary compensation the remaining landowners have agreed to accept the transfer to them of road closure parcels being Lots 7-11 in DP 1151832 respectively. The compensation payable in this instance falls within Section 64 of the *Land Acquisition (Just Terms Compensation) Act*, 1991.

The acquisition is to proceed under the provisions of the *Land Acquisition (Just Terms Compensation) Act*, 1991 whereby an application is to be made to the Department of Local Government for approval to the acquisition.

RECOMMENDATION:

That:

- 1. Council approves the acquisition of Lots 1-6 in DP 1151832 for public road and the compensation payable as noted in the resolution of the Council meeting dated 19 January 2010 and the transfer of road closure parcels being Lots 7-11 in DP 1151832 under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act, 1993 and the making of the necessary application to the Minister and/or Governor;**
- 2. Lots 1-6 in DP 1151832 be dedicated as road following gazettal of the acquisition; and**

3. **All necessary documentation be executed under the Common Seal of Council.**

REPORT:

Council has allocated funds to proceed with the upgrade of the school bus route along Palmvale Road, Palmvale. In the course of surveying the existing road boundaries it was discovered that there was an historical anomaly whereby part of the existing road was actually formed over several parcels of land fronting Palmvale Road.

To correct this anomaly Council proposed to the respective landowners that the area in question be acquired by Council and dedicated as road reserve. The plan of land proposed to be acquired for Road under the *Roads Act* 1993 has been registered as DP 1151832 showing Lot 1 (Land in 2/610215), Lots 2-5 (Land in 133/755698) and Lot 6 (Land in 11/852575) as the land to be acquired as public road. Lots 7-11 are public road proposed to be closed and transferred as compensation to the affected landowners.

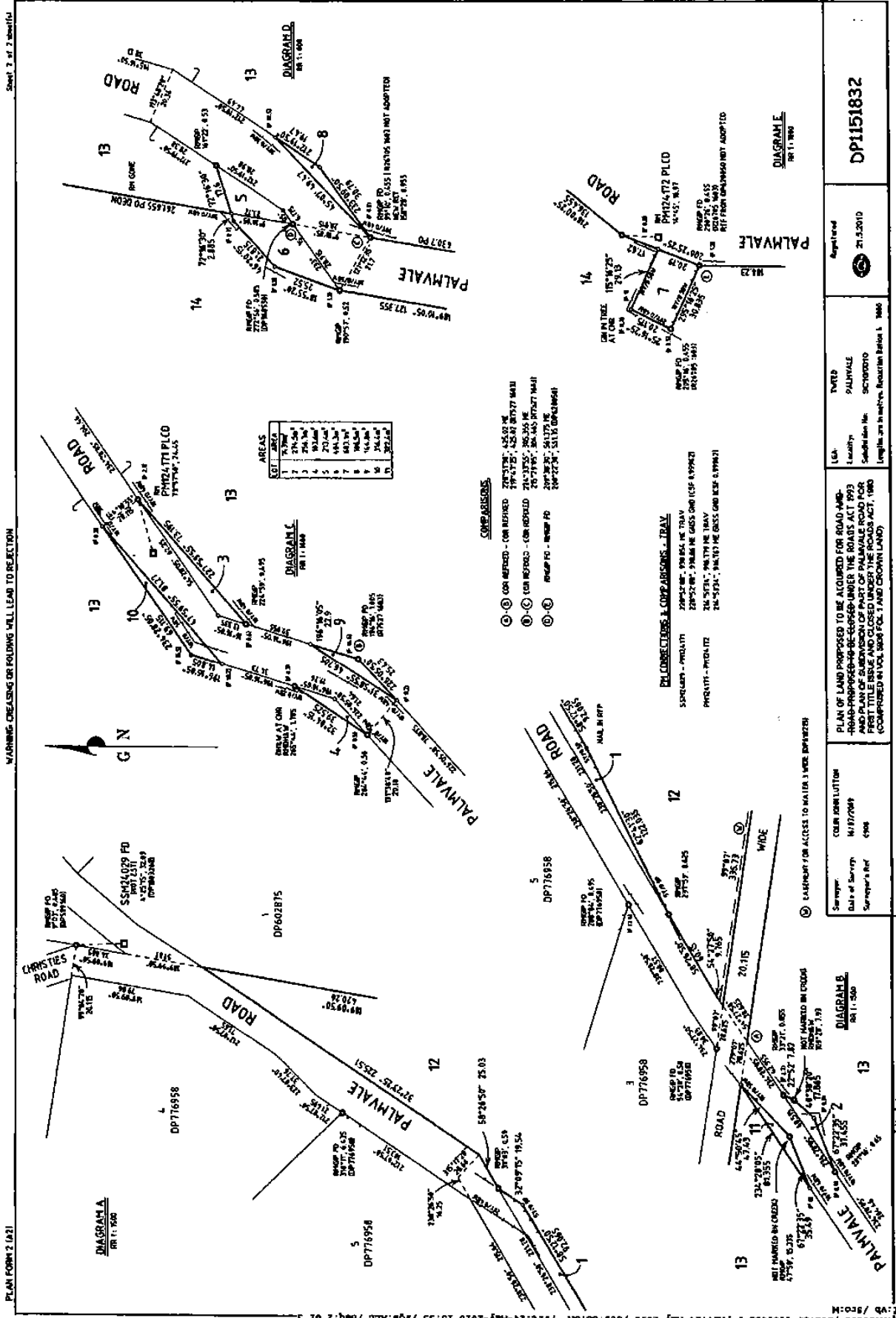
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In lieu of monetary compensation the remaining landowners have agreed to accept the transfer to them of road closure parcels being Lots 7-11 in DP 1151832 respectively. The compensation payable in this instance falls within Section 64 of the *Land Acquisition (Just Terms Compensation) Act*, 1991.

The following table shows the lots to be acquired and the road to be closed and transferred to each respective land owner as compensation:

Land to be acquired as road	Road to be closed and transferred as compensation
Lot 1	Monetary Compensation only
Lots 2-5	Lots 8-11
Lot 6	Lot 7

The acquisition is to proceed under the provisions of the *Land Acquisition (Just Terms Compensation) Act*, 1991 whereby an application is to be made to the Department of Local Government for approval to the acquisition.



PLAN FORM 2 (A2) W/11/2009 WARNING: CREATING OR FOLDING WILL LEAD TO REACTION Sheet 7 of 7 Beneficial

<p>PLAN OF LAND PROPOSED TO BE ACQUIRED FOR ROAD AND ROAD-PROPOSED TO BE CLOSED UNDER THE ROADS ACT, 1993</p> <p>FRONT TITLE BULK AND CLOSED UNDER THE ROADS ACT, 1993 (COMPRISED IN VOL 3008 FOL 1 AND CROWN LAND)</p>	<p>LOCALITY</p> <p>PALMVALE</p> <p>SECTION No.</p> <p>SECTION 10</p> <p>Lengths are in metres. Reservation Batches 1, 1000</p>	<p>DP1151832</p>
<p>DATE OF SURVEY</p> <p>16/12/2009</p> <p>SURVEYOR'S REF</p> <p>696</p>	<p>LOCALITY</p> <p>PALMVALE</p> <p>SECTION No.</p> <p>SECTION 10</p> <p>Lengths are in metres. Reservation Batches 1, 1000</p>	<p>DP1151832</p>

Req:R600508 /Doc:DP 1151832 P /Rev:24-May-2010 /Sts:SC.OK /Prt:24-May-
 Ref:138 /Pg:111 /Seq:3 of 3

DEPOSITED PLAN ADMINISTRATION SHEET Sheet 1 of 1 sheet(s)

SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.

LOT 1 (LAND IN 2/610215) IS PROPOSED TO BE ACQUIRED AS PUBLIC ROAD.
 LOTS 2 - 5 (LAND IN 133/755698) ARE PROPOSED TO BE ACQUIRED AS PUBLIC ROAD.
 LOT 6 (LAND IN 11/852575) IS PROPOSED TO BE ACQUIRED AS PUBLIC ROAD.

LOT 7 IS PUBLIC ROAD PROPOSED TO BE CLOSED (PREVIOUSLY LAND IN ~~134/755698~~ - VIDE PLAN R26705-1603). VOL 5938 FOL 1


LOTS 8 - 11 ARE PUBLIC ROAD PROPOSED TO BE CLOSED (PREVIOUSLY LAND IN ~~133/755698~~ - VIDE PLAN R7587-1603). CROWN LAND

Use PLAN FORM 6A for additional certificates, signatures, seals and statements

*



DP1151832 S

Registered:  21.5.2010 *

Title System: TORRENS & CROWN LAND

Purpose: ROADS ACT, 1993

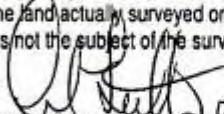
PLAN OF LAND PROPOSED TO BE ACQUIRED FOR ROAD AND ROAD PROPOSED TO BE CLOSED UNDER THE ROADS ACT 1993. AND PLAN OF SUBDIVISION OF PART OF PALMVALE ROAD FOR FIRST TITLE ISSUE AND CLOSED UNDER ROADS ACT, 1993 (COMPRISED IN VOL 5938 FOL 1 AND CROWN LAND)

LGA: TWEED
 Locality: PALMVALE
 Parish: CONDONG
 County: ROUS

Surveying Regulation, 2006

I, Colin John Lutton of Tweed Shire Council a surveyor registered under the *Surveying Act, 2002*, certify that the survey represented in this plan is accurate, has been made in accordance with the *Surveying Regulation, 2006* and was completed on: 22/12/2009

The survey relates to Lots 1 - 11 incl only (specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey)

Signature:  Dated: 22/12/2009
 Surveyor registered under the *Surveying Act, 2002*

Datum Line TS12080 -PM124154
 Type: Rural

Crown Lands NSW/Western Lands Office Approval

I, Stephen Howlahan in approving this plan certify (Authorised Officer) that all necessary approvals in regard to the allocation of the land shown herein have been given

Signature: 
 Date: 17 March 2010
 File Number: G.E. 511.2.12
 Office: Grafton

Subdivision Certificate

I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to:

the proposed Road Closure set out herein (insert 'subdivision' or 'new road')


 * Authorised Person/General Manager/Accredited Certifier

Consent Authority: TWEED SHIRE COUNCIL
 Date of Endorsement: 30 MARCH 2010
 Accreditation no:
 Subdivision Certificate no: SL10/0010
 File no:

* Delete whichever is inapplicable.

Plans used in the preparation of survey/compilation

DP258530	DP360530	DP599160
DP605944	DP610215	DP620050
DP706831	DP776958	DP852575
DP1083260	R26705 1603	R4425 1759
R7587 1603	R4426 1759	

(if insufficient space use Plan Form 6A annexure sheet)

SURVEYOR'S REFERENCE:0908

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

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40 [EO-CM] Naming of Council Public Road - Doon Doon

ORIGIN:

Design

FILE NO: GS5/1 Pt6

SUMMARY OF REPORT:

Council at its meeting of 20 April 2010 resolved to publicise its intention to name the road reserve that runs off Lone Pine Road approximately 1km north from the intersection of Commissioners Creek Road at Doon Doon as Cypress Lane.

The proposed road naming was advertised in the Tweed Link and all relevant authorities were notified and provided with an opportunity to comment on the proposed naming.

An objection was received from Land & Property Management Authority on the basis of Uniqueness. The name Cypress Crescent already exists within the Tweed Shire at Cabarita Beach.

Two further suggestions were submitted from local residents of the area.

The first proposal is for the road to be called "**Jacana Lane**". Jacana is the name given to the small Lilly-trotter bird which inhabits the Clarrie Hall Dam and is prevalent in the area year round.

The second proposal was for "**Waterview Lane**" as the road overlooks the Clarrie Hall Dam.

Both names comply with Councils Policy on Road Naming in that they are unique and relevant to the immediate area. The name "**Jacana Lane**" is however possibly a more suitable name due to the fact that, as noted in the Policy, it is a preferred source for a road name being a Thematic name of local fauna.

No further submissions or objections were received.

It is recommended that Council readvertise its intention to name the road reserve that runs off Lone Pine Road approximately 1km north from the intersection of Commissioners Creek Road at Doon Doon as "**Jacana Lane**" allowing one month for submissions or objections to the proposal.

RECOMMENDATION:

That Council:

- 1. Publicises its intention to name the road reserve that runs off Lone Pine Road approximately 1km north from the intersection of Commissioners Creek Road at Doon Doon as “Jacana Lane” allowing one month for submissions or objections to the proposal;**
- 2. Notifies the relevant authorities under the provisions of the Roads (General) Regulation 1994.**

REPORT:

Council at its meeting of 20 April 2010 resolved to publicise its intention to name the road reserve that runs off Lone Pine Road approximately 1km north from the intersection of Commissioners Creek Road at Doon Doon as Cypress Lane.

The proposed road naming was advertised in the Tweed Link and all relevant authorities were notified and provided with an opportunity to comment on the proposed naming.

An objection was received from Land & Property Management Authority on the basis of Uniqueness. The name Cypress Crescent already exists within the Tweed Shire at Cabarita Beach.

Two further suggestions were submitted from local residents of the area.

The first proposal is for the road to be called "**Jacana Lane**". Jacana is the name given to the small Lilly-trotter bird which inhabits the Clarrie Hall Dam and is prevalent in the area year round.

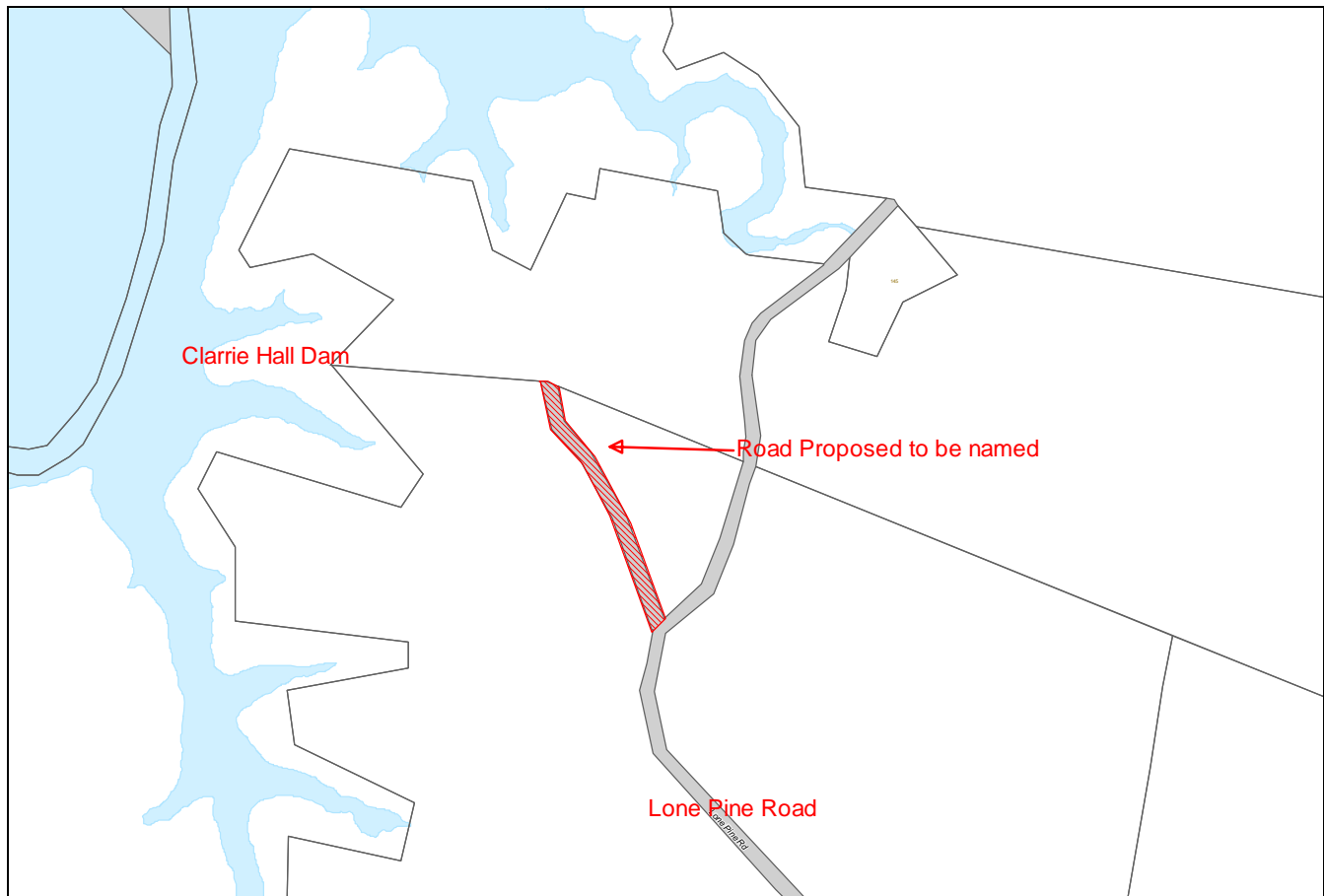
The second proposal was for "**Waterview Lane**" as the road overlooks the Clarrie Hall Dam.

Both names comply with Councils Policy on Road Naming in that they are unique and relevant to the immediate area. The name "**Jacana Lane**" is however possibly a more suitable name due to the fact that, as noted in the Policy, it is a preferred source for a road name being a Thematic name of local fauna.

No further submissions or objections were received.

It is recommended that Council readvertise its intention to name the road reserve that runs off Lone Pine Road approximately 1km north from the intersection of Commissioners Creek Road at Doon Doon as "**Jacana Lane**" allowing one month for submissions or objections to the proposal.

Plan showing location of road reserve



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Objection to proposal (ECM 16917215 and 16364057).
-

41 [EO-CM] Old Fingal Harbour Boat Upgrade Plans

ORIGIN:

Recreation Services

SUMMARY OF REPORT:

Council resolved to allocate funding from round 2 of the Regional and Local Infrastructure Grants (RLCIP) to the upgrading of the Old Boat Harbour at Fingal. A concept design was completed and an extended consultation process undertaken through which the design was amended a number of times in response to comments received.

The consultation process and submissions received during the display period are detailed in this report.

RECOMMENDATION:

That Council:

- 1 Endorses the 'Old Fingal Boat Harbour Plan' as presented with this report and proceed to detail design and construction.**
- 2. Liaises with the local Aboriginal community to identify opportunities for art or other cultural elements to be incorporated into the detail design.**
- 3. Forwards comments and suggestions regarding use of the Old Boatharbour by powered craft to the Tweed River Committee.**

REPORT:

Council resolved to allocate funding from round 2 of the Regional and Local Infrastructure Grants (RLCIP) to the upgrading of the Old Boat Harbour at Fingal. As with the Round 1 park upgrade projects (Ambrose Brown Park, Pottsville and Jack Bayliss Park, Kingscliff), it is proposed to add Council funds to the grant to enable delivery of a 'finished' project.



Old Fingal Boat Harbour Plan

Consultation

A draft concept plan was initially developed for discussion purposes based on the current park layout and usage patterns.

Meetings

An onsite meeting was held in December 2009 with Executives from the Fingal Head Community Association to table the draft plan which was then taken by the Association representatives for distribution and discussion.

Council's Landscape Architect Ian Bentley tabled the plan at the Public Art Advisory Committee and Indigenous Public Placemaking Committee (IPPP) meeting held 2 February 2010. Mr Bentley subsequently tabled the plan at the Aboriginal Consultative Committee Meeting held 5 February 2010. From this meeting it was agreed that Council's Aboriginal Liaison Officer arrange a meeting with the Fingal Aboriginal community and Ian Bentley on site to discuss the concept plan. The meeting was held 10 March 2010 where the concept plan was discussed with suggestion for changes to the carpark layout and extent of bollarding.

Opportunities for inclusion of Aboriginal art or interpretation into the design were discussed and it was agreed to hold a Community Design Gathering to be facilitated by Glenda Nalder. The Gathering was held at the Minjungbal Museum on 19 April 2010. The gathering provided comment on a number of elements in the draft plan and resolved to hold another meeting to discuss opportunities for inclusion of public art/public place making within the design. The follow up meeting was held 5 May 2010 and comments forwarded to Ian Bentley. The following table details the comments received from that meeting and Council's response to the issues raised.

Comment from Meeting minutes 5 May 2010	Council Response
Consensus of the people in this meeting would like to know why the concept plan for the upgrade of the Old Boat Harbour was drawn up before consultation with Aboriginal Community	A landscape concept plan was drawn up prior to consultation based on the current park layout and usage. This provides a basis from which to discuss options. It was known that the toilet block needs replacing as do the shelters and bbq, illegal boat launching is an issue as is hooning within the park. The concept plan was developed to address these issues and provide the opportunity to discuss these and other issues such as restricting vehicular access through the park area, the location of the new facilities, the extent of the car park etc.

**Comment from Meeting minutes 5
May 2010**

Council Response

Meeting are also enquiring if there is an alternative product that can be used other than asphalt for the car park.

Council has looked into this and the alternatives to asphalt are very expensive and visually as dominant. The use of concrete is almost double in price due to the thickness required. Gravel has been considered (similar to existing on site) but on going maintenance with pot holes and erosion and run off adversely effecting water quality in the boatharbour make it a less desirable option. Paving and other finishes are too costly and would consume a large portion of the budget. Council preference is to reduce the extent of the original car park and use asphalt. The proposed car park is 250m² smaller in size than the existing gravel car park currently there. The solid nature of asphalt also allows disabled access through the car park.

Meeting is concerned about the restricted car parking due to the placement of bollards.

Bollards have been placed around the car park area and then sweep around the playground and out towards the river. This new alignment separates a large space for park users but still allows access to the river at the northern end of the park. The main rationale is to separate vehicular traffic from passive recreation to create a safe environment. Additionally, this alignment will keep vehicles off the grass area allowing it to grow, aid with compaction issues around trees and also help with illegal boat and Power Water Craft (PWC) issues in the future. The idea of a park is to encourage recreation in a safe vehicular free environment; there is no reason for cars to dominate these areas. The location of the car park is central to the whole park. It is close to the toilets and shelters. It is close to the bbq's and to the Tweed River. Passengers from vehicles do not need to travel far by foot to the facilities. The area from where cars are restricted is minimal allowing unfettered access to large tracks of park north and south of the park area..

Comment from Meeting minutes 5 May 2010	Council Response
<p>Planning issues of the Old Fingal Boat Harbour needs to be addressed before the Beautification of the park. Especially the low-lying area that is prone to flooding & the car access to the area from Fingal Road</p>	<p>Planning issues raised are outside the scope of the park upgrade and will not impact on the park upgrade anymore than they do currently. The park upgrade may be a catalyst to fix up some of the other issues raised such as the low lying area. This work would involve road reconstruction and future drainage. The park upgrade at this stage will look only at ways of preventing the road run off from entering the old boat harbour (as it does currently) and cleaning any run off generated from the site through infiltration garden beds.</p>
<p>Community would like to meet with Ian Bentley as soon as possible after all aspects of the upgrade has been implemented into the new concept plan.</p>	<p>Follow up meeting was held 26 May 2010</p>
<p>Meeting discussed the safety issues that seem to be of concern and relate to you that to date there has not been an accident concerning the public users of this area</p>	<p>Council has a duty of care when designing and upgrading public open space to consider the safety of the facility users. When providing facilities, particularly facilities such as play equipment, Council has an obligation to respond to reasonably foreseeable risks. The movement of vehicles in and around playgrounds, picnic and BBQ facilities in areas where children can be expected to play is such a risk. As noted above, there is no strong argument for the need for vehicular access to the park area. Vehicular access is to be retained north and south of the Old Boat Harbour Park.</p>
<p>Meeting was also wondering if it was possible to have an extension of time to put any further aspects forward</p>	<p>28th May is the last possible day for any more feedback as a report needs to go to Council, but Council is happy to discuss opportunities for input into detail design such as art works, sculptures etc.</p>

Table 1: Comments from Community Meeting held 5 May 2010 and Councils response.

Ian Bentley submitted a revised plan based on comments tabled at the Community Design gathering and another on-site meeting was held on 26 May 2010. The revised plan had a redesigned car park and reduced bollarded restricted vehicle access area.

At this meeting, the main issues, as with previous meetings were management of boats within the boat harbour, sealing and formalisation of the carpark and restricting of vehicular access. The response to these issues is as detailed in table 1

The Fingal Head Community Association expressed full support and appreciation for the proposal.

Meeting date	Meeting details
21/12/2009	On site meeting with Executive of Fingal Head Community Association to table draft concept plan for distribution.
02/02/2010	Attendance by Ian Bentley at the Public Art Advisory Committee and with members of the IPPP Sub Committee
05/02/2010	Attendance by Ian Bentley at Aboriginal Advisory Committee to discuss draft Concept plan
10/03/2010	On site meeting with representatives Aboriginal Community
19/04/2010	Community Design Workshop at the Minjungbal Museum facilitated by Dr Glenda Nalder
26/05/2010	On site meeting with representatives of Aboriginal Community and Tweed Byron Aboriginal Land Council to discuss response to concerns raised and proposed amendments to the plan

Table 2: Summary of Consultation Meetings

Submission Period

The draft plans were placed on exhibition inviting comment for a three week period closing 5 May 2010. A summary of submissions received is detailed below.

DW Number	Support/Against	Summary of comment
DW 15229016	Support	Good family area and popular recreation spot often ruined by 'hoons', illegal camping etc. Other comments include in list below
DW 15688519	Support	Much needed upgrade to improve amenity and safety of this area. Other comments include in list below
DW 15983559	Support	Council to be applauded for initiative and hope the plan will be implemented expeditiously. Other comments include in list below
DW 16264275	Support	Follow up submission from DW 15229016 with additional comment on water ponding and carparking in the quarry

DW 16039804	No indication either way	area. Requesting an extension of time for Tweed Byron Aboriginal Land Council members as their scheduled April meeting did not occur. Ian Bentley contacted them and provided further information.
Various (284)	Limited support plus strong concerns	Form letter as detailed below

Table 3: Summary of Submissions received

Council received 284 form letters after the closing date for submissions and up until the time of drafting this report. All of these submissions were faxed from the same location. The form letter is reproduced below:

RECD: 10 MAY 2010
 ASSIGNED TO: Burney, I
 HARD COPY IMAGE

KEEP FINGAL SPECIAL

I, H. Riddle, object to the proposed redevelopment of the 'old' Fingal Boatharbour.

I am in agreeance that the toilet, barbeque and seating facilities need repairing.

Fingal is a small seaside village and I believe by redeveloping the 'old boatharbour' will detract from the special qualities and uniqueness that is Fingal, which is the very quality that attracts people to it.

I have strong concerns that this redevelopment will be a start to many other projects to try and 'beautify' 'upscale' 'modernise' 'urbanise' Fingal, which will take away the true essence of Fingal.

Families have enjoyed the 'old' Boat Harbour in it's current state for many generations without incident or threats to their safety in any form.

This 'old' Boat Harbour is a gathering place and a food source for the Aboriginal and wider community.

I request that you extend comment time on this project as many residents and wider community were not aware of this proposal.

Those understood to have initiated this form letter were contacted to discuss the proposal and invited to the on-site meeting held 26 May 2010. Councils response to the concerns raised in the letter are outlined below:

I am in agreeance that the toilet, barbeque and seating facilities need repairing.

These items are beyond the point of repair and require replacing as is the play equipment. The items in the plan in addition to the replacement of these facilities are formalised carparking, access paths and bollarding restricting vehicular access.

Fingal is a small seaside village and I believe by redeveloping the 'old boatharbour' will detract from the special uniqueness that is Fingal, which is the very quality that attracts people to it.

As noted above, the plan does not propose major redevelopments, but an upgrade to the existing park layout.

I have strong concerns that this redevelopment will be a start to many other projects to 'beautify' 'upscale' 'modernise' 'urbanise' Fingal, which will take away the true essence of Fingal

From a park improvement perspective, the only other plans for Fingal are the eventual replacement of the picnic facilities in the foreshore park.

Families have enjoyed the 'old' Boat Harbour in its current state for many generations without incident or threats to their safety or form.

The facilities within the park are well beyond their usable life span and need to be replaced. Council has a duty of care when designing and upgrading public open space to consider the safety of the facility users. When providing public facilities, particularly facilities such as play equipment, Council has an obligation to respond to reasonably foreseeable risks. The movement of vehicles in and around playgrounds, picnic and BBQ facilities in areas where children can be expected to play is such a risk. Council cannot rely on a defence of "it has never happened before".

This 'old' Boat harbour is a gathering place and a food source for the Aboriginal and wider community.

The plan does not significantly change the opportunities for use as a gathering place or change potential for food gathering except for restricting vehicular access to the recreation areas.

I request that you extend comment time on this project as many residents and wider community were not aware of this project

As demonstrated above, and extensive consultation process was undertaken providing ample opportunity for comment. Additionally, all of the form letters were received after the closing date for comment and those involved in initiating the letter were contacted to discuss the proposal and attended the meeting held 26 May.

As this project is part funded by the Regional and Local Infrastructure Grants there is a set timeframe in which the projects must be delivered. Further extensions to the consultation time frame would make these time frames extremely difficult to achieve.

Following is a summary of feedback from community groups and individuals (Comments closed 5/5/2010):

- Do not want the extra road in/out as shown on the second plan
- Concerns with cycles crossing the road in/out
- Concerns about higher powered water craft (PWC) use in the area
- Illegal boat launching in the old boat harbour is an issue and needs to be addressed at this concept plan stage (photos added to submission of PWC launching)
- Bollarding would restrict illegal boat launching and hooning in the park
- Safety concerns between cars entering car park and bikes using the cycleway.
- Concerns about over sized parking leading to boat launching
- Noted original plans for 'New Boat Harbour' have not eventuated these included a safe swimming area, kiosk and bbq facilities.
- Flooding and drainage concerns. After rain an area (as noted on a submitted plan) floods part of the road and onto the cycleway. This low spot collect water from the park and the roadway.
- A suggestion was raised about utilising additional car parking in the area of the quarry or south of the old boat harbour especially around holiday periods.
- Concerns about human behaviour hooning, illegal camping
- North of the park the historic point of interest needs bollarding off
- Issues of safety at this point culvert installation and filling
- Issues of vehicles driving along the shared pathway
- Additional bins are required especially at busy periods of the year
- Restrictions to boat use in the harbour, speed limits and limited access
- Keep Fingal Special group realised the need for new toilet, bbq and seating facilities
- Strong concerns about Fingal becoming to beautiful, upscale, modernised, and urbanised
- Old boat harbour is a gathering place and a food source for the Aboriginal and wider community.
- Why was the plan drawn up before consultation with the Aboriginal community
- Look at alternatives to asphalt
- Concerns about restrictive access due to bollard placement
- Planning issues and low lying area adjacent car park entry were raised as an issue
- Issue raised about Councils concern for safety between vehicles and park users and what this is based on
- Happy that the work was finally happening at Old Fingal boat Harbour, long overdue (promised in 1988)
- Area needs to be fixed up for community use including visiting groups
- Need a shower installed
- Discussions about an 'art shelter'
- Extension of time for review

Plan amendments

The following amendments were made to the plan through the consultation process in response to issues/comments raised at the various meetings.

Original landscape concept plan issue A

Drawn up in December 2009, and shown to the Fingal Head Residents Association for comment.

Issue B

A slight modification to the car park was drawn up and a note was added to the southern part of the old boat harbour to prevent illegal boat launching. All trees on site were requested to remain and bollards were relocated to encompass the shared pathway

Issue C

The carpark was amended again after consultation with the Aboriginal Advisory Committee and the IPPP. At this meeting a separate in/out was requested and again the bollards realigned to not encompass as much of the park as originally shown.

Issue D

Latest plan has gone back to a single entry/exit point after much comment about the two access points with the number of sealed spaces reduced down to 18. Bollard alignment was much reduced and now encompasses an area around the old boat harbour to prevent illegal boat launching and the play area out to the river. This is considerably less than originally shown but still allows an area that separates vehicles and park users.

Summary

The plan appears to have strong support from the Fingal Head Community Association and other community members. However, the Aboriginal community have expressed concerns that the proposed upgrades will adversely affect their use of the area. Whilst there appears to be an acceptance that the existing shelters and toilet block need to be replaced, they do not see a need for any other of the proposed elements, in particular the formalised carpark and restricted vehicular access.

However, as described previously, the footprint of the carpark will in fact be less than the existing area and leaving the carpark as gravel retains the following problems:

- Constant requirement for maintenance
- Difficulty of access for wheelchairs and prams
- Erosion and run-off into the harbour
- Pot holing
- Uncontrolled access for boat launching into the harbour.

Experience with previous park upgrades or other developments has shown that car parking is generally a major issue of debate, either too much or not enough and concerns of the visual impact of a sealed carpark. The approach is to reach a compromise and generally speaking, when designed sympathetically incorporating tree planting and avoiding large block carparks, the impact is minimal to positive.

The issue of limiting vehicular access has been discussed previously in this report. The extent of area set aside with restricted access has been minimised and there is ample opportunity north and south of the park area for vehicular access right down to the river bank.

Council has had a number of discussions with the Aboriginal community on opportunities for art or interpretation within the site and these opportunities can be pursued.

It is considered that the final plan represents a reasonable compromise between comments received and will provide a benefit to the wider Tweed Community without significant compromise to the local community.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Project funded by round 2 of the Regional and Local Infrastructure Grants (RLCIP) with the balance funded from the 7 year plan and CP5.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

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42 [EO-CM] Tree Poisoning - Shady Lane, Banora Point

ORIGIN:

Recreation Services

SUMMARY OF REPORT:

Council's tree management officers inspected a large mature Forest Red Gum in Shady Lane Banora Point in response to a customer work request expressing concern that the tree was diseased and contained die back. Upon inspection, several drill marks approximately 8mm in diameter were noted in the base of the tree indicating the tree had been deliberately poisoned supported by the fact that the pattern of dieback in the tree matches the drill areas.

A tree inspection report dated 21.2.2007 reported the tree to be in very good condition. Council's arborist and an independent Arborist have both undertaken pruning on this tree and found no evidence of pest, disease or lightning strike to indicate natural dieback.

As a result of the current damage and the now evident risk to surrounding homes this tree will need to be removed.

There are a number of potential motives for the killing of the tree including impact on amenity and view enhancement. In past incidents of deliberate tree vandalism, where the identity of offenders cannot be determined, Council has elected to install screens or signs where possible to deter further incidents and negate the potential benefit that may be derived from the act. To treat this incident in a consistent manner to past actions, the trunk of the tree could be left in-situ to a height of several metres and a large sign mounted on the trunk advising that the tree had been killed due to an act of vandalism and requesting information anyone may have as to who may of killed the tree.

RECOMMENDATION:

That when removing the poisoned Forest Red Gum in Shady Lane, Banora Point, several metres of the trunk are left in-situ and a sign mounted on the trunk advising that the tree was killed in an act of vandalism and requesting any information in regard to the poisoning.

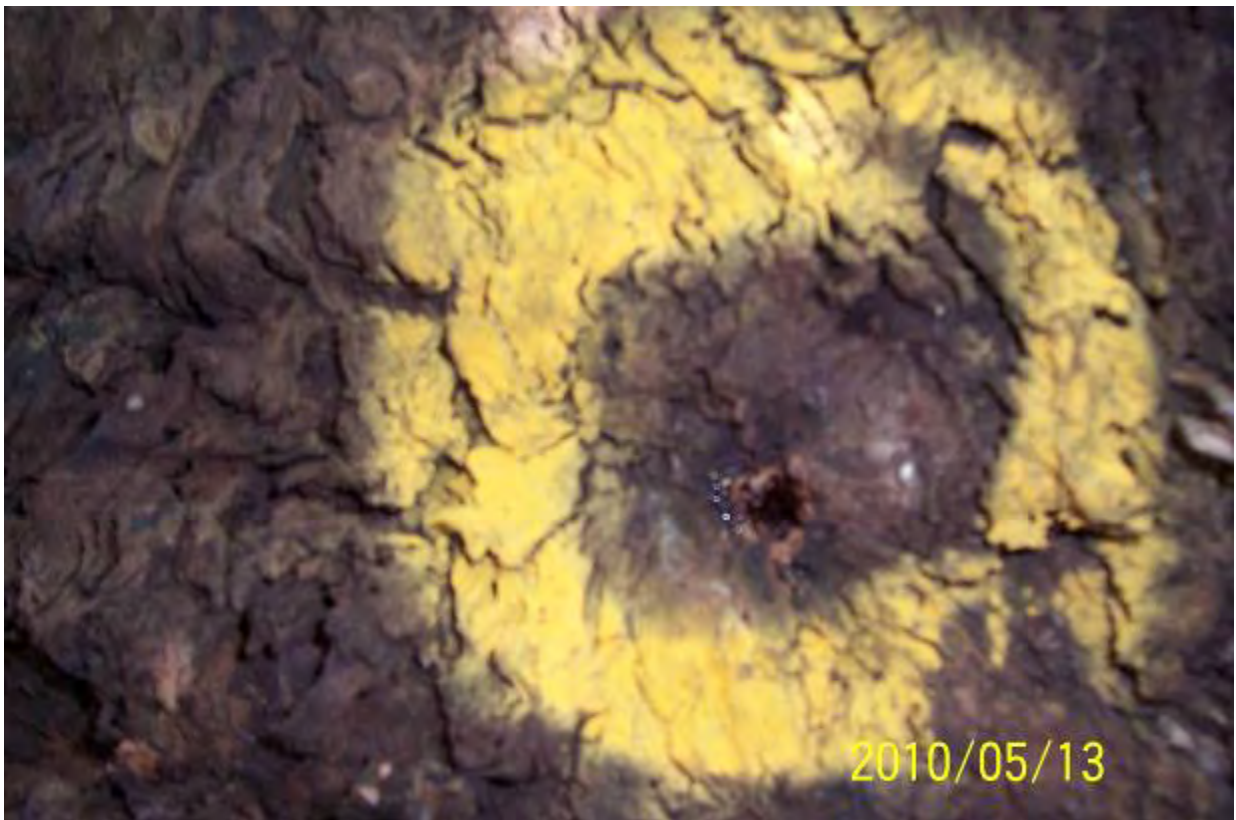
REPORT:



Subject tree



Die back in canopy as a result of poisoning.





Photos of drill holes.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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43 [EO-CM] Lakes Drive Bridge

ORIGIN:

Director Engineering and Operations

SUMMARY OF REPORT:

Council resolved to suspend preparation of the Development Application for Lakes Drive Bridge in 1999. This followed considerable opposition to the project by affected individuals, community and environmental groups and remaining unresolved environmental issues.

Council removed Lakes Drive Bridge from its arterial road network in 2000. Other issues with the network were resolved by the joint adoption with the RTA in 2006 of the "Lower Tweed and Pacific Highway Traffic Master Plan". Lakes Drive Bridge was formally removed from Council's Section 94 Contributions Plan in 2007.

The environmental issues and community opposition remain and the cost of reinstating Lakes Drive Bridge is considered to be beyond Council's financial resources.

RECOMMENDATION:

That no further action be taken to reinvestigate or reinstate the Lakes Drive Bridge.

REPORT:

1. Notice of Motion

At Council's meeting held 18 May 2010, following a notice of Motion from Councillor Skinner, it was resolved:

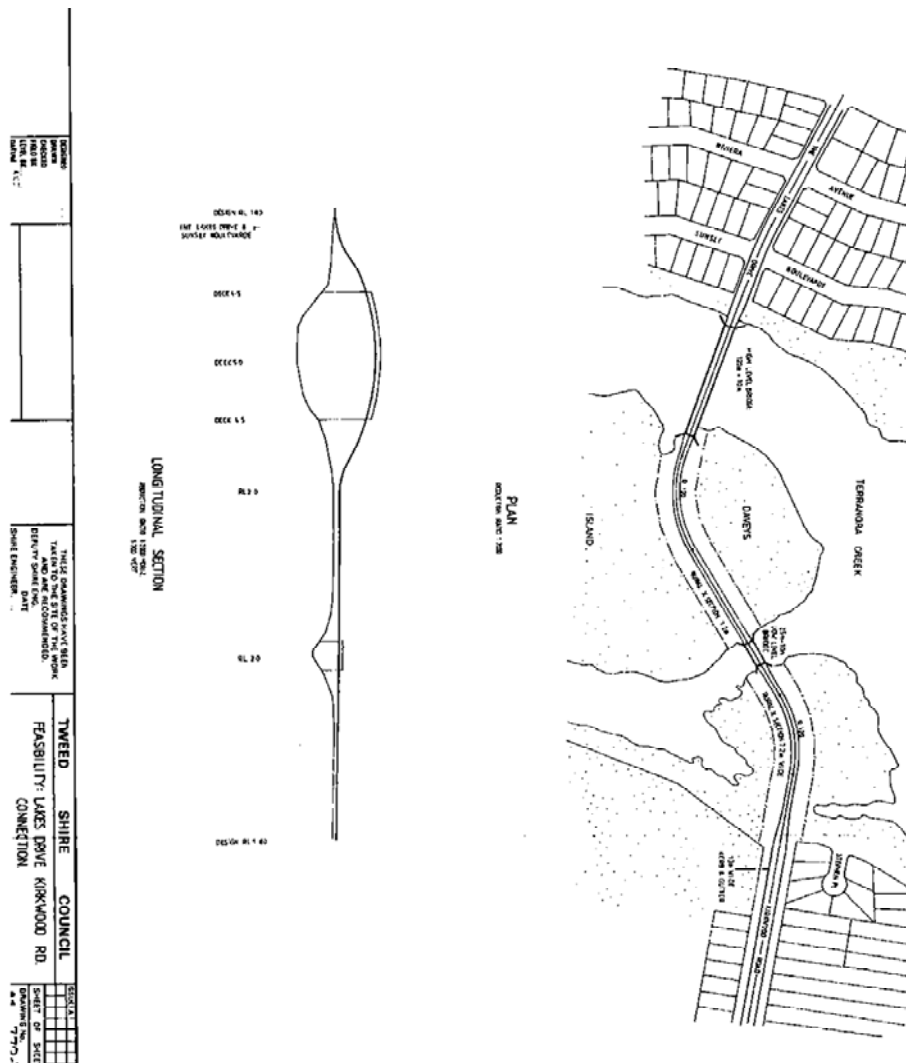
**"NOTICE OF MOTION:
Cr K Skinner
Cr W Polglase**

RESOLVED that Council brings forward a report on the possibility of reinvestigating the original plans for the Lakes Drive bridge implementation.

The Motion was **Carried**

**FOR VOTE - Cr P Youngblutt, Cr D Holdom, Cr K Skinner, Cr B Longland, Cr J van Lieshout, Cr W Polglase
AGAINST VOTE - Cr K Milne"**

Below is a sketch of the Lakes Drive Bridge location:



2. Background

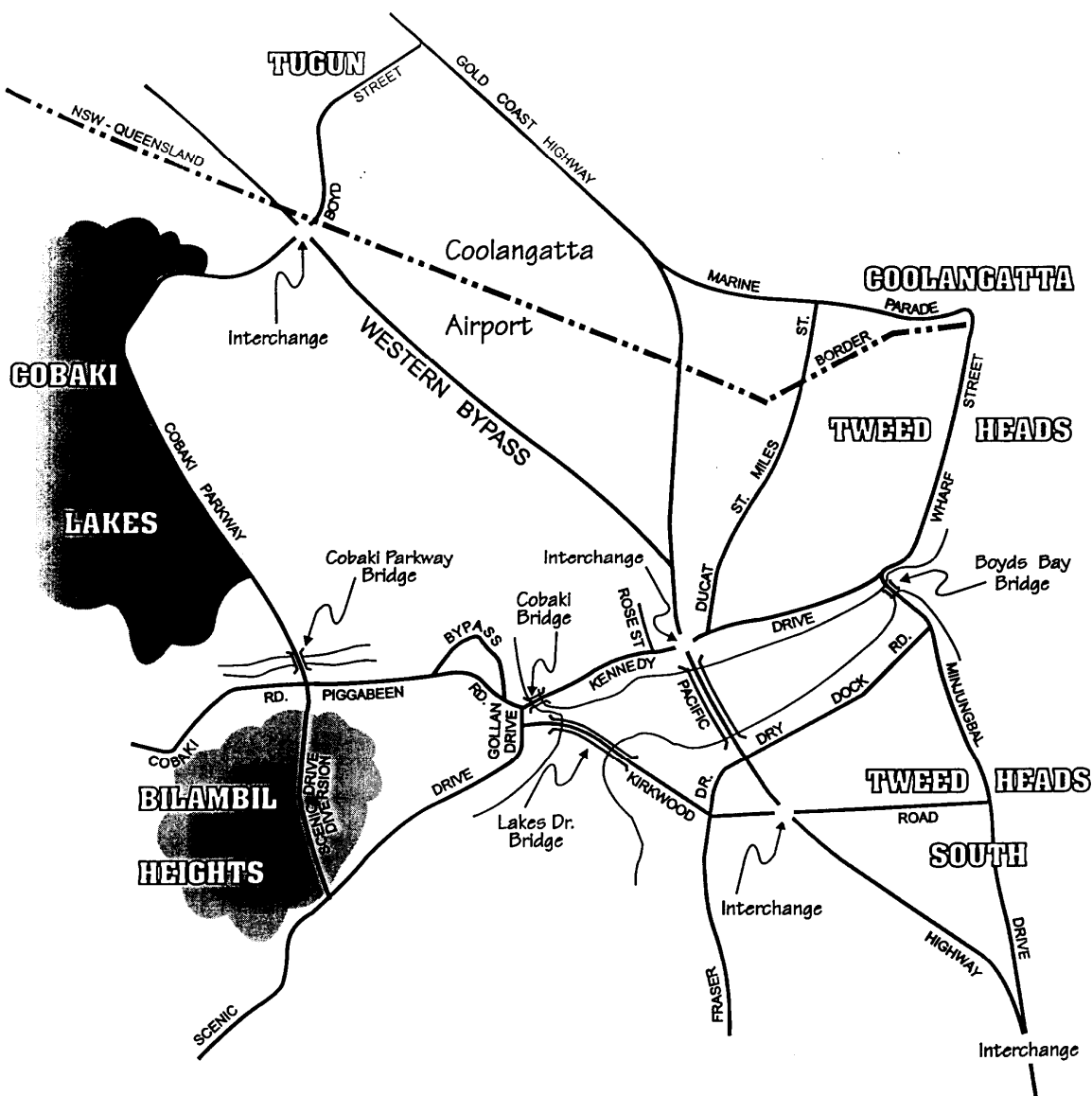
In 1990 the Lower Tweed Transportation Study Report and DJA Report jointly funded by Council and the NSW Roads and Traffic Authority (RTA), included arterial road network recommendations for Kirkwood Rd to be extended from Minjungbal Drive (Tweed Heads South) to Lakes Drive (Tweed Heads West). This link included a Pacific Highway freeway interchange and the Lakes Drive Bridge across Terranora Creek.

A Development Application for Lakes Drive Bridge was submitted October 1997. It met with heavy opposition from affected residents and environmental groups.

Further work on the DA was suspended 17 February 1999:

"RESOLVED that Council:

1. *Suspends preparation of the Development Application for the Lakes Drive Bridge; and*
2. *Prepares a report examining the implications of NOT building the Lakes Drive Bridge given that development upstream of the Cobaki Bridge (Kennedy Drive) remains frozen, as is current Council policy."*



The Development Application for Lakes Drive Bridge was submitted October 1997. and placed on public exhibition from 24/12/97 until 25/2/98.

An extract from a report to Council 21 July 1999 advises:

"The following submissions were received:

- 61 individual letters of objection
- 567 pro-forma type objections
- Objections from 3 community or interest group
- Objection from Lakes Dr Bridge Action Group and Terranora Wetlands Protection Committee accompanied by 92 signed objection notices
- 2 individual letters of support
- Petition supporting proposal with 203 signatures
- Written comments from 8 government departments
- Submissions from state and federal members of parliament

An independent review of the DA, EIS and submissions identified a number of areas needing further attention these included:

- Alternatives not considered to be fully explored
- More specific assessment needed of impact on local environment and street system in the event that upgrading of network in the east (Kirkwood Rd) does not occur
- Environmental and ecological aspects insufficiently addressed, some inconsistencies with some of Council's management plans
- Noise mitigation and visual consequences not sufficiently addressed
- Safety aspects including pedestrian/cycle access not sufficiently addressed
- Public transport operators not been consulted on new routes
- Overall community opinion needs to be addressed
- More substantial justification for choosing the proposed site needed

Council addressed some of these issues by engaging Veitch Lister to carry out cost benefit analysis of options and a report has been made to Council (17/6/98) on alternatives proposed in the public submissions.

The consultants (previously Cameron McNamara, now renamed Kinhill) liaised with National Parks and Wildlife Service (NPWS) and NSW Fisheries in the rest of 1998 in an effort to address concerns. Issues that are unresolved with the NPWS are potential for stormwater pollutant discharge from the bridge into the waterway and potential impacts on three threatened species (the Osprey, Mangrove Honeyeater and Collared Kingfisher). Issues with NSW fisheries are compensation for wetlands affected by construction of the bridge. The process of resolving these issues is ongoing and incomplete. It may be possible for Council to determine the development application when these and other outstanding issues are resolved.

Costs to date for this project include consultants costs of approximately \$76,000 and another \$12,590 is estimated as required to complete matters required by the National Parks and Wildlife Service. Separate costs are not available for Council staff salaries and expenses."

On 5 April 2000, Council resolved:

"RESOLVED that :-

1. The proposed Ultimate Tweed Shire Road Network as designated in Figure 3 and figure 4 be adopted in principle, subject to
 - (a) A commitment being made by the NSW and Queensland governments to construct the Tugun Bypass in general accordance with Preferred route C4.
 - (b) A commitment being made by the RTA to install two north facing freeway ramps at Kirkwood Road.
2. The proposed Lakes Drive Bridge project be put on hold until the above issues are resolved. If these are resolved satisfactorily Council would then give further consideration to the Lakes Drive Bridge proposal with a view to its abandonment.
3. When issues in 1(a) are resolved, Tweed Roads Contribution Plan No 4 is to be amended to reflect the changes in the new adopted road network
4. Council pursues early completion of the Tugun Bypass and government funding for the Boyd Street interchange

5. *A planning strategy be prepared to respond to the road network constraints being:-*
- (a) Initially connect Cobaki Lakes to Boyd Street (Tugun) with no southern road outlet*
 - (b) Delay the southern outlet to Cobaki Lakes until the northern end is connected to the Tugun Bypass and Boyd St interchange*
 - (c) Bond Cobaki Lakes Development for cost of southern connection and Cobaki Creek bridge.*
 - (d) Delay Bilambil Heights development until the Tugun Bypass/Boyd Street Interchange, Cobaki Parkway and Cobaki Creek Bridge are available for connection of the development to the north.*

Voting - Unanimous"

The Road Network adopted in principle in part 1. of the resolution above, deleted Lakes Drive Bridge from the network (see Figure 4 below).

PROPOSED NETWORK 2000 - LOWER TWEED

NUMBERS ARE ULTIMATE TRAFFIC VOLUMES (Vehicles per Day)

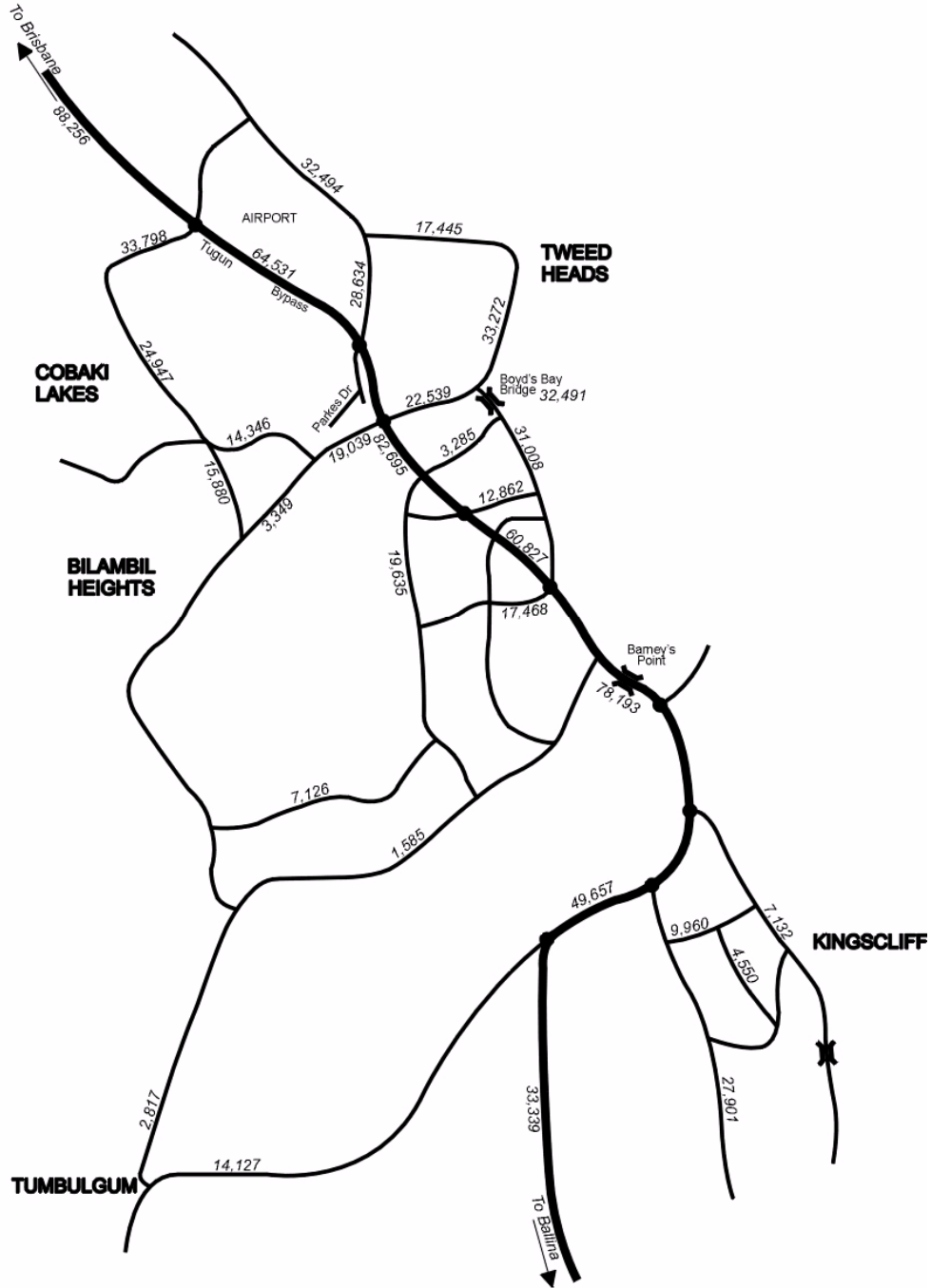


Figure 4

The network adopted on 5 April 2000, replaced the previous adopted network shown in Figure 2 below (which included Lakes Drive Bridge):

ADOPTED NETWORK 1997 - LOWER TWEED

NUMBERS ARE ULTIMATE TRAFFIC VOLUMES (Vehicles per Day)

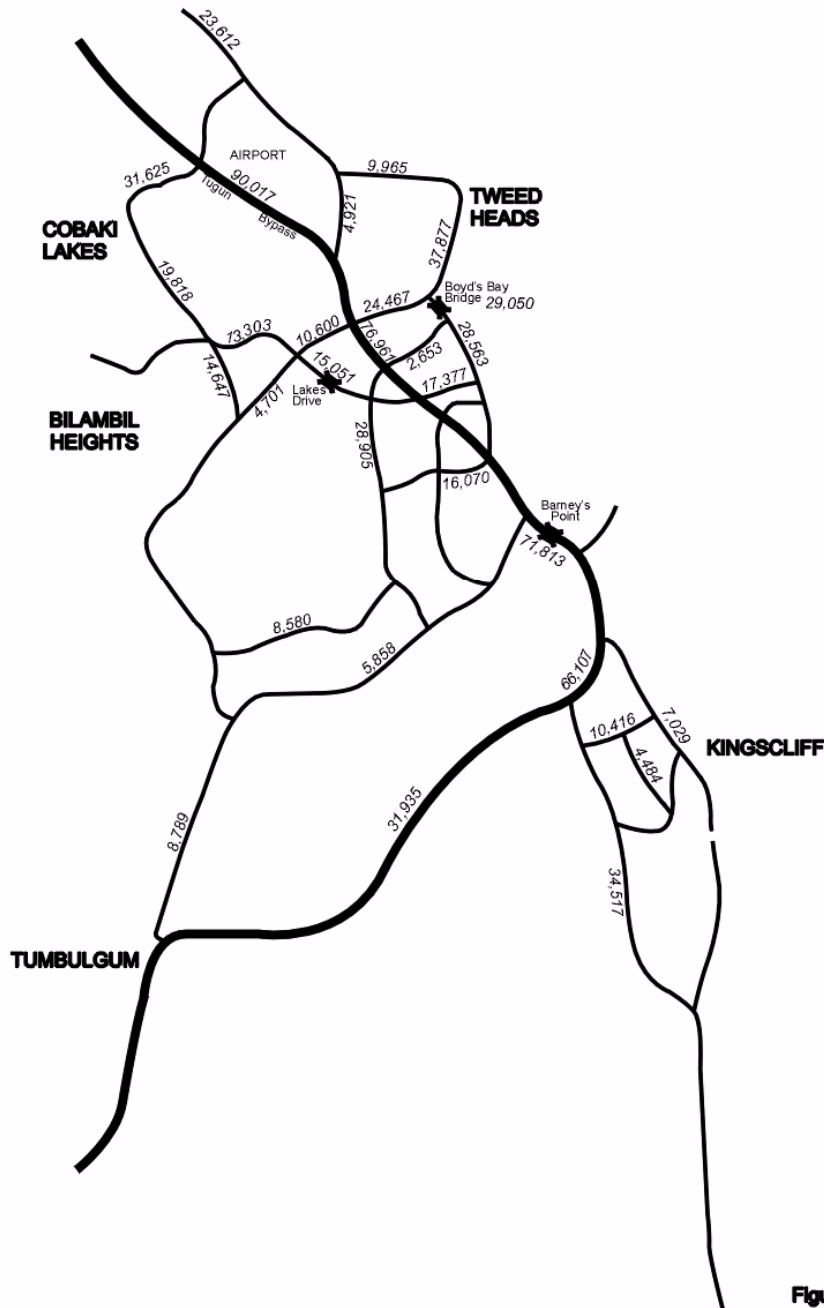


Figure 2

network.cdr
page2

In the April 2000 report, the traffic modelling numbers shown on Figures 2 and 4 show that the deletion of Lakes Drive Bridge:

- Increases average daily traffic on Kennedy Drive (West) from 10,600 to 19,039
- Decreases average daily traffic on Kennedy Drive (East) from 24,467 to 22,539
- Increases average daily traffic on the Highway (Terranora Creek) from 76,961 to

The report goes on to advise that there are risks in adopting the new network which included there being no agreement with the RTA to permit north facing freeway ramps at Kirkwood Road.

To deal with this issue:

- Studies were commissioned by RTA to analyse safety implications of (north facing ramps) and nominate alternatives
- The studies confirmed that the proposed partial interchange with north facing ramps was unsafe
- Any credible alternative option needed to be both safe and provide a similar network connectivity
- The recommended alternative option was the basis of the 2006 "Lower Tweed and Pacific Highway Traffic Master Plan"

The Master Plan was jointly endorsed by Council and RTA September 2006 and its scope included the Pacific Highway from Barneys Point to the Qld Border and associated connections and interchanges with Tweed Shire Council Arterial Road Network

- The Master Plan's configuration of the Kirkwood Rd Project included
 - Kirkwood Road Overpass
 - Service roads/bridges from Kirkwood Rd to Kennedy Dr and
 - South facing freeway exit/entry ramps at Kirkwood Rd
- Compared with the previous North facing freeway ramps proposal this configuration
 - Provided equal or better network connectivity
 - Safe merging/exiting at the interchange
 - Is more expensive, but is partially offset by joint RTA funding
 - Achieves strategic network objectives of both RTA & Council

2006 Master Plan Elements

Master Planning Element	Estimated Cost (\$,000,000)	Funding Responsibility	Time Frame
Banora Point Upgrade	190	RTA	2010 - 15
Kirkwood Road Extension (including modifications to Fraser Drive)	10 - 15	TSC	2015 - 20
Terranora Creek western service road	15 - 20	Joint RTA/TSC	2015 - 20
Kirkwood Road south facing ramps	10 - 15	Joint RTA/TSC	2015 - 20
Terranora Creek eastern service road	15 - 20	Joint RTA/TSC	2025 - 30
Kennedy Drive to Tugun Bypass service roads	N/A	QDMR/Federal Government	under construction
Tweed Heads Bypass, widening to six-lanes	30 - 45	RTA	2025 - 30

With the resolution of network in the 2006 Master Plan, the Lakes Drive Bridge was formally removed from the Section 94, Tweed Roads Contribution Plan (TRCP) when amended by Council in 2007.

3. Should Lakes Drive Bridge be Reinstated?

Since the effective abandonment of the Lakes Drive Bridge project by Council on 17 February 1999, Council in partnership with the RTA have moved on and agreed to a new arterial network configuration that does not include this link. The traffic modelling has shown that whilst (in the absence of Lakes Drive Bridge) Kennedy Drive (West) will be at full capacity, it can still deliver reasonable levels of service into the future provided Master Plan elements are constructed according to the agreed timetable up to 2025-30.

There are no recent estimates for Lakes Drive Bridge, but it would now be expected to cost more than \$30M. The TRCP is already under extreme pressure to provide timely funds for the Kirkwood Road project and in the longer term, funds are needed for Boyd Street Interchange (to service Cobaki Lakes and Bilambil Heights), Scenic Road Diversion (to service Bilambil Heights), four laning the Tweed Coast Road from Cabarita/Bogangar to Chinderah Interchange (to service Kings Forest) as well as many other smaller projects. The works program for the TRCP is currently being updated to reflect current costs. This process has some months before completion, but early indications are that current civil works costs are likely to double the cost of the works program. This will necessitate an upwards revision of s94 contribution rates and is likely to cause exceedance of the NSW Government's \$20,000 contributions cap. The inclusion of Lakes Drive Bridge is therefore likely to be unaffordable.

As well as the financial cost, the reinstatement of the Lakes Drive Bridge will raise the still unresolved community and environmental issues that resulted in so much opposition in the 1990s. These issues were substantial and the cause of Council suspending the project in 1999.

The current arterial road network configuration is the result of a considered evolutionary process that has been endorsed by the RTA. This network has been extensively modelled and shown not to need the Lakes Drive Bridge link.

It is therefore recommended that no further action be taken to reinvestigate or reinstate the Lakes Drive Bridge.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES

44 [TCS-CM] Government Information (Public Access) Act 2009

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

The *Government Information (Public Access) Act 2009 (known as GIPA Act)* will commence on 1 July 2010. The GIPA Act will replace the existing *Freedom of Information Act 1989*.

The GIPA Act creates new rights to information that are designed to meet the community's expectations of more open and transparent government. It encourages the routine and proactive release of government information.

The State Government has appointed an Information Commissioner whose role is to promote public awareness and understanding of the legislation as well as monitoring Council's compliance with the legislation and may undertake formal or informal investigations and actions to assist in resolving any complaints.

The GIPA Act requires Council to provide open access information on its website, setting up a disclosure log and a register of Council contracts.

Council's Internet website encompassing all GIPA Act issues will be active prior to 1 July 2010. Brochures published by the Office of Information Commissioner have been placed at Council Offices and Libraries.

Detailed information of the GIPA Act is contained in this report.

RECOMMENDATION:

That Council receives and notes the commencement of the *Government Information (Public Access) Act 2009*, as from 1 July 2010.

REPORT:

The *Government Information (Public Access) Act 2009 (known as GIPA Act)* will commence on 1 July 2010. The GIPA Act will replace the existing *Freedom of Information Act 1989*.

Detailed information of the GIPA Act is as follows:

1. The General Manager is the Principal Officer under the Act and is responsible for ensuring that Council does not adopt an unnecessarily defensive and legalistic approach to requests for access to information.
2. The General Manager has delegated specific authority to three Officers, who will manage the GIPA Act within Council. These Officers are in Corporate Governance and in accordance with the Act are known as Right to Information Officers.
3. The GIPA Act establishes four ways for the public to access Council information:

- **Mandatory Disclosure**

The legislation prescribes information which must be contained on Council's Internet Website, being:

- a current publication guide- this describes the structure and functions of Council, the various kinds of information it holds, and how people can access it;
- documents about the Council that have been tabled in Parliament
- Council's policy documents;
- Council's disclosure log of formal access applications;
- Council's register of government contracts entered into from 1 July 2010; and
- a record indicating the general nature of an open access information that has not been disclosed because of an overriding public interest.

- **Proactive Release**

Council will take the initiative to release as much information as possible in an appropriate manner and free of charge, except for adopted photocopying charges.

- **Informal Release**

Council will release information without the need for a formal application, unless there are good reasons to require such application.

Council's Access to Information Policy will require the public to complete and submit an informal access to information application form, seeking information which is not on Council's Internet Website. The application form will be on Council's Internet Website.

- **Formal Access**

Council will require formal access applications to be lodged, after access has been denied under the informal release process.

An application fee of \$30.00 must be submitted with the application form as well the legislation does enable Council to charge \$30.00 per hour for the processing of the application.

The legislation is very prescriptive in the management of formal access applications.

4. In deciding which to release, Council must apply the public interest test, having regard to its obligation to promote the objectives of the GIPA Act and to any relevant guidelines issued by the Information Commissioner.

The public interest test involves three steps:

1. Identifying the relevant public interest considerations for disclosure.
The Act allows for consideration of any public interest in favour of disclosure.
 2. Identifying any relevant public interests against disclosure.
 3. Assessing whether the public interest against disclosure outweighs the public interest in favour.
5. The GIPA Act provides an exhaustive list of public interest considerations against disclosure. They are the only considerations against disclosure that Council may consider applying the public interest test and can be grouped under the following headings:
 - Responsible and effective government
 - Law enforcement and security
 - Individual rights, judicial processes and natural justice
 - Business interests of agencies and other persons
 - Environment, culture, economy and general matters
 - Secrecy provisions (in legislation other than those listed (in Schedule 1)
 - Exempt documents under interstate Freedom of Information Legislation

The legislation also contains 12 categories of information, where there is always an overriding public interest against disclosure. In regard to Council the information can relate to:

- Information subject to legal professional privilege
 - Judicial information
 - Complaint handling and investigative functions
 - Competitive and market sensitive information
6. Other legislative changes require Council to place on its Internet Website a Disclosure Log and Register of Contracts.

The Disclosure Log records information on formal applications granted access, whilst the Register of Contracts contains information on contracts entered into after 1 July 2010 over \$150,000, categorised into three classes which are dependent upon the nature of the relevant contract.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Government Information (Public Access) Act 2009
Freedom of Information Act 1989
Local Government Act 1993

POLICY IMPLICATIONS:

Access to Information Policy to be revised at a future Council Meeting.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

45 [TCS-CM] Audit Committee

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

Council at its meeting of 12 April 2006 resolved to appoint Ross Bell and Warren Buntine as the two Independent members on the Audit Committee until 30 April 2008.

The resignation of two Internal Auditors caused some disruption to the operation of the Audit Committee, which met only infrequently up until 2009. The Audit Committee has for the last twelve months met five times and is starting to progress through the audit reviews.

Furthermore, the Division of Local Government has released its Internal Audit Guidelines, which has enhanced the functioning of the Audit Committee.

When the original applications for the two independent Committee members were invited, it was on the premise of no remuneration being paid for their services. However, independent members of Council's Conduct Review and Joint Regional Planning Panels are being remunerated for their services, as follows:

Conduct Review	Full Day	Half Day
Chair/Sole Reviewer	\$380.00	\$190.00
Member	\$230.00	\$115.50

These fees were determined in accordance with the remuneration payable under the maximum daily sitting fees for Advisory Councils for NSW Board and Committee Members and are indexed annually with CPI.

Joint Regional Planning Panel:

\$200 per hour with a capped payment of four (4) hours preparatory work/site inspections per application; and

\$200 per hour per Northern Region meeting – with a minimum of one (1) hour payable per meeting.

The independent members of the Audit Committee provide a service to Council in a similar manner as the above Panel members.

It is timely that Council invites applications for two independent members to be appointed to the Audit Committee for a two year term and that they be remunerated for their services on the same basis as Council's Conduct Review Committee members.

The current independent members are eligible to reapply.

RECOMMENDATION:

That Council invites applications for two independent members to be appointed to the Audit Committee up to November 2012 and that they be remunerated for their services at the same rate as Council's Conduct Review Panel members.

REPORT:

As per Summary.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Provision has been made in the 2010/11 Budget of \$2,500 for Audit Committee fees.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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46 [TCS-CM] Policy - Refund Transaction Version 1.0

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

Council at its meeting of 20 April 2010 resolved to approve:

- "1. *The inclusion in the draft 2010/2011 Fees and Charges of a Refund Administration Fee structure as follows:*
- a. *A \$20.00 Administration Fee will apply to all refunds due to overpayments where the applicant is at error.*
 - b. *A \$20.00 Administration Fee will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:*
 - *603 & 149 (2) (5) Certificates*
 - *Dwelling Entitlement Search*
 - *Dwelling Consent Search*
 - *Drainage Diagram*
 - *Swimming Pool Certificate*
 - *Outstanding Notices Building or Health*
 - *Caravan Parks, Camping Grounds, Manufactured Homes.*
 - *Section 68 Stormwater Drainage Works*
 - *Section 138 Driveway Access to Property*
 - *Water Services*
 - *Freedom of Information Request*
 - c. *A \$60.00 Administration Fee will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:*
 - *Building Information*
 - *Construction Certificate Fees*
 - *Complying Development Certificate Fees*
 - *Sewer Application*
 - *On Site Sewage Management System Application*
 - *Stormwater Application*
 - d. *Building Certificate Fee – 75% of original fee.*
 - e. *Development Application Fees - calculated by Town Planner or Building Surveyor as per Section 52 Environmental Planning and Assessment Regulation 2000.*
2. *The Refund Transaction Policy be advertised in conjunction with the Draft Management Plan, Draft Fees and Charges, Draft Revenue Policy and Draft Budget."*
-

The draft Refund Transaction Policy and proposed Refund Administration Fee structure were advertised in the Tweed Link of 27 April 2010. Public submissions were invited and closed on Wednesday 9 June 2010 on the draft Refund Transaction Policy and proposed Refund Administration Fee structure.

At the date of preparing this report no submissions were received. Any submissions received after the preparation of this report and the closing date for submissions will be provided at the meeting.

It is recommended that Council adopts the Draft Refund Transaction Policy as a Corporate Policy and that the Refund Administration Fee structure commence from 1 July 2010.

RECOMMENDATION:

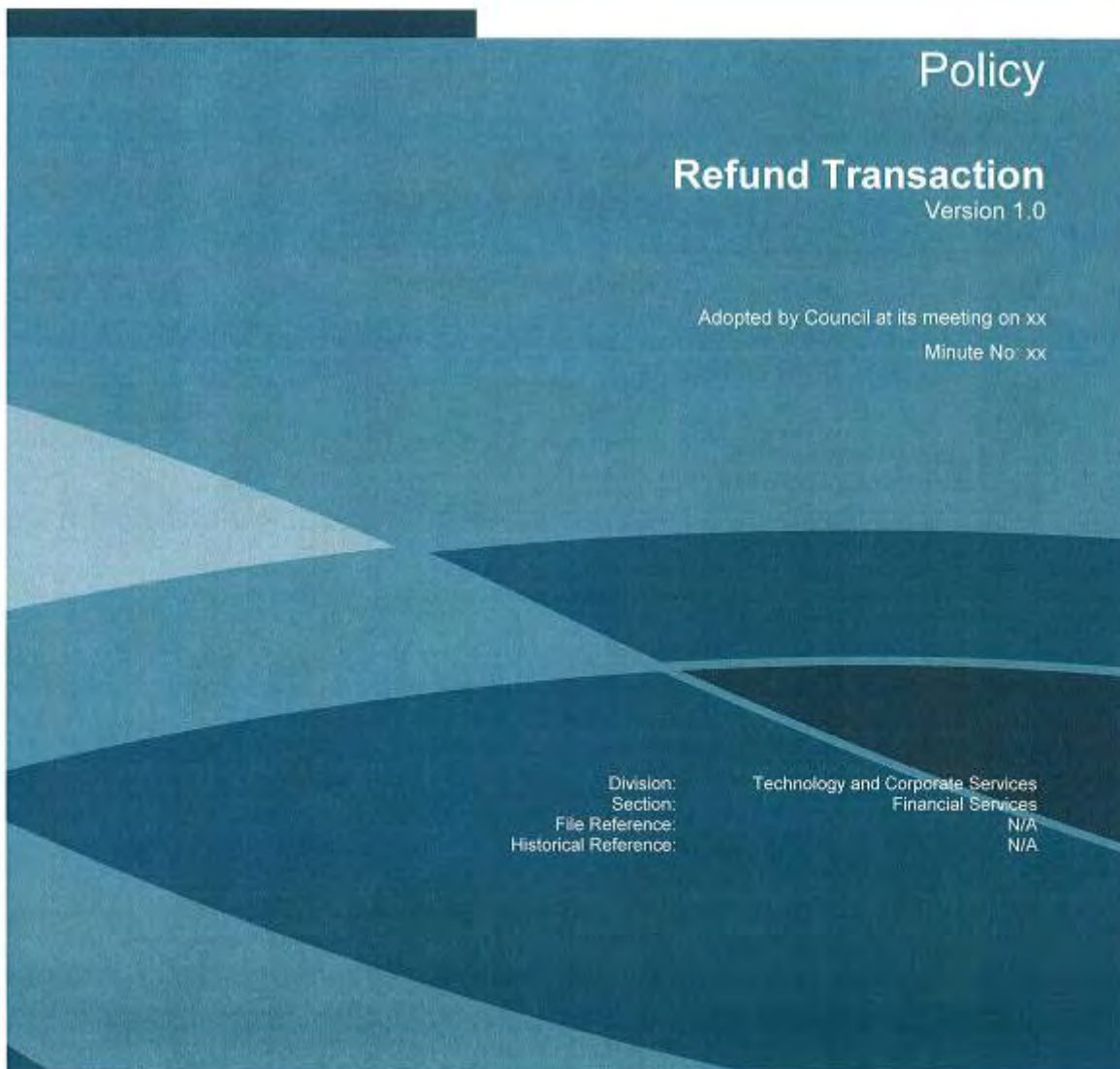
That:

- 1. Council adopts the Refund Transaction Policy version 1.0 as a Corporate Policy in accordance with Section 161(2) of the Local Government Act 1993.**
- 2. Council adopts as from 1 July 2010, a Refund Administration Fee structure as follows:**
 - a. A \$20.00 Administration Fee will apply to all refunds due to overpayments where the applicant is at error.**
 - b. A \$20.00 Administration Fee will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:**
 - 603 & 149 (2) (5) Certificates**
 - Dwelling Entitlement Search**
 - Dwelling Consent Search**
 - Drainage Diagram**
 - Swimming Pool Certificate**
 - Outstanding Notices Building or Health**
 - Caravan Parks, Camping Grounds, Manufactured Homes.**
 - Section 68 Stormwater Drainage Works**
 - Section 138 Driveway Access to Property**
 - Water Services**
 - Freedom of Information Request**

- c. **A \$60.00 Administration Fee will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:**
- **Building Information**
 - **Construction Certificate Fees**
 - **Complying Development Certificate Fees**
 - **Sewer Application**
 - **On Site Sewage Management System Application**
 - **Stormwater Application**
- d. **Building Certificate Fee – 75% of original fee**
- e. **Development Application Fees - calculated by Town Planner or Building Surveyor as per Section 52 Environmental Planning and Assessment Regulation 2000.**

REPORT:

The proposed new Policy is as follows:



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Refund Transaction

Purpose

To formalise the practice of refund transactions and create uniform practices across Council.

Statement

Council is frequently requested to refund overpayment of service application charges/ fees or where a development application or an application for service is withdrawn. In undertaking such request, Council incurs an administration cost, which is not always recovered.

Procedures

- Council will not accept underpayment for any application or service.
- Where an application is submitted in writing it is to be withdrawn in writing including requests for refund;
- Refunds to be in the form of EFT or cheque only, excepting the Art Gallery, Tweed Heads and Kingscliff Swimming Pools where refunds are given by cash, or EFTPOS due to the nature and low value of the transaction;
- Refunds to be issued only in the name appearing on Council's receipt record unless the person on the receipt authorises in writing another person or entity;
- Copy of receipt to be attached to refund request.

Associated Fee

- a. An Administration Fee¹ will apply to all refunds due to overpayments where the applicant is at error.
- b. An Administration Fee² will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:
 - 603 & 149 (2) (5) Certificates
 - Dwelling Entitlement Search
 - Dwelling Consent Search
 - Drainage Diagram
 - Swimming Pool Certificate *
 - Outstanding Notices Building or Health
 - Caravan Parks, Camping Grounds, Manufactured Homes.
 - Section 68 Stormwater Drainage Works
 - Section 138 Driveway Access to Property *
 - Water Services
 - Freedom of Information Request

* No refund will apply where an inspection has been undertaken.

¹ Refer to Council's Fees and Charges

² Refer to Council's Fees and Charges

- c. An Administration Fee³ will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:
- Building Information
 - Construction Certificate
 - Complying Development Certificate
 - Sewer Application
 - On Site Sewage Management System Application
 - Stormwater Application
- d. Building Certificate Fee – 75% of original fee
- e. Development Application Fees - calculated by Town Planner or Building Surveyor as per Section 52 Environmental Planning and Assessment Regulation 2000.

Exclusions

The proposed new fee structure does not apply to payments in relation to:

- General Fund rates
- Domestic/ Non Domestic Waste Management and Sanitary Charges
- Water Access and Volumetric Charges
- Sewer Access, Special, Usage and Trade Waste Charges
- Annual On Site Sewerage Management Fee
- Bonds and Security Deposits

³ Refer to Council's Fees and Charges

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Section 608(1) of the Local Government Act 1993, enables Council to charge and recover an approved fee for any service it provides.

Section 161(2) enables Council to prepare and adopt a Local Policy.

POLICY IMPLICATIONS:

New Council Local Policy.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

47 [TSC-CM] 2010/2013 Draft Management Plan Incorporating Council's Seven Year Infrastructure and Services Plan; 2010/2011 Draft Budget, Revenue Policy and Fees and Charges

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

Tweed Shire Council placed the 2010/2013 Draft Management Plan on public exhibition from Friday 23 April 2010 to Monday 24 May 2010 in accordance with s 405 of the *Local Government Act 1993* (NSW).

The 2010/2013 Draft Management Plan includes Council's Strategic and Operating objectives for the period in addition to the 2010/2011 Draft Budget. The 2010/2011 Draft Budget includes year-five of the Seven Year Infrastructure and Services Plan together with the Draft Revenue Policy and Draft Fees and Charges for the same period.

The Minister for Local Government under s508A of the *Local Government Act* determined in August 2007 that the percentage by which Tweed Shire Council could increase its General Purpose income for 2010/2011 was 8.5% above that for 2009/2010.

Twenty five organisations within the Shire representing chambers of commerce, ratepayers, community groups and residents associations were provided with a compact disk containing the Draft Management Plan documents. Each organisation was invited to provide a written submission on the 2010/2013 Draft Management Plan.

The 2010/2013 Draft Management Plan documents were also placed on public exhibition at the Murwillumbah and Tweed Heads Civic Centres as well as libraries at Murwillumbah, Tweed Heads and Kingscliff. The documents were also accessible from Council's webpage.

Council invited submissions from the public on the 2010/2013 Draft Management Plan and associated documents by placing advertisements in the Tweed Link and local news paper.

A total of seven (7) submissions were received by Council during the public exhibition period and are summarised in the body of this report.

A number of changes have been made to the Draft Budget during the exhibition period and these are also outlined within the report.

RECOMMENDATION:

That:-

- 1. Council's 2010/2013 Draft Management Plan incorporating the 2010/2011 Draft Budget based on an 8.5% increase in general income above that for 2009/2010 be adopted with the following changes to the 2010/2011 Draft Budget:**

Project	Amount \$
Museum Collections Assistant	23,328
Museum grant expenditure	(7,000)
Increase Contributions Far North Coast Weeds	8,600
Increase SES contribution to State Government	11,421
Delete boat ramp expenditure	(80,000)
Delete boat ramp funding	80,000
Increase Workers compensation premium	245,772
Increase Workers compensation on costs	(245,772)
Increase salary costs-Workers Comp. on costs	153,191
Reduce transfer to ELE Reserve	(189,540)
Regional Hockey Complex	500,000
Section 94 Plan 26 Funding	(500,000)
	<hr/>
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2. The 2010/2011 Draft Revenue Policy and the 2010/2011 Draft Fees and Charges be adopted with the addition of the following Refund Administration Fee Structure:

a. *A \$20.00 Administration Fee will apply to all refunds due to overpayments where the applicant is at error.*

b. *A \$20.00 Administration Fee will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:*

- *603 & 149 (2) (5) Certificates*
- *Dwelling Entitlement Search*
- *Dwelling Consent Search*
- *Drainage Diagram*
- *Swimming Pool Certificate*
- *Outstanding Notices Building or Health*
- *Caravan Parks, Camping Grounds, Manufactured Homes.*
- *Section 68 Stormwater Drainage Works*
- *Section 138 Driveway Access to Property*
- *Water Services*
- *Freedom of Information Request*

c. *A \$60.00 Administration Fee will apply to the following services when the application is withdrawn/cancelled in writing from the applicant once lodged in Council's system:*

- *Building Information*
- *Construction Certificate Fees*
- *Complying Development Certificate Fees*
- *Sewer Application*
- *On Site Sewage Management System Application*
- *Stormwater Application*

- d. Building Certificate Fee – 75% of original fee.*
 - e. Development Application Fees - calculated by Town Planner or Building Surveyor as per Section 52 Environmental Planning and Assessment Regulation 2000.*
3. Council reports to the Department of Local Government on any significant variations from its seven Year Infrastructure and Services Plan as contained in the instrument under section 508A(1) and 548(3)(a) of the Local Government Act 1993 dated 15 August 2007.

REPORT:

MANAGEMENT PLAN

The Draft Management Plan details Council's vision, mission and core values. The operating component of the plan identifies a limited number of key principal projects that Council will undertake over the next three-years to benefit the community and progress Council towards meeting its long-term strategic goals.

The Draft Budget, Draft Revenue Policy and Draft Fees and Charges documents detail the means in which Council intends to resource its operational plans for the next year.

The Draft Management Plan contains the means by which Council intends to performance monitor its progress in achieving outcomes detailed in the Draft Management Plan. Outcomes achieved against performance targets are reported quarterly to Council by the General Manager. Council must also report annually to the community in the Annual Report.

Meeting community needs is a major challenge facing Council. This year's Draft Management Plan has a focus on delivering year five of the Seven Year Infrastructure and Services Plan plus suitable provisions of funding to ensure essential services and assets are maintained at increased levels.

Council's 2010/2013 Draft Management Plan and associated documents were placed on exhibition for public comment for 31 days from Friday 23 April 2010 to Monday 24 May 2010. The Minister for Local Government under s508A of the *Local Government Act* determined in August 2007 that the percentage by which Tweed Shire Council may increase its General Purpose income for 2010/2011 is 8.5% above that for 2009/2010.

VARIATION TO GENERAL INCOME FOR 2010/2011 TO 2012/2013

Council, as part of the special variation application, is required to report to the Department of Local Government on all variations from the original Seven Year Infrastructure and Services Plan as contained in the instrument under ss 508A(1) and 548(3)(a) of the *Local Government Act* dated 15 August 2007. The information to be provided to the Department will be based on variations to the Seven Year Infrastructure and Services Plan which have been reported through the normal quarterly budget and management plan review process.

PUBLIC CONSULTATION

In accordance with s 405 of the *Local Government Act*, the 2010/2013 Draft Management Plan was placed on exhibition for public display from Friday 23 April 2010 to Monday 24 May 2010.

The public consultation process sought submissions from ratepayers and the community in general. Copies of the Draft Management Plan documents were placed on public exhibition and accessible at the Tweed and Murwillumbah Civic Centres, libraries and available from Council's internet site. The Draft Management Plan was advertised in the *Tweed Daily* newspaper on 23 April 2010 and the *Tweed Link* edition 27 April 2010.

Twenty-five organisations within the Shire representing chambers of commerce, ratepayers, community groups and residents associations were sent a CD containing the Draft Management Plan documents and they were invited to provide a written submission on the documents.

PUBLIC COMMENTS RECEIVED

Submissions received from the public consultation process totalled 1 from an individual and 6 from community groups.

Submissions related to the Draft Management Plan documents are summarised as follows:

Draft Management Plan Submissions Received

Summary of Written Submissions Received from individuals

1. Mr Rodger Graf

A written submission was received from the Mr R Graf. Following is a summary of issues raised and Council's Responsible Officer's reply:

- Council Corporate Values:
Expressed Council's Corporate Values were not in the interests of the community because the General Manager of Council held a directoral position on the Repco Car Rally.

Responsible Officer Comments

The matter of Conflict of Interest has been investigated by the Minister for Local Government, who advised that as the General Manager was appointed by Council, there is currently no conflict of interest.

- Requested Councillors consider a referendum at the next local council elections for a popularly elected Mayor.

Responsible Officer Comments

A referendum was conducted in accordance with the 2004 Local Government elections, with the result being that the status quo remain.

It is a matter for Council as to whether to consider the conduct of a referendum for a popularly Mayor in conjunction with the 2012 Local Government elections.

- Rail and Road projects:
Expressed a need for a Transport Strategic Plan for the Tweed Shire in consultation with the State Government. In addition, suggested that light rail facilities must continue from South East Queensland through Tweed, linking Bryon Bay and onto Grafton.

Responsible Officer Comments

The NSW State Plan 2010, chapter 1, Better Transport and Liveable Cities states the NSW State Government in response from regional communities will prepare transport strategies for the Far North Coast.

Council already considers a strategy for road transport within it's existing "Tweed Road Development Strategy". In regard to light rail transport, there are currently no strategic plans for Tweed Shire addressing this specific issue, particularly during the 2010/2013 Management Plan.

- Expressed concerns about Tweed South road infrastructure at Minjungbal and Industry Drives intersection. Stated planning is needed to meet population growth needs and stop people bypassing Tweed South in favour of Robina with easier access.

Responsible Officer Comments

Traffic investigations and assessments conducted as part of the recently commenced Banora Point upgrade indicate that the signalised intersections along Minjungbal Drive near Tweed City will have a satisfactory level of service for the next 20 years. It is expected that there will be some overall improvement to the existing local road network, when these works are completed.

- Expressed a need for a systematic approach to public transport availability, especially for the elderly given that Tweed Heads is set for vertical elevation to meet population growth.

Responsible Officer Comments

Public transport in Tweed is administered by the State, through the Minister for Transport. Council does however provide a support and advisory role to facilitate improvements to public transport through the relevant stakeholders.

- Priority stormwater projects
Believes with many parts of the shire in flood areas, council needs to urgently address stormwater infrastructure to meet increase in climate change volatility and ocean water rise.

Suggested capturing of all rainwater from properties would reduce stormwater and the water captured could be recycled.

Responsible Officer Comments

Road drainage infrastructure is generally designed with piped systems that cater for minor events (less than a 1 in 5 year ARI). These systems will surcharge in major storm events, in which case overland stormwater flow paths along channels and through road reserves, open space etc are utilised. It is impractical and extremely costly to upgrade all public drainage to cater for major storm events. With the high rainfall of the Tweed Shire, harvesting of all stormwater from catchments is similarly impractical. In accordance with Council's Water Demand Management Strategy and the NSW Government's BASIX program, new residential development is required to provide tanks to collect and reuse roof water. Council continues to monitor areas where overland stormwater flows pose a risk to private property and such projects are included in the management plan as required.

- Fingal boat harbour upgrade
Requested waste management and toilet facilities upgrade to cater for influx of population to Fingal on weekends and holidays.

Responsible Officer Comments

A report on the Old Fingal Boat Harbour Upgrade will be presented to Council at its next meeting.

- Beach erosion
Requested more Rangers to patrol Fingal Head and Letitia Beach to stem threat to beach erosion from 4WDs and risk to bushland from illegal camping.

Responsible Officer Comments

Council Rangers currently patrol Fingal beaches on a regular basis.

Council jurisdiction to patrol along Letitia Road ceases at the end of the sealed section. Land extending from the end of the sealed section is controlled by the Tweed/Byron Aboriginal Land Council.

In regard to bushland risk and illegal camping, Council may control to only 50 metres from the high water line which is effectively to the tree line.

- Fingal Headland
Stated a need for a dedicated foot track to the headland with more bins for waste.

Responsible Officer Comments

Council is liaising with the Fingal Head CoastCare Group and local indigenous community to commence development of formalised tracks up to Fingal Headland. There are several environmental, cultural and historical constraints to any construction works on the headland and these need to be dealt with properly in the design and installation of any tracks. Works will commence on Stage 1 of the track in the near future through a grant received by the Fingal Head CoastCare.

Rubbish bins need to be placed where there is access for trucks or Council vehicles to collect and are focused around high visitation areas or areas where people pass through i.e. ends of tracks and access points to encourage people to use the facilities on the way in and out of dispersed locations.

- Signage
Requested off lease dog signage be replaced on both sides of Fingal Headland.

Responsible Officer Comments

New signage has been constructed and is ready to be erected in all coastal areas.

- Fingal Road realignment
State a need for a realignment of Fingal Road from the quarry to Lighthouse Road to cater for extra parking, pedestrian and road safety to the proposed new picnic area at the Old Fingal Boat Harbour Upgrade.

Consideration of a pedestrian crossing, signage and a dedicated pathway leading to the beach from Fingal Road and Letitia Road along with dedicated parking was also requested.

Responsible Officer Comments

A report on the Old Fingal Boat Harbour Upgrade will be presented to Council at its next meeting.

Summary of Written Submissions Received from Community Organisation Groups

1. Friends of Terranora

A written submission was received from the Friends of Terranora. Following is a summary of issues raised and Council's Responsible Officer's reply:

- **Planning Reform**
Terranora outside of Area E should be funded in tandem with Area E. Holistic planning for all Terranora is essential to counter ad hoc rezoning applications adjoining Area E, such as attempts to rezone rural land to urban along Terranora Road.

Responsible Officer Comments

Council at its meeting of 20 August 2003, resolved at Item 3 Condition B for the following two projects to be added:

- "a. DCP/Master Plan for part of Terranora/Bungalora outside of Area E*
- b. Development Control Plan for rural villages.*

Voting - Unanimous"

Council has not included the subject area noted in the submission in the current Strategic Planning Works Program. Although, there has been requests for ad hoc rezoning, Council will not be approving such requests.

- **Footpath**
Footpath from Maher's Lane to the park in Azure Estate plus a short section of footpath from east of Terranora Road and Sunnycrest Drive intersection east to provide for a walking loop with stunning views and links to Terranora retail precinct.

Responsible Officer Comments

Council will consider footpaths works in the 2010/2011 works program.

- **Construct a lookout**
Acquire lookout site on Terranora Road, north of Sunnycrest Drive intersection and east of Nicholls dam.

Responsible Officer Comments

Council last considered its position on the provision of scenic lookouts at its meeting on 15 December 2009. It resolved to work with Tweed Tourism to identify any avenues for grant funding of lookouts on the "Green Cauldron" on the National Landscapes Program.

- **Greater frequency of road side mowing and litter collection in addition to graffiti cleanup management.**

Responsible Officer Comments

Maintenance works in the Terranora area will continue to be carried out commensurate with the level of funding and resources allocated by Council to road maintenance.

Whilst additional attention to maintenance works will always be desirable, the budget allocation for 2010/2011 does not enable for the additional works to be undertaken.

2. Fingal Rovers Surf Life Saving Club Inc.

A written submission was received from the Fingal Rovers Surf Life Saving Club. Following is a summary of issues raised and Council's Responsible Officer's reply:

Fingal Rovers Surf Life Saving Club Inc gave its appreciation to Council for its support and contribution to surf life saving.

- **Refurbishment of clubhouse**

Fingal Rovers has a small membership base in part due to the condition of the club house. The club house is the focus of the club and store place for the equipment, a training area, toilet and change facilities, first aid and a dedicated local community meeting room.

The club has limited finances to repair and maintain both the internal and external parts of the club house. The club acknowledges Council has provided \$100,000 from a section 94 fund which will only go a small way towards the upgrade of the club house.

Engineer's drawings are completed with estimated costs available. The club would appreciate if Council could consider providing more funding.

Responsible Officer Comments

Fingal Rovers Surf Life Saving Club originally sought an amount of \$250,000 for the refurbishment of the club house. Council responded by providing \$100,000 from a section 94 contribution funds in December 2009 towards this refurbishment. A section 94 contribution for surf life saving is no longer available. In addition, Council has not allocated in the 2010/2011 Draft Budget any funding for refurbishment of the Fingal Rover Surf Life Saving Club.

3. Kingscliff Swimming Club Inc.

A written submission was received from the Kingscliff Swimming Club. Following is a summary of issues raised and Council's Responsible Officer's reply:

- **Construction of new clubhouse**

The Kingscliff swimming club has a membership of 100 and has lodged a development application to construct a new clubhouse at the Kingscliff Swim Centre.

The club is seeking funding to prepare building plans to enable it to formally lodge plans for construction. The estimated cost of the clubhouse is approximately \$50,000. This cost of construction is not sought from Council. The Club is seeking financial assistance to meet the cost of building plans in the order of \$3000 to \$5000.

The club could also be seeking a donation towards section 64 contribution fees and other associated building fees, dependant upon the development consent conditions.

The project was identified in Tweed Shire Councils Strategic Business Model for Aquatic Facilities.

Responsible Officer Comments

Council has not allocated in the 2010/2011 Draft Budget any funding for assistance towards the costs of building a new club house including the preparation of building plans for the Kingscliff Swimming Club.

- Additional Parking in Cudgen Road
The Cub has requested Council investigate providing additional parking in Cudgen Road. Complaints have been received from the adjoining land owners regarding problems with vehicles parking at the Swim Centre.

Responsible Officer Comments

Council's Traffic Committee will consider the request. Funds have not been allocated in the 2010/2011 Draft Budget for the provision of additional parking.

4. Tweed River Art Gallery Advisory Committee.

Committee at its meeting of 19 May 2010 recommended the appointment of a part time Audience Development Officer and that Council reconsider the matter on the grounds of:

- Increased participation and broad access to the arts through:
 - expanding the role of the arts in lifelong learning for children and adults
 - respond to changing modes and methods of arts delivery and participation.
- The provision of an Education officer at the Tweed River Art Gallery would significantly enhance the Gallery's opportunities to meet important criteria regarding education and lifelong learning as outlined in the NSW Government State Plan and the Arts NSW Strategic Plan 2007-2010 and alleviate staff shortages.
- Addressing these criteria will therefore increase the Gallery's chances of being granted more significant funding for the professional delivery of programs, and also enable the Gallery to be eligible to apply to the ConnectED Arts Program. ConnectED is a funding stream offered by Arts NSW which specifically links the arts and education through, directed, programmed and targeted educational activities.

Responsible Officer Comments

The employment of this Officer would cost \$ 38,000 in 2010/2011 and would require recurrent funding in subsequent budgets.

No funds have been allocated in the 2010/2011 Budget for this request and should Council resolve to employ this Officer, then it would be required to reallocate funds from another area within the budget.

5. Tweed Shire Council Aboriginal Advisory Committee.

Council at its meeting of 18 May 2010, resolved that it gives consideration to the inclusion of a Shire-wide Cultural Heritage study in its 2010/2011 budget deliberations.

Responsible Officer Comments

An estimate for this project has not been prepared, however it is envisaged that the cost could be between \$50,000 to \$100,000.

No funds have been allocated in the 2010/2011 Budget for this request and should Council resolve to undertake this study, then it would be required to reallocate funds from another area within the budget.

6. Friends of the Tweed River Art Gallery.

The community group is concerned that despite the significance of the current and on-going future role of the Regional Art Gallery, Council's Draft Budget for the next three years shows an increase of only about 5% for Arts and Culture. This barely equates with CPI increases for wages much less on-going increases in insurance and electricity.

The group request Council to reconsider the funds to Arts and Culture in both the areas of staffing and programs to particularly enable the Regional Art Gallery to further its education and marketing needs.

Responsible Officer Comments

The Tweed River Art Gallery Advisory Committee has requested Council to reconsider the appointment of a part time Audience Development Officer and the Responsible Officers comments are attached to submission number 5.

In regard to increasing the level of funding to the Regional Art Gallery, this request will require a determination from Council, having regard to the impact that any change in funding could have upon the remaining facilities and services provided by Council.

Media

Twenty newspaper articles and letters to the editor were published in local print media regarding the 2010/2013 Draft Management Plan.

In regard to the letters to the editor, there was no substantive criticism of the 8.5% increase in general revenue, resulting principally from year five of the seven infrastructure and services plan

Conclusion

Considering the Responsible Officers comments it is recommended that Council resolves to adopt the 2010/2013 Draft Management Plan, 2010/2011 Draft Budget and the 2010/2011 Draft Revenue Policy and Draft Fees and Charges.

BUDGET / REVENUE POLICY

Council has the option at this meeting to amend the Draft Management Plan and Budget as well as vary the Fees and Charges.

COUNCIL'S FINANCIAL POSITION (2010/2011) - BUDGET

The 2010/2011 Budget as presented is balanced in each fund. If any surplus funds become available from operations during the year, these are applied to increase the level of accumulated funds.

Program Budgeting used in the Plan provides both a financial and management analysis of the individual programs and services offered by Council and in conjunction with the various program objectives and performance measures allows an ongoing review of services related back to the individual program objective. Extensive use of activity based costing is used to support this process.

As part of the analysis of the purpose of the plan a number of objectives were identified in an attempt to determine if, on present trends, there is sufficient revenue to:

- Maintain or expand existing services;
- Replace infrastructure, both existing and future;
- Undertake new projects, in line with Council's strategic direction; and
- Ensure long-term financial sustainability.

The objectives of the 2010/2011 Budget are:

- To maintain a balanced budget;
- To maximise income from all sources, subject to the stated policies of Council;
- To provide works and services at levels commensurate with budget allocation;
- To restrain expenditure, wherever possible;
- To achieve economy of operation; and
- To optimise the return on funds and investments.

Changes to the 2010/2011 Draft Budget

A number of changes have been made to the Draft Budget since it has been placed on public exhibition. Details of the changes are as follows:

Project	Reasons for variation	Amount \$
Museum Collections Assistant	Omitted from draft budget	23,328
Museum grant expenditure	Works to be done in 2009/10	(7,000)
Contributions Far North Coast Weeds	Increase in contributions following advice from agency	8,600
SES contribution to State Government	Increase in contributions following advice from agency	11,421
Delete boat ramp expenditure	Boat ramps expenditure part of 7 year plan	(80,000)
Delete boat ramp funding	Boat ramps expenditure part of 7 year plan	80,000
Workers compensation premium	Advice received of increase in premium	245,772
Workers compensation on costs	Distribution of workers comp premium	(245,772)
Salary costs-Workers Comp. on costs	Salaried officers share of workers comp premium	153,191
Transfer to ELE Reserve	Funding above changes	(189,540)
Regional Hockey Complex	Provision for Council contribution towards hockey complex	500,000
Section 94 Plan 26 Funding	S94 funding of hockey complex	<u>(500,000)</u>
		0

DRAFT BUDGET FOR 2010/2011

General Fund	109 million
Water Fund	29 million
Sewerage Fund	66 million
TOTAL	\$204 million

FEES AND CHARGES

A proposed new Refund Administration fee structure was placed on exhibition for public comment and is subject to a report earlier in the Council Agenda.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

In accordance with Section 405 of the Local Government Act 1993, the Draft Management Plan was placed on exhibition for public display from Friday 23 April 2010 to Monday 24 May 2010.

The Minister for Local Government under Section 508A of the Local Government Act 1993, determined in August 2007 that the percentage by which Tweed Shire Council may increase its General Purpose income for 2010/2011 is 8.5% above that for 2009/2010, which includes year five of Council's Seven Year Infrastructure and Services Plan.

Council, as part of the special variation approval, is required to report to the Department of Local Government on any significant variations from its Seven Year Infrastructure and Services Financial Plan as contained in the instrument under Section 508A(1) and 548(3)(a) of the Local Government Act 1993 dated 15 August 2007.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Submissions received during the public consultation process (ECM16903369, ECM16917213, ECM16917214, ECM17011184, ECM17243725, Page 67 of Council Minutes of 18 May 2010 - ECM16709590, ECM1710386

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48 [TCS-CM] 2009/10 Loan Borrowing Program

ORIGIN:

Financial Services

SUMMARY OF REPORT:

It is Council practice to call quotations for the supply of loan funds from various financial institutions. The General Fund loan requirements for 2009/10 totals \$11,862,987 as outlined in the body of this report.

RECOMMENDATION:

That:

- 1. The General Manager and Manager Financial Services be authorised to negotiate acceptance of the loan quotations.**
- 2. The loan documentation be completed under the Common Seal of Council.**

REPORT:

It is Council practice to call quotations for the supply of loan funds from various financial institutions.

In order to distribute the cost of long term facilities over the period which the facilities benefits will be enjoyed, it is usual for Council to finance part of these works from borrowings. This ensures that both current and future ratepayers share the cost of the facility equally.

The 2009/10 Management Plan and Budget included new loan requirements of \$11,862,987 as follows:

NEW LOANS

INFRASTRUCTURE	Boat Ramps	\$40,000	
	Renewal loan 104	\$827,500	
	Renewal loan 132	\$225,787	
	Bridges	\$750,000	
	Drainage	\$1,008,000	
	Public Toilets	\$100,000	
	Road Construction	\$500,000	
		Sub Total	\$3,451,287
7 YEAR PLAN	Footpaths Rehabilitation	\$266,000	
	Gravel Resheeting of Unsealed Roads	\$398,000	
	Kerb & Gutter Rehabilitation	\$70,000	
	Sealed Road Rehabilitation	\$688,900	
	Sealed Road Resurfacing	\$490,300	
	Sportsgrounds Capital Works Local	\$300,000	
	Coastline Management Plan	\$198,500	
	Tweed Heads Masterplan	\$5,000,000	
	Cabarita Streetscaping	\$500,000	
	Economic Marketing & Promotion	\$100,000	
	Stormwater Drainage Rehabilitation	\$400,000	
	Sub Total	\$8,411,700	
	TOTAL BORROWING	\$11,862,987	

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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49 [TCS-CM] Mayor and Councillors Annual Remuneration 2010-2011

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

The Local Government Remuneration Tribunal has made a determination under sections 239 and 241 of the Local Government Act 1993 in relation to fees payable to Mayors and Councillors for the 2010/2011 financial period.

The Tribunal determined to increase the fees for Councillors and Mayors by 3.0 percent.

Council needs to determine the fees payable to the Mayor and Councillors for 2010/2011.

RECOMMENDATION:

That the annual fees payable for the Mayor and Councillors for the financial period 2010/2011 be:

Mayor	\$34,860
Councillors	\$15,970

in accordance with the maximum rate as determined by the Local Government Tribunal.

REPORT:

The Local Government Remuneration Tribunal has made a determination under sections 239 and 241 of the Local Government Act 1993 in relation to fees payable to Mayors and Councillors for the 2010/2011 financial period.

Council is classified along with 31 other councils within the Regional Rural category.

In accordance with section 241 of the Local Government Act 1993 the tribunal has determined minimum and maximum annual fees payable to the Mayor and Councillors. The determination in relation to the Regional Rural category is shown in the table below along with current fees:

	2010/2011		2009/2010	
	Minimum	Maximum	Minimum	Maximum
Councillor	\$7,250	\$15,970	\$7,040	\$15,500
Mayor *	\$15,430	\$34,860	\$14,980	\$33,840

* This fee must be paid in addition to the fee paid to the Mayor as a Councillor in accordance with section 249 (2) of the Local Government Act 1993.

Council has previously determined that the maximum fees are payable to both the Mayor and Councillors. The recommended fees for 2010/2011 are a 3.0 percent increase above the 2009/2010 fees.

Council at its meeting of 19 January 2010 resolved to forward:

“a submission to the Local Government Remuneration Tribunal in relation to fees payable to Councillors for the 2010/2011 period, recommending:

1. *That there are two (2) Category fee structures being:*

Category A - Councils of eight (8) or less elected members.

Category B – Councils of more than eight (8) elected members.

2. *That for those councils in Regional Rural Category A and Metropolitan Category A the maximum fee to be \$24,000 per annum.*

3. *That the fee for Category A for Rural, Metropolitan Centre, Metropolitan Major, Major City and Principal City, be determined by the Local Government Remuneration Tribunal.”*

A copy of the Local Government Remuneration Tribunal report is included for Council's information.

A determination is now required from Council in setting the annual fees payable to the Mayor and Councillors in accordance with sections 248 and 249 of the Local Government Act 1993 to be applied from 1 July 2010.

REPORT

and

DETERMINATION

of

THE LOCAL GOVERNMENT REMUNERATION TRIBUNAL

under

SECTIONS 239 AND 241

of the

LOCAL GOVERNMENT ACT 1993

15 April 2010

LOCAL GOVERNMENT REMUNERATION TRIBUNAL

2010 ANNUAL REVIEW

REPORT

BACKGROUND

1. Pursuant to Section 241 of the Local Government Act 1993 (the Act) the Local Government Remuneration Tribunal hereby determines in each category of council, the maximum and minimum amount of fees to be paid to mayors and councillors of councils, as well as chairpersons and members of county councils.
2. On 26 November 2009 the Tribunal wrote to all mayors advising of the commencement of the 2010 annual review. In respect of this review the Tribunal advised councils that it would be undertaking a review of the minimum and maximum fee levels for each category but would not be reviewing the categories at this time.
3. In accordance with Section 239 of the Act the Tribunal is required to determine the categories of councils and mayoral offices at least once every 3 years. The Tribunal last undertook a fundamental review of the categories of councils in 2009. In undertaking that review the Tribunal found that there was no strong case to significantly alter the current categories of councillor and mayoral offices or to move individual councils between categories. While the groupings remain unchanged, the Tribunal decided to apply descriptive titles to the categories which more accurately reflect the nature of the differences between the various groups.
4. The next review of categories is scheduled to take place during the 2012 review. Until then the Tribunal does not expect to move councils within categories unless there is a significant change in the role and responsibilities of individual councils.

5. The Tribunal also wrote to the Presidents of the Local Government and Shires Associations (LGSA) in similar terms, and subsequently met with the Presidents. The Tribunal wishes to place on record its appreciation to the Presidents for making time to see the Tribunal.

2010 REVIEW

6. The LGSA provided a submission on fees and related matters. As in previous years, the LGSA have recommended that fees be set as a percentage of the annual salary paid to NSW Members of Parliament. The LGSA has also provided information on the impact of State Government planning reforms on councillors' workloads and the additional responsibilities associated with the integrated planning and reporting amendments to the Act.
7. The Tribunal received 22 submissions from individual councils. The majority of those submissions supported an increase in the fees payable to councillors and mayors. The submissions also addressed the following issues:
- integrated planning and reporting reform
 - planning reforms, including the Joint Regional Planning Panels
 - interstate comparisons
 - categorisation
 - workload
 - attracting high quality candidates to nominate for election to local government.

Integrated Planning and Reporting Reform

8. The Act was amended on 1 October 2009 to provide for an integrated planning and reporting framework. These reforms replace the requirement for councils to prepare separate Management Plans and Social Plans with an integrated plan. It also includes a new requirement to prepare a long-term Community Strategic

Plan and Resourcing Strategy. A number of submissions have argued that there are additional responsibilities associated with the implementation of these reforms. In addition, councillors, it is argued, face additional challenges associated with the intricacies of further legislative reform.

9. The 2009 amendments build on the reforms in the 1993 Act. One of the features of the 1993 Act was the devolution of council management to the newly created General Manager position. Councillors were meant to set the broad policy directions for councils and the General Manager was to implement them.
10. The Tribunal is not convinced that the introduction of the Integrated Planning and Reporting (IP&R) reforms impose any additional workload on councillors. Rather, the reforms represent a shift in the way councils undertake their planning and reporting functions. The reforms aim to streamline and simplify the planning and reporting process, as well as assist councillors to focus their attention on the issues of strategic importance to their community. The new planning and reporting framework is a tool to enable councillors to focus strategically on social, economic, environmental and civic issues.

Planning reforms

11. The Tribunal has examined the impact of State Government planning reforms on the role and responsibilities of councillors. These reforms include the introduction of the Planning Assessment Commission, the Joint Regional Planning Panels (JRPP), the NSW Housing Code and other initiatives of the NSW Government.
12. A number of submissions have commented on the impact these changes have on the roles and responsibilities of councillors and mayors. The Tribunal is advised that the role of a councillor as a council-appointed member of a Joint Regional Planning Panel (JRPP) is provided for under the Environmental Planning and Assessment Act 1979 (EP&A Act). This role is both separate and additional to the role of a councillor under the Local Government Act. While

there may be some additional work for the appointed councillor, there should be minimal, if any, change in the work for other councillors. Councillors appointed to the JRPPs are paid a fee covering increase in responsibility.

13. The NSW Housing Code came into effect on 27 February 2009. The purpose of the Code is to simplify the planning process for new houses and alterations and additions to existing homes. Dwellings complying with the provisions of the Code can bypass formal council Development Application (DA) procedures and receive approval in 10 days or less from an accredited certifier. The Department of Planning has published figures which show that in 2008, 90 per cent of new detached houses required the lodgement of a Development Application (DA) and that the average time taken for a council to process a DA in Sydney ranged from 34 to 254 days.

14. The Housing Code provides a streamlined alternative to the DA process because it is not based on a 'merit-based' assessment. Under the Housing Code, any complying development proposal which satisfies the standards in the Code must be approved.

15. It is expected that the Housing Code provisions will significantly reduce the number of DAs requiring council approval. The Department of Planning's information sheet makes the following assessment of the impact of the Code,

"...The increasing use of exempt or complying development will reduce local councils' development assessment workload. This will save councils time and money and free up council resources to concentrate on more complex development applications and strategic planning for their local government area.

The Tribunal emphasises that strategic planning is a key role of councillors.

16. The Tribunal considers that on balance the new planning reforms should result in Councils having a reduced role in local planning decisions.

Interstate comparisons

17. A number of submissions, including that received by the LGSA, continue to support a shift to a remuneration model similar to that applied in Queensland, ie, that remuneration for councillors and mayors be determined as a percentage of the salary of a Member of Parliament.
18. The Tribunal has considered this matter previously and provided its reasons for rejecting such a proposal in its 2008 Report (paragraphs 20 to 25). The submission has not provided any additional information which would warrant a change in the Tribunal's view on this matter.

Categorisation

19. The Tribunal has received a number of submissions from councils seeking categorisation to another category or the creation of a new category. The Tribunal last undertook a fundamental review of the categories of councils in 2009. In undertaking that review the Tribunal found that there was no strong case to significantly alter the current categories of councillor and mayoral offices or to move individual councils between categories. As noted above, the Tribunal did change the titles of the various categories to more accurately describe each category.
20. The next review of categories is scheduled to take place during the 2012 review. Until then the Tribunal does not expect to move councils within categories unless there is a significant change in the role and responsibilities of individual councils. On the basis of the information received, the Tribunal finds that there is no compelling case to further adjust the categories at this time.

Workload

21. A number of submissions have sought an adjustment in fees to reflect the increasing amount of time councillors are spending on council business. As the NSW *Local Government Act 1993* provides for a high level of delegation to council staff, the amount of time devoted to local government is largely within the discretion of councils themselves. An increase in time spent does not of itself necessarily indicate any change in the roles and responsibilities of councillors.

The ability to attract suitable candidates to stand for election.

22. The Tribunal has again considered whether the level of fees is sufficient to attract quality candidates to stand for election. It has been repeatedly argued that the lack of an adequate fee means that better quality candidates are not seeking election. The Tribunal has yet to see any submission suggesting criteria which might reasonably be used to assess the quality of candidates.

23. The Act does not provide for any formal qualifications to stand for election to council. Section 232 of the Act provides that councillors perform a dual role. As a member of the governing body of the council, a councillor's duties include:

- *to provide a civic leadership role in guiding the development of the community strategic plan for the area and to be responsible for monitoring the implementation of the council's delivery program*
- *to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions*
- *to review the performance of the council and its delivery of services, and the delivery program and revenue policies of the council.*

As an elected person, the role of a councillor includes:

- *to represent the interests of the residents and ratepayers*
- *to provide leadership and guidance to the community*
- *to facilitate communication between the community and the council.*

24. From information contained in the Division of Local Government's *Candidates and Councillors 2008: Report on the survey of Local Government Elected Members and Candidates for elections held in September 2008*, the Tribunal notes that nearly 50 percent of councillors elected in the 2008 election listed their occupation as either, "Professional", or "Self Employed." While the number of candidates seeking election for local government fell slightly, when compared with the number standing in the previous two local government elections, there were on average 3 candidates for every councillor position.
25. On the basis of such information, the Tribunal is not convinced that the fee levels are an impediment either to the quality or number of candidates seeking election to local government in NSW.
26. In determining the level of increase for the 2010 review the Tribunal has had regard to the improving economic conditions as Australia emerges from the Global Financial Crisis and key economic indicators, including the Consumer Price Index and the Labour Price Index.
27. Having regard to the above, and after taking the views of the Assessors into account, the Tribunal considers that an increase of 3.0 per cent in the fees for councillors and mayors is appropriate and so determines.

Local Government Remuneration Tribunal

Helen Wright
Dated: 15 April 2010

DETERMINATION PURSUANT TO SECTION 239 OF CATEGORIES OF COUNCILS AND COUNTY COUNCILS EFFECTIVE FROM 1 JULY 2010

Category - Principal City (1)

Sydney

Category - Major City (3)

Newcastle
Parramatta
Wollongong

Category - Metropolitan Major (2)

Blacktown
Penrith

Category - Metropolitan Centre (16)

Bankstown	Liverpool
Campbelltown	North Sydney
Fairfield	Randwick
Gosford	Ryde
The Hills	Sutherland
Hornsby	Warringah
Hurstville	Willoughby
Lake Macquarie	Wyong

Category – Metropolitan (21)

Ashfield	Lane Cove
Auburn	Leichhardt
Botany	Manly
Burwood	Marrickville
Camden	Mosman
Canada Bay	Pittwater
Canterbury	Rockdale
Holroyd	Strathfield
Hunters Hill	Waverley
Kogarah	Woollahra
Ku-ring-gai	

Category - Regional Rural (32)

Albury	Greater Taree
Armidale Dumaresq	Griffith
Ballina	Hawkesbury
Bathurst	Kempsey
Bega Valley	Lismore
Blue Mountains	Maitland
Broken Hill	Orange
Byron	Port Macquarie-Hastings
Cessnock	Port Stephens
Clarence Valley	Shellharbour
Coffs Harbour	Shoalhaven
Dubbo	Tamworth
Eurobodalla	Tweed
Great Lakes	Wagga Wagga
Goulburn Mulwaree	Wingecarribee
Queanbeyan	Wollondilly

Category - Rural (77)

Balranald	Gloucester	Narromine
Bellingen	Greater Hume	Palerang
Berrigan	Gundagai	Parkes
Bland	Gunnedah	Oberon
Blayney	Guyra	Richmond Valley
Bogan	Gwydir	Singleton
Bombala	Harden	Snowy River
Boorowa	Hay	Temora
Bourke	Inverell	Tenterfield
Brewarrina	Jerilderie	Tumbarumba
Cabonne	Junee	Tumut
Carrathool	Kiama	Upper Hunter
Central Darling	Kyogle	Upper Lachlan
Cobar	Lachlan	Uralla
Conargo	Leeton	Urana
Coolamon	Lithgow	Wakool
Cooma-Monaro	Liverpool Plains	Walcha
Coonamble	Lockhart	Walgett
Cootamundra	Mid-Western	Warren
Corowa	Moree Plains	Warrumbungle
Cowra	Murray	Weddin
Deniliquin	Murrumbidgee	Wellington
Dungog	Muswellbrook	Wentworth
Forbes	Nambucca	Yass Valley
Gilgandra	Narrabri	Young
Glen Innes Severn	Narrandera	

TOTAL GENERAL PURPOSE COUNCILS 152

Category - County Councils Water (5)

Central Tablelands	Riverina Water
Goldenfields Water	Rous
MidCoast	

Category - County Councils Other (9)

Castlereagh – Macquarie	Richmond River
Central Murray	Southern Slopes
Far North Coast	Upper Hunter
Hawkesbury River	Upper Macquarie
New England Tablelands	

TOTAL COUNTY COUNCILS 14

DETERMINATION PURSUANT TO SECTION 241 OF FEES FOR COUNCILLORS AND MAYORS

Pursuant to s.241 of the *Local Government Act 1993*, the annual fees to be paid in each of the categories to councillors, mayors, members and chairpersons of county councils effective on and from 1 July 2010 are determined as follows:

	Councillor/Member Annual Fee		Mayor/Chairperson Additional Fee*	
	Minimum	Maximum	Minimum	Maximum
Principal City	21,770	31,930	133,190	175,250
Major City	14,500	23,950	30,840	69,780
Metropolitan Major	14,500	23,950	30,840	69,780
Metropolitan Centre	10,880	20,320	23,130	53,980
Metropolitan	7,250	15,970	15,430	34,860
Regional Rural	7,250	15,970	15,430	34,860
Rural	7,250	9,570	7,700	20,890
County Council – Water	1,440	7,980	3,090	13,110
County Council - Other	1,440	4,780	3,090	8,710

*This fee must be paid in addition to the fee paid to the Mayor/Chairperson as a Councillor/Member (s.249(2)).

Local Government Remuneration Tribunal

Helen Wright
Dated: 15 April 2010

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Maximum fees would result in an expenditure of \$146,650

POLICY IMPLICATIONS:

In accordance with the relevant sections of the Local Government Act 1993.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

50 [TCS-CM] Monthly Investment Report for Period Ending 31 May 2010

ORIGIN:

Financial Services

SUMMARY OF REPORT:

This report is provided to Council to advise details of monies Council has invested in accordance with Section 625 of the Local Government Act 1993.

There is a requirement by Council's investment consultant to allow at least 5 working days following the end of the month to provide the statistics for this report. Due to this time constraint there will be an addendum report provided to Council for consideration at its meeting on 15 June 2010.

RECOMMENDATION:

Refer to addendum report.

REPORT:

As per summary.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

51 [SUB-TRC] Minutes of the Tweed River Committee Meeting held Wednesday 14 April 2010

Venue:

Canvas & Kettle Meeting Room

Time:

9.00am

Present:

Cr Katie Milne (Chair); Robert Quirk (NSW Cane Growers' Association); Bob Loring (Department of Primary Industries - Fisheries); Martin Dobney (Action Sands Chinderah); Claire Masters (Tweed Landcare Inc); Scott Peterson (Tweed River Charter Operators); Rhonda James (Restoration Industry); Max Boyd (Community Representative); Jane Lofthouse, Tom Alletson, Mark Kingston; Andrew Craig (Tweed Shire Council).

Informal:

Sarah Holloway.

Apologies:

Carl Cormack (NSW Maritime Authority); David McPherson (NSW Land & Property Management Authority); Judy Robinson (Fingal Head Community Representative); Richard Hagley (Department of Environment, Climate Change & Water); Peter Baker (Tweed Agriculture Representative); David Oxenham (Tweed Shire Council).

Minutes of Previous Meeting:

Moved: Max Boyd

Seconded: Robert Quirk

RESOLVED that the Minutes of the Tweed River Committee meeting held Wednesday 10 February 2010 be accepted as a true and accurate record of the proceedings of that meeting.

Business Arising:

BA1. Far North Coast Regional Conservation Plan

Mark Kingston advised that a full review of the above is to be carried out by Department of Environment, Climate Change & Water.

BA2. Flood Management

The committee held a lengthy discussion on the issue of flooding and the potential impact of the probable maximum flood. It was agreed that Council and the State emergency Service require more resources to adequately respond to a large scale flood emergency.

BA3. Submissions to CMP

Tom thanked various committee members for submission to the Catchment Management Plan. All submissions were presented and discussed. Responses to all points were tabulated and will be included in the final plan presented to Council.

An important point of discussion was in regard to the submission by Bilambil Progress Association on professional fishing in Bilambil Creek. The committee was informed on aspects of this fishery by Bob Loring and advised of sustainability assessments undertaken by NSW Industry & Investment (Fisheries).

The issue of erosion and sediment control and general environmental compliance was also discussed at length. It was suggested that Tweed Shire Council needs another full time officer dealing with issues of environmental compliance particularly in light of the large amount of urban development soon to commence in sensitive coastal locations. It was confirmed that this outcome needs to be a top priority of the implementation of the Catchment Management Plan and Tom Alletson was requested to organise a review on existing practices with options to increase resources in monitoring and extension.

Moved: Claire Masters

Seconded: Robert Quirk

RESOLVED that the following recommendation be submitted to Council.

RECOMMENDATION:

That Council finalises and adopts the Cobaki and Terranora Broadwaters Coastal Zone Management Plan and send to the Minister for Gazettal under the Coastal Zone Management Act.

Moved: Max Boyd

Seconded: Rhonda James

RESOLVED that the following recommendation be submitted to Council.

RECOMMENDATION:

That Council staff consider methods for better enforcement of environmental compliance of all new major developments, particular erosion and sediment controls.

Max Boyd requested advice on Council's decision with regard to not relocating the discharge point from the Banora Point Wastewater Treatment Plant closer to the mouth of the Tweed River. Tom advised that this topic had been subject to a detailed evaluation process and that the EIS for the project had included keeping the discharge point in its current location and managing the catchment more effectively.

Moved: Max Boyd

Seconded: Rhonda James

RESOLVED that the Water Unit be requested to attend a meeting to update Tweed River Committee on the decision made for the location of Banora Point Wastewater Treatment Plant discharge point.

BA4. Chinderah Revetment Works

Tom to ensure a notice is placed in the Tweed Link advising the community on the design of works to stabilise the river bank including additional estuarine vegetation and improve foreshore amenity by excluding vehicles at Chinderah.

Agenda Items:

AI1. Project Implementation - Cobaki and Terranora Broadwaters Coastal Zone Management Plan

Briefing on current projects by Sarah Holloway, currently working with Tom on implementation of the Cobaki and Terranora Broadwaters Coastal Zone Management Plan

A12. Draft LEP 2010

Mark Kingston made a presentation of issues in relation to the draft LEP 2010 and highlighted concerns raised. In summary there will be:

- Loss of Environmental Protection Zones
- Loss of Environmental Controls through removal of enabling clauses

Moved: Cr Milne

Seconded: Robert Quirk

RESOLVED that the following recommendation be submitted to Council.

RECOMMENDATION:

That Council extends the consultation period on the Draft LEP 2010 by two months.

Moved: Max Boyd

Seconded: Robert Quirk

RESOLVED that the Tweed River Committee endorses the report by the Natural Resource Management section on the Draft LEP 2010 and that it go to Council and then be widely distributed to the community.

Moved: Rhonda James

Seconded: Max Boyd

RESOLVED that the issues arising from the implementation of the new LEP template be forwarded to NOROC; Regional Development Australia - Northern Rivers and the Regional General Managers NRM Group.

Moved: Rhonda James

Seconded: Max Boyd

RESOLVED that the following recommendation be submitted to Council.

RECOMMENDATION:

1. That the Committee expresses concern that the draft LEP 2010:
 - a. will result in a vastly reduced area under Environmental Protection zoning;
 - b. removes existing provisions that require consent for clearing in Environmental Protection zones;
 - c. does not reflect Council's adopted approach to environmental protection as expressed through LEP 2000 and the Tweed Vegetation Management Strategy 2004 and;
 - d. is inconsistent with overarching State directives relating to environmental protection.
2. That the Environmental Protection zones proposed to be removed in the rural hinterland be re-instated in any adopted LEP.
3. That Council takes appropriate measures to ensure that existing provisions to control clearing in Environmental Protection zones are retained in any adopted LEP.

4. That Council ensures that Stage 2 of the LEP reflects a comprehensive review of zonings and controls for environmental protection, waterways and prime agricultural land.

General Business:

GB1. Gold Coast Airport Limited Environmental Management Plan

Norbert Benton, Gold Coast Airports Environment Officer will be requested to present information on Gold Coast Airport's water management systems at the June meeting.

GB2. Environmental Health Concerns

Max noted potential water pollution and amenities issues arising from operation of the car yard on Council road reserve adjacent to the Murwillumbah bridge. This has been raised with Council's Environmental Health Officers previously.

GB3. Key Fish Habitat Mapping

Cr Milne enquired if key fish habitats were mapped on Council's GIS and noted that this information was available from NSW Industry & Investment - Fisheries.

GB4. Water Augmentation Scheme Report

Cr Milne requested that the finalised Water Augmentation Scheme report be presented to the Tweed River Committee.

Next Agenda Item

GB5. Foreshore Cleanups

Cr Milne requested that river and coastal foreshore cleanups be considered for inclusion in Council's budget.

Next Agenda Item

Next Meeting:

The next meeting of the Tweed River Committee will be held Wednesday 9 June 2010.

The meeting closed at 12:30pm

EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

BA3. Submissions to CMP

Council has yet to consider submissions on the Cobaki and Terranora Broadwaters Coastal Zone Management Plan.

BA3. Submissions to CMP

Sedimentation and Erosion Control

There would need to be an additional resource allocation in the 2010/2011 budget to enable increased compliance.

AI2. Draft LEP 2010

The exhibition period for the LEP has now been extended by Council and subsequently closed on 30 April 2010.

AI2. Draft LEP 2010

No comment.

EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

BA3. Submissions to CMP

That Council notes the Tweed River Committee endorsement of the Cobaki and Terranora Broadwaters Coastal Zone Management Plan.

BA3. Submissions to CMP
Sedimentation and Erosion Control

That Council notes the Committee's concern but also that there would need to be an additional resource allocation in the 2010/2011 budget to enable increased compliance.

AI2. Draft LEP 2010

That Council notes the Tweed River Committee request to extend the Draft LEP 2010 exhibition period.

AI2. Draft LEP 2010

As per the committee's recommendation being:

That:

- 1. The Committee expresses concern that the draft LEP 2010:***
 - a. will result in a vastly reduced area under Environmental Protection zoning;***
 - b. removes existing provisions that require consent for clearing in Environmental Protection zones;***
 - c. does not reflect Council's adopted approach to environmental protection as expressed through LEP 2000 and the Tweed Vegetation Management Strategy 2004 and;***
 - d. is inconsistent with overarching State directives relating to environmental protection.***
 - 2. The Environmental Protection zones proposed to be removed in the rural hinterland be re-instated in any adopted LEP.***
 - 3. Council takes appropriate measures to ensure that existing provisions to control clearing in Environmental Protection zones are retained in any adopted LEP.***
 - 4. Council ensures that Stage 2 of the LEP reflects a comprehensive review of zonings and controls for environmental protection, waterways and prime agricultural land.***
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52 [SUB-TRAG] Minutes of the Tweed River Art Gallery Advisory Committee Meeting held Wednesday 19 May 2010

Venue:

Tweed River Art Gallery

Time:

5.35PM

Present:

Max Boyd (Chair), Mayor Clr Warren Polglase, Shirley Kennedy, Judith Sutton, Ray Watson, Susi Muddiman, Anne Schardin.

Apologies:

Gary Corbett, Josephine Nugent, Clr Joan van Lieshout, Poppy Ottley

No apologies received from Robyn Dowling and Mal Leckie.

Josie Flett telephoned at 5.50pm after the meeting commenced to say that John Opit had reminded her to put in an apology for him as he was away, and to apologise for herself as she thought the meeting was on Thursday.

Minutes of Previous Meeting:

Moved: Judith Sutton

Seconded: Warren Polglase

RESOLVED that the Minutes of the Tweed River Art Gallery Advisory Committee meeting held 18 February 2010 be accepted as a true and accurate record of the proceedings of that meeting.

Business Arising:

Susi Muddiman reported that she has spoken with the Mayor's Administrative Assistant regarding the inclusion of a report on art gallery activities for Councillors, and will organise an appropriate time for a report to be included.

Gallery Director's Report

The Gallery Director reported that it is taking up an inordinate amount of staff time to submit an application to Arts NSW for triennial funding for 2011-2013. The formal invitation to apply for the funding was only received on 14 May and the large document, including a Council adopted Business Plan needs to be submitted in a new format by 14 June.

Susi Muddiman informed the Committee that Shirley Kennedy has increased her Border Art Prize Encouragement Awards to three Awards at \$500 making a total of \$1,500. The Committee thanked Shirley Kennedy for her commitment to nurturing emerging artists.

Moved: Judith Sutton

Seconded: Ray Watson

RESOLVED that the Gallery Director's report be accepted.

General Business:

Moved: Max Boyd

Seconded: Shirley Kennedy

RECOMMENDATION that the Committee strongly recommends the appointment of a part time Audience Development Officer and that Council reconsider the matter on the grounds of:

- Increased participation and broad access to the arts through:
 - expanding the role of the arts in lifelong learning for children and adults
 - respond to changing modes and methods of arts delivery and participation
- The provision of an Education Officer at Tweed River Art Gallery would significantly enhance the Gallery's opportunities to meet the important criteria regarding education and lifelong learning as outlined in the NSW Government State Plan and the Arts NSW Strategic Plan 2007-2010; and alleviate staff shortages.
- Addressing these criteria will therefore increase the Gallery's chances of being granted more significant funding for the professional delivery of programs, and also enable the Gallery to be eligible to apply to the ConnectED Arts program. ConnectED Arts is a funding stream offered by Arts NSW which specifically links the arts and education through directed, programmed and targeted educational activities.

Judith Sutton reported that long time arts supporter Mrs Dot Hillard has passed away recently. Some discussion was held regarding the planting of a tree in the Gallery gardens as a commemoration.

It was suggested that it would be more appropriate for people to be commemorated through an appropriate public sculpture in the garden, or by a gift of an artwork, or by having their names added to the donor boards through a donation.

Next Meeting:

The next meeting of the Tweed River Art Gallery Advisory Committee will be held at Tweed River Art Gallery on Wednesday 18 August 2010 at 5.30pm.

The meeting closed at 6.20pm.

EXECUTIVE MANAGEMENT TEAM COMMENTS:

GB1 Audience Development Officer

Nil.

EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:

GB1 Audience Development Officer

That the appointment of a part time Audience Development Officer considered as a submission to the Management Plan.

Report of the Art Gallery Director submitted to the Art Gallery Advisory Committee
Thursday 19 May 2010

Subject: Officer's Report

Author: Susi Muddiman

Director: David Oxenham, Director Community & Natural Resources

Recommendation:

That the report by the Art Gallery Director be received for information.

VISITORS TO THE ART GALLERY

Recommendation: For information

This report will cover the exhibition period Friday 22 January – Sunday 14 March 2010.
This exhibition was open to the public for 40 days.

Opening Function 181

Community Groups 241 – Tweed Valley Respite (14), Home and Health Care (19), Hope Island Probus Club (43), Tweed Valley Respite (21), Horsey Jameson Bird Pty Ltd (27), Volunteering Gold Coast, Services Section (22), On Track Tours (14), RSL Banora Point (22), Coastal Variety Tour (59),

Education Groups 526 – Volunteer training, MGNSW (66), University of Third Age (14), Shearwater Steiner School, Mullumbimby (11), Murwillumbah East Public School (9), Newrybar Public School (26), Chillingham Public School (48), Southern Cross University (12), Xavier Catholic College, Ballina (43), St Josephs Primary School (58), Mt St Patrick College (118), Murwillumbah High School (56), St James Primary School, Banora Point (65).

Total Attendances: 8,500

PUBLIC PROGRAMS (exhibition related)

The official exhibition opening was at 6.30pm on Friday 22 January with musical entertainment provided by Cyé Wood and Sammy Ibrahim, organised by the CODE artists. Prior to the opening AWM's Head of Art, **Lola Wilkins**, delivered an exhibition preview floortalk at 5.30pm. Her discussion of *Sidney Nolan: the Gallipoli Series* drew 62 people and the Gallery received numerous positive comments on Lola's knowledge and delivery. Lola went on to open the exhibition at the official function which attracted 181 guests including a number who responded to personal invitations from mailing lists supplied by AWM and local returned services groups. Friends of the Gallery Patron **Margot Anthony AM** opened *My Favourite Australian* and artist **Christine Willcocks** opened *CODE*.

At 2pm on Saturday 23 January **Lola Wilkins** spoke again about Sidney Nolan to an additional 50 visitors who again commented on the high standard of the presentation.

The Gallery was fortunate to be offered the opportunity to stage a **Bring In Your Memorabilia (BIYM)** event on Thursday 11 February. Four exceptionally knowledgeable AWM staff, specialising in conservation and military history, were available between 10.30am and 2.00pm to discuss the significance and preservation of military memorabilia brought in by the general public. The BIYM program brought an impressive 80 people into the Gallery, a number of whom were first time visitors.

In conjunction with *My Favourite Australian* the Gallery conducted a public vote to discover who visitors rated as their favourite Australian from the Northern Rivers region. Out of the 126 votes received, the largest number of votes were for Doug and Margot Anthony, with comments about their generosity – notably in the donation of the land on which the Gallery is built.

Art Gallery Director's Report to Gallery Advisory Committee 13 May 2010 Page 1 of 5

EDUCATION

- The Gallery distributed promotional information on *Sidney Nolan: the Gallipoli series* and *My Favourite Australian* to 140 schools in the region by email and/or post. Schools were also provided with the websites of touring agencies to seek additional information. The excellent *Speaker Briefing Notes* for *Sidney Nolan: the Gallipoli series*, compiled by the AWM, was also made available on the Gallery's website.
- Approximately 400 copies of the quality *My Favourite Australian* booklet, produced by the National Portrait Gallery, were distributed free of charge to Gallery visitors. This resource was a very popular item for visiting teachers and students.
- Given the school year in NSW and Queensland began on 27 January 2010, the student attendance number was very satisfactory. The Gallery believes that *Sidney Nolan: the Gallipoli series* and *My Favourite Australian* would have attracted a higher number of school visits if the exhibition had been on display later in the school year.

FINANCIAL CONTRIBUTION TO SIDNEY NOLAN: THE GALLIPOLI SERIES BY HOST VENUE

Given the generous services offered by the AWM and their financial supporters, the Tweed River Art Gallery were able to use their limited budget to promote and publicise the exhibition widely.

The Gallery was particularly grateful for the support of the AWM in presenting a number of fascinating public programs (detailed above), all of which were well attended and appreciated by Gallery visitors.

Not taking into account the cost of employing casual installation staff (\$2,000), and the in-kind contribution of permanent staff (priceless), the financial contribution to *Sidney Nolan: the Gallipoli series* by Tweed River Art Gallery is listed below.

- Launch = \$700
- Publicity = \$595
- Advertising = \$2,500

MERCHANDISE

***Sidney Nolan: the Gallipoli series* catalogue**

In a testament to the popularity of the exhibition, 78 copies of a quality 58 page colour catalogue, produced by the Australian War Memorial, were sold through the gallery shop for a retail price of \$21.95 each (wholesale \$14.27). **Total retail value = \$1,712 Gallery profit = \$599.04**

ART SALES - CODE

The high number of sales from this exhibition was an exceptional result for two emerging artists.

Kat Shapiro Wood sold 7 works from the 15 works on display for a total retail value of \$3,660

Kate Maurice sold 6 works from 23 on display for a total retail value of \$2,530

Total retail value = \$6,190

PROMOTION

Personalised information packages – over 70 personalised letters with invitations and promotional material were sent to AWM and Veterans' Affairs (Tweed and Gold Coast) mail lists.

Invitations - 2500 copies distributed to the Friends of the Gallery mail list, touring body mail lists as provided, exhibiting local artists, local media, education and tourism facilities and Gallery visitors.

Gallery Exhibition Program - 5000 distributed to Friends of the Gallery mail list, arts and media organisations, schools, tourism operators and Gallery visitors.

Print media – National periodicals (eg: Imprint, Art Gallery Guide), local newspapers (eg: Daily News, Gold Coast Bulletin, Gold Coast Sun), free publications (eg: Tweed Sun, The Weekly, Byron Echo, The Tweed Times, Northern Rivers Arts) and the Tweed Shire Council newsletter (Tweed Link) distributed to all shire households.

Radio – North Coast / Gold Coast ABC, Gold Coast FM and all radio stations in Lismore, Tweed and Gold Coast areas

Website – <http://www.tweed.nsw.gov.au/artgallery> - includes general information on the Gallery's exhibition schedule and education material as supplied by touring body.

PUBLICITY – see samples attached

Newspaper coverage

"Major coup for Tweed art gallery"	Tweed Daily News	11/01/10
"Nolan works for Tweed gallery"	Tweed Shire Echo	14/01/10
"A rare opportunity for Tweed art"	Tweed Mail	14/01/10
"Tweed launch for iconic Sidney Nolan exhibition"	Murwillumbah Weekly	17/01/10
"Nolan works go on show"	Tweed Shire Echo	21/01/10
"Nolan at Tweed Gallery"	Tweed Daily News	21/01/10
"Nuances of nolan"	Gold Coast Bulletin	23/01/10
"Pick of the Month"	Arts NRivers e-news	Feb. 2010
"Precious medals can be saved"	Tweed Daily News	02/02/10
"Military masterminds shed light on family treasures"	M'bah Weekly	07/02/10
"Our pick of the crop"	M'bah Weekly (Cover)	07/02/10
"Visions of favourite Australians"	Mur'bah Weekly	07/02/10
"Enjoying the mystery of the material world"	Tweed Shire Echo	11/02/10
"The romance of music, and the language of ::CODE::"	Northern Star Weekender	12/02/10
"Gallery helps visitors assess war relics"	Tweed Shire Echo	18/02/10
"War history brought to life in relics"	Tweed Sun	18/02/10
"Billy's brazen story and a Boer War bugle"	Murwillumbah Weekly	21/02/10
"Code speaks to audience"	Murwillumbah Weekly	28/02/10
"Don't miss the Sidney Nolan exhibition"	Northern Star	06/03/10
"::CODE::"	Tweed Shire Echo	25/02/10, 04/03/10
"Nolan does Gallipoli"	ETC mag - Courier Mail	13/02/10
"Exhibition shows favourite Aussies"	Tweed Daily News	06/02/10
"Sidney Nolan – The Gallipoli Series"	Gold Coast Art Flash	01/02/10
"Out & About"	Tweed Daily News	28/01/10
"Sidney Nolan travelling exhibition"	Tweed Shire Echo	21/01/10
"Art – Tweed Shire Echo"	Tweed Shire Echo	14/01/10
"Around the Galleries"	Blake Society Newsletter	Jan. 2010

Radio Interviews

ABC North Coast Radio (Yvette Steinhauer)	Sidney Nolan, MFA, SOOM	14/01/10
ABC North Coast Radio (Graham Stewart)	Sidney Nolan, MFA, SOOM	16/01/10
ABC FM Gold Coast Radio (Scott Mayman)	Sidney Nolan, MFA, SOOM	16/01/10
Bay FM Radio	Sidney Nolan, MFA, SSOM	16/01/10
ABC North Coast Radio (Yvette Steinhauer)	Bring in your memorabilia	11/02/10

Advertisements

Craft Arts International	#77, 2009, #78, 2009
Imprint	December 2009
Art Gallery Guide	March - April 2010
Regional Arts e-news	March 2010
Arts Northern Rivers e-news	February 2010, March 2010
Murwillumbah Weekly	17/01/10, 31/01/10, 07/02/10, 21/02/10
Tweed Daily News	20/01/10, 04/02/10
Tweed Link	16/02/10, 23/02/10
Byron Shire Echo (colour)	20/01/10, 09/02/10, 23/02/10
Tweed Shire Echo (colour)	14/01/10, 21/01/10, 28/01/10
Tweed Border Mail	21/01/10, 04/02/10
Uki News	January – February 2010

COMMENTS - Exhibitions Curator

- The concurrent exhibition of *Sidney Nolan: the Gallipoli series* and *My Favourite Australian* was deliberately scheduled to explore themes and questions surrounding Australian identity, areas of study that are specifically linked to the school curriculum. This program (which also included several other exhibitions on display during the same timeframe) proved to be very popular, attracting a significant number of school students and visitors from outside the Gallery's standard drawing area.

- The digital display of the 'moving portraits' in *My Favourite Australian* in the Gallery foyer, added a lively and interesting aspect to an area of the Gallery that is often perceived as 'static'. This display also continued the Gallery's efforts to mount an increasing number of exhibitions with an audio-visual component.
 - The services offered by the Australian War Memorial's exhibition team were exceptional, in terms of quality exhibition content and didactics, catalogue publication, and the availability and friendliness of experienced staff for installation, demount and public programs.
 - A number of school teachers did comment on the lack of an education kit that specifically addressed the primary and secondary curriculum. In lieu of an education kit, the Gallery distributed a slightly amended copy of the *Speaker Briefing Notes* provided by the AWM.
 - *Sidney Nolan: the Gallipoli series* attracted an unprecedented number of written comments from visitors. In fact, so many that selecting significant excerpts would have eventuated in a long typed list. Photocopies of full and relevant pages from the Gallery Comment book are attached to this report.
- Gallery visitors were also invited to complete a Visitor Survey provided by the AWM. The completed forms were sent to the AWM as an attachment to this report.

Gallery receives excellent report from the Australian War Memorial

The Australian War Memorial was very (very) impressed by our visitor attendance figures and visitor comments resulting from the *Nolan* exhibition. We received rave reviews from Canberra, and the staff from the Travelling Exhibitions team were so taken with the Gallery, the friendly co-operative relationship that we have with our Friends group. I think they were envious. It is great to know that they believe our numbers will not be matched for the rest of the exhibition tour. They were also very happy with the response the Gallery had to the public programs run in conjunction with the exhibition.

Changes to the exhibition program

Some unavoidable changes have been made to the exhibition calendar. The *Les Peterkin Portrait Prize* will now be a stand-alone exhibition, as unfortunately the HSC and TAFE exhibitions have been cancelled for 2010 and until further notice.

I have contacted the School Principals of the region regarding the cancellation of the HSC shows, and personnel at TAFE. It was a tough decision to make, but one that was made in consultation with many parties. I have included here an extract from my letter.

"As you are aware, the Tweed River Art Gallery has for many years hosted annual exhibitions of work by Higher School Certificate students from the Tweed area. In previous years, the Gallery has worked in close collaboration with secondary teachers to mount these exhibitions within a tight schedule during a busy period at the end of the school year.

The organisation of the 2009 HSC exhibition presented a number of new challenges for both the Gallery and teachers. Changes by the Board of Studies (BOS) to timeframes for HSC examinations and the announcement of works preselected for *ARTEXPRESS*, coupled with the increasing amount of work sent to Sydney for corporate marking, made it incredibly difficult to organise the exhibition within the short timeframe available (ie: after works have been cleared for release by the BOS and before the end of the school year).

Given these difficulties, the Gallery invited secondary teachers to attend a meeting on Tuesday 30 March 2010 to discuss the ongoing viability of the annual HSC exhibition. Unfortunately, the Gallery only received a response from two dedicated teachers from the Murwillumbah area. That said, this small meeting was able to clarify the issues faced by both the Gallery and secondary teachers. In an effort to resolve the problems inherent in arranging an exhibition in the final stages of the school year, discussions were then held with representatives from the BOS and the NSW Department of Education and Training seeking clarification of 2010 timeframes. Unfortunately, the outcome of these discussions was not a positive one, with no apparent resolution to our conflicting schedules.

I sincerely hope that you appreciate the efforts of all Gallery staff to find a solution to these problems. However, it is with regret that I advise that the organisation and display of HSC works at Tweed River Art Gallery is no longer possible. Unfortunately, I have had to make the decision to cancel the exhibition for 2010 and into the foreseeable future.

I would like to thank all of the teachers involved in past exhibitions and express my sincere appreciation for their hard work and dedication for the benefit of students. I hope that your students

are able to take advantage of our ongoing program of stimulating contemporary exhibitions and events in the future.

I would appreciate you passing this information on to your Head Teacher, Creative and Performing Arts and their staff. If you wish to discuss this matter further, please contact me at the Gallery during business hours on telephone number 02 6670 2790."

Gallery staffing levels

Unfortunately the Gallery's request to Council for additional staffing in the form of a part-time Education Officer was not successful. This is most disappointing, but I would like to take this opportunity to sincerely thank those members of the Advisory Committee who supported the Gallery on this issue.

Grant funding applications

The Gallery staff are going to be completely run off our feet during May. We have a very involved and time-consuming grant submission due to Arts NSW through the State Government. We have to prepare a Triennial funding application, which involves presenting a complete program from 2011 to 2013, including all budgets, public programs, educational workshops and exhibitions etc – highlighting collaborations, partnerships, audience development and Key Performance Indicators.

A large acquittal contract is also due on the same day for the Visions of Australia program. This paperwork involves a 46 page document.

Exhibitions from the Collection

There are two new shows on exhibition showcasing the Collection. The **Withey Family Gallery** now has a great show titled *Artists by artists* and includes some new works in the portraiture genre. Many are portraits of artists by fellow artists, and some are self-portraits. There are quite a few works which haven't been on display for a long time. The show also includes two brand new works gifted by artist Joanna Braithwaite. The **Friends' Gallery** space is now hung with Acquisitions from the CPM prize for a few months. There are some stunning works there too, including many purchased through the generosity of the Friends. **The Anthony Gallery** will also change over in mid-July to showcase acquisitions to the Olive Cotton Award. This exhibition will also include many works purchased by the Friends for our Collection.

The next 6 monthly exhibition calendar

Our graphic designer has completed work on the next exhibition calendar. This will be printed soon and be sent out in the next mail out, covering the period July – December 2010. There are some excellent exhibitions on the program.

Successful visit by US Consul General

Consul General Judith Fergin forwarded a letter to the Gallery thanking me for the 'behind the scenes' tour of the Gallery on 21 April. By all accounts, the reception for the Consul general was a success and she was most impressed by the facility.

Susi Muddiman
Director
5 May 2010

COLLECTION NEW ACQUISITIONS

Reg No Accession No	Artist	First Name	Title	Date	Medium	Credit Line
678 2010/03	BOT	G W	Australglyphs - Mount Warning	2009	linocut	Acquired by the Tweed River Art Gallery through the Anniversary Print Project, 2010
679 2010/04	DAVIS	Jan	OO	2009	digital print	Acquired by the Tweed River Art Gallery through the Anniversary Print Project, 2010
680 2010/05	FRANSELLA	Graham	Cane figure	2009	etching colour	Acquired by the Tweed River Art Gallery through the Anniversary Print Project, 2010
681 2010/06	LUCCIO	Marco	View from the Gallery	2009	drypoint	Acquired by the Tweed River Art Gallery through the Anniversary Print Project, 2010
682 2010/07	MACLEOD	Euan	Mt Warning	2009	etching colour three plate	Acquired by the Tweed River Art Gallery through the Anniversary Print Project, 2010
683 2010/08	PEEBLES	Graeme	The oysters are taking over the universe	2009	mezzotint	Acquired by the Tweed River Art Gallery through the Anniversary Print Project, 2010
684 2010/09	GRIFFITH	Pamela	George Gittoes	2008/20	oil	Donated through the Australian Government's Cultural Gifts Program by Selena Griffith, 2010
685 2010/10	CUSACK	Michael	Untitled	2001	synthetic polymer acrylic paint	Donated through the Australian Government's Cultural Gifts Program by Nick Mitzewich, 2010

Wednesday, 5 May 2010

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53 [SUB-LTC] Local Traffic Committee Meeting held Thursday 20 May 2010

Venue:
Mt Warning Meeting Room

Time:
Commencing at 10.30am

Present:
Committee Members: Cr Barry Longland, Mr Ian Shanahan on behalf of Ms Liz Smith, Roads and Traffic Authority, Snr Constable Justin Lavin on behalf of Paul Henderson, Sgt Richard Baxter NSW Police, Mr Rod Bates on behalf of Mr Geoff Provest MP, Member for Tweed.

Informal: Mr John Zawadzki (Chairman), Mr Ray Clark, Mr Wayne Haayer on behalf of Mr Paul Brouwer, Mr Danny Rose, Ms Judith Finch (Minutes Secretary).

Apologies:
Ms Liz Smith, Roads and Traffic Authority, Mr Thomas George MP, Member for Lismore, Mr Paul Brouwer, Mr Geoff Provest MP, Member for Tweed.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING
RESOLVED that the Minutes of the Local Traffic Committee Meeting held 22 April 2010 be adopted as a true and accurate record of proceedings of that meeting.

SCHEDULE OF OUTSTANDING RESOLUTIONS
[LTC] Schedule of Outstanding Resolutions 20 May 2010

1. [LTC] Eyles Avenue, Murwillumbah

ORIGIN:
Planning & Infrastructure

FILE NO: ECM 3999809; Traffic - Committee; School Zones; Parking Zones; Safety; Eyles Avenue; Schools - Murwillumbah Public

SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B1)

Concern has been raised with cars parking in Eyles Avenue on the school side.

"These vehicles are causing problems for buses accessing the School Bus Zone. Could 'No Parking' at School finishing times be implemented here?"

Council officers will investigate this site and report to the meeting.

COMMITTEE ADVICE:

That:-

1. Council officers discuss with the School representatives the possibility of extending the 'No Parking' zone on the eastern side of Eyles Avenue to the intersection with Prince Street.
2. This item be placed on the Schedule of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 27 August 2009 and 24 September 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 26 November 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 17 December 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 18 February 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 25 March 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item 1 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 22 April 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item 1 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 20 May 2010 remain on the list of Outstanding Resolutions.

2. [LTC] Kennedy Drive, Tweed Heads West

ORIGIN:
Planning & Infrastructure

FILE NO: ECM 3948168; Traffic - Committee; Kennedy Drive, Tweed Heads; Kennedy Drive - Tweed Heads West; Norman Street; Parking - Zones; Traffic - Lights; Traffic - Roundabouts; Boat Ramps

SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B7)

Concern received in relation to increasing traffic problems along Kennedy Drive.

"In particular the intersection of Norman Street and Kennedy Drive causes local residents a great deal of frustration which is worsened by parking of boats and boat trailers using the boat ramp located on the opposite side of the road.

..... Norman Street is one of the few streets where right hand turns are permitted and this also contributes to traffic problems. He has suggested that either a roundabout or traffic lights are needed to facilitate turning into and out of Norman Street."

The Norman Street/Kennedy Drive intersection has been the subject of community concern for a number of years.

A concept design for a roundabout has been previously completed by Council officers and unfortunately there is insufficient room within the road reserve to install a small roundabout. The installation of traffic signals would not meet the warrants of the Roads and Traffic Authority of NSW guidelines.

Another alternative is to provide a narrow central median on Kennedy Drive which would prevent right turns from both the boat ramp area and Norman Street into Kennedy Drive. This is very undesirable as it would inconvenience many motorists and encourage possibly less safe "U" turns to be made on Kennedy Drive away from the intersection.

Council officers will advise the Committee of the accident history of this intersection.

Council officers advised that of seven accidents from 2005 to 2008, four of them were right rear crashes. The right turns were from Kennedy Drive into Norman Street. Council officers suggested that a right turn lane be further investigated with a view for reducing this type of crash.

COMMITTEE ADVICE:

That:-

1. Council officers further investigate the possibility of a right turn lane on Kennedy Drive into Norman Street.
2. That this item be listed on the Schedule of Outstanding Resolutions.

Current Status: That Item B7 from Local Traffic Committee meeting held 27 August 2009 and 24 September 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B7 from Local Traffic Committee meeting held 26 November 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B7 from Local Traffic Committee meeting held 17 December 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 18 February 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 25 March 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item 4 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 22 April 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item 2 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 20 May 2010 remain on the list of Outstanding Resolutions.

3. [LTC] Tomewin Road, Dungay

ORIGIN:
Planning & Infrastructure

FILE NO: ECM 3948848; Traffic - Committee; Speed Zones; Tomewin Road; Dungay Creek Road

SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B9)

At the Local Traffic Committee meeting on 25 June 2009 the Police Representative requested that a speed limit review of Tomewin Road, north of Dungay Creek Road be undertaken with a view to adopting a fixed speed zone along this road.

Tomewin Road north of Dungay Creek Road is currently signposted as derestricted speed limit however its alignment inhibits speeds greater than about 70 km/hr.

Council's traffic data shows the following counts for Tomewin Road (at the tick gates - May 2008):-

756 vehicles per day with an 85th percentile speed of 58 km/hr.

It is suggested that the Roads and Traffic Authority of NSW conducts a speed limit review of Tomewin Road north of Dungay Creek Road.

Accident statistics for the 5 year period from July 2003 to June 2008 show 18 crashes on Tomewin Road with 14 of those being off path on curve, 16 were single vehicle and 4 of the crashes were motorcyclists, with 1 motorcyclist being a fatality.

COMMITTEE ADVICE:

That the Roads and Traffic Authority of NSW be requested to conduct a speed limit review of Tomewin Road north of Dungay Creek Road.

Current Status: That Item B9 from Local Traffic Committee meeting held 24 September 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B9 from Local Traffic Committee meeting held 26 November 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B9 from Local Traffic Committee meeting held 17 December 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 18 February 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 25 March 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item 3 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 22 April 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item 3 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 20 May 2010 remain on the list of Outstanding Resolutions.

4. Pottsville Public School - Tweed Coast Road, Pottsville

ORIGIN:
Planning & Infrastructure

FILE NO: ECM 14868320; Traffic - Committee; Traffic - School Zones; Pedestrian Crossings; Safety; Pottsville Public School; Tweed Coat Road Pottsville

SUMMARY OF REPORT:

From Meeting held 22/4/10 (Item B3)

Request received for a pedestrian crossing at Pottsville Beach Public School.

"I am writing this letter to raise my concerns about the lack of a pedestrian crossing at Pottsville Primary School.

Since the start of the school year I have seen many incidents that could have quite easily resulted in serious injury or death.

Due to the fact that this is a primary school there are many very young children who are at most risk due to their lack of road safety and maturity.

The current situation where there are 'children crossing' flags yet no lollipop person seems untenable, and an invitation for disaster.

I invite representatives from the local traffic committee to view the current situation in person and see for themselves how precarious this situation is."

The Roads and Traffic Authority of NSW administer the School Crossing Supervisor Scheme and Council provides advice on current traffic and pedestrian volumes for its consideration.

Pedestrian counts will be submitted to the Committee meeting.

The Committee Representatives considered that the existing school crossing is located undesirably, being immediately adjacent to the roundabout. Consideration should be given to relocating the School Crossing to the north side of the roundabout near the School's southern driveway entrance and a report tabled at the next meeting including comments from the School.

Council's pedestrian counts did not satisfy the Roads and Traffic Authority of NSW's warrants for a School Crossing Supervisor however additional counts will be carried out by the Roads and Traffic Authority of NSW and an assessment will be undertaken. Counts conducted on Wednesday 24 March 2010 found there were 10 unaccompanied children, 24 children with adults and 24 adults in a one hour period after school in the afternoon.

COMMITTEE ADVICE:

That the item for Pottsville Public School be brought forward to the May 2010 meeting of the Local Traffic Committee.

Current Status: That Item 4 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 22 April 2010 remain on the list of Outstanding Resolutions.

Current Status: That Item 4 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 20 May 2010 remain on the list of Outstanding Resolutions.

BUSINESS ARISING

Nil.

A. FORMAL ITEMS SECTION

DELEGATIONS FOR REGULATORY DEVICES

A.1 [LTC] Cabarita Headland

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 16321193; Traffic - Committee; Safety; Parking Zones; Traffic - Control; Coast Road

SUMMARY OF REPORT:

Request received in relation to parking at Cabarita Headland.

"As Cabarita has become more popular parking at the headland has become an issue. One of the main problems is that once a vehicle has entered the parking area and proceeded towards the northern end only to find there is no parking available. However because the turning circle at the Northern end is full with parked cars there is no space to turn around. As a consequence vehicles have to reverse the whole length of the access road often

through narrow gaps; recently there have been several incidents where vehicles have been damaged by those who are less adept at reversing and/or children have been narrowly missed.

"I have two suggestions to ameliorate the problem:

- 1. Place some NO PARKING/TURN AROUND SPACE ONLY signs at the second and third last spaces at the northern end of the access road. This will leave a space for vehicles to turn around and drive back out when there is no parking. As to whether people will obey and policing well that is another issue.*
- 2. Alternatively make the access a ONE WAY road with access from the northern end by south bound traffic only which then exit via the southern roundabout. Obviously this is a more substantial endeavour which involves traffic studies i.e. no right turn from Coast Rd into the northern entrance etc. but it's something to consider."*

With regard to Item 1 Council officers will inspect the site and report to the meeting. With regard to Item 2 it is considered that one-way roads are undesirable. It is also undesirable to create an additional intersection with Tweed Coast Road, creating an additional conflict point.

RECOMMENDATION TO COMMITTEE:

That 'No Parking' signs be placed at the northern end of the Cabarita Headland carpark to enable u-turns.

RECOMMENDATION TO COUNCIL:

That 'No Parking' signs be placed at the northern end of the Cabarita Headland carpark to enable u-turns.

FOR VOTE - Councillor Barry Longland, Ian Shanahan, Snr Constable Justin Lavin, Rod Bates

A.2 [LTC] Riverside Drive, Tumbulgum

ORIGIN:
Planning & Infrastructure

FILE NO: ECM 16029053; Riverside Drive; Government Road; Traffic - Committee; Signs; Parking Zones

SUMMARY OF REPORT:

Request received in relation to:

1. The provision of 'No Stopping' signs along Riverside Drive road shoulder opposite Government Road where the shoulder has slipped into the river. It is reported that cars are parking adjacent to temporary barriers, blocking traffic lanes. Temporary signs are requested for 9 months to enable rock revetment works to restore the road shoulder.

2. The provision of 45 degree angle parking in the existing widened angle parking bay opposite the Hotel in Riverside Drive. It is reported that boats with trailers are parking parallel and preventing the equivalent of 4 vehicles from using angle parking spaces.

It was suggested that Council officers investigate further parking provision for boat trailer parking near the boat ramp.

RECOMMENDATION TO COMMITTEE:

That:

1. 'No Stopping' signs be installed temporarily on Riverside Drive, Tumbulgum opposite Government Road (approx 30m) whilst revetment works are under way.
2. Signage and linemarking supporting 45° front to kerb parking be installed on Riverside Drive, Tumbulgum on the widened parking bay opposite the Hotel complying with relevant guidelines.

RECOMMENDATION TO COUNCIL:

That:

1. 'No Stopping' signs be installed temporarily on Riverside Drive, Tumbulgum opposite Government Road (approx 30m) whilst revetment works are under way.
2. Signage and linemarking supporting 45° front to kerb parking be installed on Riverside Drive, Tumbulgum on the widened parking bay opposite the Hotel complying with relevant guidelines.

FOR VOTE - Councillor Barry Longland, Ian Shanahan, Snr Constable Justin Lavin, Rod Bates

A.3 [LTC] Barnby and William Streets, Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 14862977; Traffic - Committee; Speed Zones; Safety; William Street; Barnby Street

SUMMARY OF REPORT:

Request received in relation to high speeding vehicles in William Street to Barnby Street and continuing on to the Riva Vue Estate.

"One night 'street racers' screamed in high acceleration up William Street, then continued onto the new housing estate close-by.

... Apparently these episodes occur frequently, according to local residents.

The objective to my letter is to make it obvious to the Tweed Shire Council of the dangerous intersection that it is. Regardless of the 'hoon' behaviour that happens, the physical nature of the high hill towards a road intersection, is very dangerous.

One has to almost slow to a stop ascending William St to be able to view Barnby St for traffic. Sometimes trying to then accelerate from William St, the tyres of the vehicle can often spin if there is a little moisture on the road from rains.

It is well known as a 'hoon' spot and I feel it is a very dangerous intersection.

Maybe Tweed Shire Council could more fully investigate the area and close off William Street at that intersection?"

Council's Accident Database shows no vehicle accidents at the intersection of William Street and Barnby Street for the period 2004 to 2008. Council officers will inspect the site and report to the meeting.

It was suggested that Council further investigate the skid resistance of William Street at this intersection.

It is considered that hoon activity is unfortunately a general activity within Tweed Shire streets that should be resolved via enforcement and education.

This item has been moved to Section A - Item A3.

COMMITTEE ADVICE:

That:

1. Double centre lines be installed on the William Street and Barnby Street (south) approaches to the William Street / Barnby Street intersection.
2. The existing 'Give Way' hold lines be repainted on the Barnby Street northern approach.

FOR VOTE - Councillor Barry Longland, Ian Shanahan, Snr Constable Justin Lavin
PRESENT. DID NOT VOTE - Rod Bates

B. INFORMAL ITEMS SECTION

GENERAL TRAFFIC ADVICE

B.1 [LTC] Kennedy Drive, Tweed Heads

ORIGIN:

Planning & Infrastructure

FILE NO: ECM16324353; Kennedy Drive; Traffic - Committee; Safety; Linemarking

SUMMARY OF REPORT:

Request received to address the Local Traffic Committee regarding Kennedy Drive.

The correspondent considers that Kennedy Drive is a dangerous thoroughfare. The two outside lanes on Kennedy Drive are dangerous and apparently there is confusion regarding the number and delineation of lanes.

The correspondent was previously advised by Council officers that:-

- The installation of directional arrows in both east and westbound outside lanes is not supported as these arrows are generally used at intersections to indicate that traffic must move in the direction indicated. Installation of arrows at other locations would lead to driver confusion.
- Kennedy Drive is marked with double centre line markings and the two lanes of traffic in each direction are marked with separation lines where required.
- Any other upgrade of markings will be considered when Kennedy Drive is reconstructed.

The correspondent did not attend the meeting however his written submission was considered.

The Committee noted that Kennedy Drive has been listed in Council's Works Program to upgrading to four lanes.

COMMITTEE ADVICE:

That no action be taken regarding lane delineation on Kennedy Drive.

B.2 [LTC] Ewing Lane, Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 15983560; Traffic - Committee; Signs - Traffic Issues; Directional Signs; Street - Signs; Tweed Street; Uki Street; Ewing Street; Ewing Lane

SUMMARY OF REPORT:

Request received for the provision of 'No Stopping' or 'No Standing' signs on both sides of Ewing Lane between Ewing Street and Uki Street.

"Whilst my address is 5 Tweed Street, the entrance to my garage is in Ewing Lane. There are also garages at 3, 7, 9, 11 and 13 that have lane access.

On a regular basis I drive from the town centre via Queen Street and Ewing Street and before the left lane sweep that leads to the hospital I veer across Ewing Street into Ewing Lane.

From time to time cars park on either side of Ewing Lane between Ewing Street and Uki Street. It is very narrow.

Recently a car was parked in such a way that I could not pass on either side of it so I had to reverse on to Ewing Street which was quite dangerous.

I'd like to propose that No Stopping or No Standing signs be placed on both sides of Ewing Lane between Ewing Street and Uki Street."

The following data is provided regarding Ewing Lane:

- Average daily traffic - less than 50 vehicles per day
- Bitumen seal width of less than 3 metres
- Grass verges, no kerb and channelling

Council officers will inspect the site and report to the meeting.

It was suggested that Council officers monitor this issue.

COMMITTEE ADVICE:

That no action be taken regarding the provision of 'No Stopping' signs on Ewing Lane between Uki Street and Ewing Street, Murwillumbah and that Council officers monitor this parking issue.

B.3 [LTC] Camp Quality Bicycle Charity Ride 2010

ORIGIN:

Planning & Infrastructure

FILE NO: 15632887; Charities; Bicycle Matters; Traffic - Committee; Caravan Parks - North Star; Tweed Valley Way; Wooyung Road; Tweed Coast Road - Wooyung; Tweed Coast Road; Pottsville; Tweed Coast Road - Hastings Point

SUMMARY OF REPORT:

Request received for approval of the Camp Quality Bicycle Charity Ride on 4, 5 and 6 September 2010 to be run over a period of 3 days.

- *"First day will start in Hogan Street Ballina leaving at 7.30am and riding to Hastings Point where we will stay overnight.*
- *Second day we will leave Hastings Point at 7.3am and ride to Kyogle staying overnight.*
- *Third day we will leave Kyogle at 7.30am and arrive back in Ballina before 4pm.*

The route is approximately 310kms long. Please see the attached route plan for details.

Our risk assessment plan is as follows -

- *Event to be conducted during daylight hours only*
- *Event will be advertised in local media 1 week prior to the event in all municipalities*
- *This ride is strictly a charity ride to raise money for Camp Quality, it is not a race and no form of racing will be done*
- *No money will be collected on roadside during the ride*

- *When the ride leaves Ballina at no stage will we ride on the Pacific Highway. Bike tracks will be followed as per attached route plan.*
- *Fire Brigade, Ambulance, Police, RTA and all shire councils involved have been notified of this ride*
- *There will be a qualified paramedic and first aid officer riding with us with radio and mobile phone contact at all times. The rear escort vehicle will contain the full first aid/medical kit*
- *Public liability insurance certificate of currency is attached*
- *Lead escort Vehicle: on a single lane carriageway the vehicle will be positioned approximately 300 metres ahead of the leading participants. The vehicle will display a sign directed to the front of the vehicle displaying the words "CAUTION CYCLISTS FOLLOWING" so as to provide advance warning to oncoming, motorist and other road users*
- *Rear Escort Vehicle: whilst participants are on the carriageway, an advance warning escort vehicle will be positioned approximately 300 metres to the rear of the last participant. The vehicle will display a sign directed to the rear of the vehicle displaying the words "CAUTION CYCLISTS AHEAD" Warning signs referred to above are 900mm x 400mm in size with large lettering proportionate to the dimensions of the sign. The escort vehicles will have hazard and warning lights operating whilst escorting participants*
- *Riders must remain between the front and rear escort vehicles at no stage shall riders venture outside of the vehicles to form groups of their own*
- *If queuing traffic behind the escort vehicle becomes excessive the escort vehicles and riders will move off the road to let the traffic past*
- *Escort vehicles will be carrying fresh water for riders if needed*
- *Communication equipment is provided to escort vehicles to enable communications between those vehicles and the organizer. Communication is to be maintained between those vehicles and the organizer during the course of the event. First aid officer will have radio contact also, as well as 2 other key participants on the ride*
- *Organizers, officials and participants to take all reasonable measures to reduce obstruction to pedestrians or vehicles during the course of the event*
- *Participants are not permitted to ride on the carriageway during periods of poor visibility due to inclement weather or fog, where there is insufficient daylight to render a person in dark clothing discernible at a distance of 100 metres*
- *Whilst participants are riding on the carriageway they shall -*
 1. *keep to the extreme left hand side of the carriageway at all times*
 2. *obey traffic light signals and comply with the 'STOP' and 'GIVEWAY' signs*
 3. *ride in a single file on single lane carriageways*
 4. *wear an approved safety helmet in compliance with the Road Transport Legislation."*

The applicant has further advised that there will be a maximum of 60 cyclists and 4 support staff. Generally the roads within Tweed Shire that are affected are as follows:

Tweed Valley Way, Wooyung Road, Tweed Coast Road, Pottsville Road, Stokers Road, Smiths Creek Road and Kyogle Road. Only the day 1 and day 2 events are located in Tweed Shire.

It is recommended that the Committee note the Camp Quality Charity Ride 2010 event.

COMMITTEE ADVICE:

That the Camp Quality Charity Ride 2010 event be noted.

B.4 [LTC] Barnby and William Streets, Murwillumbah

This item was dealt with earlier in the meeting at Item A3.

B.5 [LTC] Road Closure - Carraboi Terrace, Tyalgum

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 14519121 - Traffic Committee; Road Closures - Temporary, Tyalgum; Carraboi Terrace, Coolman Street; Showgrounds

SUMMARY OF REPORT:

Request received to temporarily close Carraboi Terrace Tyalgum between the hours of 6.00am and 4.00pm. The closed section of road would commence on the corner of Coolman Street and Carraboi Terrace for Tyalgum Diggers Sports Association's Family Day and Rodeo to be held on Saturday 25 September 2010.

Residents requiring entry and exit to and from their properties along Carraboi Terrace will be able to do so upon identifying themselves to the marshalls.

It is recommended that approval be given for the temporary closure of Carraboi Terrace on Saturday 25 September 2010 from 6.00am to 4.00pm for the conduct of the Tyalgum Diggers Sports Association Family Day and Rodeo, subject to standard conditions of approval.

COMMITTEE ADVICE:

That approval be given for the temporary closure of Carraboi Terrace on Saturday 25 September 2010 from 6.00am to 4.00pm for the conduct of the Tyalgum Diggers Sports Association Family Day and Rodeo, subject to standard conditions of approval.

B.6 [LTC] Speed Limits

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 15287039; Traffic - Speed Zones; Safety; Local Area Traffic Management

SUMMARY OF REPORT:

Request received in relation to LTC consideration for:

1. A reduction in the speed limits.

2. Traffic calming measures where roads cross wildlife corridors and especially in relation to Clothiers Creek Road and the Koala blackspot.

Item 1 above has been forwarded for consideration based on a recent decision of Hobart City Council to reduce speed limits generally within that city to 50 km/hr within its municipal boundaries. Tweed Shire Council was one of the first Councils in NSW to introduce a 50 km/hr urban speed limit some 10 years ago. Since then NSW legislation has been amended for the urban speed limit in built up areas to be 50 km/hr unless otherwise signposted.

It should be noted that the Hobart City Council decision for 50 km/hr limit does not include existing 40kph areas or arterial highways within Hobart.

Item 2 has been forwarded for Local Traffic Committee's general consideration. Road safety is generally anthropocentric. Currently there are guidelines in relation to fauna sensitive road design however they tend to relate to the design of new roads. The current posted speed limit for Clothiers Creek Road is 70 km/hr in the koala signed blackspot area.

It is recommended that advice be sought from the Roads and Traffic Authority of NSW.

The Roads & Traffic Authority of NSW representative advised that NSW legislation has a general 50km/hr in built up areas unless otherwise signposted. Sub arterial roads in Tweed LGA would not meet 50km/hr warrants.

Some methods for assisting fauna safety include the erection of barrier fencing, signage and possum chains across the road.

Council officers will monitor the situation on Clothiers Creek Road.

COMMITTEE ADVICE:

That:

1. Speed limits on roads need to conform to relevant guidelines on NSW roads for consistency.
2. A reduction in speed limits and/or provision of traffic calming devices on Tweed Shire streets generally is not considered to be warranted.

Next Meeting:

The next meeting of the Local Traffic Committee will be held on 24 June 2010 in the Mt Warning Meeting Room commencing at 10.30am.

There being no further business the Meeting terminated at 12.00 noon.

EXECUTIVE MANAGEMENT TEAM COMMENTS:

A1 [LTC] Cabarita Headland

Nil

A2 [LTC] Riverside Drive, Tumbulgum

Nil

A3 [LTC] Barnby and William Streets, Murwillumbah

Nil

EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:

A1 [LTC] Cabarita Headland

That 'No Parking' signs be placed at the northern end of the Cabarita Headland carpark to enable u-turns.

A2 [LTC] Riverside Drive, Tumbulgum

That:

1. 'No Stopping' signs be installed temporarily on Riverside Drive, Tumbulgum opposite Government Road (approx 30m) whilst revetment works are under way.
2. Signage and linemarking supporting 45° front to kerb parking be installed on Riverside Drive, Tumbulgum on the widened parking bay opposite the Hotel complying with relevant guidelines.

A3 [LTC] Barnby and William Streets, Murwillumbah

That:

1. Double centre lines be installed on the William Street and Barnby Street (south) approaches to the William Street / Barnby Street intersection.
 2. The existing 'Give Way' hold lines be repainted on the Barnby Street northern approach.
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- 54 [SUBCOM] Minutes of Sub-Committees not requiring a decision of Council**
1. Minutes of the Tweed Shire Council Aboriginal Advisory Committee Meeting held Friday 7 May 2010 (ECM 17049658)
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ORDERS OF THE DAY

55 [NOM-Cr W Polglase] Pottsville Shopping Village

NOTICE OF MOTION:

Councillor W Polglase moves that Council schedules a Workshop on a revised shopping village proposal on the Seabreeze/Pottsville site which includes a presentation from the proponents.

56 [NOM-Cr K Milne] Sustainability Budget

NOTICE OF MOTION:

Councillor K Milne moves that Council allocates an amount of \$10,000 in the 2010/2011 budget for use by the sustainability officer, as previously proposed as an option by the Director Community and Natural Resources.

57 [NOM-Cr K Milne] Cage Free Eggs

NOTICE OF MOTION:

Councillor K Milne moves that:-

1. Tweed Shire Council adopts a policy of not using eggs sourced from caged chickens. This policy will include but not be limited to the following situations:
 - all future catering arrangements will only be made with caterers who can guarantee that they use non-cage eggs.
 - the use of non-cage eggs be stipulated in any future tenders or contracts relating to the supply of food in which Council is a party.
 - Council publicises this policy on its website and that the General Manager writes directly to all known suppliers of food products to Council notifying them of the new policy position.
 2. Council promotes this policy through the Tweed Link and local media and encourages other local businesses, organisations and households to adopt a similar ethical policy.
 3. Council supports any similar motions at the LGA, NSROC and in any other area in which it may be expected to voice a position, relevant to this policy.
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CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE GENERAL MANAGER IN COMMITTEE

1 [GM-CM] Tweed Shire Council Sale of Land - Wollumbin Street, Murwillumbah

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE

2 [EO-CM] Land Acquisition - West End Street Extension Murwillumbah

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(a) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (a) personnel matters concerning particular individuals (other than councillors)

3 [EO-CM] Estate of the late Walter Alwyn Peate - Certificate of title Volume 4755 Folio 91 and Trust Deed Numbered 86 Book 2761

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

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

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