



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 16 March 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 Meeting held Tuesday 16 February 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 16 February 2010 (ECM 13277416)

Upon review Section 5.10 "*Limitation as to Number of Speeches*" of the Code of Meeting Practice is governed by the terms of the Local Government (General) Regulation Clause 250(3) with the time periods stated within this regulation mandatory and currently being that ***a councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time.***

Therefore Council is not able to reduce this time interval and therefore part 3 of Minute number 105 of 16 February 2010 where Council has resolved to reduce this time interval is ultra vires and will require correction at the Council Meeting of 16 March 2010 when the minutes of 16 February 2010 meeting are confirmed.

The status quo will be retained with the existing section 5.10 containing the timeframe of five (5) minutes remaining unchanged within the Code of Meeting Practice Version 2.0.

2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 16 February 2010 (ECM 12887565).

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SCHEDULE OF OUTSTANDING RESOLUTIONS

2 Schedule of Outstanding Resolutions to 16 March 2010

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.

Following various discussions and correspondence with the applicant throughout 2009, Council officers have most recently written to the applicant on 14 January 2010 requesting additional information to address previously unresolved issues, including updated engineering plans, the continuing reference to Gold Coast Council development controls, non-compliances with the BCA, waste collection details, deficiencies of the geotechnical report, outstanding environmental issues, and an amended bushfire risk assessment. A further report will be put to Council once these matters have been satisfactorily addressed by the applicant

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

18 August 2009

MAYORAL MINUTE

a3 [MM] Tweed Food Bowls Vision

170

Cr J van Lieshout

RESOLVED that:-

1. Council Officers investigate and prepare a feasibility report on the potential for Northern Rivers region to increase its food growing capacity together with studies on food related industry initiative and more sustainable "Paddock to Plate" and "co-operative marketing" opportunities.
2. Council takes an active involvement in the \$1.9 million Northern Rivers Food Links Project and that a suitable workshop presentation on the "Draft Food Link Project Business Plan" be arranged.

Current Status: Workshop held on 22 September 2009, report to be prepared.

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: Report to be prepared.

65 [NOM-Cr K Milne] Native Vegetation Clearing Education

448

Cr K Milne

Cr B Longland

RESOLVED that Council:

1. Encourages the Department of Environment Climate Change and Water (DECCW) to:
 - a) Adopt a zero tolerance policy to illegal native vegetation clearing and
 - b) Consider a marketing campaign to educate the community on the importance of this issue and informs the community how to report suspected breaches.
2. Invites representatives of the Department of Environment Climate Change and Water (DECCW) to present a workshop to Council on this issue.

Current Status: Workshop scheduled for 23 March 2010.

19 January 2010

MAYORAL MINUTE

a3 [MM] Mayoral Minute - Workshop/Briefing Sessions

18

Cr D Holdom

Cr J van Lieshout

RESOLVED that a Workshop be scheduled on Sustainability Action Plan

Current Status: Workshop scheduled for 30 March 2010.

19

Cr D Holdom

Cr K Milne

RESOLVED that a Workshop be scheduled on Business Ethics and Procurement Policies.

Current Status: Workshop to be scheduled.

20

Cr D Holdom

Cr K Milne

RESOLVED that a Workshop be scheduled on Solar Power Wind Turbines and alternative energy sources and the legislation in force.

Current Status: Workshop to be scheduled.

16 February 2010

REPORTS THROUGH THE DIRECTOR PLANNING AND REGULATIONS

12 [PR-CM] Development Application DA09/0385 for a Telecommunications Facility (30 Metre High Monopole and Associated Infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place Uki

67

Cr K Skinner

Cr J van Lieshout

RESOLVED that:

1. This matter be referred back to Optus to request public consultation within the next month.
2. Optus seek a suitable site for telecommunication with full community co-operation.
3. This matter be further considered at Council's meeting to be held in April.

Current Status: A response has been received from Optus. A Report to be prepared for April Council Meeting.

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: 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: Negotiations with land holder/proponent yet to commence.

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 to be scheduled.

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: Report to be prepared.

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MAYORAL MINUTE

3 [MM] Mayoral Minute for the Period 06 February to 05 March 2010

Councillors,

COMMITTEE MEETINGS:

Attended by the Mayor

- 26 Feb 2010 NOROC Meeting – Kyogle Council Offices
- 04 Mar 2010 TRAG Foundation Board Meeting – Tweed River Art Gallery

INVITATIONS:

Attended by the Mayor

- 09 Feb 2010 Saltwater Festival Launch – Mantra, Salt Resort
(also attended by Cr Dot Holdom)
- 16 Feb 2010 Kingscliff Chamber of Commerce – Saltbar, Salt
- 17 Feb 2010 4CRB Talkback radio - 8 Stevenson Court, Burleigh Heads
- 17 Feb 2010 Southern Cross University (SCU) – Official Opening of the Foundation Building of the new Gold Coast Campus – Gold Coast Campus, Southern Cross Drive, Bilinga (also attended by Crs Longland and van Lieshout)
- 18 Feb 2010 SCU Rising Stars Scholarship Presentation Ceremony – Beachside Campus, Southern Cross Drive, near Gold Coast Airport
- 02 Mar 2010 Cheque Presentation to Tweed District Rescue Squad – 4/27 Morton St, Chinderah
- 02 Mar 2010 Tweed Chamber of Commerce, Tweed City Shopping Centre boardroom, South Tweed
- 05 Mar 2010 Burringbar Mooball Cycleway Official Opening – Mooball Park (also attended by Crs Youngblutt and Longland)
- 05 Mar 2010 Murwillumbah Chamber of Commerce – RSL, Murwillumbah

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

- 12 Feb 2010 Regional Development Australia – Northern Rivers Meeting – Tweed Council Chambers, Murwillumbah (attended by Crs Milne, Longland, van Lieshout, Skinner)
- 24 Feb 2010 Installation of Membranes at Bray Park Water Treatment Plant (attended by Deputy Mayor, Cr Phil Youngblutt)

Inability to Attend by or on behalf of the Mayor

- 14 Feb 2010 Christ Church sermon by new Associate Pastor – Currumbin Primary School Assembly Hall, Philip St, Currumbin
 - 18 Feb 2010 Northern Rivers Carpool Community Launch - Lismore
 - 26 Feb 2010 Screenworks Producer Attachment Program - A & I Hall, Station Street Bangalow
 - 27 Feb 2010 Uki Water Meeting re water options for Community Water Augmentation Group – Uki Hall (attended by Cr Milne)
 - 04 Mar 2010 Bilambil Heights Landowners Group Meeting – Mt Warning Room, Tweed Council Offices, Murwillumbah
-

CONFERENCES:

Conferences attended by the Mayor and/or Councillors

- 6 Feb 2010 “A” Division Conference, Shires Association of NSW – Grafton Council Offices (attended by Crs Polglase, van Lieshout, Holdom, Milne)
- 23–26 Feb 2010 Floodplain Management Authorities Conference – Mingara Centre, Gosford (attended by Cr Kevin Skinner)
- 2 – 3 Mar 2010 Australian Coastal Councils Conference – Byron Community Centre, Jonson St (attended by Crs Longland, van Lieshout, Milne)

Information on Conferences to be held

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

- 14-17 Jun 2010 National General Assembly of Local Government – Canberra
-

SIGNING OF DOCUMENTS BY THE MAYOR:

- 9 Feb 2010 Transfer – Lot 1, DP 248515 and Part Lot 1 DP 774820 Eviron
- 11 Feb 2010 Licence Agreement – Berths 2,3,4,5 and 20 Southern Boat harbour, Tweed Heads
- 1 Mar 2010 Transfer Granting Easement – Lot 1 DP590220
- 2 Mar 2010 Licence Agreement – Berth 1, Southern Boat harbour, Tweed Heads
- 4 Mar 2010 Request – Land Acquisition – Cudgen Road, Duranbah

RECOMMENDATION:

That:-

1. **That the Mayoral Minute for the period 06 February to 05 March 2010 be received and noted.**
2. **The attendance of Councillors at nominated Conferences be authorised.**

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4 [WR-CM] Workshop Requests

CODE OF MEETING PRACTICE VERSION 2.0 PART 12 - WORKSHOPS

12.1 Request

Any future Councillor requested Workshop/Briefing sessions will only be programmed by resolution of Council (19 January 2010).

The following request(s) has been received from Councillors for Workshop(s):

Name of Councillor Making Request	Workshop Name	Comments
Cr Warren Polglase	Affordable Housing	Presentation to be made by external provider.
Cr Phil Youngblutt	Rural Land Zonings	
Cr Dot Holdom	World Rally Championship	Council considers inviting Dr Stephen Phillips (Biolink) to a workshop with Councillors and relevant staff to discuss his involvement and findings with regard to the Rally conducted in September 2009 and that consideration be given to inviting the local media to attend this workshop given the widespread media coverage of the inaugural event.

RECOMMENDATION:

That the following Workshops be scheduled:

Workshop Name	Suggested Date

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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE ACTING GENERAL MANAGER

5 [GM-CM] Tweed Kenya Mentoring Program - Operational Plan 2010-2015

ORIGIN:

General Manager

SUMMARY OF REPORT:

In September 2005 Council financially committed to the Tweed Kenya Mentoring Program and in so doing adopted an Operational Plan for the period 2005-2010.

In August 2007 Council considered a further report on the program and adopted a revised Operational Plan 2007-2010.

In January 2009 Council received a report detailing progress through 2008 and resolved to increase Council's contribution to match the contributions being made to the program by staff through a weekly payroll deduction.

Staff contributions are currently in the order of \$20,000 per year.

The program boasts an impressive list of achievements and is continually being recognised as a best practice model for delivering genuine long term and sustainable improvements in the quality of life of disadvantaged communities.

This report presents the program's Operational Plan 2010-2015 for council's consideration and recommends its adoption.

RECOMMENDATION:

That Council adopts the Tweed Kenya Mentoring Program Operational Plan 2010-2015.

REPORT:

In September 2005 Council financially committed to the Tweed Kenya Mentoring Program and in so doing adopted an Operational Plan for the period 2005-2010.

In August 2007 Council considered a further report on the program and adopted a revised Operational Plan 2007-2010.

In January 2009 Council received a report detailing progress through 2008 and resolved to increase Councils contribution to match the contributions being made to the program by staff through a weekly payroll deduction.

Staff contributions are currently in the order \$20,000 per year.

The program boasts an impressive list of achievements and is continually being recognised as a best practice model for delivering genuine long term and sustainable improvements in the quality of life of disadvantaged communities.

Operational Plan 2010-2015

Council staff and the Nairobi Desk have reviewed the program over the last six months and in so doing have produced the Operational Plan 2010-2015. The Plan is an attachment to this report.

Key achievements 2007-2010 are detailed in section 4 of the Operational Plan. On any assessment it is an impressive list given the (relative) small investment in the program.

Recent Developments

Alec and Mary Peden and Bert Thiess

On 5 May 2009 Alex and Mary Peden attended a presentation by Councils officer Tom Alletson on the successful delivery of Safe Water Project 2 at Tinga in Western Kenya.

So impressed with the outcomes being achieved Alec and Mary in association with Bert Thiess pledged \$30,000 per year to the program to deliver five Safe Water Projects over the next five years.

Safe Water 3

The Tweed Kenya Mentoring Program is currently in the midst of delivering its third Safewater Project in the Siaya region of western Kenya. Sebastian Garcia-Cuenca, an employee of Tweed Shire Council and TKMP volunteer, is travelling to Kenya at the end of March to deliver and commission the Safewater Project.

TKMP's third Safewater installation will again consist of a drinking water purification facility based around Skyjuice Foundation membrane filters. The site of this year's project is Ochilo Primary School.



Ochilo School

The project's primary aim is to supply clean potable water to 500 pupils at the primary school using Yawo Ochilo as the water source. The project will not only reduce incidences of disease, but also reduce the distance and time pupils spend going to fetch water during break and lunch by half. The head teacher Mr Saul indicated that pupils spend up to 30 minutes each time they go to the dam to fetch water for drinking. The pupils make three trips to the dam (break time, lunch and 4pm close of class) and would consume up to 3 litres per student.

"I have two of my children who attend this school...when schools close I was not at all taking them to hospital and I did not spend any money on medicine...but immediately the school opened in January, they started again to fall sick...one after the other...and it now costed me 400 Shillings to get them medicine...something tells me its because of this dam water...I really want to see this project." Mr James Omondi, village elder and representative of Ting Wangi area.

Weekly community meetings have been going on to include the school parent-teachers, chiefs barazas and local leaders promoting safe water as a way of life. One of Opondo's (TKMP Safewater Officer) jobs is to attend these meetings and speak about the project. At the meetings local support has been elicited for the project and also negotiation with the community on their role and contribution.



Safewater 3 kiosk under construction

Major funding contributors to Safewater 3 are Alec and Mary Peden and Bert Thiess, the Dickinson Family, Scandinavian Cone Company, staff contributions and Tweed Shire Council.

Olita Ogonjo

The TKMP Coordinator is Olita Ogonjo. In September 2009 Olita was the Inaugural Recipient of the Ken Thiess Memorial Scholarship for the Master of Integrated Water Management at the University of Queensland.

Olita has arrived in Australia and has commenced his Masters which will be completed over the next 12 months. Council's Waterways Program Leader, Tom Alletson, was successful in obtaining an International Water Centre scholarship for the same course which he is undertaking on a part time basis.

While in Australia the Program will be coordinated by David Opondo (Safewater Projects western Kenya) and Kori Kinuthia (TKMP Desk, Nairobi). Overall project management responsibility for Kenyan activities will remain with Olita who will be paid a proportional allowance for time allocated to the program.

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. Tweed Kenya Mentoring Program - Operational Plan 2010-2015 (ECM13587812)
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6 [GM-CM] Review of Economic Development and Tourism

ORIGIN:

Business & Economic Development

SUMMARY OF REPORT:

At its meeting on 18 August 2009 Council resolved to undertake a review of Council's involvement in economic development and tourism. The Centre for Local Government – University of Technology Sydney was engaged to undertake this review.

This report presents the findings of this review and makes recommendations for Council to continue to support tourism and economic development as core functions of Council's operations.

RECOMMENDATION:

That Council:-

- 1. Receives and notes the report on the review of the delivery of economic development and tourism.**
- 2. Invites tenders for the delivery of the following economic development and tourism services:**
 - a. Investigate and develop tourism product**
 - b. Marketing and promotion of Tweed for business investment**
 - c. Demographic and statistical research**
 - d. Operate Visitor Information Centres**
 - e. Prepare strategic tourism marketing and promotion plans (4 years)**
 - f. Detailed tourism marketing and promotion plan (1 year)**
 - g. Maintain and enhance tourism PR function.**
- 3. Commissions the projects listed below at a time Council considers it appropriate, with delivery being in accordance with Council's procurement policy:**
 - a. Health and ageing strategy**
 - b. Telecommunications infrastructure strategy**
 - c. Tweed agriculture and food production strategy**
 - d. Other industry development initiatives**
 - e. Skills development strategy**
 - f. Other projects identified from time to time.**

4. Delegates to the General Manager responsibility for conducting the tender process, including but not limited to:
 - a. Preparation of tender specifications
 - b. Preparation of draft contracts
 - c. Conduct of the tender process
 - d. Establishment of a panel to evaluate tenders received
 - e. Engagement of external probity and other advice if necessary.
5. Negotiates with Tweed Tourism to cancel the previously agreed 12 months extension of the current funding agreement, which is to commence on 1 July 2010.
6. Offers to extend the current funding contracts with Tweed Economic Development Corporation and Tweed Tourism by three months to 30 September 2010.
7. Advises the Division of Local Government, Department of Premier and Cabinet of its decision to extend the funding agreements with Tweed Economic Development Corporation and Tweed Tourism by three months to 30 September 2010 while it conducts the public tender process.
8. Deletes the following term of reference from the study brief:

"a. Review the success of TEDC and TT in delivering their key undertakings over the past four years."

and replace it with:

"a. Assist Council to prepare tender specifications for economic development and tourism services to be let for tender, and provide advice to Council on the tender process."
9. Further considers the positions of the elected members and staff currently serving on the boards of Tweed Economic Development Commission and Tweed Tourism following any probity advice received as a result of recommendation 4e.
10. Notes that 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:

At its meeting on 18 August 2009 Council resolved to undertake a review of Council's involvement in economic development and tourism. The Centre for Local Government's report to Council is presented below.



Report to Tweed Shire Council – REVIEW OF THE DELIVERY OF ECONOMIC DEVELOPMENT AND TOURISM

1 BACKGROUND

At its meeting on 18 August 2009, Tweed Shire Council resolved to undertake a review of Council's involvement in economic development and tourism.

1.1 TERMS OF REFERENCE

The primary term of reference is to review and provide advice on the delivery of Council's undertakings on its economic and tourism programs over the next four years. The method includes:

- a. Review the success of Tweed Economic Development Corporation (TEDC) and Tweed Tourism (TT) in delivering their key undertakings over the past four years.
- b. Research and provide comment on best practice models for the delivery of economic development and tourism promotion.
- c. Undertake key stakeholder meetings, including:
 - i. Councillors
 - ii. Executive staff
 - iii. TEDC
 - iv. Tweed Tourism.
- d. Provide recommendations on the structure and delivery of Council's economic development and tourism promotion programs.
- e. Facilitate at least two joint meetings with the key stakeholders to present the recommendations.

Following the consideration of expressions of interest, Council appointed the UTS Centre for Local Government (the Centre) to undertake the review. Professor Graham Sansom, the Director of the Centre and Melissa Gibbs, an associate of the Centre, are undertaking the review.

2 PROGRESS OF THE REVIEW

2.1 STAKEHOLDER CONSULTATIONS

In accordance with term of reference c. Graham Sansom and Melissa Gibbs attended a series of meetings in the Tweed on 24 and 25 November 2009. Specifically, meetings were convened with:

- Senior Council staff
- The Mayor
- Representatives of TEDC and TT
- A representative of the Department of Employment, Education and Workplace Relations
- The regional manager of Industry and Investment NSW
- Tweed Shire Councillors.

Consultations with representatives of the Chambers of Commerce began in late January 2010.

Workshop with councillors and senior staff

A key feature of the consultation stage was a workshop with councillors and senior staff on 24 November 2009. The workshop provided councillors and staff with the opportunity to:

- Outline expectations of the review process
- Identify areas of agreement and concern with the delivery of economic development and tourism in the Shire
- Discuss governance arrangements
- Identify goals and targets for economic development and tourism.

Key points coming out of the workshop were:

- Councillors expressed the strong view that an external body should continue to run the Visitor Information Centres (VICs)
- Council values the research and profiling undertaken by TEDC
- There is value in an external body being the "first port of call" for potential investors
- The current arrangement with TEDC undertaking economic development projects on behalf of council is working well
- TEDC should not be involved in land use planning
- There is a need to develop tourism product and infrastructure
- There needs to be a stronger focus on identifying industries that are acceptable to Council and then seek to attract such businesses to the Shire
- Clear targets should be set for delivering new jobs in the Shire.

2.2 REVIEW OF BEST PRACTICE MODELS – DUBBO CITY COUNCIL

A key stage in the review process is the examination of best practice models for delivering economic development and tourism. While undertaking research for this stage, the Centre found that Dubbo City Council uses a similar model to Tweed Shire Council for economic development. Dubbo City Council funds the Dubbo City Development Corporation (trading as Grow Dubbo) to provide economic development services, a similar arrangement to Tweed Shire Council's relationship with TEDC.

Dubbo City Council's contribution to Grow Dubbo is approximately \$300,000 per annum. Dubbo City Council has been relying on section 356 of the Local Government Act to provide funding to Grow Dubbo. Section 356 of the Act prescribes the requirements for a council providing financial assistance to others for the purpose of exercising its functions.

Division of Local Government, Department of Premier and Cabinet (DLG) inquiry into Dubbo City Council's funding of Grow Dubbo

The Centre's research into Grow Dubbo found that the Division of Local Government, Department of Premier and Cabinet (DLG) recently undertook inquiries into Dubbo City Council's funding of Grow Dubbo. One of the terms of reference for the inquiry was whether Council should have called tenders for the economic development services provided by Grow Dubbo. Given the level of funding involved, the DLG advised that it is not satisfied that Council's continued reliance on section 356 is in the public interest and/or in compliance with its statutory obligations to call tenders prior to entering into a contract.

Legal opinion

Given the implications of the DLG's advice to Dubbo City Council, the Centre immediately brought the matter to the attention of Tweed Shire Council's General Manager. The General Manager asked the Centre to seek an opinion from Maddocks Lawyers as to whether or not Tweed Shire Council is obliged to call tenders for the delivery of economic development and tourism, bearing in mind the DLG's advice to Dubbo City Council. In the event that tenders are required to be called before entering into contracts, the Centre also invited Maddocks to propose interim arrangements for the delivery of tourism and economic development in the Shire while Council prepares the necessary specifications and tender documents.

Maddocks provided its advice to the General Manager on 22 February 2010. A copy of the advice is at Attachment 1. The executive summary of the advice follows:

1. Whilst, technically, the discretionary power of Council to grant financial assistance to TT and TEDC for performing one of Council's functions may be exercised, pursuant to section 356 of the Local Government Act, it is our opinion that the *mandatory* requirements to call tenders *overrides* the discretionary power to award a grant of funds of \$150,000 or more.
2. In our opinion, the provision of the sum of about \$1 million by Council to TT and TEC provided for in the funding agreements between Council and TT and TEDC, triggers the requirement of Council to invite tenders as provided in section 55 of the Act and clause 165(2) of the *Local Government (General) Regulation 2005* (Regulation).

It would appear that a number of other councils in NSW will be similarly affected.

3 COUNCILLOR WORKSHOP ON 23 FEBRUARY 2010

As soon as he became aware of the Dubbo situation the General Manager convened a workshop of councillors and senior staff on 23 February 2010. Melissa Gibbs of the Centre also attended the workshop. The General Manager tabled the legal advice from Maddocks and councillors and staff discussed the implications of the advice. Councillors were clearly of the view that tenders would need to be called before long-term arrangements for the delivery of economic development and tourism could be secured.

Councillors saw this turn of events as an opportunity to review the services currently provided by TEDC and TT, and assess which services are best outsourced and which

services Council should retain. As part of their deliberations, councillors reviewed the outcomes of the workshop held on 25 November 2009 where agreement was reached on the areas of activity best delivered by external bodies. Councillors and senior staff identified the core functions of economic development and tourism outlined in the economic development and tourism strategic plans, and the options for delivery, either by:

- An external body through a public tender process (for ongoing economic development and tourism services)
- An external body through a professional service contract (for ad hoc, specialist projects)
- In house by Tweed Shire Council.

The outcomes of the deliberations are outlined in table 1 below.

Table 1 – Economic development and tourism activities and preferred methods of delivery

Area of activity	Core function or project?	Method of delivery
1. Investigate and develop tourism product	Core function	Public tender
2. Marketing and promotion of Tweed for business investment	Core function	Public tender
4. Demographic and statistical research for business investment	Core function	Public tender
4. Operate VICs	Core function	Public tender
5. Prepare strategic tourism marketing and promotion plans (4 years)	Core function	Public tender
6. Detailed tourism marketing and promotion plans (1 year)	Core function	Public tender
7. Maintain and enhance tourism PR function	Core function	Public tender
8. Health and ageing	Project	Professional services arrangement – project timing to be determined, and delivery to accord with Council's procurement policies
9. Telecommunications infrastructure	Project	Professional services arrangement – project timing to be determined, and delivery to accord with Council's procurement policies
10. Tweed agriculture and food production	Project	Professional services arrangement – project timing to be determined, and delivery to accord with Council's procurement policies

Area of activity	Core function or project?	Method of delivery
11. Other industry development initiatives	Project	Professional services arrangement – project timing to be determined, and delivery to accord with Council's procurement policies
12. Skills development	Project	Professional services arrangement – project timing to be determined, and delivery to accord with Council's procurement policies
13. Transport infrastructure	Core function of TSC	In house
14. Tweed Heads CBD revitalisation project	Core function of TSC	In house
15. Murwillumbah Master Plan	Core function of TSC	In house
16. Water infrastructure	Core function of TSC	In house
17. Employment generating lands	Core function of TSC	In house
18. Provide regular progress reports and detailed financial reports to Council	Contract management issue	KPIs and reporting requirements to be specified and included in contract documentation
19. Provide regular reports to council for dissemination to the community	Operational issue	KPIs and reporting requirements to be specified and included in contract documentation
20. Separate VIC operations in budget and reporting	Operational issue	KPIs and reporting requirements to be specified and included in contract documentation
21. Advise regional/ state/ federal tourism agencies	Operational issue	KPIs and reporting requirements to be specified and included in contract documentation
22. Tweed and Northern Rivers Economic Model	N/A	Remains an asset of TEDC
23. Cross-border issues	Neither a core function nor a project	N/A
24. Investigate ways to increase funding and membership	Not relevant to TSC	N/A
25. Provide industry advice on product development issues	Not a core function	N/A

Summary of services and preferred method of delivery

Public tender to deliver the following services:

- Investigate and develop tourism product
- Marketing and promotion of Tweed for business investment
- Demographic and statistical research
- Operate VICs
- Prepare strategic tourism marketing and promotion plans (4 years)
- Detailed tourism marketing and promotion plan (1 year)
- Maintain and enhance tourism PR function.

Professional services contract to deliver the following projects:

- Health and ageing
- Telecommunications infrastructure
- Tweed agriculture and food production
- Other industry development initiatives
- Skills development.

In house Council function:

- Transport infrastructure
- Tweed Heads CBD revitalisation project
- Murwillumbah Master Plan
- Water infrastructure
- Employment generating lands.

Interim arrangements

Councillors would be aware that the funding agreements with both organisations expire on 30 June 2010. At the 23 February workshop, councillors and senior staff were of the view that TEDC and TT should be offered a three months extension to the existing contract until 30 September 2010. This would allow time for Council staff to prepare tender documents and conduct the tender process. The value of the services to be provided for three months is under the tendering threshold figure of \$150,000, and has been presented as an option in the legal advice from Maddocks.

Maddocks also suggested that it would be prudent to advise the DLG of its intention to extend the relationship with TT and TEDC, which is directly analogous to Dubbo City Council's interim arrangements.

4 ADVANTAGES OF COUNCIL ASSUMING A MORE ACTIVE ROLE IN SETTING VISION AND STRATEGIC DIRECTION

There are a number of compelling reasons for Council to set the long-term vision for economic development and tourism in the Shire. Some of these were discussed at the 23 February workshop:

- **Integrated planning and reporting**

The new integrated planning and reporting legislation requires councils to work with the community to develop a long-term Community Strategic Plan (CSP). The purpose of the plan is to identify the community's key priorities and aspirations for the future. The

integrated planning and reporting reforms have been introduced to ensure councils play the primary role in working with the community to set the long-term vision for the community and translate the strategic goals of the CSP into actions via a Resourcing Strategy, a four-year Delivery Program and an annual Operation Plan.

It is evident from the work undertaken by Council to date in the development of its CSP that economic development and tourism will feature prominently in the plan, leaving no doubt as to their status as a core function of Council. It is therefore imperative that Council assume responsibility for setting the vision for economic development and tourism, in the same way it shapes and directs other key council functions, like infrastructure planning and provision, strategic land use planning and community development.

Council's enhanced role in setting the long-term direction of economic development and tourism will logically lead to a review and refocus of the current strategic plans in the medium-term, to ensure the plans align with the community's aspirations as outlined in the CSP. It may also necessitate a review of the internal structure for economic development and tourism within the organisation, and possibly also a review of resource allocation over time.

- **Governance**

The Boards of TEDC and TT operate independently of Council. In the case of economic development, this has given rise to TEDC and Council sometimes adopting conflicting policy positions. The potential for policy conflict is also there with tourism, although to date it has not eventuated. In addition, TEDC has sought to become involved in some land use planning issues, which are clearly the responsibility of Council.

While Council has a number of representatives on the Boards of both corporations (staff and councillors), those representatives are required to represent the interests of the corporations under the Corporations Act 2001 at Board meetings. This gives rise to the potential for conflict between councillors' role on the Board and the exercise of their Council functions and responsibilities, and in the case of employees, conflict with their delegated functions and roles as employees of Council.

After it moves into a strict service delivery arrangement, Council will need to review its relationship with both TEDC and TT in the medium-term, and perhaps consider a review of the advisory role played by both organisations. It would be prudent for Council to review these advisory arrangements after the tender process is concluded so as not to confuse the two issues.

- **Reporting**

The reporting requirements of corporations are not as exhaustive as the reporting requirements of Council, and many matters considered by the corporations are commercial-in-confidence. While Council requires quarterly reports and financial statements, the differing reporting structures sometimes gives rise to Council feeling not fully informed about the full operations of the corporations.

- **Public participation and accountability**

Council is accountable to the community, and has many systems and processes in place to enshrine community engagement and public participation in its planning and reporting. There are other controls within the organisation that ensure accountability and transparency. The same level of scrutiny and engagement is not required of corporations to deliver what is a core function of Council.

By assuming a more prominent role in setting the vision and strategic direction of economic development and tourism in the Shire, and by tightening up accountability and probity requirements in a new contractual arrangement to deliver specified services, Council will go a long way towards addressing these issues.

5 TIMING

Assuming Council resolves to call tenders at the meeting on 16 March 2010 for the services identified in this report, the following timetable is proposed for conducting tenders:

- *Prepare tender documents* – 17 March to end of April 2010
- *Advertise tender in the Local Government tenders section of the Sydney Morning Herald* – Tuesday 4 May 2010
- *Tender period* – 4 May to 2 June 2010 (longer than the mandatory 21 day period)
- *Tender close* – Wednesday 2 June 2010
- *Tender evaluation and preparation of report to Council* – 3 June to 12 July 2010
- *Council consideration of tender report and recommendations* – Council meeting on 20 July 2010.

6 REVIEW OF TERMS OF REFERENCE OF THE REVIEW

As can be seen from this report, most of the terms of reference for the review have been substantially completed. However, the emergence of the DLG's review of Dubbo City Council's economic development arrangements, and the need for Tweed Shire Council to call tenders for economic development and tourism, renders term of reference a. redundant. Term of reference a. is to review the success of TEDC and TT in delivering their key undertakings over the past four years.

It is therefore proposed to delete term of reference a. and replace it with a new term of reference that would see the Centre assisting Council to prepare the tender specifications for the services to be let for tender, and advising Council on the tender process.

7 RECOMMENDATIONS

1. That Council receive and note the report on the review of the delivery of economic development and tourism.
2. That Council invite tenders for the delivery of the following economic development and tourism services:
 - a. Investigate and develop tourism product

- b. Marketing and promotion of Tweed for business investment
 - c. Demographic and statistical research
 - d. Operate VICs
 - e. Prepare strategic tourism marketing and promotion plans (4 years)
 - f. Detailed tourism marketing and promotion plan (1 year)
 - g. Maintain and enhance tourism PR function.
3. That Council commission the projects listed below at a time Council considers it appropriate, with delivery being in accordance with Council's procurement policy:
 - a. Health and ageing strategy
 - b. Telecommunications infrastructure strategy
 - c. Tweed agriculture and food production strategy
 - d. Other industry development initiatives
 - e. Skills development strategy
 - f. Other projects identified from time to time.
4. That Council delegate to the General Manager responsibility for conducting the tender process, including but not limited to:
 - a. Preparation of tender specifications
 - b. Preparation of draft contracts
 - c. Conduct of the tender process
 - d. Establishment of a panel to evaluate tenders received
 - e. Engagement of external probity and other advice if necessary.
5. That Council negotiate with Tweed Tourism to cancel the previously agreed 12 months extension of the current funding agreement, which is to commence on 1 July 2010.
6. That Council offer to extend the current funding contracts with Tweed Economic Development Corporation and Tweed Tourism by three months to 30 September 2010.
7. That Council advise the Division of Local Government, Department of Premier and Cabinet of its decision to extend the funding agreements with Tweed Economic Development Corporation and Tweed Tourism by three months to 30 September 2010 while it conducts the public tender process.
8. That Council delete the following term of reference from the study brief:
 - a. *Review the success of TEDC and TT in delivering their key undertakings over the past four years*and replace it with:

Assist Council to prepare tender specifications for economic development and tourism services to be let for tender, and provide advice to Council on the tender process.
9. That Council further consider the positions of the elected members and staff currently serving on the boards of Tweed Economic Development Commission and Tweed Tourism following any probity advice received as a result of recommendation 4e.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

This report recommends that Council revise its current contractual arrangements with Tweed Economic Development Corporation (TEDC) and Tweed Tourism. It also recommends that Council tender for these services.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. **Confidential Attachment** - Privileged advice from Maddocks Lawyers (ECM 13582438)
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7 [GM-CM] Tweed Economic Development Corporation (TEDC) Quarterly Financial Report - December 2009

ORIGIN:

General Manager

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 to December 2009 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 receives and notes the:

- 1. Quarterly financial report from Tweed Economic Development Corporation to December 2009.**
- 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:

This report recommends Council endorses the quarterly financial report as required by Tweed Economic Development Corporation's funding agreement. This report is presented as a confidential attachment to this report.

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** - Quarterly Financial Statement to December 2009 (ECM 13581379).
-

8 [GM-CM] Second Round Applications for Financial Assistance 2009/2010 - Donations Policy**ORIGIN:****General Manager****SUMMARY OF REPORT:**

Tweed Shire Council recognises a need to assist non-profit community groups, organisations and individuals who are interested in and are working towards the enhancement and the well being of its residents and the Shire.

Council advertises and invites applications for financial assistance from eligible organisations in accordance with its Donations Policy twice a year under Section 356 of the Local Government Act, 1993. Applications for financial assistance close at the end of July for the first round and end of February for the second round.

Second round applications for financial assistance were invited under Council's Donations Policy and closed on 26 February 2010.

RECOMMENDATION:**That Council:**

1. **Allocates the Second Round Donations for 2009/2010 under the Donations Policy as follows:-**

<u>Applicant</u>	<u>Amount Approved</u>
Twin Towns Friends Association Inc.	\$2,000
Coolangatta-Mt Warning Dragon Boat Club Inc	\$1,000
Blind Citizens Australia, Tweed Valley Branch	\$1,250
Northern Region SLSA Helicopter Rescue Service	\$2,000
2010 NSW Fire Fighter State Championships	\$2,000
Uki Sports & Recreation Club Inc	\$2,000
TOTAL	\$10,250

2. **ATTACHMENT 1 as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**

(a) *personnel matters concerning particular individuals (other than councillors)*

REPORT:

Tweed Shire Council recognises a need to assist non-profit community groups, organisations and individuals who are interested in and working towards the enhancement and the well being of its residents and the Shire.

Council advertises and invites applications for financial assistance from eligible organisations in accordance with its Donations Policy twice a year under Section 356 of the Local Government Act, 1993. Applications for financial assistance close at the end of July for the first round and end of February for the second round.

The following criteria is required to be used to determine the applications:

- No financial assistance will be given to privately owned businesses/companies.
- Organisations must be Tweed based or the funds are to be used on a service or activity for Tweed.
- No financial assistance will be given to Government Departments or agencies or for support of Government owned facilities.
- The funds are not to be used for a social activity for members of the organisation exclusively.

The 2009/2010 Budget was prepared on the following basis:

\$23 121	Donations Funding
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An amount of funding under the Donations Policy in round one was \$8,790. The amount available for allocation in round two is \$14,331.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

An amount of \$10,250 is recommended for distribution in the second round.

POLICY IMPLICATIONS:

Donations Policy.

UNDER SEPARATE COVER/FURTHER INFORMATION:

<i>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).</i>
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1. **Confidential Attachment** - Donations Policy Assessment Table (ECM13579198)
-

9 [GM-CM] Second Round Applications for Financial Assistance 2009/2010 - Festivals Policy

ORIGIN:

General Manager

SUMMARY OF REPORT:

Tweed Shire Council recognises a need to assist non-profit community groups, organisations and individuals who are interested in and are working towards the enhancement and the well being of its residents and the Shire.

The main objective in the Tweed Shire Festivals and Events Strategic Plan 2008-2013 is to increase the quality and effectiveness of all the Tweed Festivals and Events.

The Council recognises the importance of festivals and events to the quality of life offered in the Tweed Shire and their significant economic benefits to tourism and other industries.

Council advertises and invites applications for financial assistance from eligible organisations in accordance with its Festivals Policy twice a year under Section 356 of the Local Government Act, 1993. Applications for financial assistance close at the end of July for the first round and end of February for the second round.

Second round applications for financial assistance were invited under Council's Festivals Policy and closed on 26 February 2010.

RECOMMENDATION:

That:

- 1. Council allocates the Second Round Donations for 2009/2010 under the Festivals Policy as follows:**

<u>Applicant</u>	<u>Amount Approved</u>
Cabarita Beach-Pottsville Beach Lions Club Inc	\$3,000
Murwillumbah Festival of Performing Arts Inc	\$4,000
Northern Rivers Symphony Orchestra	\$2,000
Caldera Environment Centre	\$2,324
Murwillumbah Community Centre Inc	\$3,000
Tweed River Agricultural Society Ltd	\$7,000
2010 NSW Fire Fighter State Championships	\$3,000
Tyalgum Festival of Classical Music	\$5,000
Ukitopia Arts Festival	\$1,500
TOTAL	\$30,824

- 2. Council allocates to Wintersun Festival an extension to the three year multi-year funding agreement of one more year at the current rate of**

\$10,000 while the Festival is reviewed and future multi-year funding agreements options are considered.

3. ATTACHMENT 1 as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-

(a) *personnel matters concerning particular individuals (other than councillors)*

REPORT:

Tweed Shire Council recognises a need to assist non-profit community groups, organisations and individuals who are interested in and working towards the enhancement and the well being of its residents and the Shire.

The main objective in the Tweed Shire Festivals and Events Strategic Plan 2008-2013 is to increase the quality and effectiveness of all the Tweed Festivals and Events.

Tweed Shire has a diverse range of festivals and events each year that attracts a combined audience of almost 200,000 from the community and visitors to the Tweed.

The Council recognises the importance of festivals and events to the quality of life offered in the Tweed Shire and their significant economic benefits to tourism and other industries.

Council advertises and invites applications for financial assistance from eligible organisations in accordance with its Festivals Policy twice a year under Section 356 of the Local Government Act, 1993. Applications for financial assistance close at the end of July for the first round and end of February for the second round.

The 2009/2010 Festivals Budget was prepared on the following basis:

\$55,669	General
\$10,000	Wintersun multi-year funding

An amount of \$19,500 was allocated in the first round and a further amount of \$5,345 was allocated to Twin Towns Services Club for the New Years Eve community celebrations at Jack Evans Boat Harbour. The amount available for allocation in round 2 is \$30,824.

Applicant	Amount	Festival
Cabarita Beach-Pottsville Beach Lions Club Inc	\$3,500	Lions Charity Greenback Tailor Fishing Competition
Murwillumbah Festival of Performing Arts Inc	\$4,000	Murwillumbah Festival of Performing Arts Inc.
Northern Rivers Symphony Orchestra	Amount between \$2,000 to \$5,000	The Gala Open Air Gala Concert
Caldera Environment Centre	\$2,000	World Environment Day Festival
The Unity Festival Inc	\$4,000	Unity Festival
Murwillumbah Community Centre Inc	\$3,000	Belly to Big School Program
Tweed River Agricultural Society Ltd	\$7,000	Murwillumbah Show
Tyalgum Festival of Classical Music	\$5,000	Festival 2010
TOTAL	\$33,500	

<u>Applicant</u>	<u>Amount Approved</u>
The Unity Festival Inc	\$1 000
Caldera Regional Arts Incorporated	\$1 000
Tweed Valley Banana Festival	\$7 500
Island Style Promotions/Gold Coast Malibu Club	\$3 000
Friends of the Tweed River Art Gallery Inc and	
Tyalgum Festival Committee Inc.	\$6 000
The Combined Orchid Societies	\$1 000
TOTAL	\$19 500

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

An amount of \$30,824 is recommended for distribution in the second round.

POLICY IMPLICATIONS:

Festivals 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. Confidential Attachment - Festivals Policy Distribution List (ECM13580320)

10 [GM-CM] Code of Conduct - Complaint against Cr Youngblutt

ORIGIN:

General Manager

FILE NO: Complaint; Code of Conduct; Code of Conduct Review

SUMMARY OF REPORT:

A Code of Conduct complaint from Mr Jeremy Cornford against Cr Youngblutt was referred to a Sole Reviewer for determination in accordance with the relevant sections of the Code of Conduct and the Conduct Review Committee/Sole Reviewer Policy.

RECOMMENDATION:

That Council receives and notes the report and findings of the Sole Reviewer into the complaint against Cr Phil Youngblutt and determines any appropriate actions.

REPORT:

On 30 November 2009 Mr Jeremy Cornford lodged a complaint against Cr Youngblutt. The complaint referred to a discussion held between Cr Youngblutt and Cr Milne at the Council meeting on 17 November 2009.

The complaint was referred to Mr John Hawkins who was engaged as a Sole Reviewer to investigate the complaint.

The following report was received from Mr Hawkins on 27 January 2010.

Report and Findings of the Sole Reviewer, John Hawkins into Complaints against Cr Phil Youngblutt dated 30 November 2009 by Mr Jeremy Cornford

The Complaint

By letter dated 30 November 2009 Mr Jeremy Cornford complained that the comment allegedly made by Cr Youngblutt to Katie Milne during the Tweed Shire Council meeting at Murwillumbah Chambers on 17th November 2009 namely, "Why don't you go outside and have a cry", breached the undermentioned sections of the Council's Code of Conduct.

The Code of Conduct

I set out here under sections of the Code of Conduct allegedly breached by Councillor Youngblutt.

Section 4.2

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the Council. This means promoting public duty to others in the Council and outside by your own ethical behaviour.

Section 4.8

You must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision making.

Section 6.1 (e)

You must not conduct yourself in carrying out your functions in a manner that is likely to bring the Council or holders of civic office into disrepute. Specifically; you must not act in a way that:

- (e) causes, comprises or involves intimidation, harassment or verbal abuse.*

Section 6.3

You must treat others with respect at all times.

Section 6.7

You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

Section 9.5

You must act in accordance with Council's Code of Meeting Practice, if Council has adopted one, and the Local Government (General) Regulation 2005 during council and committee meetings.

Section 9.6

You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

PRELIMINARY INVESTIGATIONS

1. *By letter dated 11 December 2009 Mr Mike Rayner, General Manager of Tweed Shire Council, appointed John Hawkins, a member of the Conduct Review Committee, Sole Reviewer and Chair for the purpose of investigating and reporting upon the complaints by Mr Jeremy Cornford against Councillor Youngblutt detailed in his letter dated 30th November 2009.*
2. *On the 7th January 2010 the complainant was personally interviewed by Mr Hawkins. On this occasion Mr Cornford acknowledged that he was not present when the words "Why don't you go outside and have a cry" were allegedly spoken by Councillor Youngblutt when addressing Councillor Milne. Thus the complainant was also unaware of the precise context of the remark and of any conversation that may have provoked it. Mr Cornford also referred to several publications of the said remark although these are not recited in his complaint.*
3. *On the 7th January 2010 Councillor Milne was interviewed by Mr Hawkins. On this occasion she noted the terms of Councillor Youngblutt's suggestion that she 'go outside and have a cry' were accurate and offensive to her. Councillor Milne did not raise any complaint against the said comment but observed that Councillor Youngblutt's general approach to her when they met in Chambers was aggressive and unpleasant, which she attributed to "political differences".*
4. *The Sole Review has undertaken a study of the Code of Conduct and numerous findings upon previous complaints.*

FINDINGS

Section 4.2

This section provides that Council and staff have a duty to promote and support the key principles of the Code of Conduct by leadership and example and to maintain the public's trust and confidence in the integrity of the council. This means promoting public duty to others in the council and outside by your own ethical behaviour.

The remark to Councillor Milne by Councillor Youngblutt, quoted out of context, may well have constituted a light hearted aside and if so would fall outside the broad principles recited by this section. Thus a clear breach has not been demonstrated.

Section 4.8

This section provides that Councillors and staff must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision making.

Notwithstanding the lack of conversational context, the words chosen by Councillor Youngblutt are clearly disrespectful to Councillor Milne and constitute a breach of this section of the Code of Conduct accordingly.

Section 6.1 (e)

This section provides that Councillors and staff must not conduct themselves in carrying out their functions in a manner that is likely to bring the council or holders of civic office into disrepute. The sub-section (e) prohibits acting in a way that causes, compromises or involves intimidation, harassment or verbal abuse.

The suggestion that Councillor Milne "go outside and have a cry" is clearly an inappropriate remark but not one of the kind contemplated by this section.

Section 6.3

This section provides that Councillors and staff must treat others with respect at all times.

It is clear that the words "go outside and have a cry" are disrespectful of Councillor Milne and thus constitute a breach of the Code of Conduct.

Section 9.5

Council has adopted a Code of Meeting Practice but there is no evidence that a Point of Order has been taken thereunder, with respect to the subject remark.

Section 9.6

Councillors must show respect to the chair, other Council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

The aforesaid suggested by Cr Youngblutt that Cr Milne go outside and have a cry, regardless of the context of the remark, constitutes a clear breach of the Code of Conduct under this section.

RECOMMENDATION

I suggest that this report be submitted to Council and that Councillor Youngblutt be given some assistance regarding appropriate verbal communication.

Upon reading the report the General Manager determined that it had not been conducted in accordance with the procedural fairness requirements of the Code in that Cr Youngblutt had not been provided with an opportunity to defend the allegation made against him.

Consequently, the following instruction was provided in letter form to Mr Hawkins on 8 February 2010:

Council Reference: Code of Conduct; Conduct Review Committee
Your Reference:

8 February 2010

Mr John Hawkins
Unit 8
2 Haig Street
KIRRA QLD 4225

Dear Mr Hawkins

Code of Conduct Complaint against Cr Youngblutt

I refer to your Code of Conduct report of 27 January 2010. The report dealt with a complaint lodged by Mr Cornford against Cr Youngblutt dated 30 November 2009 relating to comments allegedly made by Cr Youngblutt to Cr Milne.

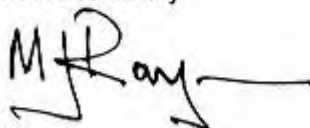
I note from your report that you have interviewed both Mr Cornford and Cr Milne.

It would appear that you have not interviewed Cr Youngblutt in accordance with Section 14.7 of the Code of Conduct – Procedural Fairness.

In accordance with Section 14.7 you are required to provide an opportunity for Cr Youngblutt to respond to the allegations against him. If he declines or fails to take up this opportunity you can proceed to finalise the matter.

I request you give consideration to the matter raised above and take action as appropriate.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M Rayner', with a horizontal line extending to the right.

Mike Rayner
GENERAL MANAGER

As a result of that instruction Mr Hawkins interviewed Cr Youngblutt and other Councillors and provided the following Supplementary Report.

Supplementary Report of the Sole Reviewer, John Hawkins into Complaints against Cr Phil Youngblutt dated 30 November 2009 by Mr Jeremy Cornford

Preamble

My earlier report was based on the understanding that Council was in session on the 17 November 2009 when the remark complained of was addressed by Cr Youngblutt to Cr Milne. In such a case the Code of Conduct would apply.

I have recently had the benefit of conferences with Cr Youngblutt, Cr Holdom and Cr Kevin Skinner.

The Interviews

Whilst each Councillor was interviewed separately and privately, the following observations were made concerning the remark of Cr Youngblutt to Cr Milne by each of them.

1. On the occasion in question Councillors Youngblutt, Holdom and Skinner were engaged in a private conversation following the formal adjournment of Council's meeting and thus council was not in session at the time.
2. Cr Milne interrupted the said conversation and confronted Cr Youngblutt on matters of concern to her. Cr Youngblutt responded in the manner complained of.

The Code of Conduct

This document is a comprehensive guide designed to assist Councillors and Council staff in achieving standards of excellence in the conduct of their duties, not only in formal meetings but also on a day to day basis. It clearly does not apply to the content of private conversations.

Conclusion

The remark complained of was made during such a private conversation and The Code of Conduct does not apply to this situation.

RECOMMENDATION

That no further action be taken in this matter and that Cr Youngblutt and the complainant be advised accordingly.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

UNDER SEPARATE COVER:

Nil.

REPORTS FROM THE ACTING 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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11 [PR-CM] Development Application DA08/1056 for a Conversion of an Existing Farm Shed to Rural Workers Dwelling at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay

ORIGIN:

Development Assessment

FILE NO: DA08/1056 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 95%.

The SEPP No. 1 variation relates to Clause 18(3) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to the erection of a rural worker's dwelling on land zoned 1(a) where the allotment of land has a minimum area of 40 hectares. Lot 1 DP 803636 has a total area of 2.04 hectares and is zoned exclusively 1(a). The subject site has an active cropping area of 6500m² (0.65ha).

The applicant seeks consent for the conversion of an existing farm shed to rural worker's dwelling, which is located within a rural residential and agricultural area, four kilometres north of Murwillumbah. The subject site was created through a series of subdivisions over the last thirty three years from an original parcel of 63.2 hectares and was used for agricultural purposes until 1989 as part of adjacent Lot 2 DP 803636, which now has an area of 27.42 hectares.

The farm shed was approved on 4 September 2006. In breach of Condition 26 of the development consent, the farm shed has been converted for use as a dwelling, being used for this purpose, as confirmed by the applicant since 2008.

Concurrence was not granted by the Director General in this instance to convert the existing farm shed to a rural workers dwelling, for the following reasons:

- One dwelling already exists on this small lot of 2.04 hectares; the proposal will allow for a second dwelling on the subject land which is approximately 95% below the 40 hectare minimum lot size development standard. To allow an additional dwelling on this size lot is likely to affect the rural character of the area in the vicinity;

- The subject land is designated as 'Regionally Significant Farmland' (Northern Rivers Farmland Protection Project Map 2005) and is to be protected from unnecessary development. It has not been established that the rural worker's dwelling is necessary to the operation of the farm in the long term. The existing farm shed is likely to be used for storage purposes and there is no information provided as to alternative arrangements, on this small lot, for the storage of agricultural produce. In addition, there is no planning mechanism to return the rural worker's dwelling to a farm shed should the particular set of circumstances relating to this case cease or change;
- In relation to genuine need for on-farm accommodation, the letter from the Department of Primary Industries (DPI) dated 10 February 2009, does not support this contention. DPI suggests that in coastal regions, farms are smaller and relatively close to a population centre, therefore, on site accommodation is rarely necessary or essential. The township of Murwillumbah is located 4 to 5 kilometres to the south of the subject land and the percentage of rented properties in Murwillumbah is similar to the national average. The rural worker's requirement for affordable housing should not be met through SEPP 1, as this will circumvent the proper strategic planning processes set in place to address these matters through the local environmental planning process. The issue of affordable accommodation may be further indication that the property is unlikely to support two full time employees in the longer term; and
- The grounds of objection to the development standard cannot be based on personal hardship as is the case in this instance, i.e. the landowner (age and health status restricting agricultural pursuits) and the rural worker (a requirement for affordable housing). The Land and Environment Court has repeatedly held that personal hardship does not provide adequate grounds for objection in this context.

The proposal was placed on public exhibition and did not attract any objections or letters of support.

Having regard to relevant statutory controls and an assessment against Clause 18 in particular, of the Tweed LEP 2000, the proposed conversion of an existing farm shed to rural workers dwelling is not considered suitable for the location and therefore the proposed development is recommended for refusal. This recommendation is in accordance with direction from the Department of Planning.

RECOMMENDATION:

That: -

- A. Development Application DA08/1056 for the conversion of an existing farm shed to rural workers dwelling at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay be refused for the following reasons:**
 - 1. The Department of Planning has not issued concurrence.**
 - 2. The proposed land use does not comply with the 40 hectare minimum development standard contained within Clause 18(3) of the Tweed LEP 2000.**

3. The SEPP 1 objection has not demonstrated that the development standard is unnecessary and unreasonable.
-
- B. Council engages it's Solicitors to commence legal proceedings (for a breach of the Environmental Planning and Assessment Act 1979) in respect of the unauthorised works at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay, and seek reinstatement of the use as farm shed as part of the legal proceedings.

REPORT:

Applicant: J Griffis and P Griffis
Owner: Mr J Griffis and Mrs PJ Griffis
Location: Lot 1 DP 803636, No. 9 Sanderson Place Dungay
Zoning: 1(a) Rural
Cost: \$70,000

BACKGROUND:

The Subject Site

The subject land is described as Lot 1 DP 803636, 9 Sanderson Place, Dungay and has a total area of 2.04 hectares.

The site is an irregular, rectangular shaped allotment with a frontage of 41.15m to Tomewin Road and 67m to Sanderson Place. It has a depth of approximately 280m and is relatively flat land. Development is proposed at the rear of the site where the Farm Shed is currently located some 26m from the rear boundary and 10m from the eastern boundary.

Vehicular access to the site is from Sanderson Place only. Power is available to the site. Provision of an on-site water supply and upgrading of an existing waste management system is required.

The site is located in an area generally characterised as rural. Surrounding development is low-intensity rural residential and agricultural cropping and grazing. At least half a dozen rural residential dwellings and a small school are located within a 300m radius of the subject site, the closest of which is within 80m of the site boundary closest to the farm shed.

Council mapping indicates that an area of approximately 6500m² (0.65ha) is actively used for cropping, which is 31.8% of the total site area.

Existing improvements include the main dwelling, associated pool, tractor shed and unsealed access along the western boundary to the rear of the site. The only prominent vegetation is located within the vicinity of the main residence and along the road frontages of Sanderson Place and Tomewin Road.

The Proposed Development

The applicant seeks consent for the conversion of an existing 360m² farm shed to three bedroom rural worker's dwelling. The proposed development involves:

- Alteration of internal walls and general fitout
- Plumbing work to an existing kitchenette and bathroom (modified)
- Plumbing work to a proposed laundry and additional WC
- Installation of windows and doors
- Creation of a garage area.

The applicant states that the dwelling will be used by a farm manager employed on the property to carry out duties associated with an existing small cropping operation.

Access to the rural workers dwelling will be by way of an unsealed driveway running along the length of the western property boundary from the Sanderson Place frontage. Car parking provision has been made available in an 8m x 12m garage (96m²) within the existing farm shed.

The applicant's submission in support of the development application offers further information about the proposal and current business activities undertaken on the site.

The applicant states that:

- Farming of the land is undertaken by the family company
- Over the last five years, small crop farming has been carried out initially to send produce to vegetable markets in Sydney and Brisbane
- The owners of the land are retired pensioners who, due to personal medical problems are unable to assist in the physical side of vegetable growing and harvesting
- The owners are absent from the property regularly
- Profits average \$36,518 per year
- The manager will be required on a daily basis year round apart from a break for annual leave
- Frost free varieties of vegetables will be grown allowing saleable produce in the winter months
- This will require installation of cool room facilities in which to store vegetables.

The proposed road extension on the site plan refers to land that is not within the ownership of the applicant. It should be disregarded. Access to the farm shed, as outlined above is via the existing unsealed access along the western boundary of the subject site.

It is unclear as to whether the rural worker's dwelling is intended to be used for workers on Lot 2 DP 803636 as well as the subject site, as the previous application for the farm shed mentions that the applicant also has use of the neighbouring property to expand operations.

History

Title Details

The subject site, current Lot 1 DP 803636 (2.04ha) was created from a subdivision of Lot 4 DP 594636 in 1989. The parent lot had an area of 29.54ha. Sanderson Place was created through this subdivision and adjacent Lot 2 DP 803636 retained an area of 27.42ha.

Lot 4 DP 594636 had been created from a subdivision of Lot 3 in DP 590025 in 1977. The parent lot had an area of 58.86ha (excluding roads by dedication) and both created allotments 3 and 4 were equal in size at 29.54ha.

Lot 3 DP 590025 had been created from a subdivision of Part and Portions 5 and 6 in the Parish of Kynnumboon in 1976. The parent lot had an area of 63.2ha. Two smaller lots were created with frontage to Tomewin Road, Lot 1 with an area of 2.983 ha and Lot 2 with an area of 1.358ha.

Applications

A 65m tractor shed was approved 21 June 1991 by way of 0664/91B.

An Aqua Nova Aerated Septic application was approved 11 July 1994.

B435/89 (dwelling and pool)

This development application was lodged 23 March 1989 at the same time as subdivision, and approved 23 August 1989. It included a 540.3m² four-bedroom, single dwelling to be constructed of brick veneer with colorbond roofing. This main dwelling is located at the northern end of the subject site with frontage to Tomewin Road.

DA06/0827 (farm shed)

This development application was lodged 27 July 2006 for a 360m² farm shed to be used for 'processing small crops, storage of farm consumables, maintenance of farm plant and general farm shed usage'.

It was located 120m from the existing dwelling with a 10m setback from the eastern side boundary. There was a garage door and window on the western elevation, garage door and door opening on the eastern elevation and no openings on the northern and southern elevations.

The approved floor plan shows employee facilities such as a kitchenette with sink and shower, toilet and hand basin in a separate bathroom area with direct access from outside of the shed. The lodged floor plan included a laundry which was not approved on the final plan.

The septic tank was to be pumped to the existing enviro-cycle system attached to the main residence.

Use of the shed was proposed as a facility for workers (approximately 5 family members) who lived part-time in the existing residence. The owners wanted the existing residence not to be used by the workers.

Land use of 1 hectare was specified as 'small crop growing' between September to July each year. There was also use of the neighbouring property (Lot 2 DP 803636) to expand operations.

There was no upgrade to the current septic system required but the applicant needed to install the new septic collection well and pump. Town water is not available to the site.

The farm shed was approved with no Section 94 contributions levied. Of note were:

- Condition 11: The finished floor level of the bathroom should finish not less than 225mm above finished ground level
- Condition 26: The building is not to be used for any habitable, commercial or industrial purpose.

The owner refused entry to a Building Officer in 2008 when following up concerns that the shed was being used for habitable purposes. The matter was referred to a compliance officer. A letter was sent to the applicant advising that an inspection of the property was to be carried out at a specified time. A letter was received from the applicant two days prior to the inspection confirming that the farm shed was being used for habitable purposes.

Council then received a letter asking that no further action be taken as the applicant was preparing an application for a rural workers dwelling.

DA08/0915 (roadside stall for sale of fruit and vegetables)

A development application was lodged 22 July 2008 to sell non-refrigerated produce from the subject site by way of a mobile sales stand, seven (7) days a week from 7am to 5pm. A note on the approved plan states that the owners were the sole residents of Sanderson Place.

The 30m setback from Tomewin Road (as a designated road) was not required as the stall was not considered to be a structure.

Environmental Health Unit comments note that the applicant had stated that he had 'operated the stall over the past two years without complaint'. The type of produce was restricted to potatoes, watermelon, tomatoes and pumpkin etc.

The traffic committee stipulated a 5m setback from the edge of the existing Tomewin Road carriageway.

The application was approved 23 December 2008.

DA08/1056 (conversion of an existing farm shed to rural workers dwelling)

This application was lodged 26 September 2008.

Assessment of the application has highlighted issues (apart from non-compliance with the relevant development standard) in relation to building orientation as pertaining to solar access, compliance with the Building Code of Australia (BCA), extra loadings on the existing on-site sewer management system and soil contamination.

In consideration of a response received from the Department of Planning that did not grant concurrence, the applicant was notified and given the opportunity to withdraw the application prior to final determination.

The applicant requested that the application be placed on hold until the 29th January 2010 for further consideration. However, no contact from the applicant was forthcoming by that date.

Compliance Matters

The farm shed is currently occupied as a second residence on the subject site. A dual occupancy on 1(a) rural zoned land must be attached to the principal residence in order to comply with zoning provisions within Clause 11 of the Tweed Local Environmental Plan (TLEP) 2000.

A dual occupancy on such a site with an area less than 40 hectares is only supported if the subject site is an allotment referred to in Clause 57. Lot 1 DP 803636 was created in 1989, prior to the commencement of the TLEP 2000 and is therefore such a lot.

The farm shed has been altered in accordance with the proposed floor plan for this development application. Window openings have been added to the eastern and southern elevations with large sliding doors and windows added to the western elevation. Photographs supplied as part of the application documentation indicate that a young family may be residing in the farm shed.

Council's Building Unit has highlighted the following inadequacies of the farm shed to support its use as a habitable dwelling through lack of:

- smoke alarms to comply with Part 3.7.2 of the BCA
- roof ventilation
- roof cavity insulation with an R-value of not less than R 2.65
- certification for all existing glazing
- a 10 000 litre rainwater tank to service the dwelling, and
- certification from a structural engineer to ensure that the existing wall and roof bracing is adequate for human occupation.

Council's Environmental Health Unit has indicated that:

- Adequate information to assess possible soil contamination has not been supplied, and
- The On-Site Sewer Management system is currently inadequate and requires upgrading, with an increase in effluent disposal area to 465m².

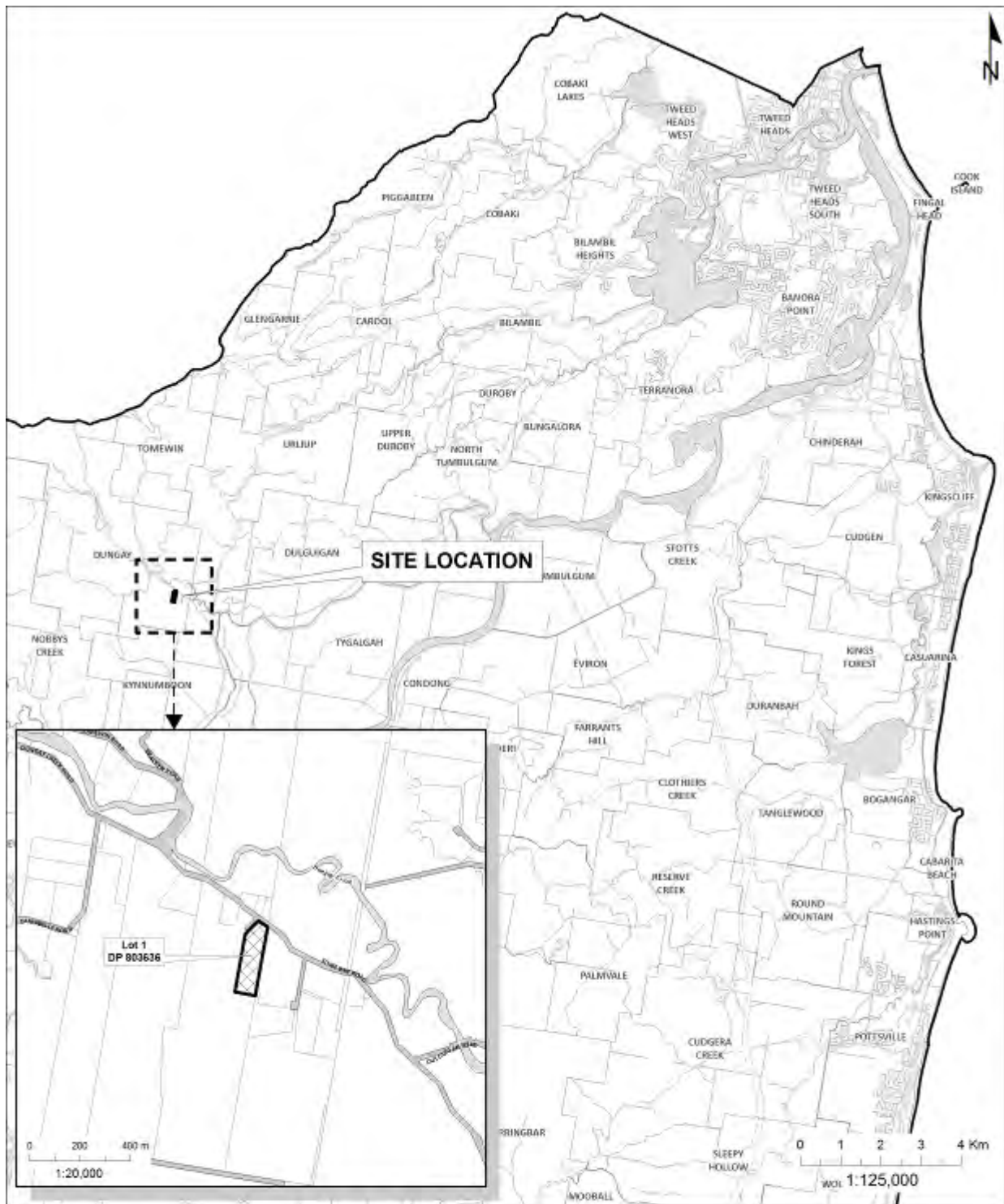
Public Submissions

The proposed development did not attract any objections or letters of support.

Conclusion

Having regard to relevant statutory controls and an assessment against Clause 18 in particular, of the Tweed LEP 2000, the proposed conversion of an existing farm shed to rural workers dwelling is not considered suitable for the location and therefore the proposed development is recommended for refusal.

SITE DIAGRAM:



LOCALITY PLAN

DA08/1056: Conversion of existing farm shed to rural worker's dwelling at
Lot 1 DP 803636, 9 Sanderson Place, Dungay

Filename: c:\jason\planning\mxd\A49_B&W SitePlan.mxd

Author: J Batchelor - Planning (Reforms Unit)

Date Printed: 24 February, 2010

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Cadastral: 24 February, 2010
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Coordinate System - MGA Zone 56
Datum - GDA94

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TWEED
SHIRE COUNCIL





NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION



WEST ELEVATION

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

One of the aims of the plan is:

- (d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

Council Assessment

The proposed development is not considered to be compatible with the area's environmental and rural residential amenity qualities. It compromises area on the small allotment for continued cropping by using the existing farm shed as a dwelling, thus displacing farm shed requirements potentially to an additional large farm shed to be located elsewhere on the site.

The distant location of the second dwelling to the main dwelling on a small rural allotment compromises the open rural character of the locality in general.

Clause 5 - Ecologically Sustainable Development

Development must be consistent with four principles of ecologically sustainable development.

Although the proposal has little impact on biological diversity or ecological integrity, it does compromise the area available on the small rural allotment for agricultural activities, as outlined in the above assessment of Clause 4.

Clause 8 – Consent Considerations

The proposed development is inconsistent with provisions contained within 1(a), (b) and (c) of this clause which states that the consent authority may grant consent to the development 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.

Council Assessment

Assessment of the proposal as outlined below in relation to Clause 11 results in the development being inconsistent with the primary objective of the 1(a) Rural zone.

Consideration has been given to other aims and objectives of the plan that are relevant to the development.

The proposed development is best suited to a rural agricultural enterprise that is remotely located and undertaken on an allotment of considerable size. The size of the allotment is 5% of the development standard and is located within 4km of Murwillumbah, a regional rural township.

Should the proposed development be approved, it would set an unacceptable precedent for future development in rural areas due to its general non-compliance with development standards and criteria for the location of rural worker's dwellings.

Clause 11 - Zoning

The subject land is zoned 1(a) Rural.

A 'rural workers dwelling' is permissible with development consent within this zone provided it also satisfies Clause 18(3) by being located on an allotment of at least 40 hectares in size.

Primary objectives for the 1(a) Rural zone include:

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development, and*
- *to protect rural character and amenity.*

Secondary objectives for the 1(a) Rural zone include:

- *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, and*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

Council Assessment

Development surrounding the subject site is characterised by rural residential and intensive / non-intensive agricultural uses on large rural allotments.

Although the existing and proposed use of the land is for small production agricultural purposes, the proposal does not satisfy the abovementioned objectives in that:

- it is not an allotment of the specified size to support the type of development known as 'rural worker's dwelling'
- the location of an industrial sized shed used as a dwelling on a small rural allotment threatens the established rural character of the locality
- the proposal does not provide for development that is 'not suited' in or near an urban area
- the establishment of a second detached dwelling on the site may lead to pressure for further fragmentation of viable rural land and encroachment of urban residential densities.

Clause 15 - Essential Services

This clause of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent.

The subject land is provided with electricity and telecommunications services. However, no town water or sewerage services are available.

Clause 16 - Height of Building

The height of the existing farm shed is not proposed to be altered as part of the development application.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The site exhibits Class 5 Acid Sulfate Soils. However no development is proposed that involves disturbance of soils.

Specific Clauses

Clause 18 – Rural workers dwellings

The objective of Clause 18 is as follows:

- to enable the provision of on-farm accommodation for rural workers only where there is a genuine need for them to live on-site and there is a demonstrated capacity of the existing farm to support their employment.

Consent may only be granted to the erection of a rural worker's dwelling only if the consent authority is satisfied that:

- a) its erection will not impair the use of the land for agriculture, and
- b) the existing agricultural operation genuinely necessitates that rural workers reside on the farm and the operation has the economic capacity to support them, and
- c) the resident of the rural worker's dwelling is to be employed on that farm, and
- d) the erection of a rural worker's dwelling would not result in there being any more than one rural worker's dwelling on the farm, and
- e) the dwelling will not be built on land classified as Class 1 or 2 agricultural land by the Department of Agriculture.

The resident of the proposed rural worker's dwelling is to be employed on the farm. There is no expressed intention for there to be more than one rural worker's dwelling on the farm and the land is designated as regionally significant farmland as opposed to State significant farmland as identified by the (now) Department of Primary Industries.

However, the proposal is inconsistent with Clause 18(2) (a) and (b) in that:

- it may impair the use of the land for agriculture by resulting in the need for another large farm shed on the site to house activities displaced by the conversion of the existing farm shed to a rural workers dwelling, thus reducing the available area on the small rural lot for cropping, and
- The existing agricultural operation is in need of one farm manager. This is usually an owner/operator. In this instance, the need for a rural worker to reside on the farm is due to the personal circumstances of the owner, rather than the need for two workers of the land.

In addition, in accordance with Clause 18(3), consent must not be granted to the erection of a rural worker's dwelling on an allotment of land having an area of less than 40 hectares in Zone 1(a). Please refer to the discussion below relating to the SEPP 1 Objection to development standards.

Clause 22 – Development near designated roads

The subject site has frontage to Tomewin Road, which is a Council designated road, however, there is no access available from Tomewin Road.

It is considered that the development will not contribute to a marked increase in the volume of traffic generation, nor will it require any modification to existing site access which is currently from Sanderson Place.

Clause 24 – Set backs to designated roads

The proposed rural worker's dwelling is set back approximately 245m from Tomewin Road which is greater than the required 30m as stipulated in this clause.

Clause 34 - Flooding

The front of the subject site (where the main dwelling is located) is mapped as being flood prone and within a Probable Maximum Flood (PMF) area on Council's mapping, exhibiting a design flood level of RL 4.7m AHD. Minimum floor levels for habitable structures at the front of the site are equal to or greater than RL 5.2m AHD.

The rear of the site, where the existing farm shed is located, is not affected by flooding. This has been confirmed by Council's Planning and Infrastructure Engineers. Therefore, the application is consistent with Clause 34.

Clause 39 – Remediation of Contaminated Land

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

Please refer to a full assessment in accordance with SEPP 55 (Remediation of Land) in a later section of this report.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

The history of the use of the site has been for cropping activities, both after the subdivision in 1989 and before, in association with a larger adjoining parcel.

Adjoining and surrounding land continues to be utilised for agricultural, cane farming and grazing purposes.

The development would not lead to a loss of prime crop and pasture land on adjoining land but may adversely impact upon the area available for agricultural activities on the site itself.

Clause 43: Residential development

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

Considerations within this clause relate to satisfactory:

- density in relation to impact upon environmental features
- road widths

- access to services (and physical suitability of the land)
- design of the road network, and
- site erosion control.

This proposal does not impact upon the above considerations apart from potentially reducing the cropping area (fertile, regionally significant land as an environmental feature) through the subsequent need for a large farm shed replacement elsewhere on the allotment.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 1(a) zone for the purposes of converting an existing farm shed to a rural workers dwelling as contained within Clause 18(3) of the Tweed LEP 2000.

Clause 18(3) of the Tweed LEP 2000 states that:

Consent must not be granted to the erection of a rural worker's dwelling on an allotment of land having an area of less than 40 hectares in Zone 1(a), 1(b2), or 7(d) or an allotment of less than 10 hectares in Zone 1(b2).

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

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

Applicant Assessment

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

- *The development would not conflict with the stated purpose of requiring a minimum site area of 40ha as it would not lead to potential fragmentation of ownership of rural land*
- *The development would not cause the agricultural use of the land to be unsustainable as it does not reduce the area available for production. In the circumstances, sustained agricultural production is unlikely to be achievable without the proposed rural worker's dwelling*
- *The proposal would not cause a change that would lead to pressure to subdivide the property. The proposed rural worker's dwelling would involve the conversion of an existing farm shed that could be converted back to a farm shed should the circumstances of the farm operation no longer require a rural worker. The rural worker dwelling is not of a size or quality that would provide an incentive for permanent accommodation.*

- *A legitimate need for a rural worker is established through the provision of financial records.*

In the circumstances, the proposed rural worker's dwelling:

- *Could be regarded as necessary for the proper management of the agricultural resource as without the rural worker's dwelling current farming operations could not be sustained*
- *Will provide affordable accommodation for a low paid rural worker who might otherwise have to allocate a high proportion of their income to rental accommodation and travel costs. Affordable housing is a recognised social and economic issue that is particularly relevant to rural workers. In the circumstances, the proposal would offer social and economic welfare benefits to the farm owner and the rural worker*
- *Approval of the application would promote the economic use of the land. The applicant has owned the property for 18 years and has built up an intensive farming operation involving vegetable production as well as farm gate sales via a mobile stall. The applicant's health restricts his ability to manage all aspects of the operation so its continuation requires a rural worker. The owner resides on the property and understandably does not want to relocate or sell the property. Evidence has been provided that the farm can sustain a rural worker and that the employment of an experienced worker may not be possible on the available wages alone. The rural worker's dwelling will offer the best opportunity for sustained economic agricultural use of the site*

In summary, the proposal:

- *Facilitates economic use of the land*
- *Does not result in loss of available land*
- *Does not lead to subdivision*
- *Does not give rise to land use conflict*
- *Provides social and economic benefits*
- *Has no effect on biodiversity*
- *Does not burden existing infrastructure and services*
- *Long-term viability of the farm is dependent upon approval*
- *Shed can be converted back to a dwelling if property is sold*

Council Assessment of the applicant's submission:

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

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

The objective of Clause 18(3) of the Tweed LEP is not achieved. The variation to the development standard pertains to minimum allotment size. The objectives of this clause are aimed at restricting the placement of a second dwelling on a rural allotment of less than 40 hectares for the purposes of housing a rural worker. The proposed rural worker's dwelling is not consistent with surrounding development. It compromises the development standard by varying it by 95% and leads to a precedent being set for similar proposals.

The applicant's submission is not supported.

- Further fragmentation of farmland and reduction in the agricultural use of the land may occur through the need to establish a replacement farm shed of similar size on the property and retain a 'residential' land use buffer around the existing farm shed for the rural worker's family
- Pressure to subdivide the property in the future may be real. There are similar dwellings on the market in the Tweed region used as primary residences on rural properties
- Profit from agricultural pursuits on the property may be higher if the business were run by one owner/operator, rather than having to employ a rural worker and pay a wage
- Current farming operations cannot be sustained primarily because the owner is physically unable to work the land
- Suitable rental accommodation is available in the regional townships in close proximity to the subject site. Planning controls should not be compromised as a mechanism for the provision of affordable housing to rural workers
- Planning controls permit attached dual occupancies on 1(a) Rural land. Given that the main dwelling is large, at 540m², this is a viable option available to the applicant
- There are no planning mechanisms to revert the rural worker's dwelling back to farm shed use should the property be sold.

3. **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 proper management, development and conservation of natural and artificial resources, including agricultural land and the promotion and co-ordination of the orderly and economic use and development of land.

It is Council's view that the proposal has the ability to impact upon conservation of valuable agricultural land on the subject site, thus reducing its overall viability for primary production purposes.

It is Council's view that the proposal intensifies the residential density of the small rural lot which impacts upon the rural character of the locality.

It is considered that the granting of this application would hinder the attainment of such objectives.

4. **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 18(3) of the Tweed LEP 2000 is considered to raise matters of significance for State and regional planning.

It is Council's view that the proposed development does not satisfy the provisions contained within:

The Tweed LEP 2000:

- Clause 4: Aims of this plan
- Clause 8(1): Consent Considerations
- Clause 11: Zoning
- Clause 18: Rural Workers Dwellings
- The Draft Tweed LEP 2010
- Section A1: Residential and Tourist Development Code

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

As stated previously in this report, concurrence was not granted in this instance by the Director General for the following reasons:

- One dwelling already exists on this small lot of 2.04 hectares; the proposal will allow for a second dwelling on the subject land which is approximately 95% below the 40 hectare minimum lot size development standard. To allow an additional dwelling on this size lot is likely to affect the rural character of the area in the vicinity;
- The subject land is designated as 'Regionally Significant Farmland' (Northern Rivers Farmland Protection Project Map 2005) and is to be protected from unnecessary development. It has not been established that the rural worker's dwelling is necessary to the operation of the farm in the long term. The existing farm shed is likely to be used for storage purposes and there is no information provided as to alternative arrangements, on this small lot, for the storage of agricultural produce. In addition, there is no planning mechanism to return the rural worker's dwelling to a farm shed should the particular set of circumstances relating to this case cease or change;
- In relation to genuine need for on-farm accommodation, the letter from the Department of Primary Industries (DPI) dated 10 February 2009, does not support this contention. DPI suggests that in coastal regions, farms are smaller and relatively close to a population centre, therefore, on site accommodation is rarely necessary or essential. The township of Murwillumbah is located 4 to 5 kilometres to the south of the subject land and the percentage of rented properties in Murwillumbah is similar to the national average. The rural worker's requirement for affordable housing should not be met through SEPP 1, as this will circumvent the proper strategic planning processes set in place to address these matters through the local environmental planning process. The issue of affordable accommodation may be further indication that the property is unlikely to support two full time employees in the longer term; and
- The grounds of objection to the development standard cannot be based on personal hardship as is the case in this instance, i.e. the landowner (age and health status restricting agricultural pursuits) and the rural worker (a requirement for affordable housing). The Land and Environment Court has repeatedly held that personal hardship does not provide adequate grounds for objection in this context.

SEPP No. 55 - Remediation of Land

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

No consideration of contaminated land was undertaken in the application documentation.

Council's Environmental Health Unit have advised that there was no evidence of contaminating activities from the topographical maps (Murwillumbah 9541-11-N 1:25 000 1976; Murwillumbah 9541-2-N 1:25 000 1987; Murwillumbah 9541-11 1:50 000 1970). Council's mapping shows that there are no cattle dip sites in close proximity to the development site.

It is most likely that the site was used for the production of sugar cane prior to 1990 consistent with surrounding acreage.

Further information was requested from the applicant to confirm historic uses on the site. The applicant provided a statutory declaration detailing the site history for the previous 19 years. This was not considered an appropriate timeframe to adequately assess historical land uses.

The applicant would need to provide information from the previous owners of the site or a preliminary contaminated lands assessment carried out by a suitably qualified consultant in accordance with the relevant NSW EPA Guidelines in order for a final assessment in relation to site contamination.

SEPP (Rural Lands) 2008

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

Provisions contained within this SEPP must be taken into account in consideration of granting consent for a dwelling on rural land. A residential use must not conflict with existing uses, adjoining uses and/or preferred uses.

Measures designed to reduce these land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities, which does not specifically apply to this development as no subdivision is proposed. However, the preferred use of the farm shed is as a farm shed to support current agricultural activities on the site, not as a dwelling to provide accommodation that may be available locally.

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

The shire-wide Draft Local Environmental Plan is currently on exhibition. The draft zone is RU2: Rural Landscape (replaces 1(a) zone).

The proposed conversion of an existing farm shed to rural workers dwelling is permissible in this zone, as outlined below.

3 Permitted with consent

Airstrips; Animal Boarding or Training Establishments; Aquaculture; Bed and breakfast accommodation; Biosolid waste applications; Boat sheds; Caravan parks (camping ground only); Cellar door premises; Cemeteries; Community facilities; Crematorium; Depots; Dual occupancies (attached); Dwelling houses; Educational establishments; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Funeral Chapels; Funeral homes; Helipads; Home-based child care; Home businesses; Home industries; Hostels; Information and education facilities; Intensive Livestock Agriculture; Landscape and garden supplies; Mining; Places of public worship; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Research Stations; Restaurants; Roadside stalls; Rural industries; Rural Supplies; Rural workers' dwellings; Serviced Apartments; Sewerage Systems; Timber and Building Supplies; Transport Depots; Truck Depots; Turf Farming; Veterinary Hospitals; Water recreation structures; Water Supply Systems.

The objectives of the RU2 Rural Landscape zone include the following:

- 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.
- To provide for a range of compatible land uses that support tourism in the hinterlands and Tweed generally, such as teahouses, macadamia farms, specialised produce farms and the like.

Although no minimum allotment size is currently specified in the draft LEP for rural workers dwellings, the minimum allotment size within the RU2 zone remains at 40 hectares. It is intended within the plan to exclude the erection of dwellings on allotments that are less than the development standard. This is an anomaly that has been brought to the attention of the Planning Reform Unit.

As discussed previously, the current proposal does not satisfy the primary objective of the current 1(a) Rural zone in that it threatens the rural landscape character of the land through the location of a second dwelling on a small rural lot. Similarly, under the draft objectives for the RU2 zone, the proposal does not maintain the rural landscape character of the land.

In addition, a proposal of this kind would need to satisfy the criteria of Clause 7.3, as follows:

7.3 Erection of rural workers' dwellings [local]

(1) The objectives of this clause are:

- (a) to ensure adequate provision for existing agricultural and rural industries that genuinely require accommodation for permanent on-site employees on land in Zone RU1 Primary Production and Zone RU2 Rural Landscape, and
- (b) to enable development for a rural worker's dwelling if there is a genuine need to accommodate an on-site employee due to the nature of the agricultural or rural industry or the location of the land, and
- (c) to prevent development for a rural worker's dwelling if the agricultural or rural industry does not have the capacity to support rural workers' employment.

(2) Development consent must not be granted for the erection of a rural worker's dwelling unless the consent authority is satisfied that:

- (a) it is ancillary to a dwelling house or dual occupancy on the same lot and will be used as the principal place of residence by persons employed for the purpose of an existing agricultural or rural industry on that lot, and
- (b) it will not impair the use of the lot for agricultural and rural industries, and
- (c) there is a demonstrated economic capacity of the agricultural or rural industry to support rural workers' on-going employment, and
- (d) there is a demonstrated necessity to provide on-site accommodation via a rural worker's dwelling due either to the nature of the agricultural or rural industry that the workers are employed in or because of the remote or isolated location of the site, and
- (e) it will not result in more than one rural worker's dwelling being erected on the lot comprising the agricultural or rural industry.

These provisions are similar to those contained within the current Clause 18, a full assessment of which has been undertaken earlier in this report. It is clear, through the responses from the Department of Primary Industries and the Department of Planning that the proposal does not satisfy the criteria in either of these clauses.

As such, provisions contained within the draft LEP 2010 do not support the conversion of the existing farm shed to a rural worker's dwelling.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

An assessment of the proposal against standards contained within Part A of DCP A1 indicate that the proposed rural worker's dwelling is oriented on the allotment so that sufficient solar access is not provided to living areas (kitchen, dining room and lounge room) which are located in the south-western sector of the structure.

In summer months, the western elevation is exposed to direct solar penetration in the afternoon, thus reducing the capacity of the proposed rural worker's dwelling to take advantage of energy efficient methods to effectively cool the structure.

In winter months, there is little opportunity for solar access as bedrooms and bathroom facilities are located on the eastern elevation and the northern elevation is completely blocked by the large garage. This results in a greater than average requirement for heating.

As such, with living areas located less than ideally and no opportunity for passive solar design, the proposal for a rural worker's dwelling conflicts with:

- Design Control 6 – Building Amenity, Sunlight Access, Control a.

Living spaces are to be oriented predominantly to the north where the orientation of the allotment makes this possible

- Design Control 6 – Building Amenity, Building Orientation, Control e.

Orient living areas to employ passive solar design principles.

A2-Site Access and Parking Code

No new or additional access is to be created as it is proposed that the rural worker's dwelling utilise the existing property access off Sanderson Drive.

There is sufficient parking within the farm shed itself to cater for the one space required for a rural worker's dwelling.

A3-Development of Flood Liable Land

The front of the subject site (where the main dwelling is located) is mapped as being flood prone and within a Probable Maximum Flood (PMF) area on Council's mapping, exhibiting a design flood level of RL 4.7m AHD. Minimum floor levels for habitable structures at the front of the site are equal to or greater than RL 5.2m AHD.

The rear of the site, where the existing farm shed is located, is not affected by flooding. This has been confirmed by Council's Planning and Infrastructure engineers. Therefore, the application is consistent with DCP A3.

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

There are no additional matters that affect this application.

(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

Cumulative Impacts

Approval of a rural worker's dwelling on an allotment that is 95% of the development standard sets a precedent that cannot be validated or justified in planning terms.

The subject site is in close proximity (4km) to Murwillumbah, where suitable short-term and long-term accommodation is available for workers within this region.

The proposal would effectively locate a detached dual occupancy on rural zoned land which is a prohibited land use according to the Tweed LEP 2000. This prohibited land use (detached secondary dwelling) is also not supported in provisions for the Draft LEP 2010.

(c) Suitability of the site for the development

Surrounding Land uses/Development

Surrounding land uses in proximity to the subject site include rural living, cane production, grazing and associated cropping and agricultural activities.

Over 500m to the west of the subject site, activities are undertaken in association with the production of a television series.

A small school operates immediately to the west of the subject site.

Farmland of State or Regional Significance

The existing farm shed is located on land identified as Regionally Significant Farmland. The application was referred to the NSW DPI for comment in consideration of its location within a wide corridor of regionally significant farmland.

The Department responded with advice that suggested that the proposed rural worker's dwelling was unsuitable for the site, as outlined below:

"The new NSW DPI guide indicates that the genuine need for rural worker's dwellings in a rural area should be an element of strategic planning. In coastal regions where farms are generally smaller and relatively close to a population centre, rural worker's dwellings that provide for on-site accommodation of labour over and above the labour provided by an owner/manager is rarely necessary or essential."

The subject application has outlined the personal circumstances creating the need for a worker to reside on the property. The property, while only 2.4 ha (sic) in size seems to be highly productive. The productive and sustainable use or resources is supported by NSW DPI.

The property is unusually small for a workers dwelling application. Farm economics would suggest that a 2.4 ha (sic) property is unlikely to support two full time employees (an owner and a worker) in the longer term unless prices significantly increase or productivity or both. Should small crop and intensive farming of property cease in the future, the worker's dwelling would become redundant.

Affordable housing is an increasing issue for farm workers and people on lower incomes. However, this is a planning and social issue that needs attention at a strategic level otherwise there is a risk that property owners will use worker's dwelling planning provisions to create multiple houses on rural properties.

Given the personal circumstances outlined, the small size of the subject property and the risk of setting an unsustained precedent, it is suggested that the merits of a second dwelling on this property be assessed against dual occupancy provisions or similar."

Effluent Disposal

The amenities of the existing shed are connected to the existing on-site sewage management system for the main dwelling at the eastern end of the site. Details needed to be provided to demonstrate that the size of the existing on-site sewage management system is adequate for additional loadings from the proposed rural worker's dwelling.

On On-Site Sewage Management Design Report was prepared by HMC Environmental Consulting Pty Ltd dated May 2009. Following review of the report, it was determined that the design was adequate to attain an acceptable environmental outcome. All works are required to be undertaken prior to the issue of an occupation certificate.

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

The Development Application was notified to surrounding properties for a period of two weeks, closing on Wednesday 12 November 2008. During this period, no submissions were received in relation to the proposal.

(e) Public interest

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for utilisation of small parcels of rural land for the location of detached secondary dwellings in close proximity to urban locations that provide such accommodation for rural workers. Therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

Council will incur costs as a result of legal action, however, upon resolution of the matter the Land & Environment Court may award costs.

POLICY IMPLICATIONS:

The proposed development could potentially set an unwarranted precedent for the use of undersized rural allotments for detached multiple dwellings and compromise the criteria for the suitable location of rural worker's dwellings.

It is imperative that Council pursue unauthorised works to uphold the integrity of Council's policies and any lawfully issued development consents.

CONTRIBUTIONS:

If the application were supported the following Section 94 contributions would apply to the proposal, as a dwelling, in accordance with the following plans:

- Plan No. 4 Tweed Road Contribution Plan
- Plan No. 5 Open Space Contribution
- Plan No. 11 Shirewide Library Facilities
- Plan No. 13 Eviron Cemetery
- Plan No. 18 Council Administration Offices & Technical Support Facilities
- Plan No. 26 Shirewide/Regional Open Space

Applicable charges would be to the order of \$21,467.50.

CONCLUSION:

The application submitted is deficient in detail. However, sufficient information has been submitted to determine that the nature of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application. It is also supported by direction from the Department of Planning.

Having undertaken an assessment against Clause 11 of the Tweed LEP 2000 taking into account the rural character of the area and Clause 18 taking into account the criteria for the location of rural worker's dwellings, the proposed use is not considered suitable for the location and therefore the proposed development is recommended for refusal.

In addition, this is a clear case of unlawful change of use outside the parameters of any existing development approval. Council has a responsibility to ensure that all developers undertake works as approved, in accordance with statutory controls.

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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12 [PR-CM] Development Application DA09/0468 for a Staged Two (2) Lot Subdivision at Lot 6 DP 524303, No. 26 George Street, Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA09/0468 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 93.4%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 1(a) if the area of each allotment created is at least 40 hectares. Proposed dual-zoned lot 2 has a total area of 2.639 hectares, consolidating the totality of 1(a) zoned land on the subject site and including a portion of 2(a) zoned land with a suitable area on which a dwelling is permissible. This land is currently located within a 2.852 hectare allotment (existing 92.9% variation to this development standard) which comprises the subject site.

The applicant seeks consent for a staged two (2) lot residential subdivision, which is located predominantly within an existing large lot residential area. The 1(a) zoned land is an isolated remnant that may have related to 1(b2) zoned land to the north used for grazing and cane farming and separated from the subject site by George Street.

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

- The proposal is consistent with the objectives of the zone;
- While the existing lot size is significantly less than the 40 ha standard, the rural zoned land is effectively land-locked and there is little opportunity for agricultural use of the land; and
- The proposal will not increase the present level of demand for the provision of available amenities or services.

The proposal was not required to be placed on public exhibition.

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

RECOMMENDATION:

That Development Application DA09/0468 for a staged two (2) lot subdivision at Lot 6 DP 524303, No. 26 George Street Murwillumbah be approved subject to the following conditions: -

GENERAL

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

- Plan No 3.1 Ref No. 06/191 (subdivision plan) prepared by Newton Denny Chapelle and dated 27 July 2009**
- Plan No 3.2 Ref No. 06/191 (cut/fill plan) prepared by Newton Denny Chapelle and dated 27 July 2009**
- Plan No 3.3 Ref No. 06/191 (earthworks sections) prepared by Newton Denny Chapelle and dated 27 July 2009**
- Plan No C1 Ref No. 06/191 (engineering services plan) prepared by Newton Denny Chapelle and dated July 2009,**

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0125]

- 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. Sewer manholes are present on this site. These manholes are not to be covered with soil or other material.**

Should adjustments be required to the sewer manholes, appropriate details are to be included with the construction certificate application.

[GEN0155]

- 5. Council advises that the land is subject to inundation in a 1 in 100 year event to the design flood level of RL 5.1m AHD.**

[GEN0195]

- 6. Any future dwelling in association with Lot 2 must be located within the 2(a) zoned portion of land, unless otherwise approved by Council, in order for a dwelling entitlement to be retained.**

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

[PCC0275]

8. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

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

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

- (a) Contours and terraces where the height exceeds 1m.
 - (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
 - (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
 - (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.
10. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

[PCC0455]

URBAN ROAD

- (a) Construction of a kerb and gutter and a 9m minimum width bitumen sealed road carriageway, measured from face of kerb to face of kerb, for the full frontage of the land in York Street.

Note: several existing stormwater pits within the footpath area will need to be raised.

OTHER

- (a) Relocation of existing Sewer Rising Main. A consequence of this relocation is the overall length of the rising main will be extended, and this may have an effect on the pump(s) in the pump station. The applicant is required to address the performance of the existing pump(s) in light of the altered operating conditions, as part of the construction certificate application.
- (b) The existing Sewer Gravity Main must be reconstructed for the extent of the proposed exposure. This will require:
 - Construction of two (2) new manholes - one at each end of the exposed section of sewer main, and removal of existing manhole 'XA/7' within the proposed stormwater channel.
 - The sewer main between the two new above-mentioned manholes is to be reconstructed in ductile iron and laid on concrete supports in accordance with Council standards. The design of the concrete supports must factor in the stormwater depths and velocities that will be experienced within the channel.
 - During reconstruction of the existing sewer infrastructure, the existing sewer service to other residents in the area must remain unhindered.
- (c) Provision of service connections to both lots, including sewer junctions, water main connections, telecommunication and electrical connections.
- (d) Cut and fill earthworks including relocation of the existing drainage channel, shall be designed in general accordance with Newton Denny Chapelle Engineering Services Plan (Ref No. 06191_JUL09_PLANS Sheet C1, July 2009), except where varied by the conditions of consent.
- (e) The earthworks plan shall make adequate provision for all existing drainage services discharging onto the subject land, including piped and overland flow systems, and remain freely draining to the realigned "open earth drain". Drainage easements benefiting Tweed Shire Council shall be created where any extensions of public drainage lines are required to satisfy this condition.
- (f) A minimum flood storage volume of 11,500m³ shall be provided below RL3.2m AHD (subject to verification as draft plans nominate RL 3.1m AHD), and the construction certificate shall be accompanied by plans and calculations demonstrating compliance with this condition.

Note: the relocated channel is required to be covered by a Drainage Easement extending to RL 3.5m AHD (per later condition of consent). All batters within the Drainage Easement are to be no steeper than 4(h):1(v).
- (g) Where batter heights exceed 0.5m, the top of the cut batters shall be set back a minimum of 0.9m from the property boundary.

- (h) Existing Lots 39 to 43 DP 24583 fronting Martin Street will require creation of an appropriate Inter-allotment Drainage system (IAD) to legalise existing stormwater discharge provisions. As these lots will be over 30m from the relocated drainage channel, AND in the same area intended for alternative access for Lot 2, the required system shall comprise of a series of pits and pipes to convey stormwater away from the lots to the channel.
- (i) Lot 1 shall be provided with an inter-allotment stormwater system and appropriate covering easement, if roof water from a future dwelling cannot be conveyed to the street by gravitational means.

[PCC0875]

PRIOR TO COMMENCEMENT OF WORK

11. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]
12. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
 - (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems – General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000

[PCW0025]
13. 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]
14. 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]

15. Civil work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and
 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
 - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

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

[PCW0835]

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

[PCW0985]

DURING CONSTRUCTION

18. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

22. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.

[DUR0745]

23. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- All fill and cut batters shall be contained wholly within the subject land.

and upon completion,

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

[DUR0755]

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

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

[DUR0795]

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

[DUR0815]

26. 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]

27. 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]

28. 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]

29. 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]

30. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

31. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be: -

- (a) Roofed;

(b) Provided with a sealed floor; and

Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-liaible and shall be provided with pump out facilities.

[DUR1635]

32. 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]

33. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

34. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

35. Pram ramps are to be constructed at road intersections in accordance with Council's Standard Drawing No. SD 014 within all kerb types including roll top kerb.

[DUR1855]

36. The footpath area is to be graded to the kerb (generally) and a full grass cover reinstated wherever earthworks have occurred, for the full frontage of the site.

[DUR1865]

37. 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.

[DUR1875]

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

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

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

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

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

39. 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]
40. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
- [DUR2015]
41. 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]
42. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.
- Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.
- This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.
- [DUR2375]
43. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.
- [DUR2425]
44. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.
- [DUR2435]
45. Lot 1 and part of Lot 2 shall be filled to the design flood level of RL 5.1m AHD.
- [DURNS01]
46. All works shall comply with the recommendations of the Noise Impact Assessment, Tim Fitzroy and Associates, October 2009. Works shall not be permitted to unreasonably impact the amenity of any residential or public school premise.
- [DURNS02]

47. During site works and upon receipt of a noise complaint that Council deems to be reasonable, site works shall cease and the owner/operator is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The owner/operator is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[DURNS03]

48. The construction program must be scheduled to minimise the potential for soil loss through heavy rainfall events. Erosion and sediment controls must be in place prior to commencing, during and after works until permanently protected by vegetation or other soil cover.

[DURNS04]

49. Topsoil removed during construction must be stockpiled and reused within landscaped areas to improve revegetation success.

[DURNS05]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

50. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP2:	1.2 ET @ \$10709 per ET	\$12850.80
Sewer Murwillumbah:	1 ET @ \$5146 per ET	\$5146

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

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

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

[PSC0165]

52. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$1166 per Trips \$7579

(\$1060 base rate + \$106 indexation)

S94 Plan No. 4

Sector9_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) Open Space (Casual):	
1 ET @ \$526 per ET	\$526
(\$502 base rate + \$24 indexation)	
S94 Plan No. 5	
(c) Open Space (Structured):	
1 ET @ \$602 per ET	\$602
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
(d) Shirewide Library Facilities:	
1 ET @ \$792 per ET	\$792
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
(e) Bus Shelters:	
1 ET @ \$60 per ET	\$60
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
(f) Eviron Cemetery:	
1 ET @ \$120 per ET	\$120
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
(g) Extensions to Council Administration Offices & Technical Support Facilities	
1 ET @ \$1759.9 per ET	\$1759.9
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(h) Cycleways:	
1 ET @ \$447 per ET	\$447
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
(i) Regional Open Space (Casual)	
1 ET @ \$1031 per ET	\$1031
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	

(j) Regional Open Space (Structured):**1 ET @ \$3619 per ET****\$3619****(\$3619 base rate + \$0 indexation)****S94 Plan No. 26**

[PSC0175]

53. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

[PSC0215]

55. Prior to the issue of a subdivision certificate, a certificate of compliance shall be submitted to Council by the Developers Subdivision Works Accredited Certifier (SWAC) or equivalent, verifying that the placed fill has been compacted in accordance with the requirements of AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments" and is suitable for residential purposes.

The submission shall include copies of all undertaken test results.

[PSC0395]

56. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

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

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

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

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

[PSC0735]

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

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

A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.

Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

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

[PSC0785]

59. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) Existing Lots 1 to 4 DP 230676 fronting George Street will require creation of a Drainage Easement to legalise existing stormwater discharge provisions
- (c) Existing Lots 39 to 43 DP 24583 fronting Martin Street will require creation of a Drainage Easement over the proposed new inter-allotment drainage system being constructed as a requirement of this consent.
- (d) Similarly, Lot 1 may require an Inter-allotment Drainage Easement if final fill levels do not provide fall to the street frontage.
- (e) The proposed new drainage channel is to be covered by a Drainage Easement. The easement is to extend to all the property boundaries on the eastern side of the site (overlapping the existing easement), but be limited to RL 3.5m AHD (approximately: subject to verification upon submission of construction certificate application) on the western side of the new channel.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

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

[PSC0855]

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

The following information must accompany an application:

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

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

[PSC0885]

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

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

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

[PSC0915]

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

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

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

[PSC1065]

65. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

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

[PSC1165]

67. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

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

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

[PSC1185]

68. Council approved landscaping and restoration works must be completed prior to the release of the subdivision certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.

[PSCNS01]

REPORT:

Applicant: Newton Denny Chapelle
Owner: Rgbah Holdings Pty Ltd
Location: Lot 6 DP 524303 No. 26 George Street, Murwillumbah
Zoning: 1(a) Rural and 2(a) Low Density Residential
Cost: N/A

BACKGROUND:

History

The site has been in the current ownership since 2008. Previous ownership dates back to 1990. The land is currently used for grazing purposes.

No prior applications have been lodged over the subject site. The applicant met with Council officers to discuss a similar proposal over the subject land on Friday 29th May 2009.

The Subject Site

The subject land is described as Lot 6 DP 524303, 26 George Street, Murwillumbah and has a total area of 2.852 hectares. The site is vacant and irregular in shape with over 275m of frontage to Reynolds, York and George Streets. Access is available from these local, bitumen sealed roads.

The site is sparsely vegetated but does contain vegetation along an existing drainage path which traverses the western portions of the site from south to north. The drainage channel is extremely degraded with heavy weed infestation, blockages of vegetative matter and rubbish from prior flow events. A sewer main traverses the site from east to west in a central location.

Detailed survey of the site identifies contour levels ranging from RL 2m AHD to RL 6m AHD. The site is protected by the Murwillumbah Levee Bank which is designed to the Q100yr ARI level, being RL 5.1m AHD.

The site is currently encumbered by an existing "Easement for Drainage and All General Services" 3.05m wide along the eastern boundary, although this is not formalised as a Section 88 instrument. An internal fence has been erected 2m to 3m off the eastern boundary to keep grazing cattle away from adjoining neighbour's gardens.

The site is of limited ecological value due to a variety of degrading influences. The vegetation on the site is limited to exotic grassland with isolated trees and a degraded drainage channel. The vegetation species present on the site consist predominantly of invasive exotic species, including declared noxious weeds and weeds of national significance.

The trees located on the site are invasive exotic species except for a single Macadamia, which has been planted by a resident from a seedling and is not of natural occurrence. It has limited habitat value as it is a commercial Macadamia variety. Remaining native species in the vicinity appear to be located outside the property boundaries and should be unaffected by the proposal.

The site is mapped as having low ecological significance containing no threatened flora or fauna. The site is not located within an area that provides regional or national corridors or riparian linkages of significance.

The south-east corner of the site adjoins a public park known as “Martin Watt” reserve.

The Proposed Development

The applicant seeks consent for a staged two (2) lot residential subdivision that will create:

- a residential zoned allotment of 2130m² (proposed lot 1), and
- a residue allotment, primarily containing rural zoned land, of 2.639 hectares.

The proposed development includes:

- realignment of the stormwater drainage channel further to the east along the property boundary to enhance the developable area of the site
- use of fill so gained (6,600m³) on proposed lot 2
- importation of 18,200m³ of fill for use on lot 1 and part of lot 2 so as to achieve a minimum 5.1m AHD, being the flood level for this area and the height of the existing levee bank.

In summary, it is proposed to realign an existing stormwater open drainage path crossing the site with the resultant fill in order to raise the site's existing low surface levels and improve useability of the residue parcel. In summary, it is proposed to develop the site through cut and fill to a minimum flood level of RL 5.1m AHD.

The two stages of the proposed subdivision are nominated as follows:

Stage 1

- Completion of bulk earthworks and relocation / provision of infrastructure services.

Stage 2

- Completion of the proposed two (2) lot subdivision and associated road widening works in York Street.

Proposed Lot 1 is intended to accommodate future housing in line with 2(a) zone provisions and objectives. It is oriented towards and has access from York Street as its western boundary. The allotment has a frontage of 65m and a depth of 45m.

Proposed Lot 2 maintains a proportion of land within the 2(a) zone with the majority of the lot containing the 1(a) rural zoned land. A battle-axe handle is provided to the balance of Lot 2, which also has access options from Reynolds Street and George Street as a flood evacuation route. Lot 2 maintains a dwelling entitlement as it contains a portion of 2(a) zoned land.

The primary objectives of the earthworks are:

- To provide an integrated stormwater management response, and
- To provide greater land use options through the creation of a development platform fronting Reynolds Street with flood evacuation access.

It is proposed to relocate the open drain to the eastern portion of the site which will generate approximately 6,600m³ of cut, to be filled. The development will require the importation of 18,200m³ of general fill to achieve flood height compliance of RL 5.1m AHD for proposed Lot 1. To achieve a useable filled platform on proposed Lot 2, it will be partly filled to RL 5.1m AHD with finished batters ranging from 2.8% at the southern end of the site to 33% at the northern end of the site.

Subsequently, the existing sewer rising main and gravity main require relocation and/or upgrade works. It is proposed to divert the sewer rising main to the southern perimeter of the site in a conventional manner and then re-connect back to the existing line at the western boundary of the site in Reynolds Street.

This relocation involves approximately 138m of new rising main to be installed and the creation of a 3m wide sewer easement over those works located within the development boundary. Easements are to be created over the existing sewer infrastructure to Council policy requirements.

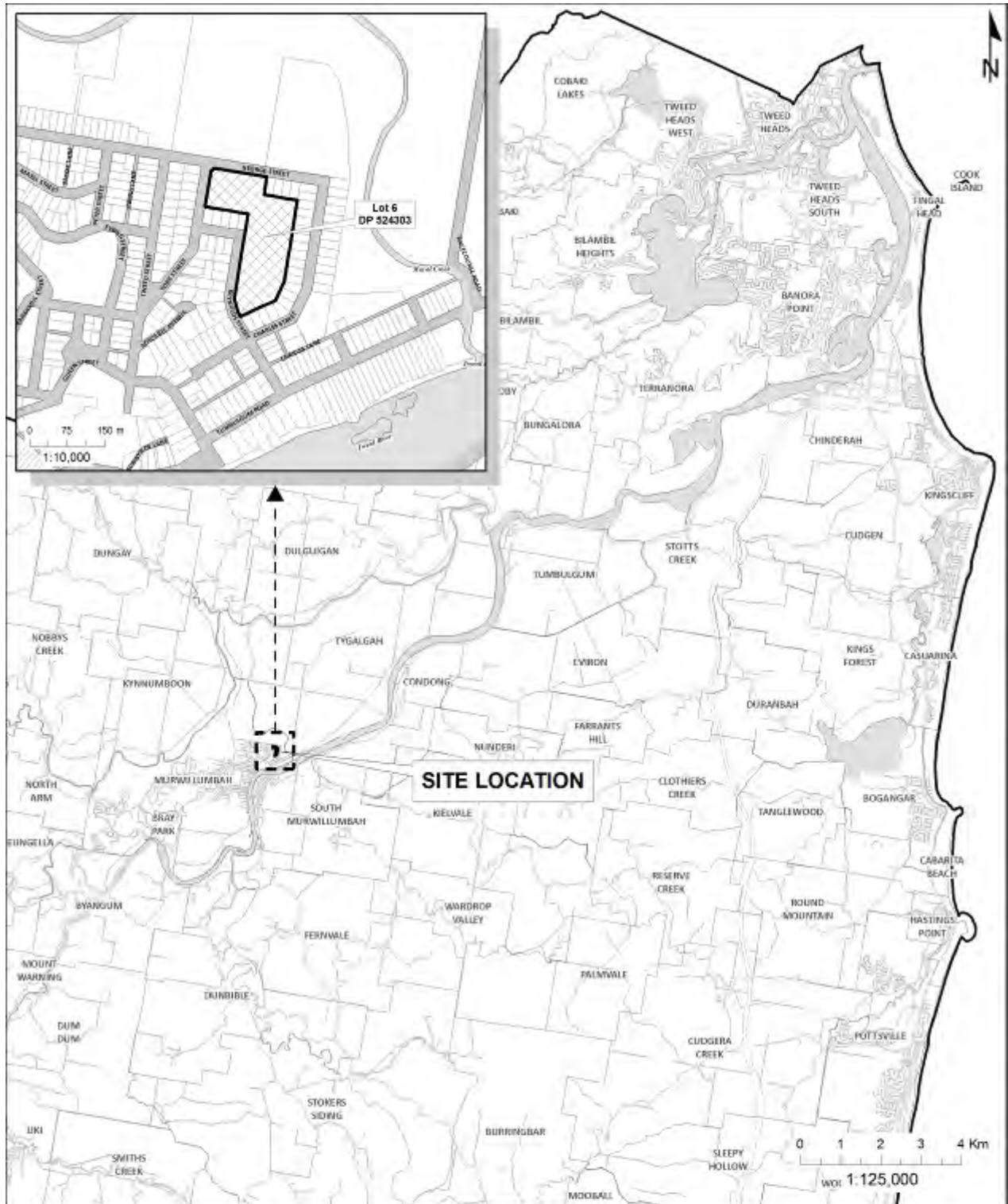
Public Submissions

The application was not required to be notified. As such, no public submissions were received.

Summary

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

SITE DIAGRAM:



LOCALITY PLAN

**DA09/0468: Staged two (2) lot subdivision at
26 George Street, Murwillumbah, Lot 6 DP 524303**

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 February, 2010

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Coordinate System - MSA Zone 56
Datum - GDA 94



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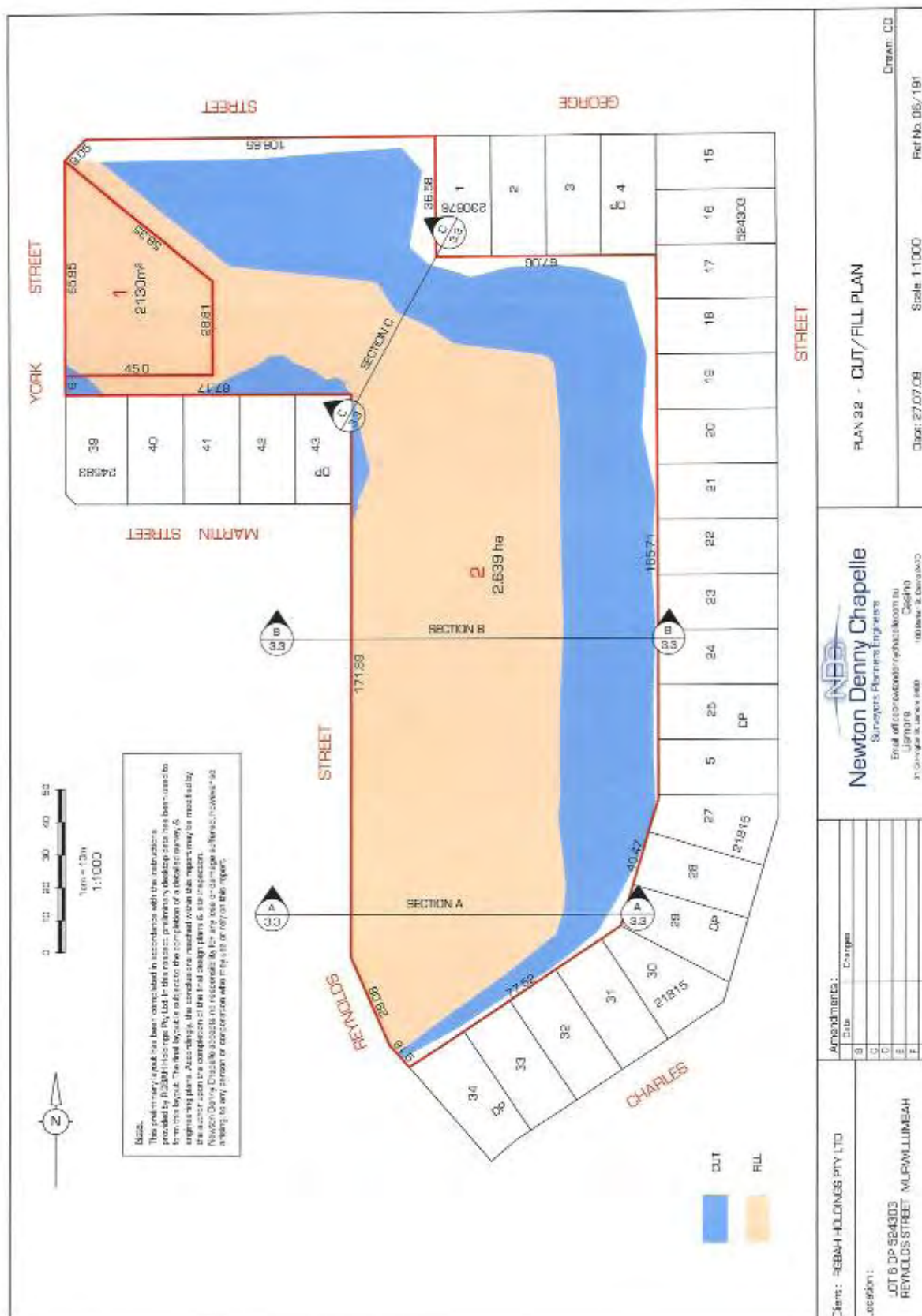
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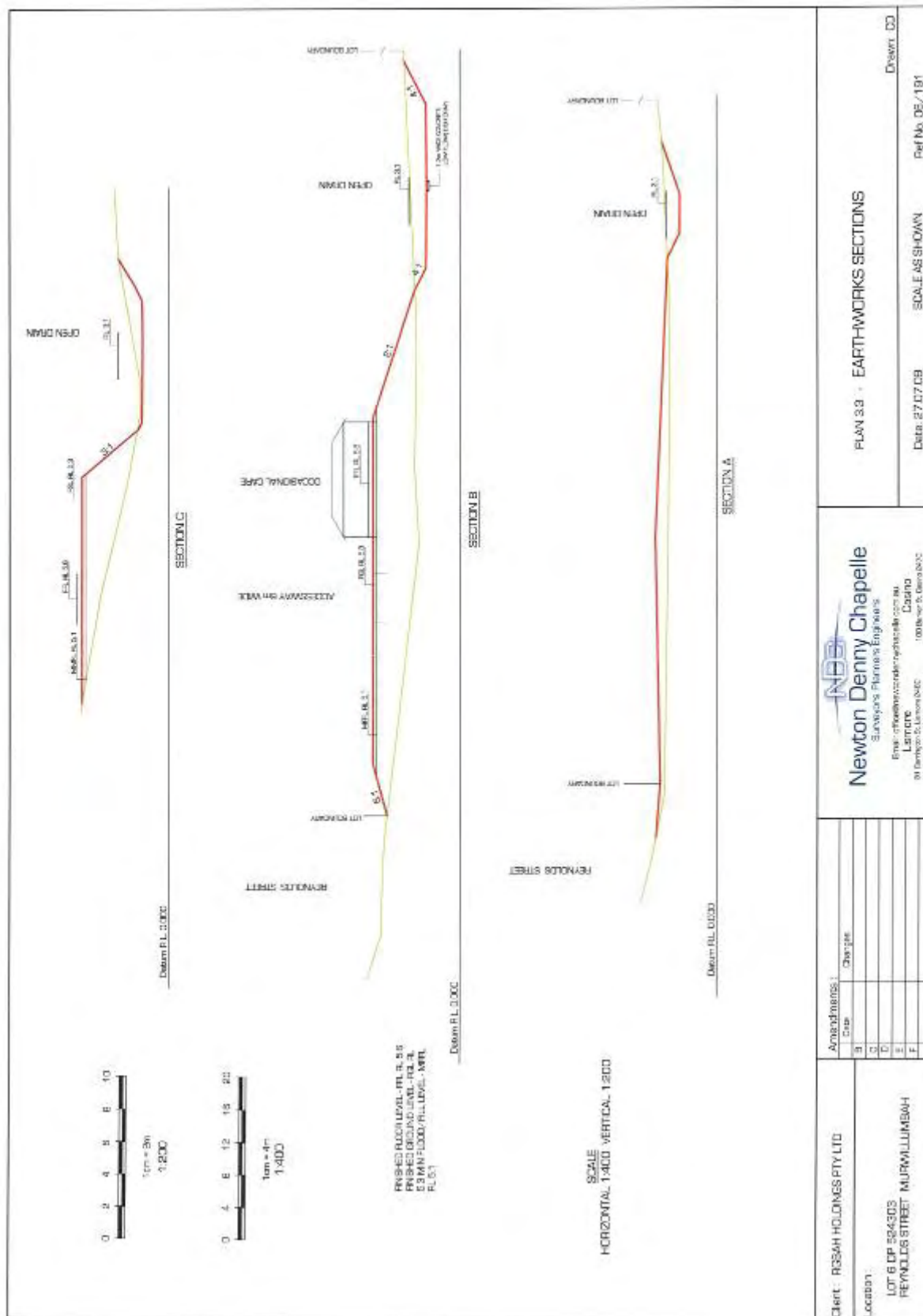


TWEED
SHIRE COUNCIL

DEVELOPMENT PLANS:







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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 – Consent Considerations

The proposed development is generally consistent with provisions contained within 1(a), (b) and (c) of this clause which states that the consent authority may grant consent to the development 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.

Clause 11: Zoning

The subject land contains a majority of land zoned 1(a) Rural Zone and a smaller portion of land with frontage to York Street zoned 2(a) Low Density Residential.

Subdivision in the 1(a) zone is permissible to create lots with a minimum area of 40 hectares. In this instance, land zoned 1(a) on the subject site is considerably less than the development standard. The proposed residue lot that will contain all of the 1(a) zoned land as a result of this proposal is further reduced in size to 2.639 hectares. A SEPP 1 objection to vary the development standard has been lodged with this application. Please refer to a discussion of this variation to the development standard in the section below.

Subdivision in the 2(a) zone is permissible to create lots with a minimum area of 450m². Proposed Lot 1 is wholly within the 2(a) zone and has an area of 2130m² which is sufficient. The 2(a) zoned portion of proposed Lot 2 is approximately 1226m² which is also sufficient.

Primary objectives for the 1(a) Rural zone include:

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development, and*
- *to protect rural character and amenity.*

Secondary objectives for the 1(a) Rural zone include:

- *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, and*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

On balance, the proposal satisfies the abovementioned objectives for the 1(a) zone in that:

- the subject land is essentially land-locked. It is not suited to agricultural activities or natural resource utilisation, and the proposed development does not interfere with land that is capable for such purposes
- the proposal does not detract from the rural character to the north of the site, nor does it reduce amenity from the streetscape or from adjoining allotments due to the 1(a) portion of the subject site being retained in area and on the one allotment. Essentially, the division of land and associated earthworks allow the placement of a dwelling on the land which will integrate the site with immediate adjoining low density residential uses.

The primary objective of the 2(a) zone relates to the provision for and maintenance of low density residential development with a predominantly detached housing character and amenity. The secondary objectives relate to the option of housing diversity and for non-residential development.

The proposed development is consistent with the primary objective of the zone in that the proposal represents the opportunity to create a large, low density allotment on which to locate a detached residential dwelling.

Clause 15 - Essential Services

Reticulated potable water and piped effluent disposal infrastructure is available to the subject site.

Electricity and telephone services currently service the subject land and surrounding development. These services would be available, subject to confirmation of any upgrades from Country Energy and Telstra, to service any future development on the land from existing infrastructure in York Street.

The existing overhead mains shall provide sufficient capacity to service the two proposed lots.

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The site exhibits Class 3 and 5 Acid Sulfate Soils.

A report, Acid Sulfate Soils Assessment and Management, Border Tech, October 2005 has been submitted for consideration. Some 16 samples were taken and analysed with potential Acid Sulfate Soils being identified. The sampling locations were well distributed across the site and the assessment satisfies all relevant requirements. The Statement of Environmental Effects and the aforementioned report indicate that Acid Sulfate Soils require neutralisation. A detailed Acid Sulfate Soils Management Plan will be required prior to the issue of Construction Certificate and has been conditioned accordingly.

Other Specific Clauses

Clause 19 – Subdivision (General)

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

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

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

Clause 20 provides for the subdivision in 1(a) zoned land if the area of each allotment created is at least 40 hectares. This application proposes to create an allotment of predominantly 1(a) zoned land (with a smaller portion of 2(a) zoned land) with an area of 2.639 ha from a parcel with a total land area of 2.852ha.

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

Clause 31 – Development Adjoining Waterbodies

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

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

The site is not within 40m of any natural waterway and is not caught by the Water Management Act or Fisheries Management Act provisions.

A stormwater gully exists on site draining the Hospital Hill area of Murwillumbah towards the East Murwillumbah levee Bank located adjacent to the site in George Street. It is a local natural drainage path that feeds into an existing open natural drainage channel towards Mayall Creek. Downstream of the site, culverts discharge into the existing open natural drainage channel extending approximately 300m to Mayall Creek, itself a tributary some 330m from the Tweed River.

It is proposed to realign the drain which will provide a significant upgrade to the existing drainage situation. The new drainage path and storage areas will be more clearly defined, including provision of a concrete invert strip to minimise maintenance.

This work will rectify less than satisfactory drainage infrastructure on site and will not compromise any existing flora or fauna on the site.

Clause 34 – Flooding

The Design Flood Level is RL 5.1m AHD, and the site is protected from Tweed River flooding by the East Murwillumbah Levee to the same level. The land is subject to stormwater inundation from local catchments within the levee, and can only drain via a floodgated structure in the levee. During a coincident river and local flood event, the site requires adequate storage for flood waters while the floodgate remains closed, so as not to impact on adjoining residences in Charles St.

Modelling shows that 11,500m³ of storage is required within the realigned drain to provide adequate storage for various duration Q100 storm events, including safety factors. The storage volume will be provided below RL 3.2m AHD, as residential properties in Charles St are at a minimum of approximately RL 3.5m AHD. This approach was reviewed by Council's Water Unit in consideration that the earthworks may impact on existing infrastructure traversing the site.

The Water Unit's main concern is the relocation of the Sewer Rising Main (SRM). However, it was considered that issues in relation to increasing the overall length of the main or the possible modification of the existing pump(s) at the sewer pump station could be addressed as part of a construction certificate application.

The existing sewer main will need to be replaced and fully reconstructed in ductile iron for the extent of any exposure as it crosses the realigned and improved open stormwater channel. Easements will need to be created over all existing and proposed sewer infrastructure.

In summary, no concerns were raised in having all water and sewer works covered by a construction certificate in lieu of a Section 68 application.

Filling of the land adjacent to Reynolds and York Streets will allow future habitable development on this land to be serviced with high level flood evacuation access to Hospital Hill.

Clause 39 – Remediation of Contaminated Land

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

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

Clause 54 – Tree Preservation Order

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

- the Tree Preservation Order 1990 - affects land zoned 1(a) and must obtain development consent.

Permissible removal of vegetation on site is discussed later in this report under the heading Flora / Fauna.

Clause 57 – Protection of Existing Dwelling Entitlement

Lot 6 DP 524303 was created as part of a Council approved subdivision and therefore meets the dwelling entitlement protection provisions of Clause 57.

Subdivision involving the creation of an undersized allotment in the 1(a) zone would lead to the loss of an existing dwelling entitlement. However, a dual-zoned allotment of 1(a) and 2(a) land retains a dwelling entitlement.

The applicant has incorporated 2(a) zoned land into both proposed lots, thus retaining the dwelling entitlement on the 1(a) zoned land and creating a new dwelling entitlement for proposed lot 1 which is wholly contained within 2(a) zoned land.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

The history of the use of the site has been for grazing activities. The small parcel of land has been deemed of marginal agricultural value by the Department of Planning.

Adjoining and surrounding land is utilised for low density residential purposes and to the north, cane farming and grazing purposes.

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

Clause 43: Residential development

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

Site erosion will be minimised throughout both stages and enforced via conditions of consent. The density of the proposed development is suitable for both zones, considering the existing area of the land parcel, and has been maximised without adversely affecting the environmental features of the land.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 1(a) zone for subdivision purposes as contained within Clause 20(2)(a) of the Tweed LEP 2000.

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

Consent may only be granted to the subdivision of land:

(a) within Zone 1(a), 1(b2), 7(a), 7(d), or 7(l) if the area of each allotment created is at least 40 hectares.

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

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

"The upholding of the prescribed 40 hectare minimum lot size is considered to be both unreasonable and unnecessary in this instance based on the following grounds.

- The subject land is already significantly below 40 hectares equating to below 3 hectares or less than 1% of the 40 hectare development standard*
- The proposed lot is consistent with the existing settlement pattern of the surrounding residential land*
- The proposal will not result in the fragmentation of rural land*
- The Department of Primary Industries has identified the land classification as significant farmland is a mapping anomaly*
- The objectives of the rural zoned land are not compromised by this proposal, whilst it is noted the current land holding size and configuration negates the objectives being met*
- The proposal will not result in a land use conflict with rural farming practices as the land is adjoined by residential zoned land*
- The property is well placed in location relative to key services*
- The land is connected to all essential infrastructure services (water, sewer, electricity)*
- The property is connected to the urban road network, with no major extension or upgrade of the road network required."*

Assessment of the applicant's submission:

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

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

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

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

The proposed residential subdivision is consistent with surrounding development. It does not compromise ecological or scenic value of the subject site.

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

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

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

The proposal provides for an urban Torrens Title subdivision that incorporates unproductive rural zoned land with no unreasonable burden on public infrastructure.

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

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

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

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

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

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

- The proposal is consistent with the objectives of the zone;
- While the existing lot size is significantly less than the 40 ha standard, the rural zoned land is effectively land-locked and there is little opportunity for agricultural use of the land; and
- The proposal will not increase the present level of demand for the provision of available amenities or services.

SEPP No. 55 - Remediation of Land

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

A Contaminated Land Assessment, Border tech, November 2005 has been submitted. Historically the site has been subject to cane farming and a small site shed existed (potential hot spot). Some 36 samples were taken for broad acre contamination and combined to composites. Four individual samples were also taken around the former shed site.

Results for some potential contaminants were above background, however all results were well below adjusted health-based soil investigation levels.

The report is consistent with relevant EPA Guidelines and concludes that the site is suitable for residential use.

SEPP (Rural Lands) 2008

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

None of the provisions contained within the SEPP relate specifically to this site. The land is not considered State significant agricultural land by the Department of Primary Industries. It is acknowledged that the mapping of this land as such is most likely an anomaly.

Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development. This proposal is essentially 'infill' development in a low density residential locality.

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

The shire-wide Draft Local Environmental Plan is currently on exhibition. The draft zones are RU2: Rural Landscape (replaces 1(a) zone) and R2 Low Density Residential (replaces 2(a) zone).

The proposed staged two (2) lot subdivision is permissible within the R2 zone, as the minimum land size is 450m², which is consistent with current provisions.

In relation to permissibility within draft zone RU2, the Draft LEP does not cater for the subdivision of an existing undersized allotment within this zone.

It refers to subdivision in Clause 4.6 (6) *Exceptions to development standards* by stating that such a consent must not be granted in this zone where it results in two or more allotments being less than the development standard (40 ha), or at least one lot that is less than 90% of the development standard.

The subject site is already 7.1% of the development standard. The proposal reduces the area of land containing the future RU2 zone to 6.6% of the development standard.

According to Clause 4.2 (3), undersized allotments may only be created for the purposes of primary production and dwellings may not be located or erected on such a lot. It is not intended, nor would it be feasible to use this land for primary production purposes.

This is an anomaly of the Draft LEP that has been brought to the attention of the Planning Reform Unit. Consolidation of land zoned RU2 within an existing undersized parcel to be used for residential purposes on insignificant rural zoned land is considered to be a practical form of development in this case.

Of interest is Clause 5.3 (c) (Development near zone boundaries) which allows placement of a dwelling on RU2 zoned land within proposed Lot 2 to be considered under the Draft LEP.

As indicated below, the objective of this clause is to provide flexibility for sites where development may be more compatible with that of the adjoining zone.

5.3 *Development near zone boundaries [optional]*

- (1) *The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.*
- (2) *This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is:*
 - (a) *20 metres between Zones RU5 Village, R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential, B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, IN1 General Industrial, SP2 Infrastructure, SP3 Tourist and RE2 Private Recreation, or*
 - (b) *50 metres between Zones RU1 Primary Production and RU2 Rural Landscape, or*
 - (c) *50 metres between a zone referred to in paragraph (a) and a zone referred to in paragraph (b).*

In this instance, the 50m of land within the RU2 zone may be considered for a land use that is more appropriate within the R2 zone (dwelling) but may be prohibited in the RU2 zone. As such, a proposed dwelling on RU2 zoned land may be located within 50m of the zone boundary even though a subdivision creating an undersized allotment may, in accordance with Clause 4.2(3) only be used for primary production purposes. The current plan indicates that the a future building envelope on proposed Lot 2 can be located well within 50m from the zone boundary. This could be considered as part of an assessment for a future land use application.

Erection of a dwelling on proposed Lot 2 (excepting enactment of Clause 5.3) is permissible through Clause 4.2C (c) or (d) as outlined below which pertains to the erection of a dwelling in the RU1, RU2, R5 and E2 zones.

- (2) *Development consent must not be granted to the erection of a dwelling on vacant land in a zone to which this clause applies unless the land is:*
- (a) *a lot created under clause 4.1, or*
 - (b) *a lot created under clause 4.2A, or*
 - (c) *a lot created before this Plan commenced and on which the erection of a dwelling was permissible immediately before that commencement, or*
 - (d) *a lot for which subdivision approval was granted before this Plan commenced and on which the erection of a dwelling would have been permissible immediately before that commencement if the plan of subdivision had been registered before that commencement.*

This outcome is dependent upon whether the subdivision plan is to be registered before the Draft LEP is gazetted or not.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Designated building envelopes on both proposed lots meet the requirements of DCP A1, Part A. These building envelopes are 10m x 15m and are well setback from property boundaries and road frontages. These building envelopes do not interfere with access arrangements or the provision of future services to the allotments.

A3-Development of Flood Liable Land

The site is considered flood liable. The nominated flood level for the site is RL 5.1m AHD.

Flooding matters are discussed previously in this report at Clause 34 of the Tweed LEP. Council's Flooding Engineer is satisfied that the proposed development satisfies provisions within DCP A3.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate “best practice” subdivision development in line with the policies of Council and the State. The DCP defines “subdivision” liberally as “the division of land into two or more parts” and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed by Council’s Engineers, details of which are included in the relevant sections of this report. As such, subject to various conditions attached to this report, the application is compliant with the provisions of this part of the DCP.

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

Clause 92(a) Government Coastal Policy

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

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

Access, Transport and Traffic

Access will be provided for both lots from the York Street frontage. However, Lot 2 will also have access available from its other road frontages. Lot 1 will not require a driveway or footpath crossing.

Lot 2 is being provided with an access ‘handle’ for flood free evacuation requirements but is most likely to provide further development options for Lot 2. As this is only a secondary access for Lot 2, being primarily a rural lot also, construction of a footpath crossing or formal driveway access within the ‘handle’ (as per standard residential usage), will not be necessary.

The provision of a gate in the boundary fencing at the York Street frontage for Lot 2 (as per standard ‘rural’ lot access requirements) will not be imposed as a requirement.

The site has an existing intersection of George and York Streets as part of its frontage. A public transport system currently services the Murwillumbah area and is accessible to the proposed development. George Street is a school bus route but no shelters are required.

Currently the only concrete footpaths fronting the proposed subdivision are on the full frontage in George Street. There are no other concrete footpaths in the immediate vicinity. A concrete footpath will not be required for the York Street frontage.

The proposed development will not generate any significant additional traffic to the area, and the local road network has sufficient capacity to cater for the extra traffic generated by the subdivision.

Flora and Fauna

No threatened species were recorded on the subject site.

The ecological value of the site is limited to its value as habitat when inundated during wet weather and subsequent flooding, during which it would be regarded as an ephemeral wetland, likely to be used on an opportunistic basis by aquatic and semi-aquatic fauna species, particularly wading birds, including potential migratory and threatened species and amphibians.

The development is unlikely to result in a significant impact upon threatened species, populations or ecological communities due to its general degraded nature and limited habitat value. A net environmental benefit may be realised through a program of works to remove environmental weeds and replace them with local hardy wetland plants.

Restoration of the main portion of the drain (apart from the concrete invert channel) will improve habitat value for the site.

Drainage

The major potential impacts arising from the construction phase of the development are erosion and sedimentation and subsequent export of sediment to the Tweed River via Mayall Creek.

Erosion and sedimentation needs to be strictly controlled on the site given its low lying nature and proximity to the adjacent waterways, however the site if flood-gated and, as long as work is undertaken outside of wet weather, the risk should be minimal.

Drain realignment will improve drainage through the site but on-site detention will remain an important factor because 11,500m³ of flood storage within the realigned and widened drain is required to satisfy Engineering conditions, should the development proceed.

Several roofwater lines from properties adjacent the subject site to the east were noticed as openly discharging onto the land although no services were noted. The existing easement is to be thoroughly investigated prior to development proceeding.

Several easements are required to accommodate the proposed development:

1. The existing gravity sewer main that transverses the site (and to be relocated) will require an easement created over the final alignment.
2. The existing sewer rising main (to be relocated also) will require an easement created over the final alignment.
3. Existing Lots 1 to 4 DP 230676 fronting George Street will require creation of a Drainage Easement to legalise existing stormwater discharge provisions.

4. Existing Lots 39 to 43 DP 24583 fronting Martin Street will require creation of a Drainage Easement to legalise existing stormwater discharge provisions. As these lots will be over 30m from the proposed drainage channel, AND in the same area intended for alternative access for Lot 2, it will be a condition of consent that a piped IAD easement be constructed to convey stormwater away from the lots to the channel. This will allow dual usage of this area.
5. The proposed new drainage channel is to be covered by a Drainage Easement. The easement is to extend to all the property boundaries on the eastern side of the site (overlapping the existing easement), but be limited to RL 3.5m AHD (approximately: subject to verification upon submission of construction certificate application) on the western side of the new channel.

Noise and Vibration

Traffic

Proposed Lot 2 is to have vehicle access from York Street in the future. Development of the proposed allotment will be the subject of a future development application. Use of the battle axe access route by vehicles may cause noise disturbances to existing residents facing Martin Street. A noise assessment will be required for the future development application to determine if acoustic fencing will be required at that time.

Construction

The development site is located within an established residential area, including a public school within reasonable proximity. Potential exists for localised disturbances from construction noise.

A Noise Impact Assessment (NIA) was submitted by the applicant. An assessment has been completed in accordance with the Construction Noise Guidelines, Department of Environment and Climate Change (DECC), July 2009 and the report indicates that noise levels from the proposed activities will exceed the DECC Noise Management Levels.

It is not possible to eliminate or manage all potential noise impacts when works are proposed in an existing residential precinct. However, the report recommends implementation of various reasonable and feasible management measures. The report was therefore deemed suitable and a condition has been applied accordingly for all works to be undertaken in accordance with the report.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The property is located within vicinity of the following key services as follows:

Local Park	(<50m)
Primary School	(<150m)
Base Hospital	(<400m)
Council Chambers	(<500m)
Murwillumbah CBD Shops	(<800m)

Effluent Disposal

The existing Sewerage Rising Main which traverses the site will be relocated to the south east boundary and along the Reynolds Street frontage.

Council's gravity sewer main infrastructure is available within the area and also traverses the site.

The existing sewer main will be further exposed due to the realignment of the open drain and will require concrete supports in accordance with Council Standards.

All sewerage mains located with the proposed subdivision will be required to have an easement created over their location.

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

The Act or Regulations do not require the proposal to be advertised or notified for public comment.

(e) Public interest

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed staged two (2) lot residential subdivision is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

13 [PR-CM] Development Application DA09/0722 for a Dwelling, Swimming Pool and Spa at Lot 31 DP 1030322, Collins Lane, Casuarina

ORIGIN:

Building & Environmental Health

FILE NO: DA09/0722 Pt1

SUMMARY OF REPORT:

A development application has been received to construct a new two storey dwelling, a swimming pool and a spa at the subject property.

The applicant has submitted an objection under the provisions of State Environmental Planning Policy No. 1 (SEPP1) to vary the development standard provided by clause 32B(4) of the North Coast Regional Environmental Plan 1988 which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7pm mid summer.

Given that the proposed SEPP1 variation is greater than 10%, this application has been referred to Council for determination in accordance with previous directions of the NSW Department of Planning.

The site is positioned on the eastern side of Collins Lane Casuarina and adjoins the beachfront. The northern side of the site is bounded by 5 metre wide public access pathway that provides access to the adjacent public reserve/beachfront. The site has a slight fall towards the rear of the property and the majority of the site is relatively level.

The adjacent site to the north of the property is Lot 32, and this site is vacant. The adjacent property to the south is Lot 30 and this site contains an existing two storey dwelling which is similar in scale to the proposed dwelling.

On the basis of planning merit and general compliance with Council planning controls, it is considered that the proposal is suitable for approval, subject to conditions.

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.**
- B. Development Application DA09/0722 for a dwelling swimming pool & spa at Lot 31 DP 1030322, Collins Lane Casuarina be approved subject to the following conditions: -**

GENERAL

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

[GEN0015]

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

[GEN0115]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

3. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

4. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).

- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to allow for construction and operation vehicular loading.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

5. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

6. The level of the swimming pool coping is to be clearly shown on the plans to be not greater than RL 7500.

[PCCNS01]

7. Prior to the issue of a Construction Certificate amended plans are to be submitted to and approved by Council which amend the position of the external wall of the garage to stand not less than 450mm from the southern side boundary.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

- 8. 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]
9. 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]
10. 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]

11. 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]

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

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

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

[PCW0255]

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

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

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

[PCW0985]

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

[PCW1005]

DURING CONSTRUCTION

15. 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]

16. The 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]

17. 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]

18. 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]

19. 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]

20. 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]

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

[DUR0445]

22. 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]

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

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

[DUR1005]

24. Zone Boundary

- (a) No construction work other than 1.2m high fencing is to be carried out in the 7(f) zone.
- (b) The 7(f) and 2(e) zone boundary is to be clearly identified on site by Registered Surveyor marks prior to start of work.
- (c) No overflow from an infiltration pit shall be discharged over the eastern boundary.

[DUR1035]

25. All landscaping is to comply with the 88B Instrument pertaining to the site.

[DUR1055]

26. 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]

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

[DUR1945]

28. 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]

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

[DUR2085]

30. 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]

31. 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]

32. 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]

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

[DUR2515]

34. 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]

35. 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]

36. Sewer connections within the 7(f) zone are to comply with the following:-

- (a) Two inspection shafts shall be provided to each lot. The first shall be provided immediately adjacent to the connection point provided by the developer. The second inspection shaft at 0.5 metres inside the 2(e) zone boundary on each property. Inspection shafts are to be finished at surface level with a standard bolted trap screw cap and concrete surround.**
- (b) Pipe work size for all lots under this approval are to have a 100mm diameter sewer.**

[[DUR2695]

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

[DUR2705]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

38. 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]

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

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

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

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

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

[POC0265]

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

[POC0435]

USE

41. 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]

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

[USE0505]

43. **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]

REPORT:

Applicant: Croft Developments

Owner: Mrs KS Tyson

Location: Lot 31 DP 1030322 Collins Lane, Casuarina

Zoning: 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)

Cost: \$500,000

BACKGROUND:

The majority of the property is zoned 2(e) Residential Tourist under Tweed Local Environmental Plan 2000. The rear portion of the site is zoned 7 (f) Environmental protection (coastal lands). The site and is located on the eastern side of Collins lane Casuarina.

An objection under SEPP No. 1 has been lodged requesting a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

SITE DIAGRAM:



LOCALITY PLAN

Lot 31 DP 1030322
Collins Lane, Casuarina

0 0.5 1 1.5 2 Km
1:75,000

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 02 March, 2010

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Coordinate System: MGA Zone 56
Datum: GDA 84

Cadastre: 02 March, 2010
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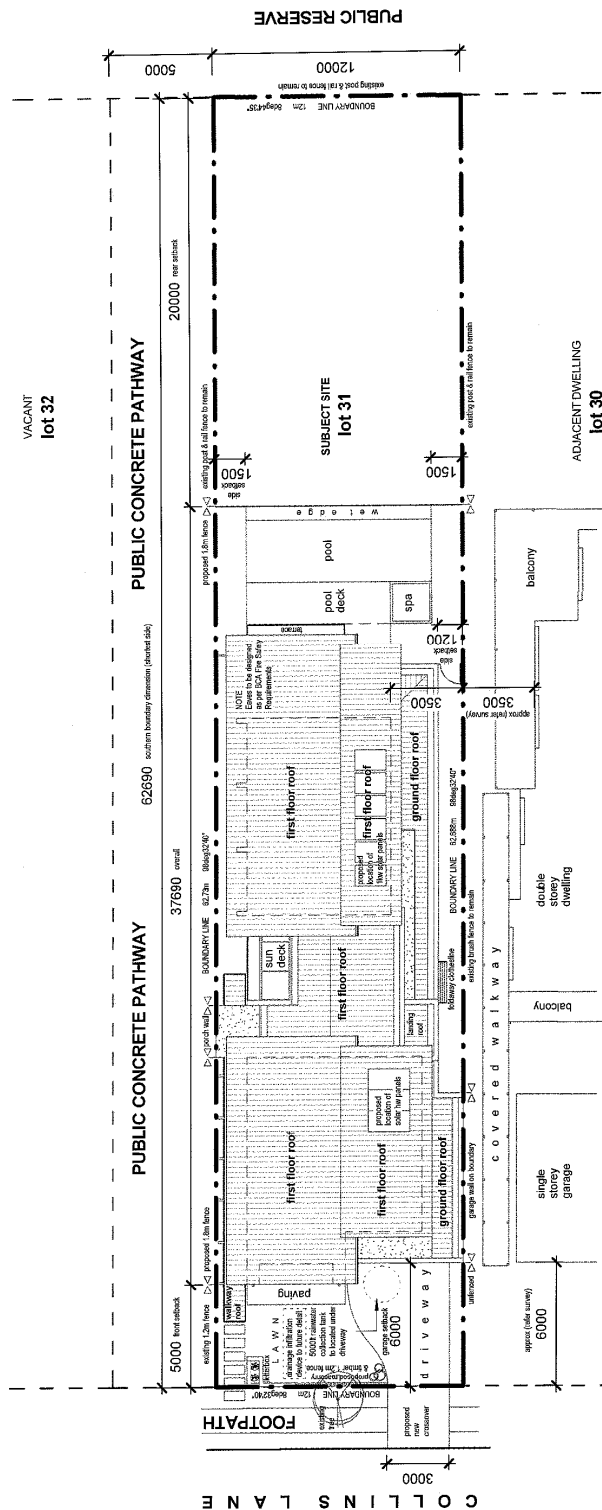
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T: (02) 6675 2400 / 1300 292 672
F: (02) 6670 2463
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TWEED
SHIRE COUNCIL

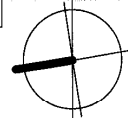
DEVELOPMENT PLANS:



SITE AREA		
lot 31		792.5m2
BUILDING AREAS		
ground floor		230m2
garage		50m2
porch		30m2
back deck		30m2
SUB TOTAL		340m2
first floor		190m2
balcony		10m2
back deck		10m2
terrace		32m2
SUB TOTAL		232m2
TOTAL		550m2
FSR AREAS		
ground floor		215m2
first floor		162m2
TOTAL		377m2 (30%)
IMPERVIOUS AREAS		
roof		322m2
deck not porous		50m2
deck porous		15m2
driveway porous		15m2
pool & spa		37m2
TOTAL		422m2 (57%)

design response

1:200



TP04

Rev A

Level 5, 31 Packer Lane
Melbourne 3000
Tel 03 9450 1407
Fax 03 9454 2676
Information@millsgorman.com.au
www.millsgorman.com.au

DATE 05/11/2009
Drawn by: AM

SCALE
1:200 @ A3

DRAWING
design response
4 of 11

CLIENT
graeme croft

ADDRESS
lot 31 collins lane
casuarina
nsw

PROJECT
proposed new dwelling





1. Streetview of subject site (looking east from Collins Lane)



2. Looking southeast from Collins Lane towards adjacent dwelling



looking south towards adjacent dwelling

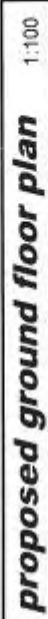
looking south towards adjacent dwelling

3. Panoramic view of subject site from northern boundary

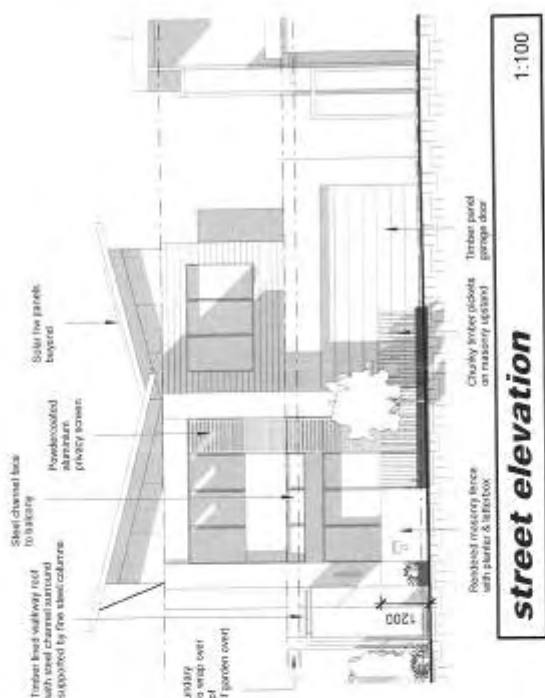


looking southeast towards beach

site photos
 lot 31 collins lane
 CASSIARIA
 NSW
 TP03 Rev A
 KILLES
 GORTON
 ARCHITECTS
 1/45-1/46 Collins Lane
 CASSIARIA NSW 2130
 02 9807 1071
 02 9807 1072
 info@killesgorton.com.au
 www.killesgorton.com.au

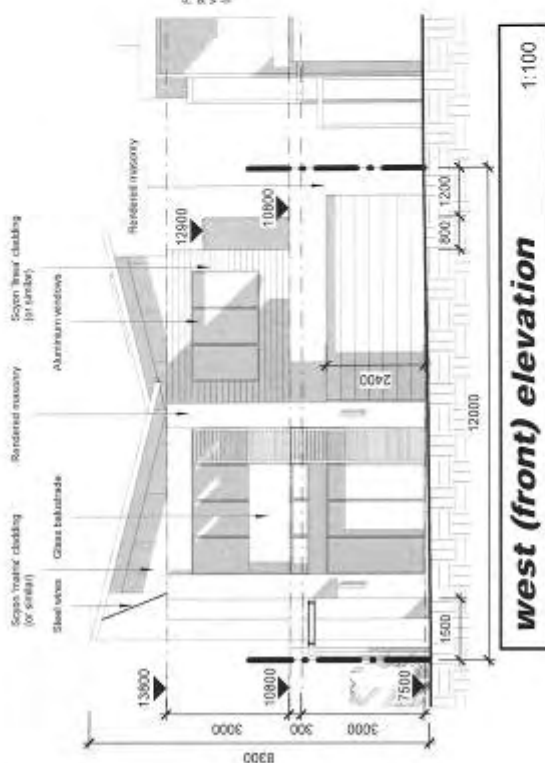






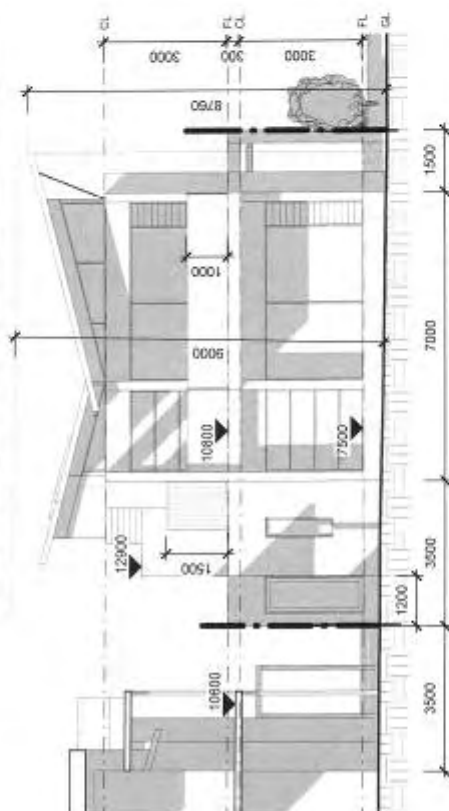
street elevation

1:100



west (front) elevation

1:100



east (rear) elevation

1:100

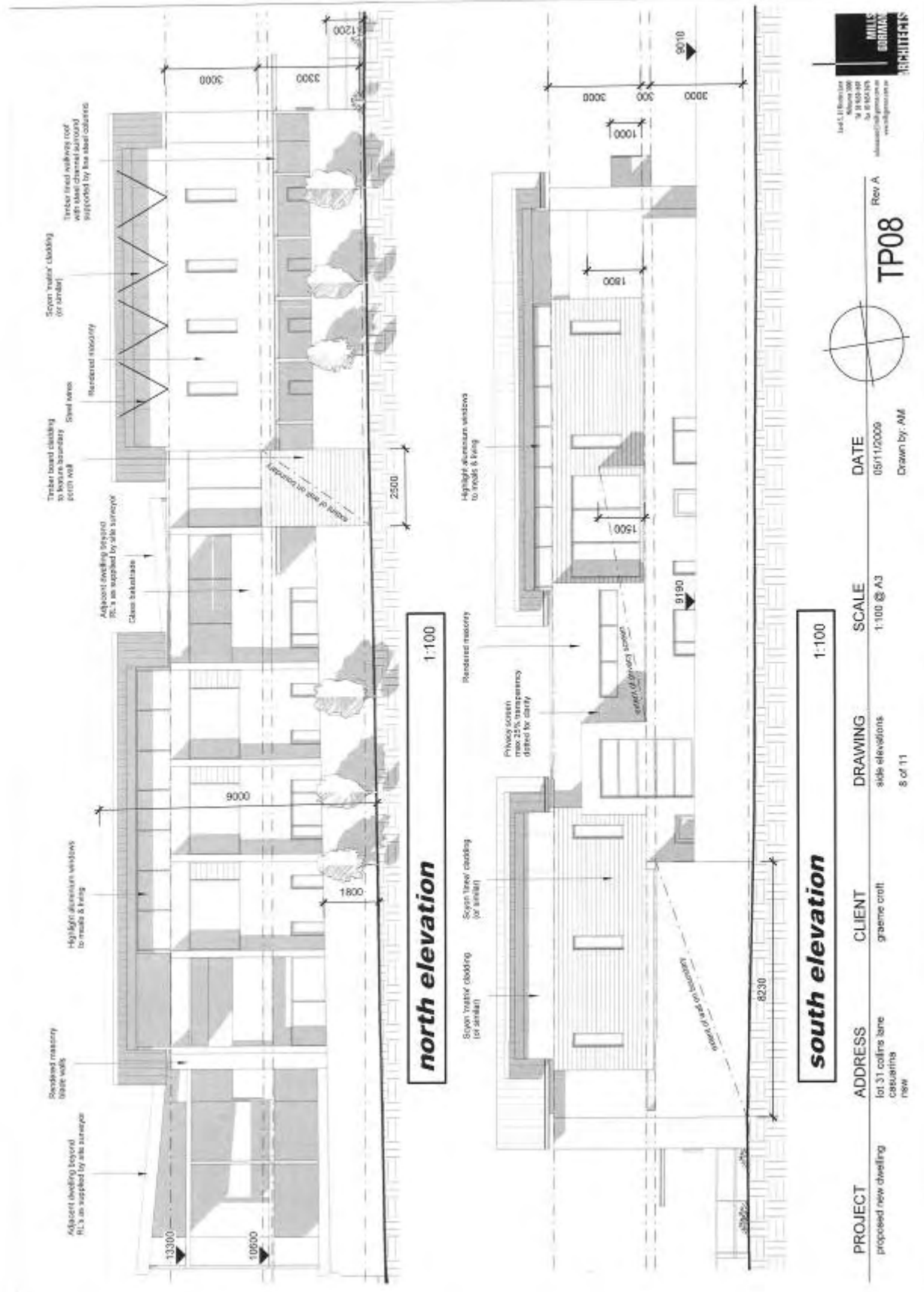


TP07
Rev A
DATE 05/11/2009
Drawn by: AM

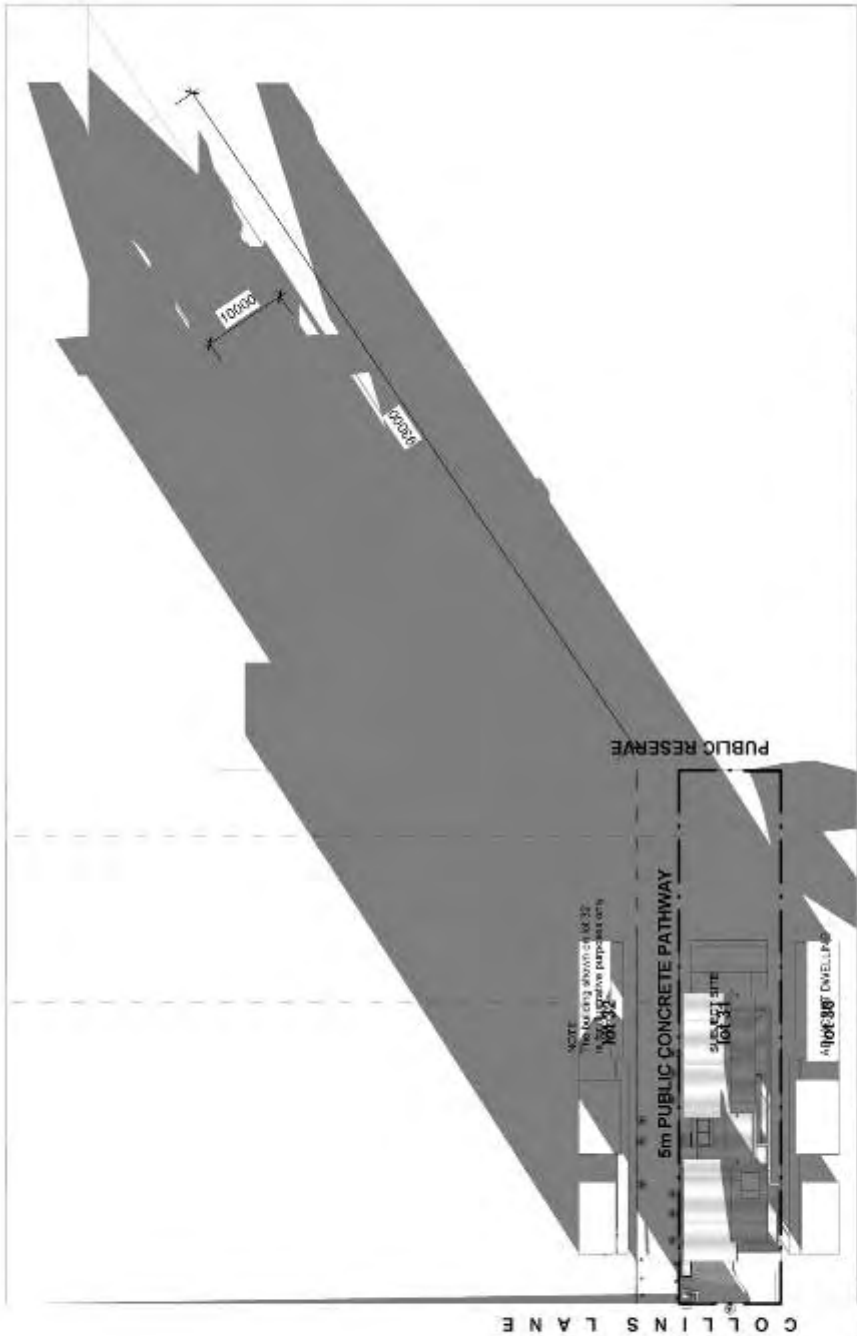
SCALE 1:100 @ A3
DRAWING front & rear elevations
7 of 11

CLIENT graeme croft
ADDRESS 1st 31 Collins lane
caulfield north

PROJECT proposed new dwelling



SHADOW DIAGRAMS:



NOTE
Shadows as per
Summer Solstice
21.12 Brisbane

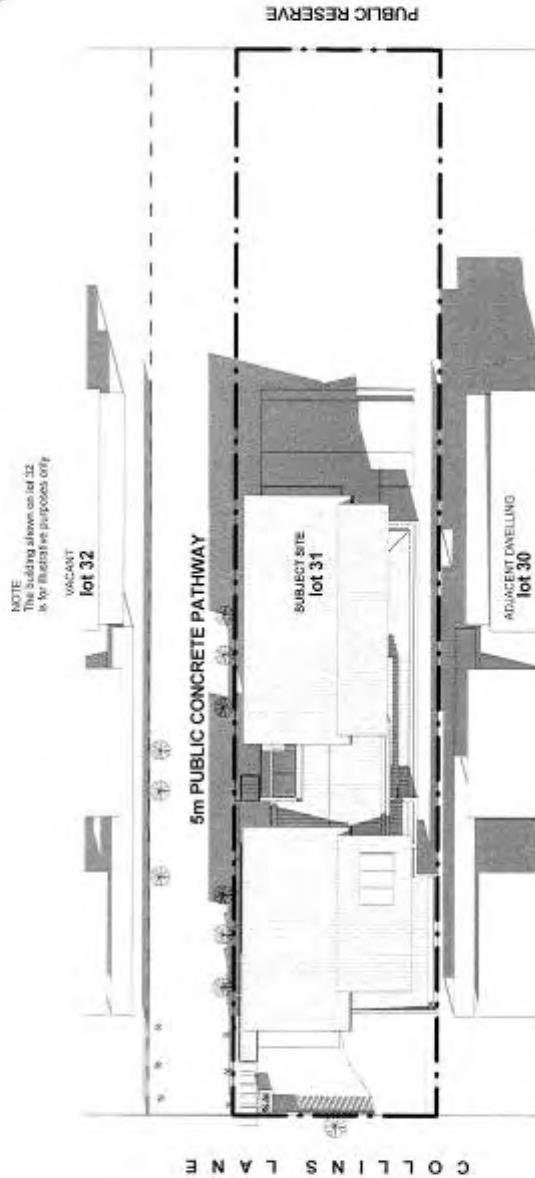
7pm summer shadow diagram 1:500

- SHADOW DIAGRAMS SHEET LIST
- 10 the model used for studies
 - 10a 9am spring
 - 10b 12pm spring
 - 10c 3pm spring
 - 10d 9am summer
 - 10e 12pm summer
 - 10f 3pm summer
 - 10g 9am winter
 - 10h 12pm winter
 - 10i 3pm winter

PROJECT	ADDRESS	CLIENT	DRAWING	SCALE	DATE	Rev B
proposed new dwelling	lot 31 collins lane casuarina new	grime craft	shadow diagrams 10 of 11	1:250 @ A3	05/11/2008 Drawn by: AM	TP10g

MILLS
BORNARD
ARCHITECTS

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www.millsbornard.com.au



NOTE
Shadows as per
Summer Solstice
21.12 Brisbane

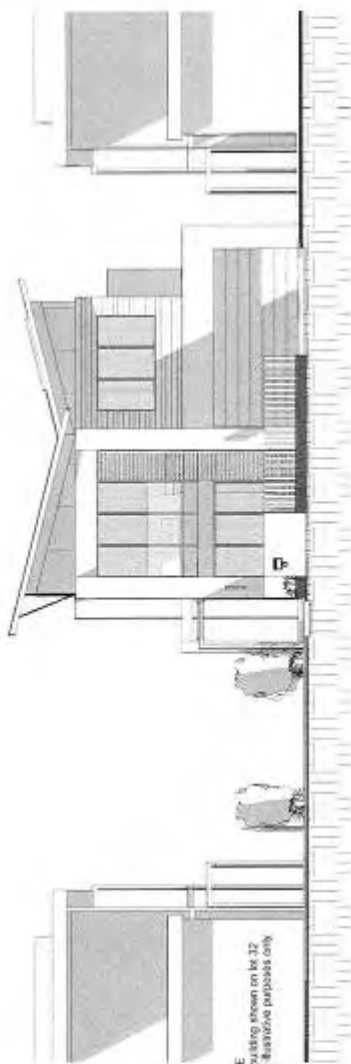
3pm summer shadow diagram 1:250

SHADOW DIAGRAMS SHEET LIST
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10b. 12pm spring
10c. 3pm spring
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10g. 7pm summer
10h. 9am winter
10i. 12pm winter
10j. 3pm winter

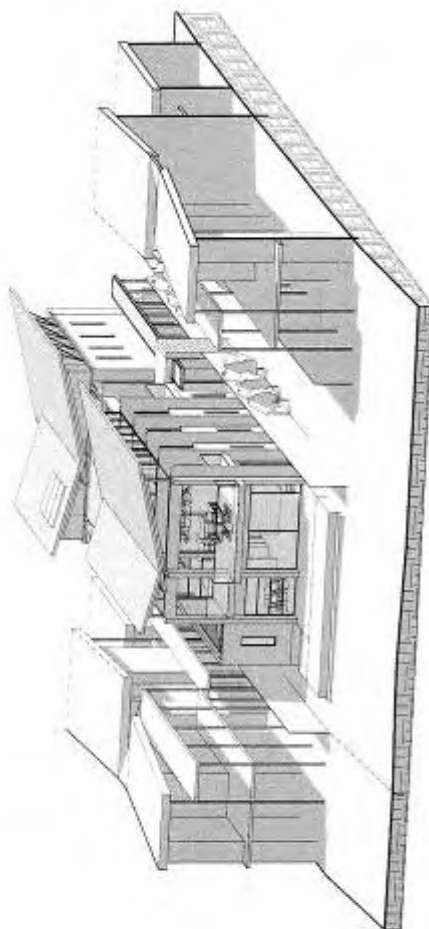
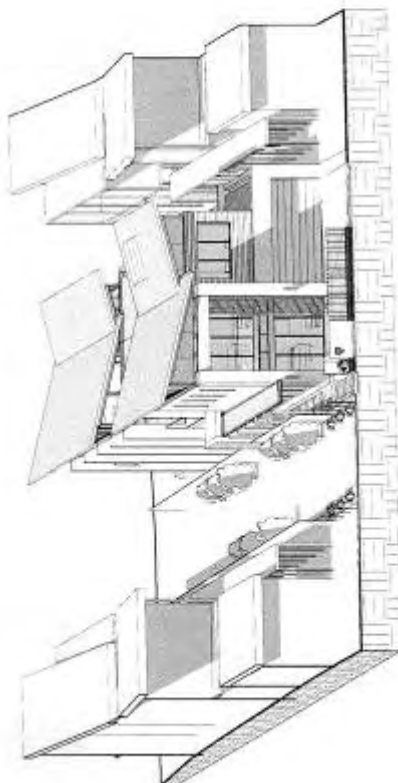


TP10f Rev A

PROJECT	ADDRESS	CLIENT	DRAWING	SCALE	DATE
proposed new dwelling	lot 31 collins lane casuarina new	grains craft	shadow diagrams 10 of 11	1:250 @ A3	05/11/2009 Drawn by: AM



NOTE
Shadows shown on lot 32
is for illustrative purposes only



NOTE
Shadows as per
Spring Equinox
21.03 Brisbane

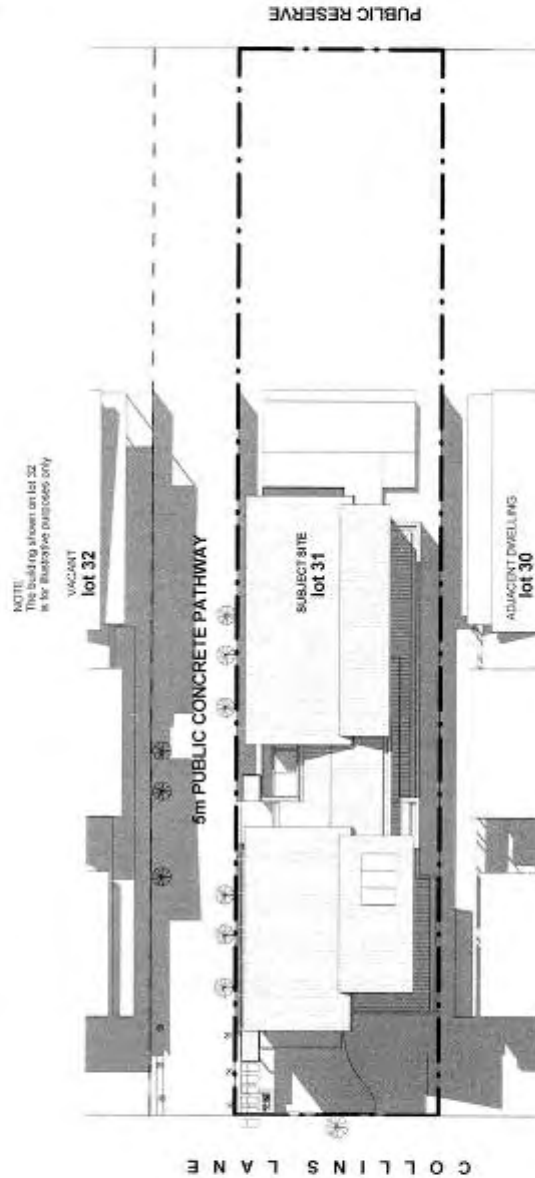
shadow model (12pm spring) nts

SHADOW DIAGRAMS SHEET LIST

- 10a 9am spring
- 10b 12pm spring
- 10c 3pm spring
- 10d 9am summer
- 10e 12pm summer
- 10f 3pm summer
- 10g 9am winter
- 10h 12pm winter
- 10i 3pm winter



PROJECT	ADDRESS	CLIENT	DRAWING	SCALE	DATE	Rev A
proposed new dwelling	lot 31 collins lane casuarina new	grame croft	sections 10 of 11	nts @ A3	05/11/2009	TP10
Drawn by AM						



NOTE
Shadows as per
Spring Equinox
21.09 Brisbane

9am spring shadow diagram 1:250

SHADOW DIAGRAMS SHEET LIST

10	the model used for studies
10a	9am spring
10b	12pm spring
10c	3pm spring
10d	9am summer
10e	12pm summer
10f	3pm summer
10g	7pm summer
10h	9am winter
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10j	3pm winter



TP10a Rev A
DATE 06/11/2009
Drawn by AM

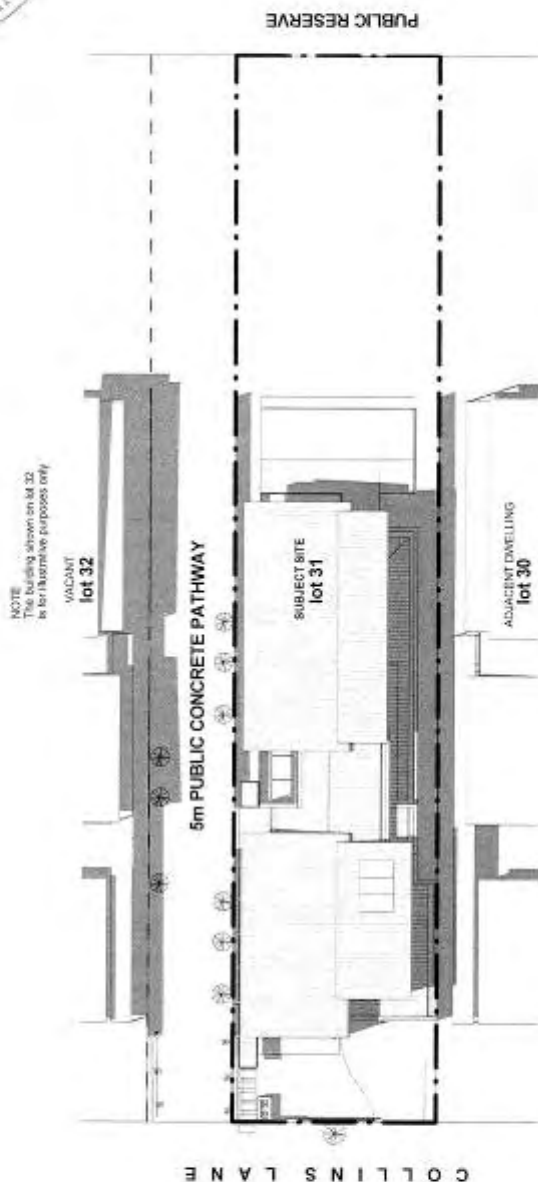
SCALE 1:250 @ A3

DRAWING shadow diagrams
10 of 11

CLIENT greene croft

ADDRESS lot 31 collins lane
casualina
rise

PROJECT proposed new dwelling

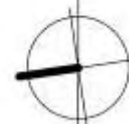


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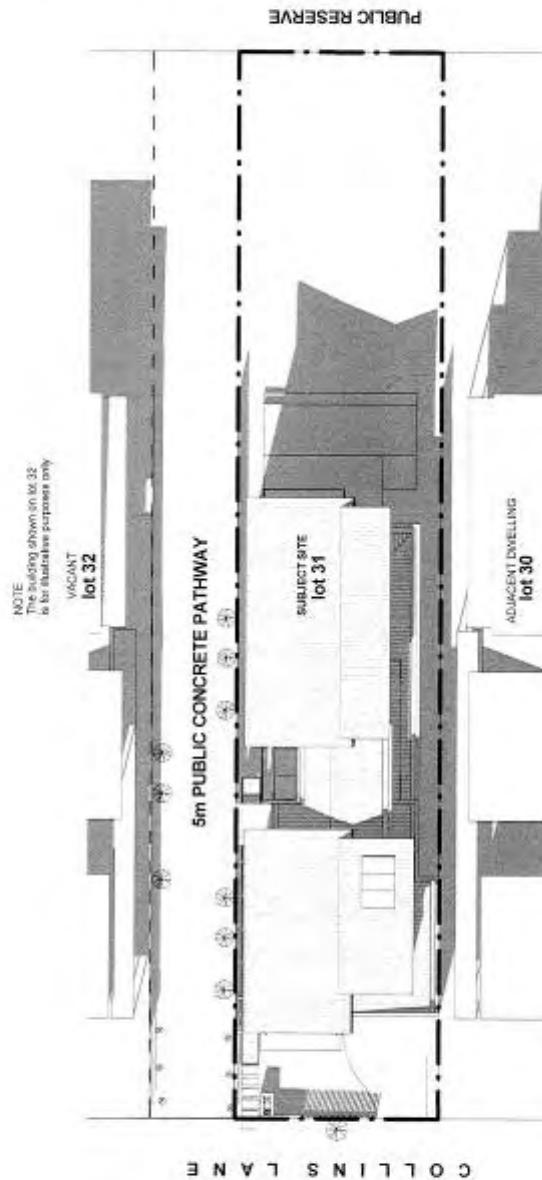
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10b	12pm spring
10c	3pm spring
10d	9am summer
10e	12pm summer
10f	3pm summer
10g	9pm summer
10h	9am winter
10i	12pm winter
10j	3pm winter

12pm spring shadow diagram 1:250

NOTE
Shadows as per
Spring Equinox
21.08 Brisbane



PROJECT	ADDRESS	CLIENT	DRAWING	SCALE	DATE	Rev A
proposed new dwelling	lot 31 collins lane casuarina NSW	greene croft	shadow diagrams 10 of 11	1:250 @ A3	05/11/2009 Drawn by: AM	TP10b



SHADOW DIAGRAMS SHEET LIST

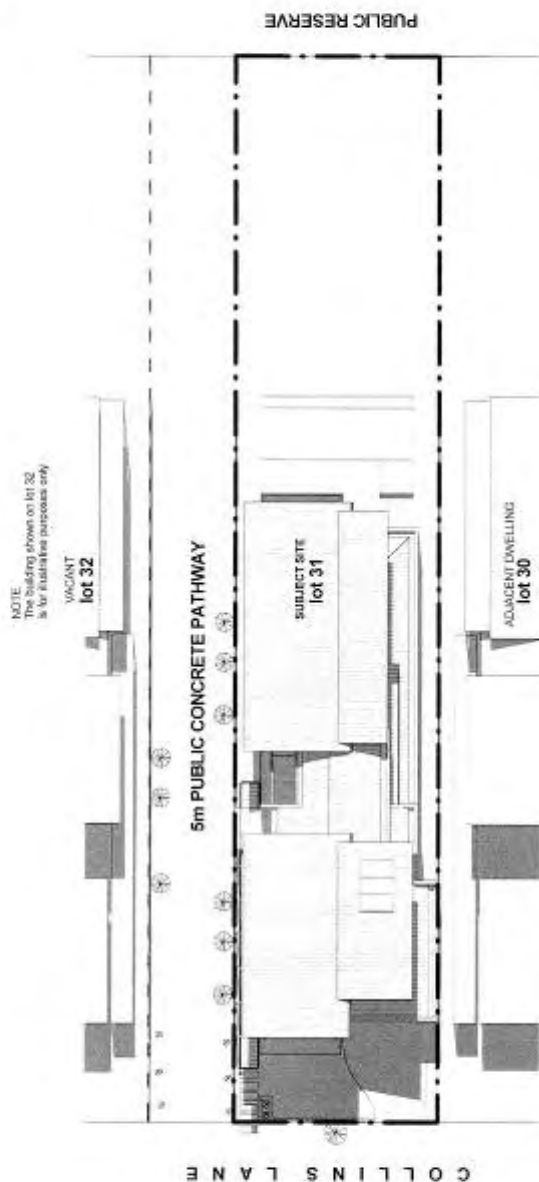
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10a	9am spring
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10c	3pm spring
10d	9am summer
10e	12pm summer
10f	3pm summer
10g	7pm summer
10h	9am winter
10i	12pm winter
10j	3pm winter

3pm spring shadow diagram 1:250

NOTE
Shadows as per
Spring Equinox
21.09 Brisbane



PROJECT	ADDRESS	CLIENT	DRAWING	SCALE	DATE	Rev A
proposed new dwelling	lot 31 collins lane cauldrup nsw	groome croft	shadow diagrams 10 of 11	1:250 @ A3	08/11/2009	TP10C
Drawn by: AM						



SHADOW DIAGRAMS SHEET LIST

10	the model used for studies
10a	12pm spring
10b	12pm spring
10c	3pm spring
10d	5pm summer
10e	12pm summer
10f	3pm summer
10g	7pm summer
10h	9am winter
10i	12pm winter
10j	3pm winter

9am summer shadow diagram 1:250

NOTE
Shadows as per
Summer Solstice
21.12 Brisbane

PROJECT	proposed new dwelling	ADDRESS	lot 31 collins lane casuarina NSW	CLIENT	grasma craft	DRAWING	shadow diagrams 10 of 11	SCALE	1:250 @ A3	DATE	05/11/2009	Drawn by	AM
										Rev A			
										TP10d			

North Arrow

TP10d

Rev A

Drawn by AM

DATE 05/11/2009

SCALE 1:250 @ A3

DRAWING shadow diagrams 10 of 11

CLIENT grasma craft

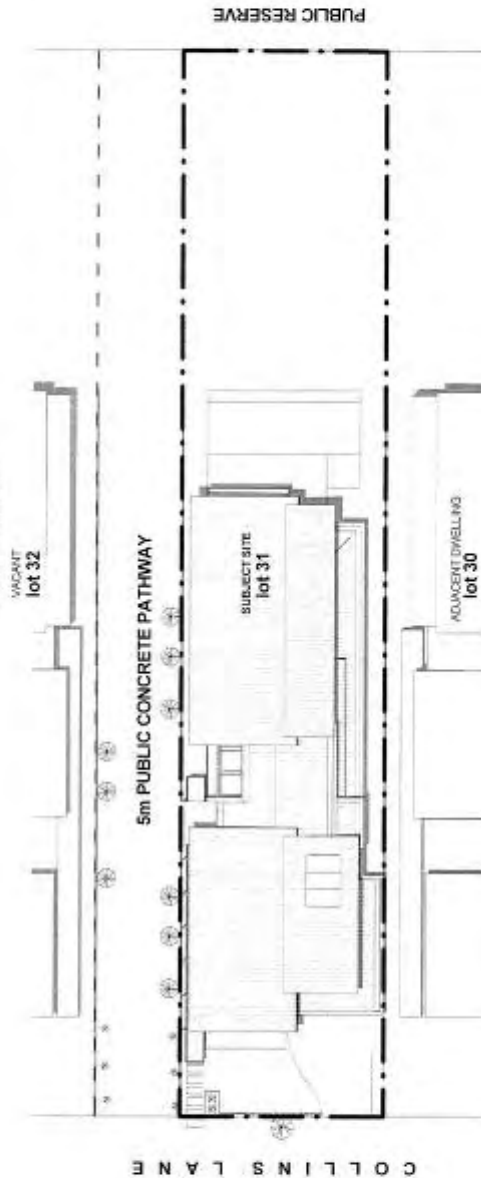
ADDRESS lot 31 collins lane casuarina NSW

PROJECT proposed new dwelling





NOTE
The building shown on lot 32
is for illustrative purposes only

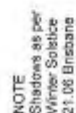


SHADOW DIAGRAMS SHEET LIST
 10 the model used for studies
 10a 9am spring
 10b 12pm spring
 10c 3pm spring
 10d 9am summer
 10e 12pm summer
 10f 3pm summer
 10g 7pm summer
 10h 9am winter
 10i 12pm winter
 10j 3pm winter

NOTE
Shadows as per
Summer Solstice
21.12 Brisbane

12pm summer shadow diagram 1:250





3pm winter shadow diagram

SHADOW DIAGRAMS SHEET LIST

Model	the model used for studies
10a	8am spring
10b	12pm spring
10c	3pm spring
10d	8am summer
10e	12pm summer
10f	3pm summer
10g	7pm summer
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Row A

DATE 05/11/2008
Drawn by: AM

SCALE
1:250 @ A3

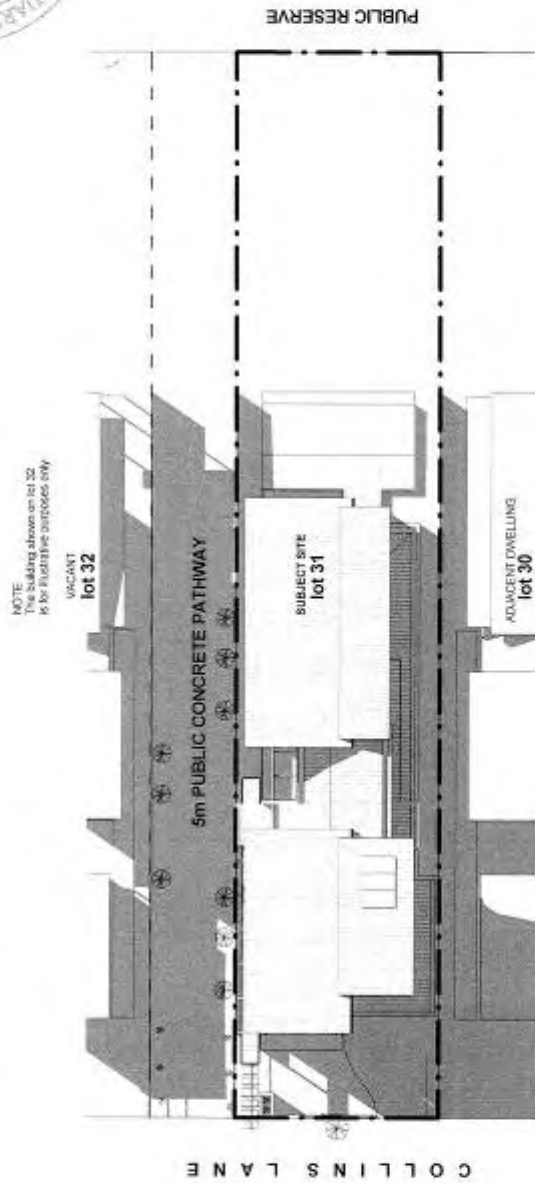
DRAWING

CLIENT
grainie croft

ADDRESS
lot 31 collins lane
casuarina
NSW

PROJECT
proposed new dwelling

David S. H. Friedman, AIA
 • 400 Avenue 19th
 St. St. 10408 1007
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 St. St. 10408 1007
 Tel. 800.442.7334
 Fax 800.442.7334

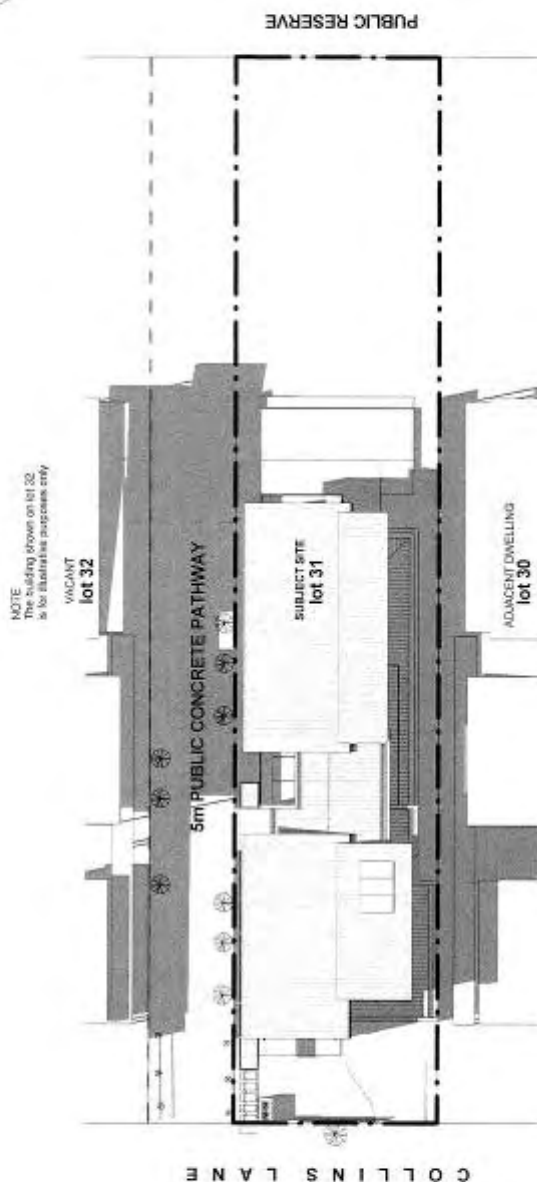


SHADOW DIAGRAMS SHEET LIST
 10 2nd model used for studies
 10a 9am spring
 10b 12pm spring
 10c 3pm spring
 10d 9am summer
 10e 12pm summer
 10f 3pm summer
 10g 7pm summer
 10h 9am winter
 10i 12pm winter
 10j 3pm winter

9am winter shadow diagram 1:250

NOTE
 Shadows as per
 Winter Solstice
 21.05 Brisbane





NOTE
Shadows as per
Winter Solstice
21.06 Brisbane

12pm winter shadow diagram

1:250

SHADOW DIAGRAMS SHEET LIST

- 10 the model used for studies
- 10a 9am spring
- 10b 12pm spring
- 10c 3pm spring
- 10d 9am summer
- 10e 12pm summer
- 10f 3pm summer
- 10g 9am winter
- 10h 12pm winter
- 10i 3pm winter



Rev A

TP10i

DATE 05/11/2009
Drawn by: AM

SCALE 1:250 @ A3

DRAWING shadow diagrams
10 of 11

CLIENT greene croft

ADDRESS lot 31 collins lane
casuarina
NSW

PROJECT proposed new dwelling

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 subject site is zoned 2(e) Residential Tourist. The primary objective of the zone is to encourage the provision of family-orientated tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing.

The secondary objective relates to the provision of 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 proposed development is consistent with the objectives of the zone.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with aims and objectives of this clause.

Clause 8 - Zone objectives

The proposed development is consistent with the zone objectives.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The dwelling will be two storeys and it is considered that the height and scale of the development will be appropriate for its location, the surrounding development and the environmental characteristics of the land.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the nature of the proposal within the existing residential environment.

Clause 35 - Acid Sulfate Soils

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2 metres below surface level. It is not anticipated that the development will impact on the acid soils in the area and only minor excavation is proposed.

Clause 36 – Coastal Erosion Hazard Outside Zone 7 (f).

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

Council's mapping records indicate the subject site is clear of the 100 year hazard line.

Clause 39A – Bushfire Protection

Council's records indicate that a small portion of the rear of the 7 (f) zone is bushfire prone. The proposal is consistent with the considerations of this clause and can be suitably protected by the Asset protection contained within the site.

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 public open space to the east of the site being overshadowed at 7pm midsummer (daylight saving time). It is considered that this overshadowing is minor considering the time of the day that it will occur, in relation to dusk. It should also be noted that the proposed development will have a similar impact on the public open space to other existing dwellings approved in the vicinity. The shadow diagram prepared for 3pm midwinter shows that shadow projected will be contained wholly within the site.

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

Clause 33: Coastal hazard areas

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

SEPP No. 1 - Development Standards

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7 pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at 7pm midsummer.

The proposal seeks a variation to the extent of shadow impacts on the coastal reserve to the east of the property and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *The proposed departure is considered to be minor as it is restricted to very late afternoon for a short period in summer. It is also noted that at this late time of the afternoon all two storey dwellings along the coastal strip throw long shadows that fall upon the coastal foreshore areas and this cannot be avoided for this short period late in the day in summer. The proposal is considered an appropriate use of the residentially zoned land and protects the coastal foreshore zoned land as environmental protection. The proposal maintains continued protection for environmentally significant areas.*
- *Existing trees on the foreshore dunal areas result in significant overshadowing of the foreshore reserve and beach prior to the relevant times.*
- *The immediate area to be overshadowed is a drainage area and cycle/footpath. The area to be overshadowed although used by the public is not really an area where people will congregate. The overshadowing will therefore not alienate the physical use of the area.*
- *The impact of the development on the public reserve and dune areas would have been addressed when the subdivision approval was being dealt with.*

Generally, the above points are agreed to and it is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation and walk way. The shadow will not impact on areas used for formal recreational activities. It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration and in the most part intercept the dwelling shadows.

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

SEPP No 71 – Coastal Protection

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

SEPP (Building Sustainability Index: BASIX) 2004

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

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

Draft Tweed Local Environmental Plan 2010.

This document was exhibited by Council on 27 January 2010 and is on exhibition until 31 March 2010.

It is considered that this development is consistent with the provisions of the exhibited Draft LEP.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

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

Public Domain Amenity

Streetscape

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

The dwelling is proposed to be set back 5m from the street which is consistent with the surrounding developments. The garage will be setback 6 metres. This is consistent with the objectives of Sections A1 and B5 (Casuarina Beach) of the Tweed Development Control Plan.

Public Views and Vistas

The proposal will not result in an unreasonable view loss of the beach and foreshore given that the dwelling is 2 storey. The proposed dwelling will provide for view corridors for dwellings located on the western side of Collins Lane. An additional view corridor is also available via the public walkway that is positioned on the northern side of the property.

Deep Soil Zones

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

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

The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a depth of 20 metres.

Impermeable Site Area

The current provisions of A1 limit the maximum allowable impervious surface area of the site to 60% for allotments over 750m². The area of the subject site is 752m² and therefore the maximum impermeable area permitted at the completion of the development would be 451m².

The proposal has a calculated impermeable area of 56% or 422m². This being less than the maximum 60% permitted.

External Living Areas

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

Landscaping

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the southern side boundary and shrubs within the front and rear setbacks.

The proposal is generally consistent with this design control.

Setbacks

The proposal has setbacks of 1.5 metres to the northern boundary as required by Section A1 of the TDCP with the exception of a point encroachment of a 2.5 metres wall which is proposed to be positioned in close proximity to the boundary. As this wall will adjoin a public path it is not considered that the wall will have a detrimental affect on the amenity of the area.

The southern wall of the majority of the dwelling is proposed to be setback 1.2 metres from the boundary. However the majority of this elevation is single storey. It is considered that this minor departure from the 1.5 metres required by Section A1 of the TDCP which typically relates to a 2 storey building and will not detract from the objectives of the DCP. It should also be noted that Section B5 of the TDCP which is a specific locality control permits external walls to be constructed up to 900mm from side boundaries.

It is also proposed to construct the external southern wall of the garage which has a length of 8.23 metres, up to the southern boundary.

The proposal was notified which resulted in an objection being received in relation to the proposed position of the external walls of the dwelling and garage.

Section A1 of the TDCP permits garages to be positioned up to 450mm of a side boundary. As noted above Section B5 of the TDCP permits external walls to be positioned 900mm from side boundaries. Furthermore Section A1 of the Tweed Development Control Plan permits single storey dwellings to be positioned up to 900mm from a side boundary.

An instrument under Section 88B of the Conveyancing Act 1919 is applicable to the site under deposited plan 1030322. This is also a site specific control and is common to many lots within the Casuarina area. This control permits the external garage wall of the subject property to be constructed up to the side boundary as long as it is constructed of low maintenance materials such as masonry. It should also be noted that the Architectural Review Committee for the estate has given its consent for the external wall of the garage to be positioned in close proximity to the side boundary. It is acknowledged that within the estate there exists a mixture of external garage walls that are positioned in close proximity to boundaries and walls that also comply with the standard 900mm setback requirements.

In a submission made by the applicants planning consultant, Planit consulting has advised the following;

“We feel satisfied that the issues raised in the submission are compliant with the relevant controls and that the design proposed will not have any significant detrimental impact on adjoining properties and accordingly no alteration to the submitted plans are considered necessary”

It is considered in this circumstance due to the existence of three setback controls and the existence of an objection from the adjacent property owner that Council should recommend that a compromise be attained by requiring a side boundary setback of 450mm. This setback will also enable the existing brushwood fence to remain in place during the construction phase of the project and allow for future maintenance of the garage wall and fence.

Building Height

The maximum height of the dwelling is 8.76 metres which is consistent the current maximum design control of 9 metres.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 3.0 m which satisfies the current requirements of the DCP.

Building Amenity

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated to the east adjacent to the pool area.

Shadow diagrams submitted indicate that overshadowing impacts on the adjacent properties will be minimal. The proposed development is in keeping with the bulk and scale of existing dwellings in the area.

Visual Privacy

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

Acoustic Privacy

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

Natural Ventilation

The design of the dwelling provides for adequate natural ventilation.

Roof

The roof is a pitched butterfly design and is consistent with the design requirements of section A1. The roof design will provide visual interest to the dwelling. A condition regarding the implementation of non-reflective roof materials has been recommended in the conditions.

Building Performance

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

Swimming Pools

The proposed swimming pool/spa is in the rear yard of the property and will be setback 1.5 from the northern and southern boundaries and is consistent with the design control objectives for swimming pools in Section A1.

Floor Space Ratio (FSR)

The current A1 provisions control the maximum allowable floor area of a dwelling in relation to the total area of the site as a means of matching the building scale with the capacity of the site and local area.

Under the current A1 requirements the maximum FSR allowable for this site is 0.55:1.

The site area of the subject property is 752.5m² and the total floor area of the proposed dwelling is 378m² which represents an FSR of 0.5:1 which complies with the requirements of Section A1 of the TDCP.

A2-Site Access and Parking Code

The development will comply with the requirements of section A2 in relation to vehicle access and parking. Two car spaces have been provided through a ground level double garage.

A11-Public Notification of Development Proposals

The proposal was notified to the adjacent property owners and this did result in the receipt of a submission in relation to the position of the external garage wall in relation to the boundary.

The concerns of the adjacent property owners have been addressed through an appropriate condition of consent.

B5-Casuarina Beach

The controls relating to setbacks were addressed in an earlier section of this report.

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

Clause 92(a) Government Coastal Policy

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

(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

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

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

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged, the site has been cleared during the creation of the subdivision.

(c) Suitability of the site for the development

Surrounding Landuses/Development

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

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

Topography

The building platform was created at subdivision stage and is generally flat however, does have fall towards the eastern boundary.

Site Orientation

The building has been centrally located on the property 5 metres back from the front property boundary. The site is rectangular in shape with the western front boundary facing Collins lane.

The living areas of the dwelling have been mainly orientated to the east and north to optimize ocean views and solar access to the north.

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

As previously discussed a submission has been received in relation to the proposal.

(e) Public interest

The proposal will not prejudice the public interest.

OPTIONS:

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application subject to conditions of consent.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application, providing reasons for refusal.

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:

The approval of this proposal will not result in a precedent being set in relation to policy.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

- 14 [PR-CM] Development Application DA09/0199 for a Depot Permitting only the Parking of 3 Trucks and 3 'Dog' Trailers at Lot 2 DP 873149, No. 233 Round Mountain Road, Round Mountain**

ORIGIN:

Development Assessment

FILE NO: DA09/0199 Pt1

SUMMARY OF REPORT:

The subject application seeks approval for the storage of three (3) trucks and three (3) trailers ('dog' trailer) on a portion of the subject site. No structures or physical alterations (apart from landscaping which has been conditioned) to the site are proposed, and the Development Application only involves the parking of the three trucks and three trailers on site. The proposed land use is defined as a '*depot*' pursuant to the *Tweed Local Environmental Plan 2000*. The depot is located on the portion of the site zoned 1(a) Rural and is therefore permissible with development consent.

The application is notified development, to which, Council received eleven (11) submissions objecting to the proposal, primarily for the following reasons: numerous truck movements, noise, dust and traffic problems, safety and loss of rural amenity. Due to the issues and number of objections received, the application has been reported to Council for determination.

On the balance of consideration of the existing planning controls and merit of the proposal, the officers have considered that the application is suitable for approval subject to conditions.

RECOMMENDATION:

That Development Application DA09/0199 for a Depot Permitting only the Parking of 3 Trucks and 3 'Dog' Trailers at Lot 2 DP 873149, No. 233 Round Mountain Road, Round Mountain be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan 'Site Plan' dated NOV 02 drawn by 'Ace Homes', (as amended in Red on the approved plan) except where varied by the conditions of this consent.**

[GEN0005]

2. The driveway is to be bitumen sealed from the edge of the bitumen of the existing road to include the access driveway up to and including the truck turn around and parking area. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve. Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee and approved prior to the use of the site as a depot.

[GEN0245]

3. All trees of the *Banksia integrifolia* species greater than 125mm diameter at a height of 1.5 metres above ground level and being koala home range trees, primary browse trees, which are utilised by koalas as a component of normal ranging patterns, are not to be removed from the lot.

[GENNS01]

4. A maximum of 12 trips per week in total are permitted each week (one truck leaving and entering the site is counted as two trips). In this regard, the owner of the business is to maintain a daily log of trips made from the site. The log is to be made available to the General Manager or delegate upon request.

[GENNS02]

5. This consent restricts a maximum of 3 trucks and a maximum of 3 dog trailers are to be stored at the premise.

[GENNS03]

6. All conditions are to be complied with prior to the commencement of use, where required.

[GENNS04]

DURING CONSTRUCTION

7. 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]

8. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

9. Acid sulphate soils shall not be exposed or disturbed.

10. All landscaping work is to be completed in accordance with the approved plans prior to commencement of use.

[POC0475]

11. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed prior to the commencement of use.

[POC0525]

12. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan, prior to the commencement of use.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, the commencement of use of the land as a depot shall NOT occur 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:

1.71 Trips @ \$1125 per Trips \$1924

(\$1022 base rate + \$103 indexation)

S94 Plan No. 4

Sector8_4

(b) Extensions to Council Administration Offices
& Technical Support Facilities

0.216688 ET @ \$1759.9 per ET \$381.35

(\$1759.9 base rate + \$0 indexation)

S94 Plan No. 18

[PCC0215/PSC0175]

13. A detailed plan of landscaping by a suitably qualified person, in accordance with Planning for Bushfire Protection 2006, containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species, is to be submitted and approved by Council's General Manager or his delegate prior to the commencement of use of the land as a depot.

A detailed plant schedule and plan at a scale of 1:100 to 1:500 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site and including:

- species listed by botanical and common names, with a minimum of 80% of plants constituting local native species;
- specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.

The landscape plan is to provide visual screening of the depot from the road users and neighbouring residents.

[POCNS02]

14. The stopping of the subject trucks on Round Mountain Road, when entering the site is prohibited.

[POCNS03]

USE

15. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

16. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act, the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.

[USE0155]

17. Hours of operation of the business are restricted to the following hours: -
- * 6.00am to 6.00pm - Mondays to Saturdays
 - * No operations are to be carried out on Sundays or Public Holidays.

The subject trucks are not to start before 6.00am and are not to be running after 6.00pm.

[USE0185]

18. 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]

19. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

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

[USE0875]

21. The premises shall be maintained in a clean and tidy manner.

[USE0965]

22. Petroleum, fuels, oils or other potentially hazardous materials shall not be stored at the premise in association with the depot.

[USENS01]

- 23. The depot shall not be utilised for mechanical repairs or servicing of vehicles.**

USENS02]

- 24. The LAeq(15min) noise level emitted from any activity undertaken in association with this consent shall not exceed the background noise level (LA90) by more than 5dBA at the boundary of any effected residence during the permitted hours of operation. Further, the LA1(60 seconds) noise level shall not exceed the background noise level by more than 15dB(A) during the hours of 6am to 7am Monday to Friday and 6am to 8am Saturday when measured outside the bedroom window of any affected residence.**

[USENS03]

- 25. Accumulation or storage of materials ancillary to the depot is not permitted.**

[USENS04]

REPORT:

Applicant: Linkways Pty Ltd
Owner: Mr TJ Freriechs and Linkways Pty Ltd
Location: Lot 2 DP 873149, No. 233 Round Mountain Road, Round Mountain
Zoning: 1(a) Rural & 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: N/A

BACKGROUND:

The subject application seeks consent for the use of part of the subject allotment for the storage of three (3) trucks and three (3) dog trailers (Refer to figure 1 and 2), the land use is defined as a depot pursuant to the *Tweed Local Environmental Plan 2000*. The proposal does not involve the construction of any structures or the storage of any fuel or chemicals. The applicant has outlined that there will be twelve vehicle movements per week (only using the three trucks twice in a week, the number of trips has been conditioned and contributions calculated on 12 trips per week).

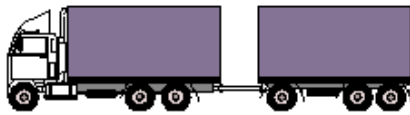
Council has previously received complaints regarding trucks on the subject property, creating noise and traffic hazards. Council investigated the subject site (on the 27 March 2009) and discovered three trucks and two excavators stored on the land. Council advised the landowner that development consent would be required for the land use.

The subject site is legally described as Lot 2 DP 873149, located at 233 Round Mountain Road, Round Mountain. The subject allotment has an area of 3.2150h and is zoned Part 1(a) Rural and Part 7(a) Environmental Protection (Wetlands and Littoral Rainforests). The site currently contains a dwelling house and shed. Mature vegetation exists on site with the majority of the site being predominantly cleared around the dwelling, shed and proposed depot location (Refer to figure 3).

Adjacent development consists of rural residential development. The general locality consists of a Country Energy facility, the Tweed Shire Sewer Treatment Plant for the Cabarita/Pottsville area, sand and gravel depot, turf farm, quarry, model air plane flying area, facility for jet boat sprint and the Cabarita Pony club grounds.

Due to the number of objections received, Council's Director of Planning and Regulation instructed staff to submit a report to Council for determination.

Three Axle Rigid Truck with Three Axle Dog Trailer



Maximum Mass Limit (tonnes): 42.5* (no increase permitted)

Annual Charge (\$);

Up to 42.5t 2,062

Over 42.5t 7,190

Width=2.5m

Height=4.3m

Length=19m

Two Axle Rigid Truck with Two Axle Dog Trailer



Maximum Mass Limit (tonnes): 30.0 (no increase permitted)

Annual Charge (\$) 1,457

Width=2.5m

Height=4.3m

Length=19m

Three Axle Bus



Figure 1 – An example of the type of vehicle proposed to be stored on the site (www.ntc.gov.au)

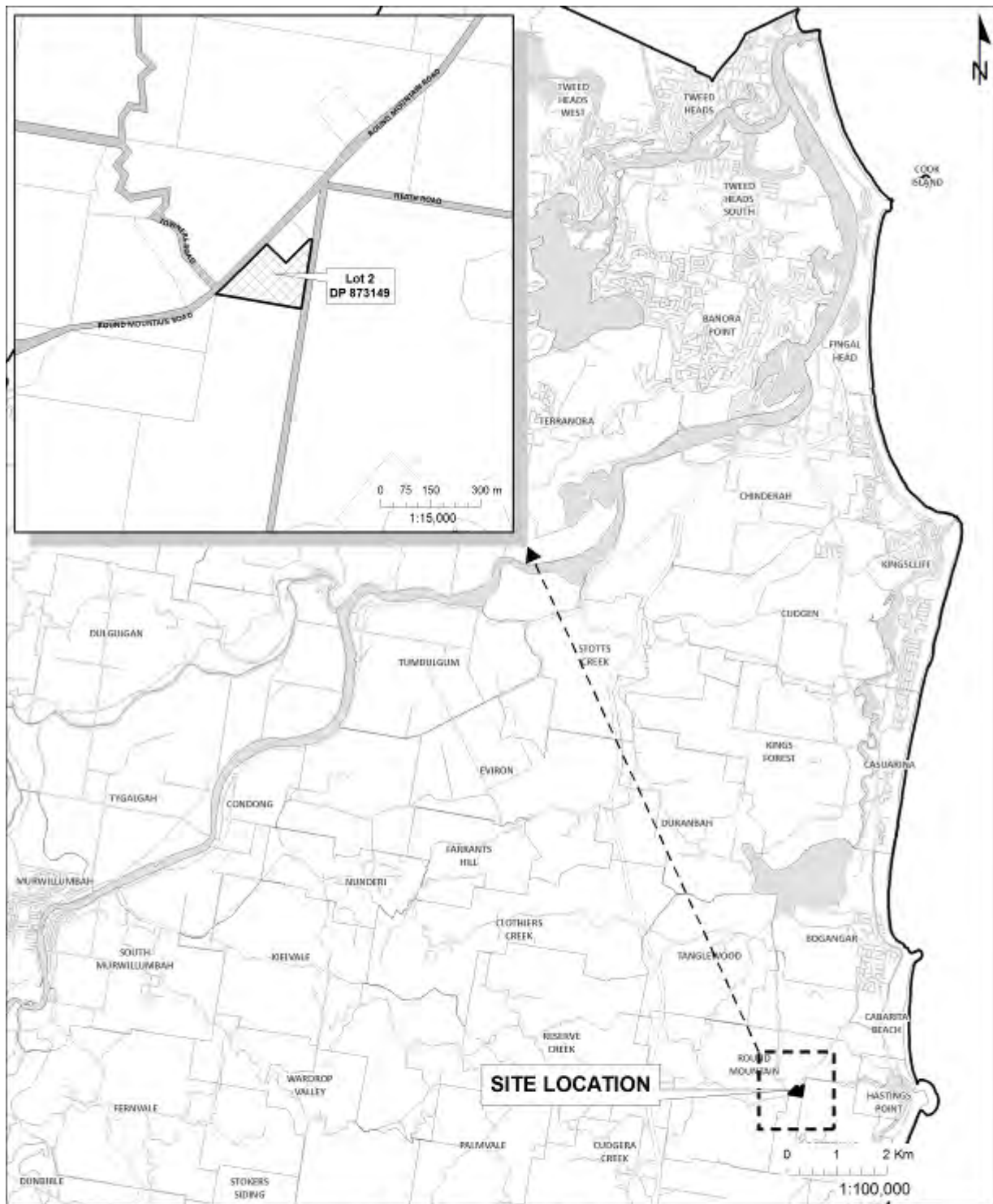


Figure 2 – Location of parking area “depot”



Figure 3 – Aerial photo of the subject site

SITE DIAGRAM:



LOCALITY PLAN

Lot 2 DP 873149

No. 233 Round Mountain Road, Round Mountain

Filename: z:\syrplanning\msd\A4P_B&W SitePlan.mxd

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of 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 "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.



Cadastral: 1 December 2009
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Coordinate System: MGA Zone 56
Datum: GDA 66

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



TWEED
SHIRE COUNCIL

DEVELOPMENT PLAN:



Nov 02

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 vision for the Tweed Shire is outlined as: *"The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced."*

The subject proposal is consistent with the outlined vision and will not result in an impact that is detrimental to the natural and developed character of the Tweed Shire, (subject to conditions).

Clause 5 - Ecologically Sustainable Development

The subject proposal is consistent with the four (4) principles of ESD.

Clause 8 Consent considerations

The proposed depot is consistent with the primary objective of the zone by providing for a land use that is not suitable near an urban area, it does not fragment the extent of rural land in this locality, and retains the site's rural character.

The other aims and objectives of this plan (Tweed LEP 2000) relevant to the development have been considered and addressed within the body of this report. The development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone objectives

The subject site is zoned Part 1(a) Rural and Part 7(a) Environmental Protection (Wetlands and Littoral Rainforests). The application proposes to establish a Depot which is defined as: *Land used for the storage or maintenance, or both, of plant, machinery, equipment, building materials and the like (Tweed Local Environmental Plan 2000)*. The proposed Depot is located in the 1(a) section of the site zoned 1(a) Rural. The proposed depot is permissible with development consent. The primary objectives of the 1(a) Rural zone are:

- *To enable 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 relies on the rural and 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 subject proposal for a Depot is a use that is not suitable near urban areas. The location of the Depot area on the allotment is separated from the closest dwelling house by approximately 70m in distance. The subject proposal has been assessed in terms of its impacts upon the amenity of the area and the impacts have been considered to be able to be adequately mitigated via conditions.

Clause 15 - Essential Services

The proposal does not require connection to any services.

Clause 16 - Height of Building

No building works are proposed or required.

Clause 17 - Social Impact Assessment

The subject proposal does not warrant a social impact assessment.

Clause 35 - Acid Sulfate Soils

Acid Sulfate Soils will not be disturbed by the proposed development. The subject site is classified as Class 2 Acid Sulfate Soils, the development does not require or propose any earth works.

Other Specific Clauses

Clause 34-Flooding

Objective-

- *To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *To minimise the adverse effect of flooding on the community.*

The subject allotment is mapped as 'Could be affected' in terms of flooding. In this instance the proposed Depot is considered to not increase the effects of flooding risk as the application does not propose or require any construction works.

Clause 39A Bushfire Protection

Objective

- *To minimise bushfire risk to built assets and people to reduce bushfire threat to ecological assets and environmental assets.*

In terms of the subject proposal, no built works are proposed and the Depot is situated on a cleared section of the site. The New South Wales Rural Fire Service was contacted in relation to the proposed development and the bush fire risk of a vegetated screen adjacent to Round Mountain Road. The Department advised that a vegetated screen would only start to become a fire hazard in this situation if it had a depth greater than 50 metres.

A condition of consent, has been recommended, requiring no storage of fuel or chemicals to occur at the site. In terms of these factors it is considered that the fire risk of the proposal is minimal. A condition of consent has also been recommended requiring the maintenance of a 20m Asset Protection Zone and the approval of a landscape plan that adequately screens the proposed depot from the road users and neighbouring properties.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

Adjoining lands are primarily utilised for rural residential purposes as such, the proposed development is unlikely to have any major impact on agricultural activities in the area as there are minimal activities conducted in the area. The site is used for rural residential purposes and is identified as not containing land of state or regional significance in accordance with the *Northern Rivers Farmland Protection Project*. The development will not result in the loss of prime crop or pasture land.

SEPP No. 44 - Koala Habitat Protection

SEPP 44 is applicable to the subject site due to the size of the allotment (greater than 1h). The application does not propose or require the removal of vegetation. Therefore the proposed depot is unlikely to result in a detrimental impact on any koala populations in the area as their current habitat will not be disturbed.

SEPP 71- Coastal Protection

SEPP 71 is not applicable to the subject site. However, In terms of the subject proposal, the use of part of the site as a depot would be unlikely to contravene the requirements of SEPP71.

SEPP (Exempt and Complying Development Codes) 2008

The proposed development is not a type of development applicable to the policy.

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

Draft Tweed Local Environmental Plan 2010

The site is identified as being zoned both RU2 - Rural Landscape and E2 - Environmental Conservation pursuant to the Draft Tweed Local Environmental Plan 2010 (Refer to figure 4). The proposed land use is defined as *depot* meaning *a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use* (Draft Tweed Local Environmental Plan 2010). A depot is permissible with consent within the RU2 zone but is prohibited with the E2 zone. The location of the depot is within the portion of the site zone RU2, as such the land use is permissible with consent under the draft Tweed Local Environmental Plan 2000.

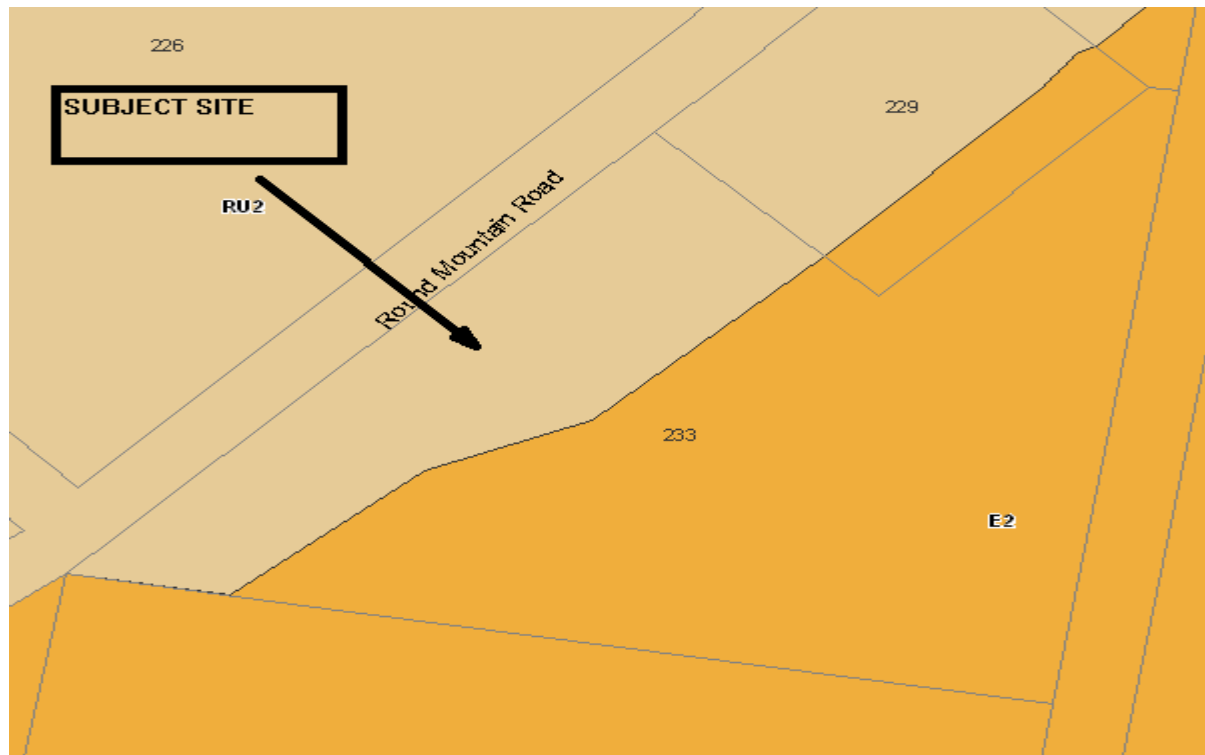


Figure 4 - Zoning extract Draft LEP 2010

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

A2-Site Access and Parking Code

The application states that the proposed use will generate an average of 12 truck movements per week. This equates to the three trucks leaving and returning twice per week. An appropriate condition of consent restricting the movement has been recommended. Suitable parking is available on site as identified on the submitted site plan.

Access to the site is via the existing drive way access from Round Mountain Road. Concerns have been raised by the public in regards to the subject trucks entering the site and blocking the road waiting for the gated entrance to be opened. To mitigate this issue, a condition is recommended that restricts the stopping of the subject trucks on Round Mountain Road. An amended plan has been submitted by the applicant that illustrates the entrance to the site is setback from the road edge (20 metres) to enable a truck and 'dog' trailer to park in the entrance (off Round Mountain Road) if the gate is closed, reducing the impact on other road users.

A3-Development of Flood Liable Land

The proposed parking of three trucks and three 'dog' trailers on the subject site is considered not a land use adversely affected by flooding or that would create an adverse impact on neighbouring properties.

A11-Public Notification of Development Proposals

The subject application was notified from Wednesday 27 May 2009-Thursdays 11 June 2009 in accordance with the requirements outlined within the clause. During the notification period 11 submissions were received including 1 petition containing 14 signatures; one submission was received after the notification period. The submissions received are detailed later in the report.

A13-Socio-Economic Impact Assessment

The proposed development is not a type that requires a socio-economic impact assessment.

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

Clause 92(a) Government Coastal Policy

N/A

Clause 92(b) Applications for demolition

N/A

Clause 93 Fire Safety Considerations

N/A

Clause 94 Buildings to be upgraded

N/A

Access, Transport and Traffic

Access to the site is via the existing drive way access from Round Mountain Road. Concerns have been raised by the public in regards to the subject trucks entering the site and blocking the road waiting for the gated entrance to be opened. To mitigate this issue, a condition is recommended that restricts the stopping of the subject trucks on Round Mountain Road, when entering the site, that, either the gate is to remain open or the entrance is to be modified to enable a truck and 'dog' trailer' to park in the entrance (off Round Mountain Road) if the gate is closed. The development consent also restricts the number of trucks to three and the number of trips to 12 per week (i.e. the three trucks can only be used twice each per week). The restricted number of trips is conditioned and appropriate contributions have been calculated at 1.71trips (12 trips divided by 7 days per week, as trips rates are calculated daily, in accordance with Tweed Contribution Plan No.4).

Flora and Fauna

The application does not propose or require the removal of vegetation. It is recommended that additional vegetation is to be provided, to ensure adequate screening between the road and location of the storage area.

Noise

It is noted that the general precinct or area already has, or has had a Country Energy facility, STP, sand and gravel depot, turf farm, quarry, model air plane flying area and jet boat sprint events. These activities involve the use of various plant and vehicle/trucks and machinery. In this instance it has been deemed that the proposal does not require a noise impact assessment and that any noise generated from the development can be managed via conditioning (i.e. no engine start before 6.00am and not to be running after 6.00pm).

(c) Suitability of the site for the development

The site is considered suitable for the proposed development subject to recommended conditions.

Surrounding Land uses/Development

The site is adjoined by rural residential land to the north, north east, west and south west with dense vegetation with environmental protection for wetlands and literal rainforests located to the south and east.

Flora and Fauna

The development does not require or propose the removal of vegetation. A condition is recommended requiring vegetation screening along the boundary fronting Round Mountain Road.

Topography

The site is relatively level with an average Relative Level of 2.0m Australian Height Datum.

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

The subject application was notified for a fourteen day timeframe from the Wednesday 27 May 2009-Thursdays 11 June 2009. During the timeframe 11 submissions were received, including one petition containing 14 signatures. The objections are outlined below:

Objection	Comment
Approval of a depot would seem to give approval for a future large scale development on site.	The proposal seeks consent for the use of part of the site as a depot for the storage of three trucks and three dog trucks. Appropriate conditions have been recommended permitting only the storage of three trucks and three dog trucks. Any development not in accordance with the development consents application to the site would require separate development approval where statutorily required.
Change the perceived land use of the whole area, and open our rural residential lifestyle up to semi industrial land usage. In particular, the future use of our land may become limited if this proposal is accepted-especially in the absence of any Rural Settlement Strategy.	The subject proposal is a permissible use in the 1 (a) Rural zone, as defined by the Tweed Local Environmental Plan 2000. The objection does not elaborate on how the future use of the land may become limited.
Our lifestyle, land values and future land usage would be severely compromised...Numerous truck movements, noise, dust and traffic problems would all flow from this development. The windfall gain that TSC would grant the developer by accepting this proposal would be offset by private loss of nearby property values. Is compensation considered?	Property values are not a matter for consideration under Section 79c of the Environmental Planning and Assessment Act, 1979.
The amenity of our local area will be affected by this depot. It will be a visual eyesore.	A condition of consent has been recommended to screen the proposed depot use from the Round Mountain Road and neighbouring properties.
The vehicles stored in the depot are likely to have a noise impact.	Some level of noise is to be expected. Conditions of consent have been recommended to monitor noise levels.

Objection	Comment
TSC may even change our rates, which are currently Rural, which would be another cost without benefit.	Not a consideration for assessment under Section 79c of the Environmental Planning and Assessment Act, 1979.
The proposed depot is at odds with the local environment- more truck journeys equals more risk to fauna (and kids riding horses and bikes).	The local environment consists of a Country Energy facility, Sewer Treatment Plant, sand and gravel depot, turf farm, quarry, model air plane flying area and jet boat sprint facility in addition to rural residential allotments. The proposed depot is considered to be relatively compatible with surrounding land uses, with the truck drivers obligated to adhere to road safety rules.
Both site and Round Mountain Road are unsuitable for B double trucks.	Round Mountain Road is a standard road that currently supports a range of vehicles travelling along the road. Council's Engineering department have determined that the road can support the proposal. The site has been assessed in terms of suitability for use as a depot and deemed to be satisfactory.
Vehicle speed of local traffic on Round Mountain Road can be excessive and ingress/egress to the depot may cause a serious accident.	Vehicle speed along Round Mountain Road is a matter for the police and not a Council matter.
The DA states that the truck destination arrival time is 6.30am. This would mean trucks would be warming up at 5.30am. This will destroy our amenity of life which we have enjoyed for 30 plus years.	A condition has been recommended restricting the hours of operation.
The subject site has some 7a wetlands zoning and the proposed depot would appear to 50 metres form this zone. The DA does not state what fuels, oils, chemicals will be stored for use by the trucks. There is a potential for fuel spills etc, becoming a hazard to this wetland environment.	An appropriate condition has been recommended prohibiting; fuels, oil or chemicals of any kind are to be stored at the depot.

Objection	Comment
<p>This area of Round Mountain Road has a very long history. The house at 229 Round Mountain Road next to the DA site was originally the Round Mountain school. Next door to that again is another old residence. Our house at 256 Round Mountain Road was the school teachers residence and post office. All these buildings are over 100 years old and to put a construction works depot next door is not acceptable.</p>	<p>It is unclear how the depot will impact upon the residential structures as described by the objector. The trucks will be entering and existing the site but are required to abide by the road rules.</p>
<p>A petition containing 14 signatures was received from group of equestrians who utilise the Cabarita beach Pony Club grounds on Round Mountain Road-</p> <p><i>'We enjoy leisurely horse rides, mostly with children, along Round Mountain Road. The Pony Club has been doing this for over 40 years. Round Mountain Road has no centre lines and in most places is not wide enough to safely allow children to get their horses off the road. Truck and Dog trailers are long vehicles. This DA represents an enormous Safety risk to our children.'</i></p>	<p>Dog trucks and trucks in general are permitted to travel along Round Mountain Road without consent from Council and adhere to road rules and speed guidelines.</p>
<p>In correct calculation of truck movements.</p>	<p>The assessment of the proposal is based on the applicants' submitted details. Therefore Council must consider that the submitted information is correct. The estimate has been clarified with Councils Development Engineers as being an acceptable indication of trips.</p>
<p>Safety risk.</p>	<p>Trucks are currently permitted to travel along Round Mountain Road and must abide by road rules.</p>
<p>Designated Road – access</p>	<p>Round Mountain Road is not a designated road. The applicant amended the access to incorporate a 20 metre setback from Round Mountain Road to the gated entrance of the subject site.</p>

The issues raised by the submissions that are considered relevant have been mitigated by recommended conditions of consent.

(e) Public interest

The proposed use of the site for the storage of three (3) trucks and three (3) dog trailers is considered not to negate the public's interest, subject to conditions.

OPTIONS:

1. Approve the application subject to recommended conditions.
2. Refuse the application and provided reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with Council's decision the applicant has the right to appeal in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development subject to conditions is considered not to create a significant adverse impact on the natural or built environments, with the site considered suitable

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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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

ORIGIN:

Development Assessment

FILE NO: DA05/0223 Pt2

SUMMARY OF REPORT:

In late 2008, Council was made aware of unauthorised building works at the existing approved restaurant adjacent to the Jack Evans Boat Harbour. An investigation into the works was undertaken, with the proprietor of the premises being advised that an application to modify Development Consent DA05/0223 was required. This was to be accompanied with a Building Certificate application for the unauthorised works, as well as a Construction Certificate for any further building works.

An application to modify the original approval by way of internal and external building modifications and use of the premises (known as the “iBar”) was subsequently lodged by the applicant. Unauthorised use (lap dancing) was also included in Council’s assessment of the development. The application was refused by Council in May 2009, with a recommendation to initiate legal action with regard to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

On 17 November 2009 a report was presented to Council to highlight the fact that the issues arising with the premises had evolved and required reconsideration. It was also prepared to update Council on the best way forward with regard to finalising all outstanding matters and included a summary of the legal advice received on the matters raised above. Council resolved to request the occupier of the premises to lodge an extra S96 application to modify Development Consent DA05/0223 and building certificate application, incorporating all unauthorised building works on the subject site, within 21 days.

A S96 application and Building Certificate application were lodged on 8 January 2010. The S96 application was deficient in detail, with the applicant yet to provide the substantial list of additional detail required for assessment. The following report provides: a summary of the communication between Council and the applicant; issues raised by the premises; and reasons for refusal of the proposed modifications.

RECOMMENDATION:

That: -

- A. Council refuses 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 for the following reasons: -**

1. The proposed development is contrary to Clause 8(1) of Tweed Local Environmental Plan 2000, relating to not providing applicable or sufficient information for the application to be assessed against: the objectives of the zone; the aims and objectives of any other relevant clause; and to determine whether the development would have an unacceptable cumulative impact on the community.
 2. Amended plans have not been provided to adequately demonstrate that the development complies with all relevant Development Control Plans.
 3. The proposed development is not considered to be in the public interest.
- B. Council re-initiates legal action through Council's Solicitor's in relation to unauthorised building works and modification of trading hours.
- C. Council notes that ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(a) of the Local Government Act 1993, because it contains:-
- (a) *personnel matters concerning particular individuals (other than councillors)*

REPORT:

Applicant: Mr A Wright
Owner: Mr AB Warner and Mrs AM Warner
Location: Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads
Zoning: 3(e) Special Tourist (Jack Evans Boatharbour)
Cost: Nil

BACKGROUND:

The subject site is located adjacent to the Chris Cunningham Park and Jack Evans Boat Harbour, opposite Centro Tweed (Tweed Mall) on Wharf Street, Tweed Heads. The existing single storey building was previously a Tourist Information Centre, as well as the sales office for the Latitude 28 proposal, which is now the Ultima site.

On 8 June 2005, Council's Development Assessment Panel issued development consent DA05/0223 for a restaurant known as "*Wright on the Water*" at 4 Wharf Street, Tweed Heads. The original approval was for the installation of a commercial kitchen to run a Steakhouse Restaurant from the existing building. The approval was for two stages of development. Stage 1 involved: the installation of a kitchen and bar within the existing building; the replacement of part of the northern and eastern external walls with retractable doors; and the installation of the services and refuse enclosure on the southern side of the building. Stage 2 incorporated: the construction of a 4.5m wide roofed terrace along the northern and eastern elevations for alfresco dining; and an additional unisex disabled toilet.

Following an investigation by Council's Compliance Officer with regard to a complaint regarding unauthorised construction activities in December 2008, the Lessee of the premises lodged a S96 application on 19 March 2009 to modify the original approval by way of internal and external building modifications and use of the premises.

On 16 June 2009, Council resolved to refuse the proposed modifications and initiate legal action in relation to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

Since the refusal of the S96, several evening site inspections from Council staff and observations from Tweed Police concluded that lap dancing no longer occurs at the premises. As such, the occupation of the premises now appears to be in general accordance with the approved use – a restaurant. However, the unauthorised building works remaining unregulated.

On 17 November 2009 a report was presented to Council as an update on the best way forward with regard to finalising all outstanding matters and included a summary of the legal advice received on matters relating to: unauthorised building works; the use of the premises; and outstanding contributions fees.

The following is a summary of the chronology of events from November 2009:

Council Meeting – 17 November 2009

- Council resolved to request the occupier of the ibar to lodge a S96 application to modify development consent DA05/0223 and building application, incorporating all unauthorised works on the subject site;

- If such applications were not lodged within 21 days of the notice from Council, it was resolved to seek further legal advice about appropriate cause of action in regard to the unauthorised building works; and
- It was also resolved that outstanding contribution fees relating to DA05/0233 not be pursued and that only the contributions paid to date are recognised as credit for any future development of the subject site.

Letter sent to Mr Warren Armstrong – 26 November 2009

- As per the Council resolutions referenced above, Mr Armstrong was requested to lodge a S96 Application and Building Certificate Application within 21 days (ending on 17 December 2009). A list of requirements were raised (although they were not an exhaustive list) including:
 - Floor Plans / elevations clearly identifying the modifications;
 - Use of premises / number of staff;
 - Patron numbers;
 - Hours of operation;
 - Details on floor area;
 - Confirmation of no live / amplified music;
 - Details of colour scheme / signage;
 - S96 criteria (“substantially the same” principles);
 - Detailed construction drawings of the disabled toilet;
 - Floor plans / details of food related areas; and
 - Advertising fee of \$540.

Phone call from Mr Adrian Wright – 7 December 2009

- Mr Wright asked if the letter sent (to Warren Armstrong) on 26 November 2009 could be resent to Mr Wright (saying the land owner would not sign off on the S96 form unless Mr Wright’s name was on the letter);
- Mr Wright said that all the information we were after was already on the file;
- Mr Wright requested an extension of time to the 21 day requirement until the end of January, due to his consultant (Coastline) being on Christmas leave.

Council’s reply phone call to Mr Wright – 8 December 2009

- Mr Wright was advised that Council would not resend the letter (addressed to him), noting that it didn’t matter who the applicant was for the application;
- Mr Wright was advised that Council needed all information to be relodged (standard Council policy). It was up to the applicant to obtain that detail. It was suggested he contact Council’s Peter Brack to do an “FOI” of the file, if he no longer had the plans etc;
- With regard to the extension of time, Mr Wright was advised the time frame was a Council resolution and would not be changed. Council would be instructing their lawyers after the 21 days were up. It was suggested that Mr Wright use another consultant if Coastline were not available.

Council letter to Marsdens Lawyers – 22 December 2009

- Acting upon the Council resolution of 26 November 2009, a letter was sent to Marsdens Law Group requesting legal advice on Class 4 proceedings with regard to the unauthorised building works at the subject site, as a result of the proprietor not submitting a S96 application within the 21 day time frame.

Email from Coastline – 23 December 2009

- Advice was provided to the effect that owners consent had not been obtained yet (noting that the owner's solicitor was going over the details prior to the owner signing the form);
- The email noted that the owner's solicitor would be submitting the application and they would likely request an extension of time to early in the new year.

Council's reply email – 23 December 2009

- Coastline was advised that a letter had been sent to Council lawyers to re-activate legal proceedings;
- An extension of time to 8 January 2010 was granted, after which instructions would be given to Council lawyers to continue appropriate action.

S96 Application and Building Certificate Application lodged – 8 January 2010

- Floor plans and elevations (same as previous S96) were provided. Detailed construction drawings of the disabled toilet; and floor plans / details of food related areas were not provided. Advertising fee of \$540 was not provided.
- The application went to Council's Area Team Meeting (ATM) for internal comments.

Council's email to Marsdens Lawyers – 13 January 2010

- As a result of the applicant lodging a S96 application, Council requested that Marsdens put "on hold" any further legal advice, until such time as an assessment had been carried out on the proposed modifications to DA05/0223.

Further Information letter sent to applicant – 15 January 2010

- Advertising fee of \$540 was outstanding;
- Detailed food area drawings requested (as per Council's EHO requirements);
- A noise report required (as a result of the S96 request to modify the 12 month period for 24 hour trading and the deletion of prohibition of live / amplified music);
- Floor plans / elevations are not acceptable. Revised floor plans requested, clearly delineating the designated smoking area. The plans need to be dimensioned and indicate the extent of the existing / proposed roof area over the terrace etc. A site plan is required, along with scaled and dimensioned elevations. Clarification of colour scheme and signage is required, as well as additional justification as to how the proposal is substantially the same as the original approval;
- A period of 28 days was given for the outstanding information to be submitted (ending on 15 February 2010).

Email from Coastline – 17 February 2010

- Coastline noted that the applicant had spent several hours at Council when the S96 was lodged and believes that they have provided everything that Council has previously requested to allow the application to be determined;
- The applicant is frustrated with Council's request for further information of 15 January 2010 and wants to know why the issues were not raised in Council's previous letters and meetings;
- Coastline has explained to their client that Council can asked for further information at any time, but the applicant is worried the application...*'may continue to go around and around without any progress'*;
- Coastline has requested a meeting with relevant parties to discuss.

Council's reply email – 18 February 2010

- Coastline was provided with a chronology of events (similar to this) which concluded that...*'Council officers have been extremely diligent in outlining the submission requirements for your client's Section 96 application, both prior to, and following the lodgement of the application, and three months onwards from Council's November resolution, the Council officers still do not have sufficient enough details to assess the submitted application'*;
- Coastline were advised that Council would support a further meeting with them and their client, only on the basis that they were willing to address the specific elements of the outstanding information request identified in Council's letter of 15 January 2010, and that any meeting was preceded by a clear written agenda of the matters of which they wished to discuss.

Letter from Coastline – 23 February 2010

- Coastline advised that their client no longer sought modification to Condition 6 (trading hours) or Condition 13 (prohibition of live/amplified music) and it was their understanding that a Noise Report was no longer necessary;
- Coastline referred to details previously submitted to Council in regard to the nominated hours of operation proposed after the expiry of the initial 12 month period, in reference to Condition 7 (S96 required to modify the 12 month limitation to trading hours). Coastline noted that to date his client has had no response from Council.
- Coastline advised that his client intended to remove the proposed BBQ area. Amended plans would be submitted separately to confirm this.

Council's reply letter – 26 February 2010

- Council acknowledged that modifications to Conditions 6 and 13 are no longer sought and confirmed that a Noise Report was no longer necessary in that regard. It was stated that Council did not have details of the nominated trading hours after the expiry of the initial twelve months, and Coastline was requested to submit the nominated hours of operation for the restaurant for Council's consideration;
- It was acknowledged that the BBQ area is no longer proposed. Amended plans are required in this regard, along with all other outstanding matters raised in Council's letter of 15 January 2010.

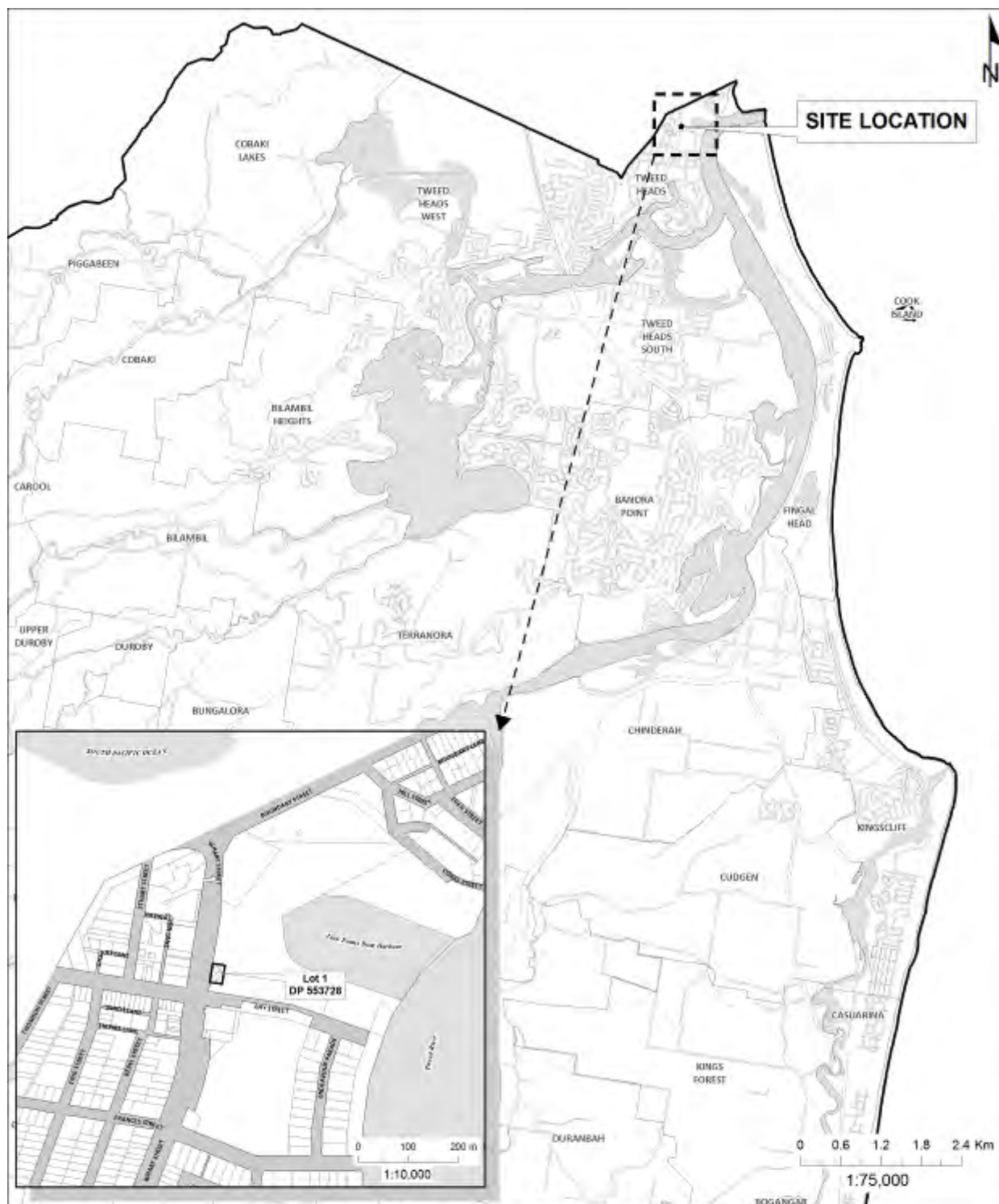
Letter from Coastline – 26 February 2010

- Coastline requested that the original proposed modification to Condition 6 remain as 24 hr trading is still sought.

Facsimile from Mr Adrian Wright – 26 February 2010

- Mr Wright faxed through a copy of a letter dated *30 March 2006* in relation to the 24hr liquor licence for the 'Wright on the Water' restaurant, which requests Council's confirmation that the 24 trading can continue after the initial 12 month period has ended.

SITE DIAGRAM:



LOCALITY PLAN

Lot 1 DP 553728
No. 4 Wharf Street Tweed Heads

Filename: z:\usr\planning\mxd\A4P_S&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 February, 2010

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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastral: 24 February, 2010
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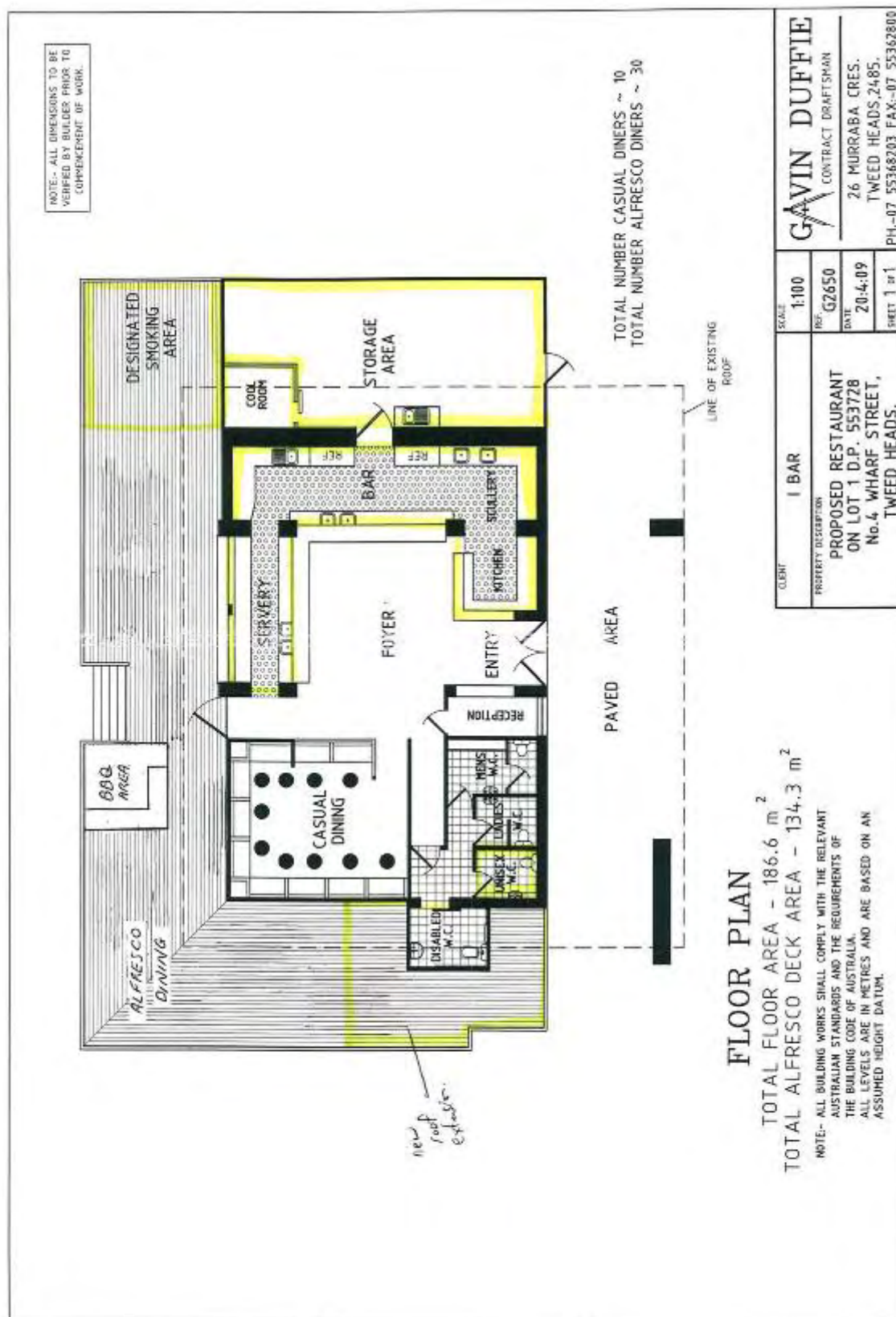
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TWEED
SHIRE COUNCIL

PROPOSED INTERNAL LAYOUT:



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

As highlighted in the preceding chronology, the applicant has failed to submit the outstanding documentation required for the assessment of the Section 96 application requested on 15 January 2010. It should also be noted that the applicant has not requested any meeting with staff since Council's email of 18 February 2010.

In order to grant consent to development, Clause 8 (1) of the Tweed Local Environmental Plan 2000 requires Council officers to be satisfied that: the proposal is consistent with the clause 11 zone objectives within which it is located; the proposal meets the aims and objectives of any other relevant clause; and the development would not have an unacceptable cumulative impact on the community. The lack of detail has not enabled an assessment of the proposed modifications against clause 8 provisions. As such, consent cannot be granted.

The following issues have also been flagged as being of concern:

Unauthorised Building Works

Council's Development Assessment Unit, Building Services Unit and Environmental Health Unit are unable to carry out an assessment of the proposed modifications due to unsatisfactory plans, conflicting information between plans and the Statement of Environmental Effects, or no detail provided at all in some instances. As such, the unauthorised building works cannot be regularised as was the intention of requesting the submission of this S96 application. Consequently, the Building Certificate (lodged in conjunction with the S96) cannot be approved.

Noise

Final comments have not been provided from Council's Environmental Health Unit as a result of the applicant not submitting details. The Environmental Health Unit would normally have commented on issues such as: noise; servery/bar/kitchen/coolroom requirements pursuant to the Food Regulations; smoke free areas; and hours of operations. Council's records indicate that one (1) noise complaint was lodged on 2 March 2009, relating to loud music coming from the ibar. No other noise complaints have been registered in conjunction with the premises.

It is acknowledged that the applicant no longer wishes to delete Condition 13, which prohibits live or amplified music on the premises. As such, a noise report is no longer required for this S96. However, noise issues relating to trading hours and potential impact on the community in general would still require assessment.

Trading Hours

As noted in the chronology of events above, the applicant originally requested to allow the 24 hr trading to continue, then advised that they no longer wished to modify the condition limiting the 24 hour trading to a 12 month period, and most recently requested that the 24 hr trading continue indefinitely.

The purpose of limiting the 'restaurant' to a 12 month period of 24 hr trading was to enable Council an opportunity to assess any issues associated with the extended hours of operation, with regard to the enclosed deck area particularly after 12 midnight, and modify the hours of operation if necessary.

Mr Wright recently submitted a copy of a letter (dated 30 March 2006) requesting confirmation from Council that the 24 hour trading will continue after the initial 12 month period had expired. Council's records (electronic filing system and hard copy file) do not have any evidence of Mr Wright lodging such letter in 2006. In any event, if Council had received such a letter, Mr Wright would have been advised in writing that a S96 was required to modify Condition 6, rather than he simply submitting a letter. Condition 7 of the development consent clearly indicates the process required:

7. *Ninety (90) days prior to the expiry of the initial twelve (12) month period, the Applicant shall lodge with Council for consideration by the Director of Planning and Environment a Section 96 application nominating the hours of operation proposed after the expiry of the initial twelve (12) months. Such application will need to address any issues associated with the enclosed deck area particularly after 12 midnight.*

The non-lodgement of a S96 (90 days prior to the expiry of the initial 12 months), results in the proprietor of the premises not being compliant with Condition 7 of the development consent.

Due to the concern raised with the proposed continuation of the 24 hr trading, a copy of the S96 application was referred to NSW Police's Tweed/Byron Local Area Command for comment. The Police have provided a comprehensive report on the proposed modifications, including a list of incidents attached to the subject premises. The report includes the following comments:

'In essence the premises, which had been operated as a Restaurant, has moved towards that of a Bar with some restaurant facilities. The nature of an operation geared more towards that of a bar has lead to an increased level of anti-social behaviour.

As can be seen from pages 7 and 8 of this report there were no police reports attached to this premises prior to the current proprietorship. Of particular concern is the consistency of the early morning hour matters reported. I can inform that this has continued through February.

On page 9 the Licensed Premises Summary shows an increasing risk rating for this premises. The risk rating is based on a system of linking used by police that gives an indication of risk.

Also on page 9 is a list of premises with their risk rating for the last completed seasonable period, being Spring 2009. Despite being a small restaurant it rates higher than major clubs and hotels in the area. I can inform that interim information for the summer 2009/2010 period is no better.

Police area aware of problems associated with the early morning activities of patrons leaving this premises causing other businesses in the area to have to vary their opening times to avoid these same persons interfering with their business.

Police are also in receipt of intelligence linking this premise to prostitution where services are offered at the premises with the full knowledge of the proprietors and clients are taken to nearby unauthorised premises for fulfilment of that service.

Police submit that unless conditions are placed on the premises to restrict hours of operation and define usage of the interior and exterior (enclosed deck) for this premises that the problems associated with this premises will not stop and the amenity of community life will not improve in that area.

Police recommend the following:

- *That the hours of operation be restricted to 9am to 12 midnight.*
- *That proper direction is given concerning the usage of the enclosed deck area to prevent persons standing around and using the area as a bar'*

The issues raised by the police are concurred with, particularly with regard to anti social behaviour impacting upon the community in general. The trading hours recommended by the police are considered to be reasonable and justified. An assessment of the police list of incidents at the ibar (from March 2009 to January 2010) highlights that 38 of the 43 incidents occurred outside the recommended hours of 9.00am to 12 midnight.

Verbal conversations between Council's Planning officers and Tweed Police suggest that the premises is effectively "catching" patrons from surrounding licensed premises in Tweed / Coolangatta when they close for business (i.e. after midnight). If the trading hours of the ibar were to be modified to 9.00am to 12 midnight, it seems likely that the majority of anti social behaviour (associated with the ibar) would cease.

Liquor Licence

The 24 hour liquor licence for the ibar requires food to be served with the alcohol, as a result of the original approval as a restaurant. Police have advised that if the trading hours were reduced, there would be no change to the actual liquor licence hours. It simply means that the proprietor has a licence with hours that they cannot utilise. However, it was noted by Tweed Police that the police (or even Council), would then have grounds for applying to the Authority to reduce their licensed hours.

Use / Patron Numbers

The original approval for the restaurant restricted the premises to a maximum of 40 diners at any one time. Although the applicant has stated that the...*'premise will continue to operate as a restaurant and with a reduced dining area it will not generate more than 40 diners at any one time'*, there is a question of whether the ibar is operating as a restaurant. As noted by the police submission, the premises appears to be more of a bar (with some restaurant facilities), rather than the "Steakhouse" restaurant (and associated bar facilities) as was the original intention for the premises.

Although the last Council report for the ibar (November 2009) acknowledged that...*'the occupation of the premises now appears to be in general accordance with the approved use – a restaurant'*, that was dependant upon applicant providing a clear indication of seating, hours of operation, noise impact etc for Council's consideration.

The floor plan provided to-date does not include seating arrangements on the external deck area. Without further detail in this regard, assessment in terms of use and patron numbers cannot be undertaken.

Legal Advice

Marsden Lawyers have provided legal advice on the matter to date. Based on previous instructions from Council's Development Assessment Unit, they have held off on taking any legal action against the proprietor, until advised otherwise by Council. Legal action sought to-date has been in the form of Class 4 proceedings in the Land and Environment Court, seeking orders and declarations with respect to the unauthorised works undertaken on the premises.

Marsdens have noted that it is difficult to provide an estimate of their fees, however in their experience the costs incurred in taking Class 4 proceedings are in the order of \$20,000 plus GST (based on the matter proceeding to a hearing of one (1) days duration). Marsdens have noted that this estimate may vary depending upon complexity of issues which arise in the proceedings and the actual length of the hearing of the matter.

If further legal action was to be initiated, Class 4 proceedings would be sought in relation to re-instating the premises back to the originally approved layout. Council would also seek orders for the proprietor to lodge a S96 application with regard to the trading hours of the premises, pursuant to Conditions 6 and 7 of the consent.

CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

Likely Environmental Impact

As noted above under S79c considerations, Council's Development Assessment Unit, Building Services Unit and Environmental Health Unit have been unable to assess the proposal in detail. As such, Council cannot be satisfied that the proposed modifications are of minimal environmental impact.

Substantially the Same Development

An assessment needs to be undertaken in terms of whether the proposed development is "substantially the same" as the originally approved development, pursuant to the provisions of the Environmental Planning and Assessment Act. Key planning principles relate to a general comparison (rather than in detail) between the approved development and the proposed modifications, to determine if the development as a whole is essentially or materially similar to the originally approved development.

In this regard, it could be argued that the development is substantially the same, in that it is still a "restaurant", despite the internal / external configuration changing somewhat. The alternative is that the proposed modifications are a change of use to a bar. The only way to determine the principle use of the premises is by way of seating arrangements, number of patrons etc. The lack of detail provided by the applicant does not allow Council to conduct a thorough assessment of the proposed modifications to determine whether the proposal is substantially the same.

Notification/Submissions

Despite Council advising the proprietor (Mr Armstrong) and the applicant (Mr Wright) that the S96 would be placed on public exhibition, thereby requiring \$540 in advertising fees, no payment has been received. As such the proposed modifications have not been placed on public exhibition.

PUBLIC INTEREST:

As noted above, the police have highlighted anti-social behaviour emanating from the 24 hour trading of the premises. Without a thorough assessment of the potential impacts and change of trading hours, the proposed modifications are not considered to be in the public interest.

OPTIONS:

1. Refuse the proposed modifications to Development Consent DA05/0223; and
2. Re-initiate legal action through Council's Solicitor's in relation to unauthorised building works and modification of trading hours (Class 4 proceedings through the NSW Land and Environment Court); or
3. Defer the determination of the application, allowing the applicant to submit outstanding information, place the development on public exhibition, and undertake an assessment of the proposed development.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Financial implications will result from legal proceedings involving Class 4 proceedings.

The applicant also has a right of appeal (Class 1) in the NSW Land and Environment Court if dissatisfied with the determination of any future S96 application.

POLICY IMPLICATIONS:

Nil

CONCLUSION:

The history of this premise, in terms of not providing detail required by Council for assessment, suggests that unless a determination to refuse the proposed modifications and legal action is undertaken, the issue of unauthorised building works etc will continue. In terms of the issues raised by the police, as well as regularising the unauthorised building works, legal action may also need to address the issue of use and trading hours.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. **Confidential Attachment** Police Report (ECM 13495856)
 2. iBar Request for Further Information Letter dated 26 November 2009 (ECM 9421721)
 3. iBar Request for Further Information Letter dated 15 January 2010 (ECM 11676068)
-

16 [PR-CM] Cobaki Lakes Project Application - Central Open Space and Lake - Council Submission to the Department of Planning

ORIGIN:

Development Assessment

FILE NO: GT1/52 Pt12

SUMMARY OF REPORT:

The Department of Planning has requested Council's comment on the Project Application received for the Cobaki Lakes central lake and open space area. Council officers have previously identified their concerns to the proponents before and throughout the Cobaki Lakes Part 3A Concept Plan process in respect of the dedication to Council and environmental impacts of the proposed lake, open space areas and environmental rehabilitation areas. These concerns are still held by the Council officers in respect of the details provided in the Project Application. The attached submission to this report provides a detailed account of these concerns. It is therefore recommended that Council endorses the forwarding of this submission to the NSW Department of Planning, which highlights the view that Council does not accept the dedication of the proposed lake, open space and environmental rehabilitation areas, unless significant modifications are made to the Project Application.

RECOMMENDATION:

That Council endorses the attached draft submission to this report on the Project Application for the Cobaki Lakes central lakes and open space area and it be forwarded to the NSW Department of Planning.

REPORT:

Applicant: Leda Manorstead Pty Ltd
Owner: Leda Manorstead Pty Ltd
Location: Lot 1 DP570076, Lot 2 DP566529, Lot 1 DP562222, Lot 1 DP570077, Lot 1 DP823679, Lot 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 & 305 DP755740 at Cobaki Lakes Estate, Tweed Heads
Zoning: 2(c) Urban Expansion, 2(e) Residential Tourist, 6(b) Recreation, 7(d) Environmental Protection (Scenic Escarpments) and 7(l) Environmental Protection (Habitat)
Cost: N/A

BACKGROUND:

In February 2009, Council reviewed the Cobaki Lakes Concept Plan and supporting Environmental Assessment and provided a detailed submission to the Department of Planning.

In January 2010, Council reviewed the Preferred Project Report (PPR) for Cobaki Lakes and provided a submission to the Department of Planning. It is noted that the submission to the Department of Planning on the Cobaki Lakes PPR indicated that dedication of the lakes was not supported based on the cost of maintenance and limited design details provided in the PPR. Furthermore, concerns were raised with the design of proposed open space (casual and structured areas) which were not in accordance with Council's standard requirements (Development Control Plan A5 – Subdivision Manual). There were also considerable concerns raised in relation to the proposed revegetation and rehabilitation plans for the areas proposed to be rezoned to Environmental Protection and dedicated to Council.

The Cobaki Lakes Development Code was placed on public exhibition from 13 January 2010 to 26 February 2010.

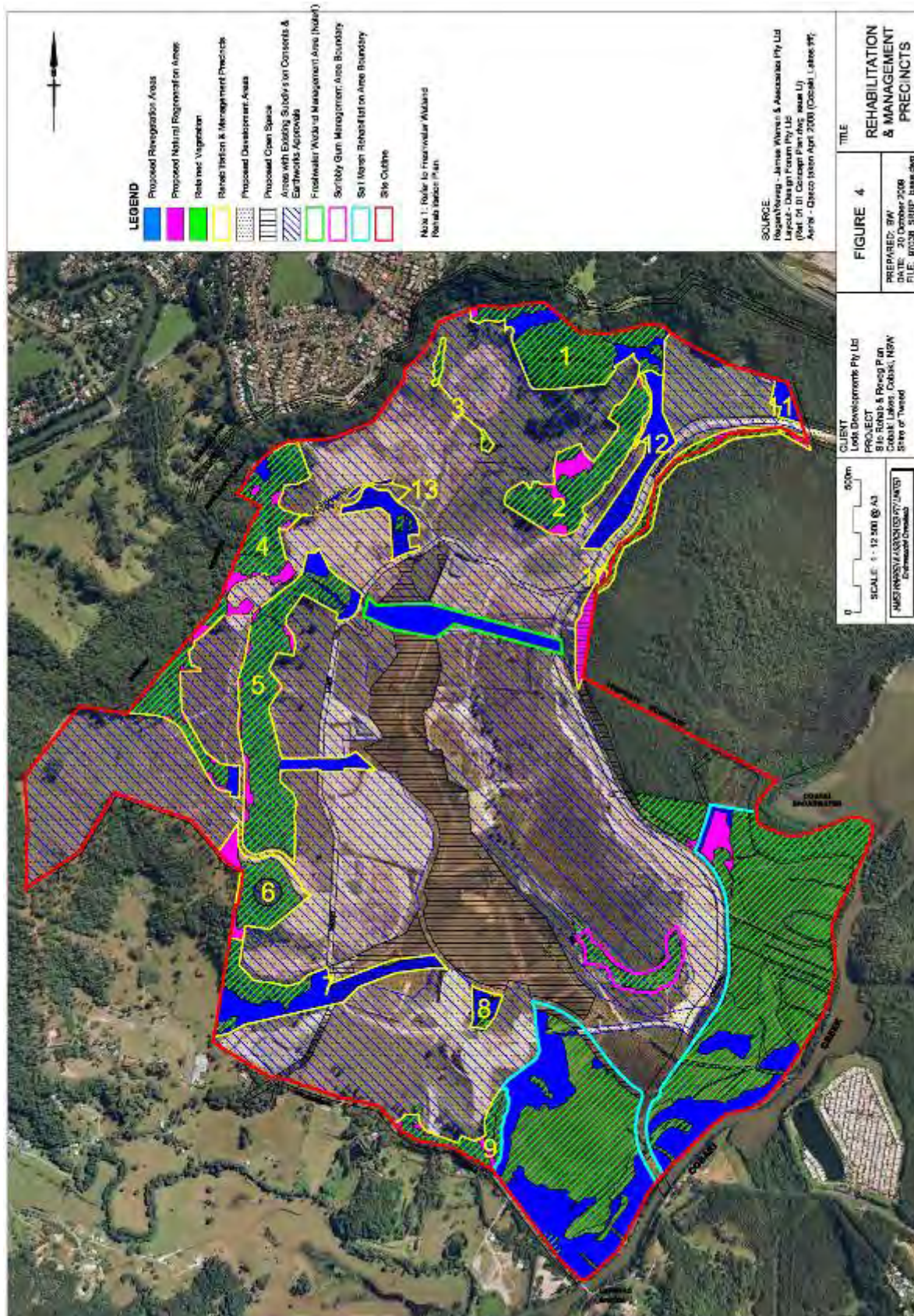
Council officers have reviewed the Cobaki Lakes Development Code and prepared a report on the issues and a recommended submission on the Draft Codes to apply to both the Cobaki Lakes and Kings Forest development sites. This report and draft submission was presented to the Council at its meeting 16 February 2010, however, as a result of a rescission motion, this report will be re-submitted to Council's March 2010 meeting for further consideration.

Council received a copy of the Project Application (PA) for Cobaki Lakes on 12 January 2010. The application is lodged pursuant to Part 3A of the *Environmental Planning and Assessment Act 1979* and the Minister for Planning is the approval authority.

The PA includes an Environmental Assessment (EA) and the EA has been on public exhibition from 13 January 2010 to 26 February 2010.

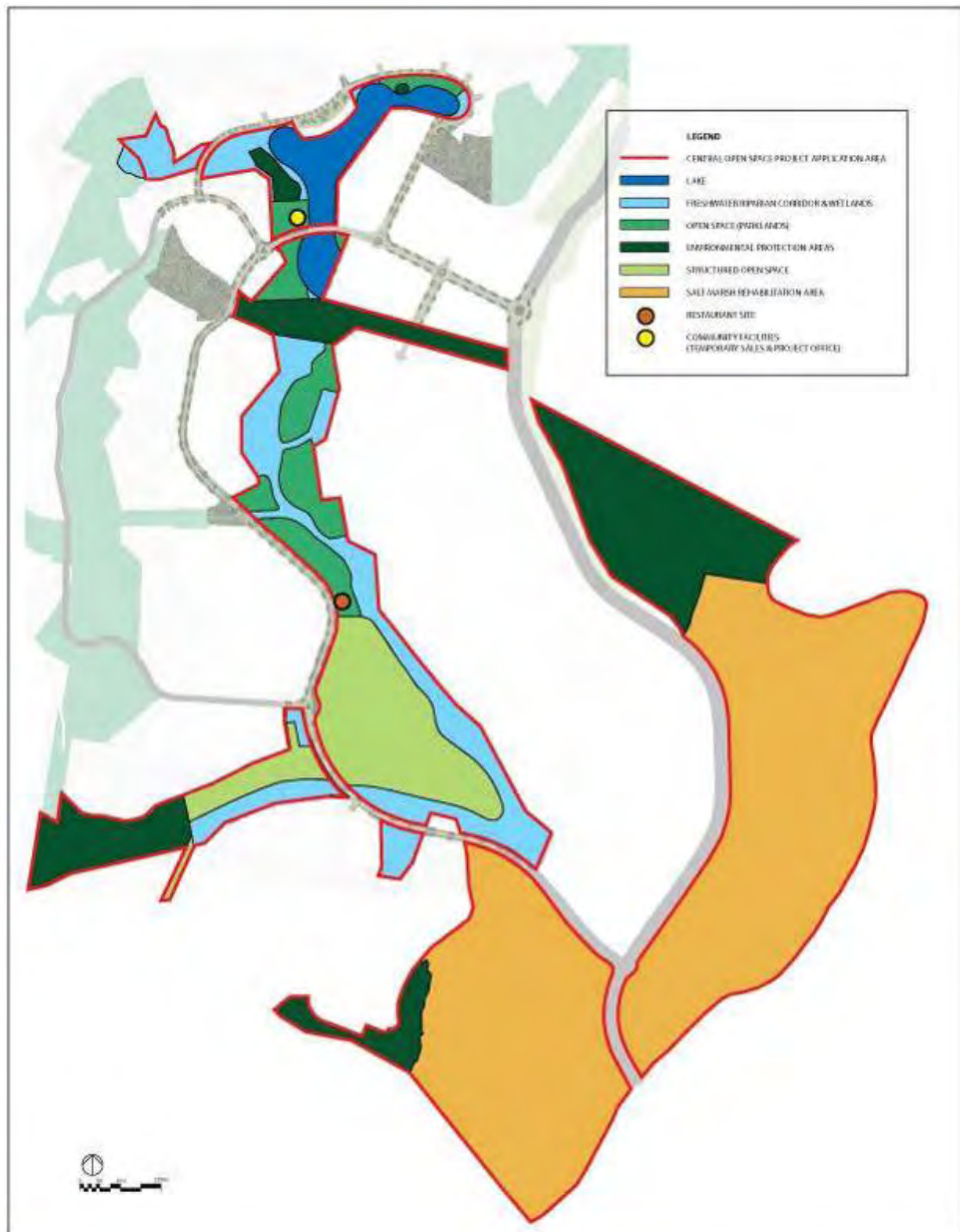
The Department of Planning has invited Council to provide comments on the PA.

REHABILITATION AND MANAGEMENT PRECINCTS

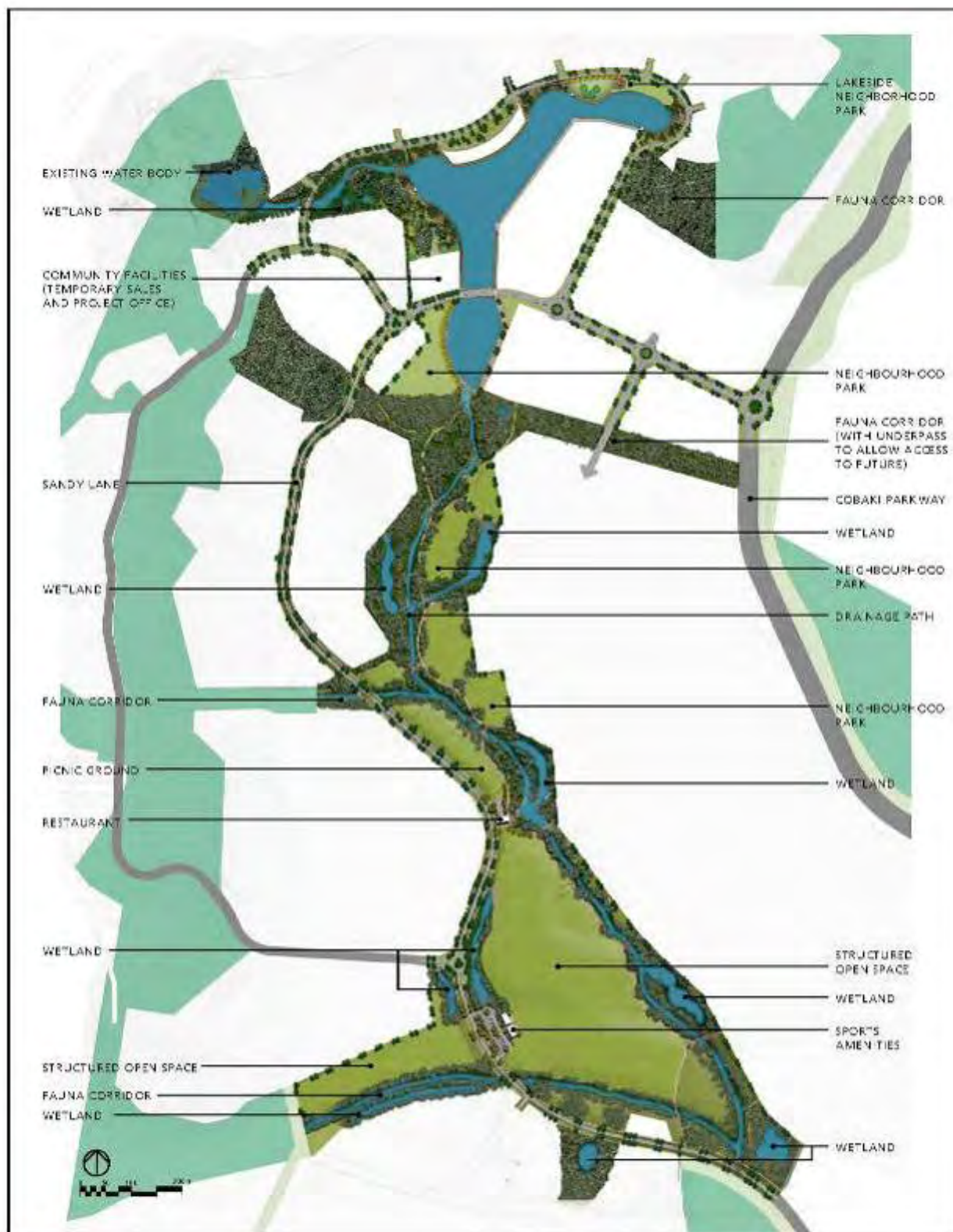




CENTRAL OPEN SPACE - LAND USE AREAS



CENTRAL OPEN SPACE – LANDSCAPE PLAN

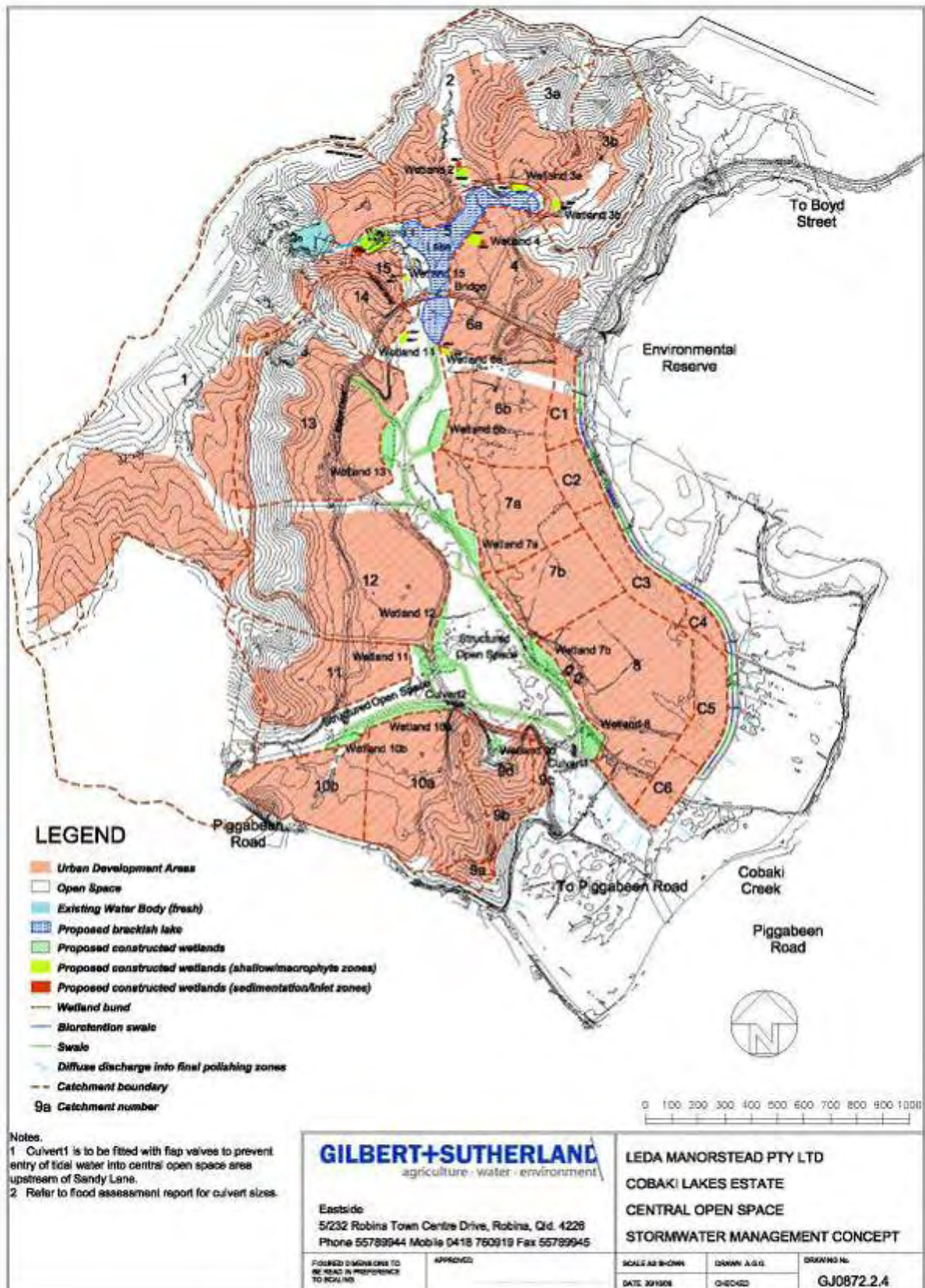


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Unit 1, 282 Midland Street
Fortitude Valley, QLD 4006 AUSTRALIA
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F: 61 7 3552 4766

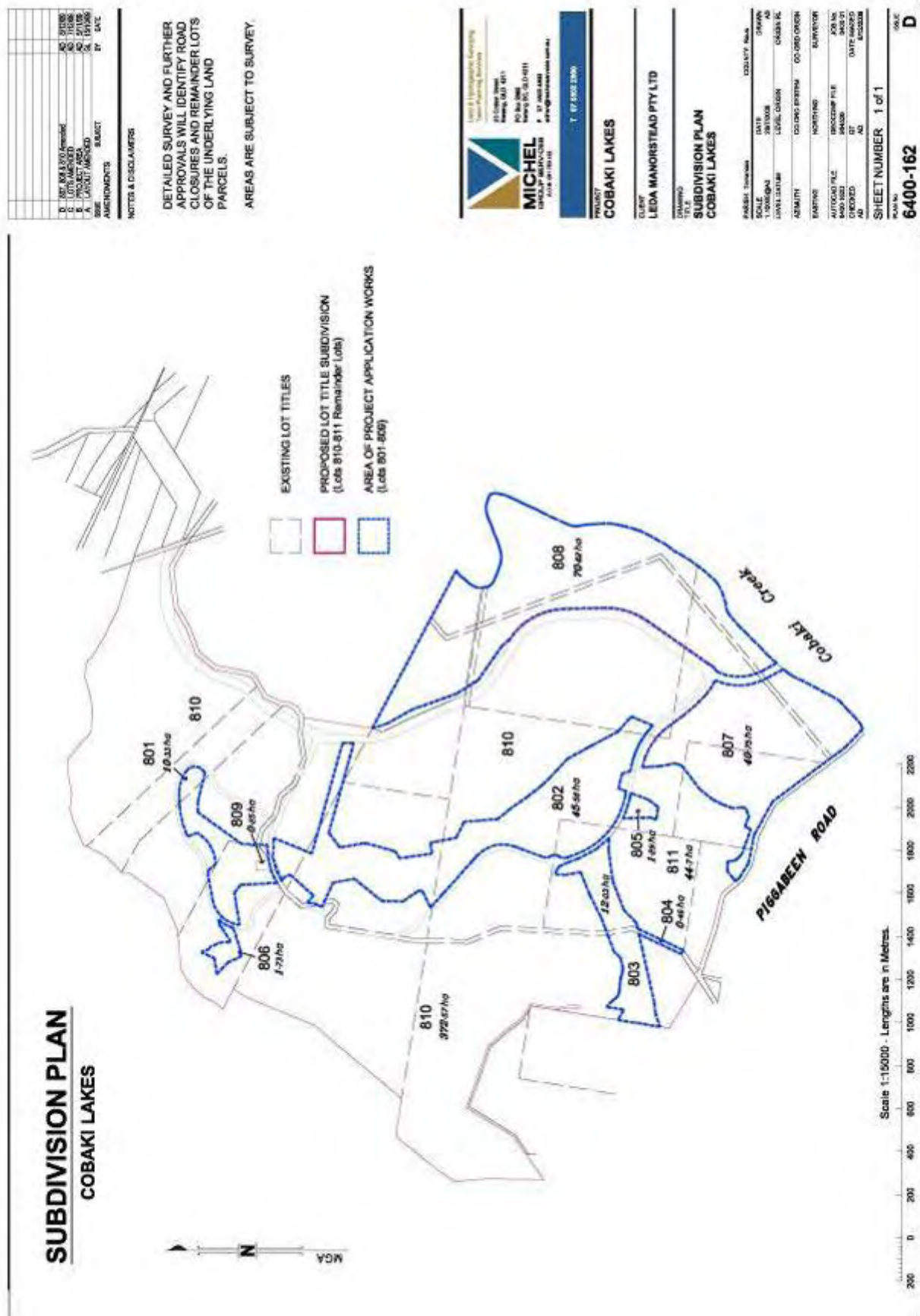
COBAKI LAKES CENTRAL OPEN SPACE - LANDSCAPE PLAN

DATE: 27/10/2009
SK01 - 01

STORMWATER MANAGEMENT CONCEPT



SUBDIVISION PLAN



PROJECT APPLICATION

Proposal

Unlike a concept plan, a project application if approved, allows for development to occur without further approval (besides detailed subdivision or construction certificates). A more detailed assessment is therefore required. Notwithstanding, given the ongoing resourcing demands of a number of Part 3A proposals, the assessment of the Cobaki Lakes PA has been limited to those areas which relate to proposed future Council assets including open space, environmental reserves, roads and stormwater infrastructure.

The PA seeks approval for the subdivision, detailed design and construction of the central open space (including lake) and riparian corridor in the Cobaki Lakes Estate consistent with the existing Concept Plan. (Note that the Concept Plan is yet to be determined by the DoP).

In terms of infrastructure provision, the main objective of the application is to provide the north-south trunk drainage system for Cobaki Lakes. In order to manage stormwater quality, quantity and flood liability, the trunk drainage system is made up of:

- A central Lake
- An open channel
- A Saltmarsh Polishing Zone
- Constructed wetlands
- A bridge over the lake,
- Three small culvert crossings and a major flood-gated culvert crossing at the outlet of the open channel on Sandy Lane

Works proposed as part of this PA include:

- earthworks (cut and fill) including creation of a lake, wetlands and riparian drainage corridor;
- landscaping of the central open space parkland areas;
- revegetation and rehabilitation of environmental protection bushland areas;
- revegetation and rehabilitation of freshwater wetlands and riparian corridor;
- revegetation and rehabilitation of saltmarsh areas;
- construction of access paths and bridges;
- construction of the lake edge landscape treatments including wetland edges, stonewalls, boardwalks, promenades, hand railing, and road bridge.

The PA also seeks approval of the following plans:

- Land Use Area Plan;
- Landscape Plans;
- Pedestrian Connectivity Plan;
- Stormwater Management Plan;
- Earthworks (cut and fill) diagrams;
- Draft Plan of Subdivision.

The subdivisional component of the application seeks approval for the subdivision of the open space, lake and riparian corridor into 9 lots (Lots 801 to 809) leaving 2 master lots (Lots 810 and 811) for the future urban development of the Cobaki Lakes Estate.

Various components of the PA are described in greater detail below.

Lake

As per the (unapproved) Concept Plan, a 7.86Ha lake is proposed at the northern end of the project application area, at the base of the "Northern Hillside" precinct and immediately west of the Town Centre. The lake will be embellished with open space, landscaping, revetments, boardwalks, promenades etc around its foreshore, and provides a significant amenity and marketing feature for the applicant. As such, the applicant aims to minimise plant growth in and around the lake, which could promote odour (due to rotting vegetation) and "nuisance wildlife", including but not limited to vermin and mosquitoes.

The central lake (providing a surface area of 6.86ha) is proposed at a depth of 5m, which will be achieved by excavating to -2.5m AHD and constructing a weir (approx. 55m in length) at the lake outlet with a crest level of +2.5m AHD. Suitable spoil from the excavation will be used to fill flood liable land within the Estate for future urban development (in accordance with separate approvals). For a lake of this depth vegetation growth will be limited, but stratification is likely to occur. To counter this, the applicant proposes a vertical mixer (such as a fountain) to provide oxygenation.

The lake edge profile in front of residential areas is proposed to consist of a constructed / formed underwater "shelf" approximately 3.6m wide at RL + 1.90m AHD (600 depth of water) with either a 3.5m wide concrete slab promenade or a 2.5m timber boardwalk, both at RL + 3.0m AHD. The promenade deck and boardwalk are both supported by a lake revetment wall and give access to private property via internal steps to the allotment behind the promenade and/or boardwalk up to RL + 4.50m AHD.

Other lake edge profiles to parkland and wetland edges will consist of similar "shelf" and retaining wall heights to RL 3.0m AHD, as for residential areas, but with finished levels behind the wall to suit surrounding ground levels, or, flat vegetated batter slopes of 1(V):6 (H) into the underwater zone batter slope of 1(V):3(H).

The lake revetment walls are proposed to consist of mass gravity concrete walls approximately 1.1m to 1.2m in height.

The lake is located "on line" with runoff catchments to the north, east and west, and as it accepts all water from these areas (some 60Ha), performs an important stormwater drainage function. While these flows will be passed through various treatment measures including constructed wetlands, relatively high levels of nutrients (nitrogen and phosphorus) are predicted in the lake, which are likely to lead to algal blooms in the warmer months. To counter this, the applicant proposes to pump salt water from Cobaki Creek and inject it into the upstream end of the lake, to achieve salinity levels that will inhibit vegetation and algal growth. The system will consist of a 250mm UPVC gravity line from Cobaki Creek, across the salt marsh rehabilitation area, to a storage reservoir located south of Sandy Lane. A pump station will be provided, capable of delivering 100L/s of salt water from the reservoir to the lake via a 250mm UPVC rising main. This system will mean that the lake will be brackish for six months of the year, and that this brackish water will travel down the central corridor of the Estate.

Water Quality Management of the Lake

Three options are proposed for management of water and aesthetic quality of the lake.

Option 1 - A shallow (approximately 2.0m deep) freshwater lake, which will be susceptible to the growth of emergent macrophytes. Operating and maintenance costs of this form of lake are estimated to be \$932,000 (life cycle estimate).

Option 2 - A freshwater lake of 5.0m depth with a mixer (a fountain) to avoid stratification. Some macrophyte harvesting would be required around the perimeter of the lake, plus occasional Phoslock dosing to reduce TP levels and prevent the algal blooms. Operating and maintenance costs of this form of lake are estimated to be \$1,620,000 (life cycle estimate).

Option 3 – A brackish lake with a depth of 5.0m with a mixer (fountain) as well as a water pump delivering saline water. This would result in no weed harvesting (including algal blooms) being required. Operating and maintenance costs of this form of lake are estimated to be between \$1,249,000 and \$1,437,000 (life cycle estimate) to operate that lake at salinities up to 3,000mg/L and 10,000mg/L respectively.

As discussed above the applicant's preferred option is Option 3.

Open Channel

Downstream of the lake weir, a large open channel will be provided through the site. The channel will be some 1900m long, from the lake to Sandy Lane. The drain will be 10m-30m wide, generally 0.6m-0.7m deep, with a trapezoidal cross section. Longitudinal gradient is virtually flat, at 0.05%. A salt water "trickle feed" from the lake is proposed to provide some flushing at this low grade.

Saltmarsh Polishing Zone

The open channel terminates at a set of culverts at Sandy Lane towards to southern end of the site (refer to Section (d) for further discussion on this critical element of the drainage system). From this point, the applicant intends to allow flows to dissipate across the salt marsh rehabilitation / compensatory planting zone, relying on existing agricultural drains across this land to convey this stormwater to floodgated outlets through the Cobaki Creek levee. This is intended to provide final "polishing" of the stormwater runoff before it enters Cobaki Creek. While in principle this may be an acceptable approach to managing nutrients in urban stormwater, it does not provide a continuous and maintainable drainage path through the site between Sandy Lane and Cobaki Creek, nor does it address the potential impacts of these pulses of concentrated stormwater on the salt marsh environment.

Roads

The PA includes part of Sandy Lane, specifically a bridge crossing of the lake.

This bridge is proposed to consist of a reinforced concrete with 4 x 15m spans between bridge abutments and bridge piers, with a deck width of 14m, providing a 9m roadway between kerbs.

Staging

The PA proposes staging as follows:

1. Implementation of Saltmarsh Rehabilitation Plan and Biting Midge and Mosquito Control Plan (to occur immediately upon approval);
2. Earthworks (cut and fill) for construction of the lake and landscaping of its edges (to commence within 6 months of approval);
3. Landscaping of open space and roads (including implementation of relevant flora and fauna management plans). This is intended to commence in conjunction with civil works for the subdivision of adjacent precincts.
4. Landscaping of structured open space and playing fields (to commence on a pro-rata basis with subdivision of adjacent precincts in accordance with Tweed DCP rates).

The Cobaki Lakes PA has been reviewed by Council's engineers, environmental scientists and open space officers in relation to proposed future Council assets, namely: the proposed roads: casual and structured open space; environmental reserves and stormwater infrastructure.

Issues identified with the PA are summarised below.

Summary

From a town planning and urban design point of view, provision of a Lake for amenity purposes is not opposed, provided environmental engineering matters can be adequately addressed ensuring impacts are mitigated.

Upon review of the PA, Council officers consider that there are significant environmental and engineering concerns with the proposal. Based on the information provided in the PA, it is recommended that Council's position is as follows.

- Council will not accept dedication of the lake as it cannot be feasibly maintained to an appropriate standard without adverse impact on the environment and is contrary to ecologically sustainable development principles.
- Council will not accept dedication of the central stormwater drainage corridor as it does not provide adequate, continuous and maintainable drainage conveyance to Cobaki Creek, and fails to take account of boundary conditions imposed by adjoining land;
- Until matters relating to the lake and stormwater management can be resolved to Council's satisfaction, all current and future applications that rely on stormwater discharge to the drainage corridor should be deferred as they impact directly on the provision of viable public infrastructure.
- Council will not accept dedication of proposed casual and structured open space areas until issues relating to flooding, maintenance and compliant design are resolved satisfactorily.
- Council will not accept dedication or maintenance of the saltmarsh and freshwater rehabilitation areas until: there is no conflict between the PA and proposed rehabilitation plan objectives; rehabilitation plans are amended satisfactorily; on-going management and maintenance issues are rectified and costs for maintenance in perpetuity are identified and deemed appropriate.
- The saltwater flushing system proposed for the lake is deemed inappropriate due to potential impacts on downstream environments and rehabilitation areas (including

- potential issues associated with acid sulphate soils and acid ground water as well as potential for the system to increase algae bloom occurrence).
- Council opposes the PA in its current form given the fundamental conflict between the saltmarsh and freshwater rehabilitation area objectives and the proposed stormwater management systems.
 - That Council opposes the PA as it contradicts justification provided in the Concept Plan and PPR for removal of Ecologically Endangered Communities and Threatened Species Impact through introducing infrastructure, roads (etc) into compensatory habitat areas proposed as offsets.

In terms of stormwater infrastructure, Council's Planning and Infrastructure Engineer has advised that Council should only reconsider its position stated above, if the following changes be made to the PA:

- a) Deletion of the lake, or reconfiguration of the lake to locate it off-line to all public drainage infrastructure and the lake privately maintained in perpetuity;
- b) Extension of drainage design and local flood modelling to incorporate the land downstream of the Sandy Lane culverts, to provide a continuous and maintainable drainage service, that takes into account the long term boundary conditions imposed by adjoining land, including environmental management areas, public open space and filled land for urban development;
- c) Modification of the central drainage design and/or the proposed fill design for adjoining land to provide flood immunity for residential allotments up to the 100 year ARI flood event, plus allowance for climate change;
- d) Provide consideration of existing filling and drainage approvals for precincts within the drainage catchment, to ensure that tailwater levels in the lake and central open channel permit efficient design of infrastructure within these urban areas.

Further justification for these comments is summarised below, including identification of areas which (should the PA be approved) require amendment as well as additional issues of concern.

Engineering

- As identified previously with the Council, there is concern with overlap and conflict between the PA, existing development consents and construction certificates.
- Further detail on on-going tidal monitoring is required, as proposed in the Saltmarsh Rehabilitation Plan particularly in relation to the proposed adjustable weir structure within the existing Cobaki Creek to control inundation of the Saltmarsh and rising sea levels.
- The proposed developer maintenance period of two years for the central open space, lake and riparian corridor is not adequate.
- The proposed Sandy Lane bridge crossing of the lake needs to be increased to a width of 18 metres wide to provide pedestrian movement and to be consistent with previous Development Consent S94/194.

- There are concerns with maintenance of the proposed open channel and ensuring the appropriate rate of flow is provided (in accordance with Council's Development Design Specification D5 – Stormwater Drainage. Further information is required on the channel in terms of groundwater influence.
- The area allocated for constructed wetlands should be 5% of the contributing urban catchment (with no discounts applied) at the PA stage.
- Council's water quality criteria should be used for erosion and sediment control, not from criteria established by the applicant through monitoring as proposed.
- Proposed use of infiltration systems for water quality management is of concern given the existing soil has limited permeability.

Environmental and Waterway Issues

- Detailed Section 5A assessment is required for any threatened species occurring within the PA area including large areas of freshwater wetland Ecologically Endangered Community (EEC) and the Wallum Froglet.

Freshwater Wetland Rehabilitation Area

- There are concerns with the freshwater wetland rehabilitation area (proposed as compensation for Wallum Froglet habitat that will be cleared as a result of the proposal) as the area includes infrastructure, roads and stormwater treatment devices. The siting of infrastructure is in conflict with the freshwater wetland rehabilitation plan objectives.
- The Stormwater Management Plan indicates that the freshwater wetland offset area would be used to treat and transfer stormwater flows. Any created freshwater wetland offset area should not have a dual function. Similarly, siting of Cobaki Parkway and pedestrian walkways / cycleways within the freshwater wetland reduces its suitability for an offset area.
- Saltwater flushing proposed as part of the lake system includes stormwater drains through the freshwater wetland rehabilitation area. Saline intrusion into the freshwater wetland area will cause die off and create unsuitable conditions for the Wallum Froglet and is in direct conflict with the objectives of the rehabilitation plan.
- There is concern with impacts from Acid Sulfate Soil (ASS) and potential acid ground water on the freshwater wetland rehabilitation area, particularly during operation and management of constructed wetlands and proposed lakes.
- The proposed freshwater wetland rehabilitation area should be zoned Environmental Protection at the outset. As identified previously, the applicant should identify the cost of maintenance along with strategies for sourcing of funding to allow Council management of the area in perpetuity.
- The proposed developer maintenance period of two to three years is inadequate.

Saltmarsh Rehabilitation Plan

- Stormwater from a large catchment is proposed to discharge into the Saltmarsh Rehabilitation Area (to the west of the proposed Cobaki Parkway and Sandy Lane). There are concerns that the stormwater discharges into the saltmarsh area will be substantial and result in threatening processes including scouring, sedimentation, increased nutrient input and altered salinity.

- The stormwater management plan identifies the saltmarsh rehabilitation area as a final polishing zone for stormwater. This is contrary to the objectives of the saltmarsh rehabilitation area to create and rehabilitate saltmarsh EEC and Swamp Oak Forest EEC to compensate for the loss of these threatened communities as a result of the proposal. The offset area should not have a dual function.
- The stormwater management plan indicates that stormwater will be channelled through existing agricultural drains. Given that these drains will be subject to sedimentation over time, there is concern with maintenance of the stormwater system within an environmental protection and rehabilitation area.
- Stormwater from the central drainage system should not be discharged into the Saltmarsh Rehabilitation Area.
- There is concern with stormwater discharge proposed from the residential catchments to the west of Cobaki Parkway as no treatment is proposed prior to discharge into the saltmarsh area.
- There is concern that construction of stormwater drains and wetlands within the ASS areas and inception of acidic groundwater will result in poor quality stormwater downstream into the saltmarsh rehabilitation area.
- As with the freshwater wetland areas, a funding source for long term management of the area must be identified.
- Impact of proposed infrastructure within the saltmarsh rehabilitation area (including channels, tidal gates and pump station) is not considered in the plan.

Site Regeneration and Revegetation Plan

- Detailed regeneration and revegetation plans should be submitted with the EA for the PA, not at later construction stages.
- Management precincts in the plan include stormwater treatment ponds, drains, open space, infrastructure community facilities, lake boardwalks and earthworks. There is a conflict with provision of these works and infrastructure and the objective of the plan, to ensure restoration of degraded areas and offsets for any vegetation removal.
- As above, there is concern that the offset areas (used as justification in the Section 5A assessments in the PPR) will be subject to other land uses and are in conflict with the rehabilitation and conservation of these environmental areas in perpetuity. Offset targets should therefore be reassessed as it is unlikely that they will be met based on the information provided in the PA.. The Section 5A assessments should be amended.

Waterways

- It is essential that works proposed to improve water quality do not result in the creation of ASS impacts, including release of acid and mobilisation of high concentrations of iron and aluminium as this will have detrimental impacts on water quality in Cobaki Broadwater.
- The ASS management plan indicates that further investigation of ASS will be undertaken once the detailed design of stormwater and drainage infrastructure is finalised. From a construction and long term operational perspective, this approach is considered to be unacceptable. Detailed ASS assessment should be undertaken to inform the location and depth profile of proposed stormwater treatment wetlands proposed south of the lake, as well as assess the risk that their construction poses to the environment. All precautionary steps must be undertaken to avoid creating long term acid generation potential in the central open space area.

- The proposed stormwater drainage channel through the centre of the site will create significant on-going issues in terms of acid and metals exported to Cobaki Creek and Cobaki Broadwater. The ASS assessment management plan does not provide information on long term management of drains or wetlands, should it be found that they become a source of acid within the environment. The depth of excavation of the channels should be accurately informed by detailed ASS investigations to ensure that ASS is not exposed through drain augmentation and to ensure that hydraulic draw down of adjacent groundwater does not result in oxidation of potential ASS in the adjacent soil profile.
- Management of nutrient and resultant algae growth in the lake waters is a concern. The recirculation of saline water through the lake system may be ineffective in controlling algal blooms.

Open Space Officer – Recreational Services

- Comments previously provided on the PPR remain applicable given that these comments have not been addressed. There is concern with the PA as it proposes structured and casual open space areas which do not comply with Council's minimum standards and dimension requirements.
- Insufficient area of structured open space is proposed, based on maximum population yield of 12,000.
- Sportsfields are proposed below the required level (Q100 – 1m) and can not be accepted.
- An independent review of saline water inundation impacts of on the sportsfield and casual open space, particularly turf management and impacts of salinity levels and frequency of inundation should be undertaken. Further information is also required on the impact of the saline water flush through the adjoining channels outside of flood times. The applicant should demonstrate that saline water will not move by capillary action or affect the root zone of the sportsfield turf.
- Limited details are provided on the construction method for the sportsfield, including the proposed sandy soil layer with adequate subsoil drainage.
- The applicant should commit to construction of the sportsfields to suitable Council standards.
- The applicant must confirm that the proposed 10.9ha “open space parkland” is part of the overall requirement for casual open space.
- The applicant should commit to providing the outstanding amount of casual open space (2.7 ha) in a suitable open space network throughout the development as part of future subdivision applications.
- Further information is required to demonstrate that casual open space areas proposed comply with Council's casual open space requirements, set out in Section A5 of the DCP.
- Additional casual open space areas are required to ensure that 95% of residents are within 400m walking distance of a local park.
- The proposed boundaries to open space areas do not meet Council's requirements for public access and road frontage outlined in Council's DCP, Section A5.
- As above, limited information is provided demonstrating that casual open space areas comply with required minimum fill levels for flood mitigation.
- Species proposed in the Landscape Plan would appear to be suitable for proposed salinity levels but not for freshwater riparian areas, which are also proposed. Further justification is required on species selection, with regard to flood inundation.

- Should the lake proceed, the applicant should provide means of meeting the cost of maintaining the lake and adjoining public infrastructure and public land.
- The applicant should commit to providing public access around the lake.
- Limited information is proposed on proposed embellishments of casual open space areas, other than conceptual drawings. Adequate detail on this is required prior to issue of an approval.
- Further information is required on the potential contaminated land site in the south-west of the development area, adjacent to an area proposed to be dedicated as open space.
- Further information is required on the proposed operation and management of the restaurant.

OPTIONS:

1. That Council endorses the attached draft submission to the Department of Planning on the Project Application for Cobaki Lakes.
2. That Council proposes an alternative draft submission to the Department of Planning on the Project Application for Cobaki Lakes.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

CONCLUSION:

Council has the opportunity to make a submission to the Department of Planning on the Project Application for Cobaki Lakes.

Various internal experts have assessed the Project Application and provided comments. These are summarised above and collated into the attached draft submission.

The purpose of this report is to seek Council endorsement of the attached draft submission to the NSW Department of Planning.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (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 submission to the Department of Planning on the Project Application for Cobaki Lakes (ECM 13590872)
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17 [PR-CM] Proposed Amendments to Tweed Development Control Plan Notification Requirements for Development Applications Affecting Caravan Parks and Manufactured Home Estates

ORIGIN:

Development Assessment

SUMMARY OF REPORT:

At its meeting of 16 February 2010 Council resolved to defer further consideration to a workshop of a report regarding additional notification procedures for development proposals adjacent to caravan parks and manufactured home estates. The method of how to notify occupants of parks and estates was discussed at a Councillors workshop held on 23 February 2010. Following some further investigations, Council officers put forward a proposed alternative notification procedure involving the use of the most current community maps of each complex for the direct mail-out of notification letters through Australia Post to the permanent occupiers of affected sites. The Councillors present at the Workshop generally supported this approach.

It has therefore been recommended that Council endorse the public exhibition of a revised amendment to Section A11 of the Tweed DCP 2008 to reflect this alternative notification procedure.

RECOMMENDATION:

That Council endorses the public exhibition of an amendment to clause A11.2.1 of Section A11 of Tweed Development Control Plan 2008 for a period of 28 days, in accordance with the Environmental Planning and Assessment Act and Regulations, through the insertion of the following:

Caravan Parks and Manufactured Home Estates

Permanent occupiers of caravan parks and manufactured home estates sites are to be notified in the same way as landowners are notified as set out in clause A11.2.1 Who is to be notified? (affected owners). In this regard individual sites occupiers are to be notified by mail identified by Council's copy of the community map for each caravan park or manufactured home estate.

REPORT:

See the attached copy of the 16 February 2010 report for background information.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

See previous report.

POLICY IMPLICATIONS:

See previous report.

UNDER SEPARATE COVER:

1. Report to Council's meeting of 16 February 2010 regarding Proposed Amendments to Tweed DCP Notification Requirements for DAs Affecting Caravan Parks and Manufactured Home Estates (ECM 13441992)
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18 [PR-CM] Results of Recent Legal Determinations for Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 Comprising 91 Independent Living Units, 94 Supported Living Units and 67 Beds within a High Care

ORIGIN:

Development Assessment

FILE NO: DA06/0413 Pt13

SUMMARY OF REPORT:

In November 2009 the Hastings Point Progress Association made two legal challenges regarding the validity of the previously approved aged care development commonly known as "The Point" (DA06/0413).

The first challenge was made to the Court of Appeal to Re-List the matter under a "slip rule" as the appellant submitted that the conclusion reached by the Court of Appeal (Justice McColl and Justice Young) should lead to the Appeal being allowed and the matter being remitted to the Trial Judge.

This matter was heard on 10 December 2009 and was unsuccessful.

The second challenge was made to the High Court of Australia being an application for leave to Appeal to the High Court (reference S270/2009).

This matter was heard on 12 February 2010 and was also unsuccessful.

Accordingly there is no further avenue of appeal for the Hastings Point Progress Association Incorporated. The only matter that might remain is the issue of costs between the Hastings Point Progress Association Incorporated and Aeklig Pty Ltd.

Therefore, development consent for DA06/0413 (comprising an aged care housing development) as issued by Tweed Shire Council in May 2007 remains valid.

RECOMMENDATION:

That the report on the recent legal determinations for Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 Comprising 91 Independent Living Units, 94 Supported Living Units and 67 Beds within a High Care Facility at Lot 1 DP 786570, No. 87-89 Tweed Coast Road, Hastings Point be received and noted.

REPORT:

Applicant: Aeklig Pty Ltd
Owner: Mr AP McIntosh
Location: Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point
Zoning: 2(c) Urban Expansion
Cost: \$25,000,000

BACKGROUND:

DA06/0413 sought approval for a staged seniors living development under SEPP (Seniors Living) 2004 comprising 91 independent living units, 94 supported living units and 67 beds within a high care facility at Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point.

The application was approved by Council in May 2007 subject to conditions of consent.

The DA was challenged in the NSW Land and Environment Court by Hastings Point Progress Association Incorporated. The nature of the appeal focused on two matters of procedure (as the Appeal could only relate to procedure and NOT merit);

1. That Council failed to consider Clause 8 of the Tweed LEP 2000 specifically in regard to cumulative impact; and
2. That Council's decision was manifestly unreasonable.

The appeal was unsuccessful on both counts.

The judgement determined that the Senior Living SEPP prevailed over Clause 8 of the Tweed LEP 2000, as Clause 8 of the Tweed LEP 2000 was inconsistent with the SEPP Senior Living.

Secondly the judgement determined that Council's decision was not manifestly unreasonable.

The case was accordingly dismissed.

In May 2009 the Hastings Point Progress Association challenged the NSW Land and Environment Court decision. The NSW Court of Appeal undertook a judicial review of the NSW Land and Environment decision primarily focussing on whether Clause 8 of the Tweed LEP 2000 actually formed an inconsistency with the Senior Living SEPP.

The Hastings Point Progress Association argued that the Clause was an additional assessment criterion not one in conflict with anything contained within the SEPP.

Aeklig Pty Ltd argued that:

1. Clause 8 of the LEP mandates that a refusal be granted unless the three matters (8 (1) (a) and (b) and (c) are satisfied; and

2. The SEPP Senior Living permits development despite the provisions of any other instrument provided the development complies with the SEPP

Therefore Aeklig argued that Clause 8 was inconsistent with the SEPP enabling the SEPP to prevail.

The Court of Appeal decision is determined by three judges. In this instance two judges ruled in the favour of Aeklig and one judge was dissenting.

The judgement summarised inter alia:

"...The critical issue on appeal was whether Clause 8 of the Tweed LEP 2000 was inconsistent with Clause 17 of the SEPP – SL for the purposes of s36 of the Environmental Planning and Assessment Act 1979 (NSW) because it mandated refusal of a development which nevertheless was to be carried out in accordance with SEPP – SL.

...That provision cannot, in my view, operate concurrently with Clause 17 of SEPP SL which permits the development to which it refers "despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.

This is not to say that the consent authority is not required by s79C to take those conditions into account in its consideration of a development that otherwise complies with SEPP – SL. But having done so, the consent authority has a discretion to grant consent, notwithstanding that it is not satisfied of each of the three conditions in Clause 8(1). The inconsistency arises because Clause 8(1) mandates refusal in those circumstances."

The Court of Appeal held that the case was dismissed with costs.

As detailed within the summary above Council did not actively defend this case and only put on a submitting appearance. Therefore the costs order issued by the Court of Appeal would only apply to the second respondent Aeklig Pty Ltd to recover their costs from the applicant Hastings Point Progress Association.

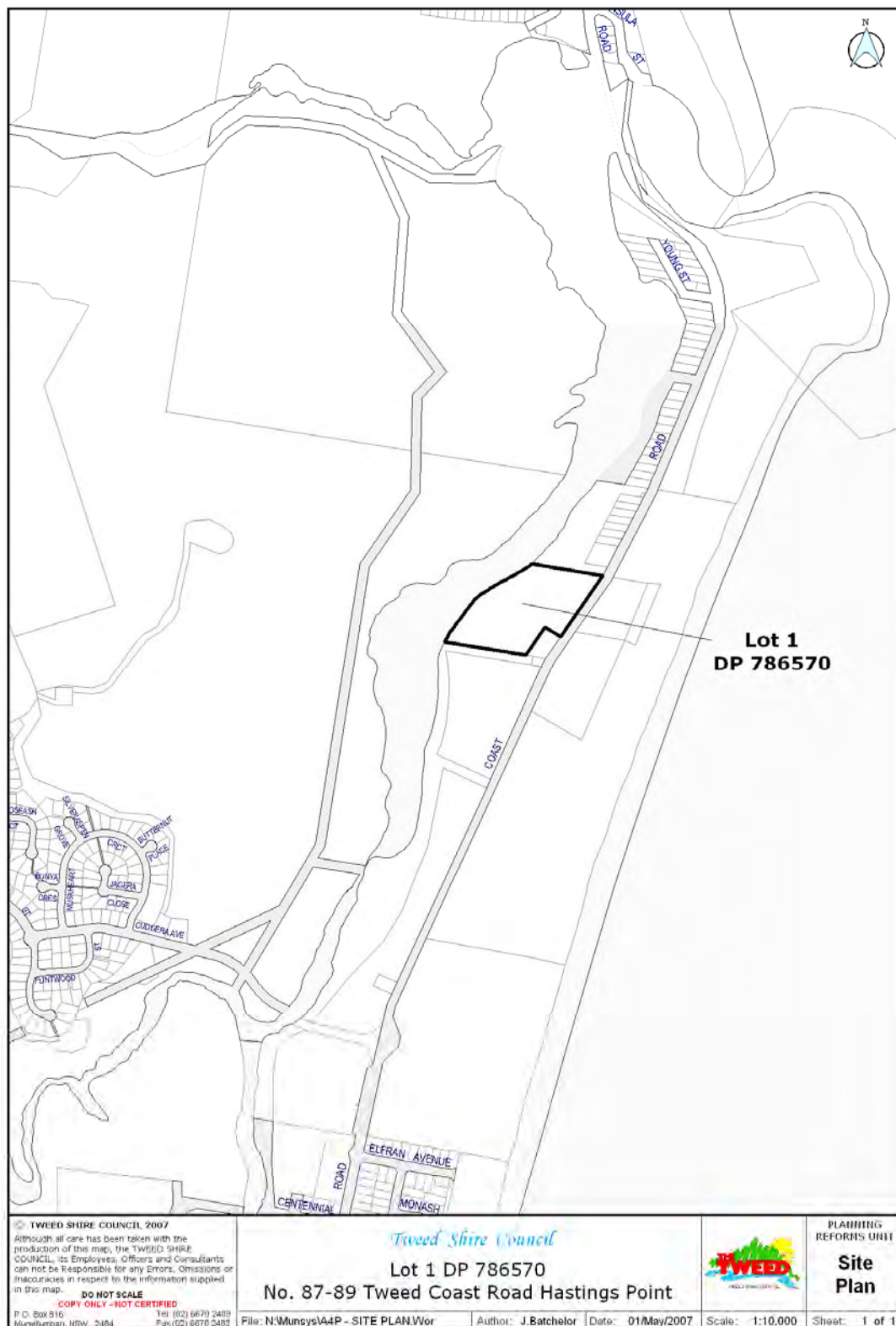
In November 2009 Council was advised of two (2) additional appeals that had been lodged by Hastings Point Progress Association Incorporated in regards to this matter:

1. Court of Appeal to Re-List under the "slip rule" as the appellant submits that the conclusion reached by the Court of Appeal (Justice McColl and Justice Young) should lead to the Appeal being allowed and the matter being remitted to the Trial Judge.
2. Application for Leave to Appeal to the High Court (reference S270/2009);

Both of these cases relate to the same principals as detailed above.

Both cases were dismissed and therefore the earlier decision by the NSW Court of Appeal in dismissing the Appeal by the Hastings Point Progress Association Incorporated stands.

Development consent for DA06/0413 (comprising an aged care housing development) as issued by Tweed Shire Council in May 2007 remains valid.



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council did not actively defend these cases and only put on a submitting appearance thus allowing the case to be defended by the applicant. Council's legal expenses in relation to this case have been minimal (approximately \$1300).

POLICY IMPLICATIONS:

It is recommended that TSC continue to undertake judicious consideration of environmental planning instruments when assessing development applications.

UNDER SEPARATE COVER/FURTHER INFORMATION:

<p><i>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).</i></p>
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1. High Court Results 12 February 2010 (ECM 13479726)
 2. Marsden's Letter to TSC 19 February 2010 (ECM 13479726)
 3. Stacks The Law Firm Letter to Marsden's 16 February 2010 (ECM 13479726)
 4. NSW Court of Appeal Judgement CA40279/09 (No. 2) – 10 December 2009 (ECM 13479726)
 5. NSW Court of Appeal Judgement CA40279/09 - 11 September 2009 (ECM 13479726)
 6. NSW Land and Environment Court Judgement - 6 June 2008 (ECM 13479726)
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19 [PR-CM] Vegetation Clearing at Lot 4 DP 1106447 Tweed Coast Road, Chinderah

ORIGIN:

Development Assessment

FILE NO: PF1070/210 Pt6

SUMMARY OF REPORT:

Certain trees and understorey vegetation were removed from the subject property (currently owned by Gales Holdings) during January 2010. Council officers became aware of this removal through a complaint from a local resident. The contractor states that the trees were dead or damaged from recent storm events and were cleared to remove hazards to cattle.

Various parts of the property are affected by Council's 1990 and 2004 Tree Preservation Orders (TPO's). Although some land is zoned for future industrial and residential land use, other parts will be preserved as environmental protection areas along the existing Drainage Channel, which may also include possible Endangered Ecological Communities. Some of the more significant tree and understorey clearing occurred in these parts.

The works, although initiated by a genuine need for responsible farm management are considered to be in part a breach of both TPO's.

RECOMMENDATION:

That a Penalty Infringement Notice (PIN) be issued to the owner of Lot 4 DP 1106447 Tweed Coast Road, Chinderah for a breach of Council's Tree Preservation Orders.

REPORT:

Background:

Following a complaint from a local resident, Council officers inspected the subject site at 2.30pm 28 January 2010. The 42ha property owned by Gales extends from Ozone Street through to Rotumah Street and the industrial estate at Chinderah.

Observations:

Beyond the tree line around the Kingscliff Drainage channel, some piles of trees around 2m in height were evident with the ground bare as if the area had been underscrubbed. Some piles of trees had boles ranging from 100cm in circumference to much smaller spindly trees less than 10cm in circumference. Species evident included *Banksia integrifolia* and *Casuarina glauca*. Vines had been mixed in amongst the debris in some piles and much of the material consisted of branches and trunks where little green leaves were evident. Most of the removed vegetation was dried/dead even though just cleared.

Fresh works were evident at the drainage channel crossing, with a new replacement bridge having been constructed but also a disturbed area beside the bridge where the excavator had crossed. Unconsolidated grey sand was evident on the waters edge and some foam and minor discoloration was seen within the drainage line which was tannin-stained.

The tree removal operators stated that they were tidying up fallen and storm damaged trees on the farm. Storm winds had knocked over many trees (most having a shallow root systems within a sandy loam soil profile). Some had fallen over fences, some into other trees clusters and some in the open pasture. As they were considered a hazard to cattle and could not be left unmanaged, they stated they were tidying up the property.

The contractors stopped work when requested to do so.

Statutory requirements:

The property is currently zoned 2(a) Residential at the Kingscliff end of the property and 4(a) Industrial at the Chinderah end under Tweed Local Environmental Plan 2000. The lot has two parts affected by Council's Tree Preservation Orders: the most easterly being under the 1990 TPO (following the 2(a) zoning) and the area following the drainage line under the 2004 TPO. The second TPO has some significant vegetation in this area. Much of the site is identified as Melaleuca and Swamp She-oak forest being candidate Endangered Ecological Community categories. The most western portion adjacent Rotumah Street is classed as "very high" ecological status under the Tweed Vegetation Management Strategy 2004.

Assessment:

It appeared that the storm had knocked several trees over. Some were easily removed but as some were “held up” in other trees and tangled with vines, the machine was needed to drag it out. Although much of the work was outside the TPO areas, there were still damaged trees cleared along the Drainage Channel which is an area which contains significant vegetation of high habitat value and perhaps the use of an excavator was not the most sensitive way to resolve deal with the fallen trees. The contractors argue that it was the most cost-effective and only practical method of clearing storm damaged vegetation.

The contractor responsible for management of the property later supplied photos of each area with damaged trees taken before works commenced. The photographs mostly confirmed that in fact the trees were damaged.

Irrespective of the legitimacy of the need to removed storm damaged trees, several trees were cleared out from within an area covered by a TPO. Secondly, whether the damage to, and removal of, vegetation as viewed on the site was for the purposes of cleaning up storm damage or not, there was clearly some damage to live trees, mid-story and understorey plants, all of which are protected without exemption under the 2004 TPO. Of particular concern were the works near the drainage line channel where the majority of clearing had occurred. In addition, some clearing had occurred opposite Peate Court in the eastern half of the property associated with drainage works, where felled trees greater than 3m in height (and thus covered under the 1990 TPO which is applicable to the eastern side) indicate a breach of the instrument. These works may have been undertaken under their ‘existing use rights’ in maintaining an existing farming property.

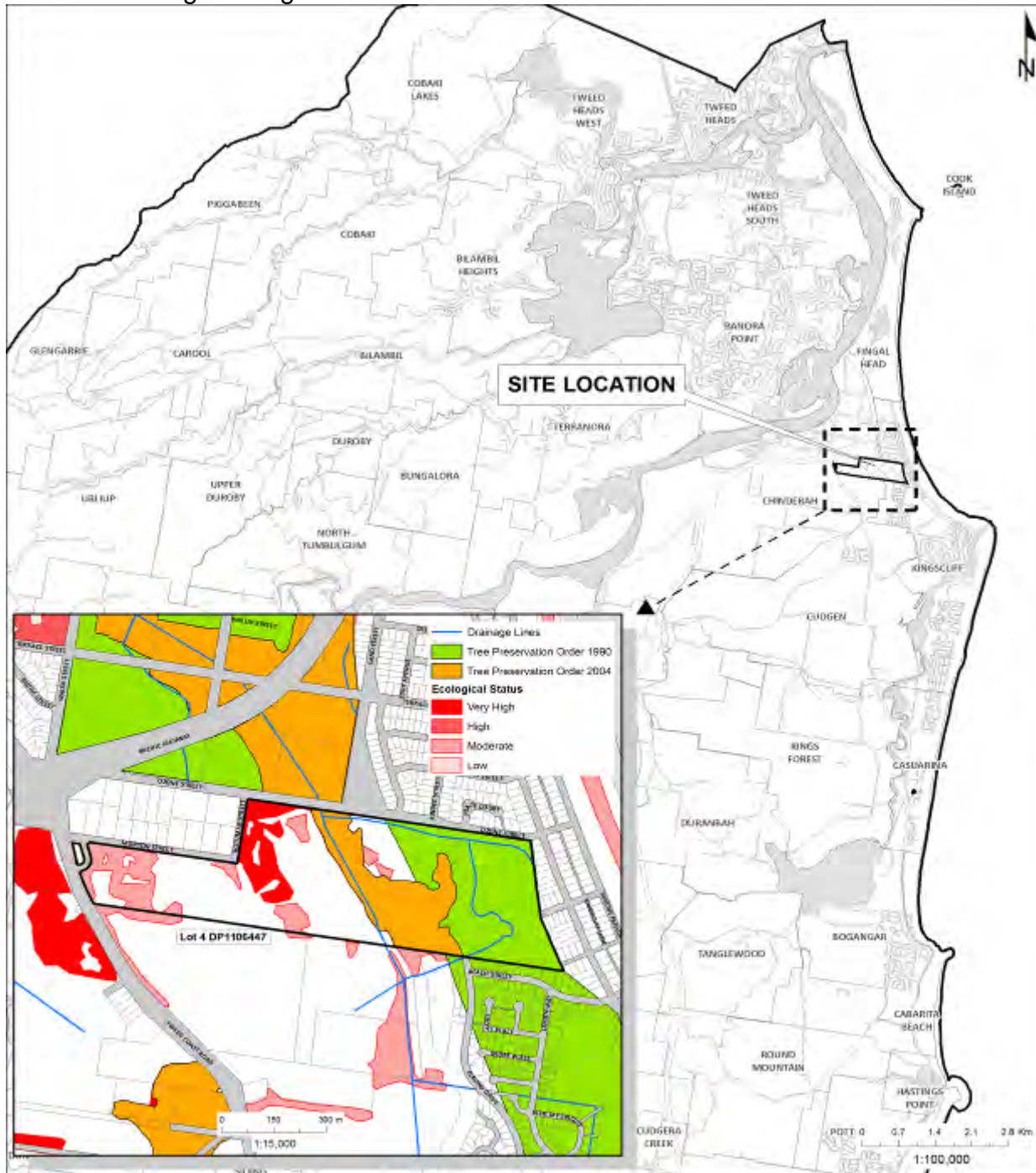
The zoning of the land for future residential and industrial use means the Native Vegetation Act does not apply to the site.

Conclusion:

The works, although initiated by a genuine need for responsible farm management in relation to care of cattle, were still in part a breach of both Tree Preservation Orders.

SUBJECT SITE:

Green shading indicates the area covered by the 1990 TPO; orange illustrates the extent of the 2004 TPO; dark red shows vegetation outside the TPO's of *Very High Ecological status* as mapped under the Tweed Vegetation Management Strategy 2004. Thin blue lines indicate existing drainage lines.



LOCALITY PLAN Lot 4 DP 1106447 Tweed Coast Road, Chinderah

Filename: c:\ecm\planning\med\AMP_B&W_SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 03 March, 2010

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Coordinate System - MGA Zone 56
Datum - 1984

Cadastre: 03 March, 2010
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AERIAL PHOTOGRAPH:



AERIAL PHOTO - taken October 2009

Lot 4 DP 1106447
Tweed Coast Road, Chinderah

Filename: z:\green\planning\standard maps\council reports\gis\seal.mxd		Author: J. Balchelor - Planning Referrals Unit		Date Printed: 03 March, 2010	
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<p>Coordinate System: UTM Zone 56 Datum: GDA84</p>		<p>DO NOT SCALE COPY ONLY - NOT CERTIFIED</p>		<p>T: (02) 6620 2433 1300 260 872 F: (02) 6620 2422 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au</p>	
				<p>TWEED SHIRE COUNCIL</p>	

Aerial photograph showing approximate location of trees cleared.

PHOTOGRAPHS OF THE SITE:



Typical shallow root tree knocked over by storm event.



Trees with understorey cleared up into piles within TPO area along the drainage channel.

OPTIONS:

- 1 Take no action.
- 2 Issue a Penalty Infringement Notice (PIN).
- 3 Instigate legal action.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council would incur costs in any prosecution. If successful, costs may be recovered through the courts as a separate hearing.

If the option of issuing a PIN is adopted, the Notice can be disputed in Court.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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20 [PR-CM] Companion Animals Management Plan

ORIGIN:

Regulatory Services

SUMMARY OF REPORT:

A draft of the Companion Animals Management Plan was placed on public exhibition from 1 January 2010 to 11 February 2010 following an earlier report to Council. Council received comments from three individuals regarding the draft plan, however it is considered that the issues raised did not warrant any amendment to the exhibited Plan. It is therefore recommended that Council adopts the exhibited Companion Animals Management Plan.

RECOMMENDATION:

That Council adopts the final Companion Animals Management Plan referred to and attached to this report.

REPORT:

A draft of the Companion Animals Management Plan was placed on public exhibition from 1 January 2010 to 11 February 2010 following an earlier report to Council. Council received comments from three individuals regarding the draft plan as summarised below:

Provision of fenced off leash dog exercise areas.

In accordance with the Companion Animals Act Council is required to provide at least one off-leash exercise area within its area of operation. Within the Tweed Shire there are currently fifteen off-leash areas provided for use by the public. There are no requirements under the Companion Animals Act or associated Regulation stating the necessity to provide a fenced off-leash dog exercise area, however, the inclusion of this type of structure may be incorporated to existing areas as resources permit.

Provision of dog poo bag dispensers and dog poo bins at all off leash areas

In establishing off-leash areas the possibility of providing these services were investigated, however, it was established this was not a feasible option due to the ongoing cost associated with maintenance, service contractors, vandalism and the continual replenishment of bags. The provision of these services is not a requirement under the Companion Animals Act and there are provisions within the Act requiring the owner or person in charge of an animal to ensure that any dog faeces is removed and disposed of in an appropriate manner.

The Companion Animals Management Plan is aimed at providing services, facilities and education strategies in the Tweed Shire which enable pet owners to maximise the enjoyment of companion animals whilst also maintaining a harmonious coexistence between, pet owners and all sectors of the community. It is believed this plan has satisfied Councils obligations in planning for the provision of Companion Animal Management.

On the basis of the review of these public submissions, it is considered that no amendments to the exhibited Plan are warranted.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The endorsement of this Plan will provide Council with a more up to date address of the Companion Animals Act.

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. Companion Animals Management Plan (ECM 13479701)
-

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21 [PR-CM] Beach Vehicle Policy Review

ORIGIN:

Regulatory Services

SUMMARY OF REPORT:

A request for a review of Council's Beach Vehicle Policy has been received by Mr David Cranwell spokesperson Ecofishers Tweed Branch. The last review was conducted in 2005 with further community consultation in 2006. Council's current policy was formulated and adopted in conjunction with the outcome of both reviews. The correspondence received requests that certain aspects of the current policy be reviewed to enable greater access to beaches by Beach Vehicle Permit holders with a review of the current permit fee.

In further reviewing this matter, a Councillors Workshop was held with Ecofishers representatives on 1 December 2009 and site inspection with Councillors (Polglase, Youngblutt, Skinner, Longland, Van Lieshout in attendance) and Council's Senior Management, was held on 3 February 2010.

In light of the prevailing, endorsed Council position on the Beach Vehicle Policy Review, and in review of the further information provided by the Ecofishers in their latest submission, it is considered that there are insufficient grounds at this stage to support the requested amendments to Council's Policy.

RECOMMENDATION:

That Council in terms of the adopted Beach Vehicle Policy:-

- 1. Maintains current exclusion zones and time restrictions;**
- 2. Maintains current fees associated with Beach Vehicle Permits; and**
- 3. Declines the request made by the Ecofishers Tweed Branch to approach the Department of Environment, Climate Change and Water regarding amending their Plan of Management for Coastal Nature Reserves, enabling access to Beach Vehicle Permit Holders.**

REPORT:

A request for a review of Councils Beach Vehicle Policy has been received by Mr David Cranwell spokesperson Ecofishers Tweed Branch, (Attachment 1). The last review was conducted in 2005 with Councils current policy being adopted in July of the same year. In 2006 ECO Fishers Incorporated Tweed Branch lodged a submission on behalf of 4WD permit holders requesting that additional areas of beach within the Tweed Shire be made accessible to 4WD permit holders due to the reduction of areas that stemmed from the 2005 review. Subsequently extensive community consultation was initiated which concluded there was overwhelming support from the public NOT to incorporate additional areas of beach into the current beach vehicle permit policy.

A further request for review of Council's Beach Vehicle Policy was declined through a report and resolution of Council at its meeting of 16 December 2008.

This most recent Ecofishers correspondence requests that certain aspects of the current policy be reviewed to enable greater access to beaches by Beach Vehicle Permit holders with a review of the current permit fee. Following an internal Councillors Workshop held on 1 December 2009, a site inspection of the Tweed Coast beaches was conducted on 3 February 2010, covering the main access points from Casuarina to Wooyung, and was attended by Councillors Polglase, Youngblutt, Skinner, Longland and Van Lieshout and Senior Council Management. During this inspection Mr Cranwell coordinated a briefing of the main issues from the Eco Fishers submission to Council concerning Beach Vehicle Access by Beach Vehicle Permit holders. The documentation used during the site visit is listed as attachment 3 and all the issues raised at the site visit are covered in this report.

History

Council has an ongoing duty to consider the use of the Shires beaches and as coastal populations increased so did the potential for conflict over beach usage, therefore in 2005 a review of the Beach Vehicle Policy was warranted to establish a clear direction of management for Beach Vehicle access through consultation with the community and interested parties. During the review period Council initiated extensive community consultation regarding the policy and the feasibility of 4WD access to additional sections of beaches previously not allocated for 4WD access.

In reviewing Council's Beach Vehicle Policy there were a number of strategic change factors that impacted the beach areas within the Shire that Beach Vehicle Permit holders were able to gain access.

The first change factor related to Nature Reserves under the control of the Department of Environment, Climate Change and Water (DECCW).

Cudgen, Wooyung and Billinudgel Nature Reserves are the areas of the Tweed Coast currently managed by the DECCW. The DECCW have adopted plans of Management for each of these reserves and they advised beach driving in a nature reserve is considered an inappropriate use and contrary to the purposes of dedication of a nature reserve. As specified under the National Parks and Wildlife Act 1974 (NP&W Act) recreational use of nature reserves should be nature based.

The Cudgen, Billinudgel and Wooyung Nature Reserves are all gazetted to the mean low water mark effectively placing the inter-tidal zone under DECCW control. Therefore vehicles traversing the inter-tidal zone within the boundaries of the nature reserve are subject to the provisions of the NP&W Act. Accordingly Tweed Shire Council permit holders were prohibited from accessing these areas in accordance with the DECCW implementation dates for the plan of management for individual reserves.

The second of these factors was new beach side subdivisions.

4WD permit holders had access to the beach situated between south Kingscliff and Cabarita, however, this area continues to be increasingly impacted by Casuarina Beach and Salt subdivisions resulting in increased beach activity, therefore creating a potential conflict over beach usage.

It is fair to say the beaches accessible to current BVP holders have historically been located in areas where there was relatively lower beach usage by the general public. Increasing pressures from the above subdivisions was identified as a potential limiting factor, for reasons of public safety and liability issues. These subdivisions also provide improved access and more secure parking adjacent to the beach in these areas resulting in a reduced need for beach vehicle access.

Community consultation and the impact of population growth in the coastal localities resulted in the introduction of the current beach vehicle permit system where restrictions have been implemented on a variety of beaches. This review involved extensive community consultation and advertisement to ensure the broader community were aware of the review and invited submissions from the public and interested stakeholders.

Current Policy

Council's current Policy relating to Vehicles on Beaches is reproduced below. The Beach Vehicle permit season runs from 1 August through to 31 July each year and it should be noted that it makes specific provision for permits under the following categories - amateur fisherman, professional fisherman and special permits. Essentially, during the 2009/2010 permit season 142 permits were issued to amateur fisherman, 33 permits issued to persons who hold a professional fishing license with NSW Fisheries and 31 'special permits' issued to persons holding a disabled parking permit with the Roads and Traffic Authority or state equivalent.

There is not currently any permits issued or policy specific to commercial beach vehicle access, and each application has historically been considered in isolation, and on its individual merits, however, Council resolved 3 May 2000 to issue no commercial (tour) beach vehicle permits in the future.

The current Policy reads as follows:

“Policy Document Beach Vehicle

Vehicles on Beaches - Permits to Drive Vehicles on Beaches

Objective

To preserve a high standard of safety and enjoyment of persons using beaches within the Tweed Council area.

The conditions for the issue of permits to drive vehicles on the beach for Amateur Fisherman shall be:

Council shall offer existing permit holders the opportunity to renew their permits for the commencement of each permit season and exclude to offer permits that have not been renewed by current license holders.

The fee shall be as determined by Council.

- a) The vehicle must be a conventional four (4) wheel drive vehicle.*
- b) The Permit is issued for the purpose of fishing only - joyriding and picnicking are not permitted.*
- c) The vehicle is not to be driven above the high tide mark, except when travelling to and from the beach.*
- d) Under no circumstances is the vehicle to be driven on or over frontal dunes or foreshore areas not designated as access points.*
- e) All vehicles must be registered with the relative State Authority.*
- f) The Permit holder must be the holder of either a provisional or full driver's licence, issued by the relative State Authority.*
- g) Vehicles must not be driven by persons under the influence of intoxicating liquor or drugs.*
- h) Vehicles are to be driven only on the beaches specified by the Permit.*
- i) The maximum speed limit at any time is 30 kph.*
- j) Only the vehicle nominated on the Permit is to be driven on the beach.*

Each applicant may only apply for a permit for himself/herself.

The conditions for the issue of Permits to drive vehicles on the beach for Professional Net Fishermen shall be:

The fee shall be as determined by Council..

- a) *Permits will only be issued to Licensed Net Fishermen.*
- b) *The vehicle nominated on the Permit shall be distinctly marked with the name of the Licensed Fisherman and the words "Net Fisherman" displayed thereon.*
- c) *The compliance with items of conditions applicable to Amateur Fishermen.*
- d) *The Fishermen shall not operate through or drive upon pedestrian areas.*
- e) *Vehicles to be driven onto beaches at specified locations to be designated on the permit.*

Issue of Special Permit

1. a) *A very small number of permits may be issued by the Director of Planning and Regulation in special circumstances considered appropriate such as to paraplegic persons or persons while engaged in Dune Care works.*
b) *The current fee shall be applicable.*

All general conditions as set out above will apply except for in some instances.

Sub-section b) may be waived by the Director of Planning and Regulation.

2. a) *When a Special Beach Vehicle application is submitted, registration details showing proof of ownership of a 4WD vehicle by the applicant or spouse, parent or child (who is the holder of the Roads and Traffic Authority Disabled Parking Permit) are to be provided as part of the application.*
b) *Holders of the Roads and Traffic Authority Disabled Parking Permit must be a passenger in the vehicle in the event of a person other than the permit holder driving the vehicle on the beach. Failing to comply with this requirement may result in Council taking action in the form of an infringement notice and/or disqualification of the permit.*

Beach Vehicle Permits - Paraplegics

In the situation where a paraplegic requires a vehicle for transport to the sea, a beach licence shall be issued free of charge subject to receipt of supporting information.

CONDITIONS OF BEACH VEHICLE ACCESS – Special and Amateur Permit Holders

- *If you are transferring your beach vehicle permit to a different vehicle, the beach vehicle permit sticker must be removed from the old vehicle and presented to Council so that a new permit can be issued. Failing to comply with this requirement may result in the cancellation of your permit.*
- *Any change of address must be supplied to Council.*
- *The Beach Vehicle permit sticker issued by Council must be prominently displayed on the front windscreen of the vehicle whilst the vehicle is on the beach. Old stickers must be removed*

- *The vehicle must be a conventional 4WD vehicle. Motor cycles and beach buggies are PROHIBITED.*
- *The permit is issued for the purpose of fishing and for NO OTHER REASON. Joy riding and picnicking is not permitted.*
- *UNDER NO CIRCUMSTANCES is the vehicle to proceed above the high tide mark, be driven on or over frontal dunes or foreshore areas except when travelling to and from the beach at designated access points. Approved access points are clearly located on the maps provided.*
- *The lights of a vehicle (both front and rear) must be illuminated during hours of darkness whilst on the beach, whether stationary or in motion.*
- *ALL BEACH VEHICLE PERMIT HOLDERS ARE SUBJECT TO THE FOLLOWING BEACH VEHICLE EXCLUSIONS, ACCESSIBLE AREAS AND ASSOCIATED VARIATIONS.*
 - *Beach access is permissible from the south of Cudgen Creek, South Kingscliff to the northern boundary of the Salt subdivision.*
 - *BEACH VEHICLE ACCESS IS EXCLUDED from the northern boundary of the Salt subdivision to the southern boundary of the Casuarina subdivision, other than between the hours of 4:30pm and 7:00am for the months of May to September inclusive.*
 - *Beach access is permissible from the northern boundary of the Cudgen Nature Reserve to an area that is approx 240m north of this point. The boundaries of this permissible area is signposted to allow definition of the accessible area.*
 - *BEACH VEHICLE ACCESS IS EXCLUDED from the south side of Mooball Creek, Pottsville to an area approximately 100 metres south of the main bathing area at Pottsville beach, other than between the hours of 4:30pm and 7am for the months of May to September inclusive.*
 - *Beach access is permissible from the area that is sign posted approximately 100m south of the main bathing area at Pottsville Beach to the northern boundary of Wooyung Nature Reserve.*
 - *Beach access is permissible from the northern boundary of the Billinudgel Nature Reserve to the southern boundary of Wooyung Nature Reserve.*

NOTE ALL BOUNDARIES ARE SIGN POSTED

- *Current Beach Vehicle exclusions include, but are not limited to the following areas of beach:*
 - *From the Tweed River to Cudgen Creek, Kingscliff*
 - *From the northern boundary of Cudgen Nature Reserve to Mooball Creek Pottsville*
 - *From the Wooyung Nature Reserve*
 - *From the northern boundary of the Billinudgel Nature Reserve to the southern boundary of the Tweed Shire.*

NOTE: THE MAPS PROVIDED CLEARLY INDICATE THE AREAS ACCESSIBLE TO BEACH VEHICLE PERMIT HOLDERS. Access to all other areas is prohibited

- *The National Parks & Wildlife Service (NPWS) has management responsibility for beaches within Cudgen, Billinudgel and Wooyung Nature Reserves within the Tweed Shire. The boundaries of these are at the Mean Low Water Mark.*

Tweed Shire Council Beach Permit holders are subject to the following conditions concerning individual reserves.

- *Wooyung Nature Reserve: Access is PROHIBITED*

- Cudgen Nature Reserve: Access is *PROHIBITED*
- Billinudgel Nature Reserve: Access is *PROHIBITED*

REGULATIONS

The use of motor vehicles below the high tide mark is now controlled by Local Councils in New South Wales except those Reserves subject to the plan of management under the NPWS. This section of beach is defined as a Public Reserve and is therefore considered to be open to and used by the public.

That section of beach open to and used by motor vehicles is now considered by Law as being a Public Street, under the meaning of Section 2 Motor Traffic Act 1909. As such you will be required to obey all regulations under both the Local Government Act 1993 and the New South Wales Motor Traffic Act 1909.

Any offences committed will result in permanent suspension of your beach vehicle permit, prosecution by the Council and prosecution by the New South Wales Police

The above will apply especially to the following

1. *Driving an unregistered motor vehicle upon a public beach.*
2. *Driving a motor vehicle whilst unlicensed or disqualified.*
3. *Driving a motor vehicle whilst under the influence of intoxicating liquor.*
4. *Exceeding the 30kph speed limit at any time.*

All vehicles must be registered with the Road Traffic Authority. All drivers must be the holder of either a provisional or full drivers licence issued by the appropriate Road Traffic Authority.

FAILURE TO COMPLY WITH ANY OF THE CONDITIONS OF THE PERMIT BY THE OWNER OR DRIVER OF THE VEHICLE MAY RESULT IN THE ISSUE OF INFRINGEMENT NOTICES AND/OR THE CANCELLATION OF YOUR PERMIT. IN SUCH CASES COUNCIL RESERVES THE RIGHT TO REFUSE ANY FURTHER APPLICATION IN RESPECT OF SUCH VEHICLE OR BY THE OWNER THEREOF."

Current Areas Accessible by Beach Vehicle Permit Holders

Attachment 2 shows a map which depicts the total length of the Tweed Coast and shows the location of accessible areas, time restrictions and prohibited areas that Beach Vehicle Permit holders are subject to.

In viewing these maps, Council are requested to note:

- The location of the three National Parks and Wildlife Reserves, Cudgen, Wooyung and Billinudgel which are subject to the plan of management for each reserve and,
- The proximity of coastal villages located along the foreshore area.

Both of these factors contribute to the areas made available for 4WD access.

Correspondence Received: Addressing the Requests

Access to Nature Reserves

As stated in the correspondence received the writer believes the biggest problem facing Beach Vehicle Permit holders relates to the Tweed Coast Nature Reserves that are under the control of the DECCW subsidiary National Parks and Wildlife Services. The writer of the letter is requesting the support of Council to help lobby the DECC to enable access to the foreshore areas of each of these reserves.

The Management Plans of the Reserves state that the Management purposes and principles of Nature Reserves are to:

- Conserve biodiversity, maintain ecosystem functions, and protect geological and geomorphological features and natural phenomena;
- Conserve places, objects, features and landscapes of cultural value;
- Promote public appreciation, enjoyment and understanding of the reserves natural and cultural values; and
- Provide for appropriate research and monitoring.

Within the context of the plan of Management for the Reserves it states inappropriate activities in the reserve, include 4WD access and that private vehicles are prohibited from driving in the reserve, with the exception of vehicles given permission on a case by case basis undertaking authorised research or reserve maintenance programs and similar activities. Emergency vehicles may enter the reserve for emergency purposes. It also states that commercial fishing activities have been undertaken on the beaches within these reserves for a number of years and that vehicles associated with pre-existing commercial fishing activities may be permitted on the beaches within the reserves only if they are licensed by the NPWS. The licences associated with this activity include conditions designed to protect the natural and cultural values of the reserve.

Council officers are reluctant to support the request to Lobby the DECCW for Tweed Shire Permit Holders to access the reserves under the control of the DECCW as the management of nature reserves are subject to legislative and policy framework, being primarily the National Parks and Wildlife Act, the Threatened Species Conservation Act and policies of the National Parks and Wildlife Service. These plans of Management are compiled from this legislative background, the corporate goals of the service and internationally accepted principles of park management. The preparation and adopted plans of management for reserves in the Tweed Shire have been implemented following detailed consideration of public submissions and the collection and analysis of large volumes of information, accordingly Council officers feel it would be inappropriate to request any change to the plans of management.

Review of exclusion zones

A review of the conditions of Beach Vehicle Access has also been requested relating to the exclusion zones and the time restrictions associated with some beaches that are under the control of Tweed Shire Council.

Management objectives of the Tweed Shire Coastline Management Plan conflict with the opening of additional beaches to vehicle access and it would be advisable for any proposal to open new beach areas to vehicles, to be placed on public exhibition and subsequent community comment considered.

In accordance with the NSW Government's Coastline Management Manual (1990), Council formulated a coastline management plan. The Tweed Shire Coastline Management Plan was adopted by Council in June 2005.

The Tweed Shire Coastline Management Study Stage 1, Values Assessment (2003) identified off-road vehicle beach usage as a Key Issue for management of the Shire's coastline. The potential for conflict between beach users was identified with specific issues including pollution and litter; damage to dunal vegetation and fauna habitat; disturbance of roosting shorebirds; and public safety (difficulty of seeing people on the beach from a moving vehicle).

Extensive community consultation was undertaken during the development of the Draft and final Tweed Shire Coastline Management Plan. A large number of submissions were received on the Draft Plan with 23 submissions supporting the removal of 4WD access to beaches and more than 100 submissions were received in support of retaining 4WD access to Tweed Beaches, with the vast majority of these submissions received lodged by 4WD permit holders who hold a strong interest in fishing.

The recommendation in the Draft Plan was removal of recreational Beach Vehicle Permit access to those areas of the coastline experiencing high population growth and increased beach access by residents (Kingscliff South and Pottsville). Following review of submissions and a meeting between Council and Fishing Club representatives, the compromise position was to allow access from the mouth of Cudgen Creek to the northern end of the Salt development, a distance of 2.1 kilometres.

It was also identified that upon adoption of the Wooyung Nature Reserve Plan of Management by the National Parks and Wildlife, that off-road vehicle access would be illegal within Wooyung and Cudgen Nature Reserves that both extend to Low Water Mark.

As a review of the Beach Vehicle Permit was underway at the time of finalising the Plan, the relevant recommendations in the Tweed Shire Coastline Management Plan (2005) were changed to:

"KC12 Implement recommendations from Beach Vehicle Permit Policy review (April/May 2005)"

"BC18 Remove Beach Vehicle Permit Access from Cudgen Nature Reserve and physically restrict unauthorised access points e.g. bollards or vegetation planting"

"PW9 Implement recommendations from Beach Vehicle Permit Policy review (April/May 2005)"

The Coastline Management Study and Plan process identified that the stretches of the Tweed coastline could no longer support off-road vehicle activities in light of the increased population pressures and the inherent safety and environmental risks. Comments to this effect were provided to Council staff undertaking the Beach Vehicle Policy review in 2005 and subsequently the current 4WD policy was adopted which reduced beach areas accessible by 4WD beach vehicle permit holders and the number of permits issued each year through natural attrition.

However, in conforming with current policy, new beach access areas would need to be located on sections of beach that are not subject to the proximity of residential development. A buffer zone may also need to be established between areas accessible by BVP permit holders and residential areas. There is also additional beach usage such as offleash dog exercise areas which are located on semi isolated sections of beach to consider when assessing appropriate areas of beach to open up for 4WD recreational purposes. New beach access tracks for 4WD vehicles would also need to be created through sensitive dune areas associated with any new section of beach allocated for 4WD use.

Below are sections of the following beaches that may be considered for 4WD access:

- Fingal Head to the Tweed River
- Kingscliff to Fingal Head (incorporates an off leash dog exercise area)
- Hastings Point to Cabarita (incorporates an off leash dog exercise area)
- Pottsville to Hastings Point

A similar request to this was lodged in 2006 and details pertaining to this are detailed below.

Council's current Beach Vehicle Policy was adopted in 2005 and it incorporated a number of the desires of current beach usage whilst maintaining safety on beaches. This effectively minimised the areas of beach that were accessible to Tweed Shire Council Beach Vehicle Permit Holders. Accordingly in 2006 ECO Fishers Incorporated Tweed Branch lodged a submission on behalf of 4WD permit holders requesting that additional areas of beach within the Tweed Shire be made accessible to 4WD permit holders due to the reduction of areas that stemmed from the 2005 review. Subsequently Council resolved to initiate community consultation regarding the request to access the following beaches:

- a) Wommin Bay Kingscliff - from a point north of the pedestrian beach access at the end of Murphy's Road Kingscliff to a point 800m south of the Fingal Head Quarry.
- b) South Cabarita Beach – from a point 500m south of Norries Headland to a point 700m north of Cudgera Creek, Hastings Point.

In consulting the community on the issue of additional access to beaches by 4WD beach permit holders it was apparent, due to various reasons, that there was overwhelming support not to incorporate additional areas of beach into the current beach vehicle permit policy.

Review of Time Restrictions

In 2005 interested stakeholders expressed their concern regarding the removal of beach access to the area from the northern boundary of the Salt subdivision to the southern boundary of Casuarina, especially throughout the period of May to September, as this is a peak fishing period. Accordingly a compromise was sought enabling beach access during this period at times when the beach was not being significantly utilised by the public, therefore reducing the potential conflict over beach usage. These times are from 4.30pm to 7am, May to September inclusive.

Council officers do not support an increase in the time restrictions as it is believed the current restrictions reflect equity in beach usage whilst maintaining public safety.

Fee Associated with Beach Vehicle Permits

The current fees associated with each specific permit are listed below. Please note that these fees are subject to CPI each year.

- Amateur Beach Vehicle Permit \$230.00.
- Special Beach Vehicle Permit \$230.00.
- Professional fishing permits \$100.00 per permit.

It could be argued that the reduction in BVP access from the 2005 review for amateur and special permit holders, should reduce the value of any permit being issued, however, since amateur permits are not available to the public and current permit holders have exclusive access, the monetary value of the permit may be deemed as equitable.

The correspondence also requests the consideration of a reduction in fees to Special Beach Vehicle Permit Holders or permit holders who have a pension card. Again due to the exclusivity of access to beaches by BVP holders it could be argued that a reduction in fee is not warranted.

Aligning with the request Council may waive or reduce fees in accordance with Section 610E of the Local Government Act.

- (1) A council may waive payment of, or reduce, a fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.
- (2) However, a council must not determine a category of cases under this section until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed fee under section 610F (2) or (3).

The cost associated with beach vehicle permits is categorised in Councils Revenue Policy Fees and Charges 2009/2010 as a significant partial cost pricing. Accordingly the price for this good/service is set to make a significant contribution towards the cost of providing the service with the remainder of the costs being met from general purpose income.

CONCLUSION:

Council has an ongoing duty to consider the use of the Shires beaches and as coastal populations increase so does the potential for conflict over beach usage. If an amendment or review of the current BVP system is undertaken Councillors need to take into account public safety and issues of liability associated with potential mishaps between general beach users and 4WD vehicles.

The current system of offering existing permit holders the opportunity to renew their permits may be seen as inequitable and even discriminatory to members of the public who wish to obtain a permit, accordingly if a review was to be undertaken it should include all aspects of the policy.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Beach Vehicle Permit Policy.

UNDER SEPARATE COVER/FURTHER INFORMATION:

<p><i>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).</i></p>

1. Submission from Ecofishers which was presented to a Councillor Workshop on 1 December 2009 (ECM 12160690)
 2. Coastline Map (ECM 12160706)
 3. Documentation used during the site visit (ECM 13338319)
-

22 [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 February 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.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA09/0566	two (2) lot subdivision	Lot 2 DP 701967 No. 611 Cudgen Road, CUDGEN	18/2/2010	Clause 20(2)(a) - Minimum lot size 40ha	1(b2) Agricultural Protection, 1(b1) Agricultural Protection, 2(a) Low Density Residential	Variation to Clause 20(2)(a) is sought as a result of the minimum lot size (40 hectares) for the 1(b2) land not being met, despite there being no change to this part of the lot. The proposed subdivision does not reduce the area of land zoned 1(b2); the proposed subdivision does not create an additional dwelling entitlement; and the proposal will not fragment rural land. The subdivision creates a new dwelling entitlement within the 2(a) zoned land.	land zoned 1(b) is much less than 90% of 40ha minimum	Director General of the Department of Planning
DA09/0814	dwelling additions	Lot 1 DP 781535 No. 10 Dobbys Crescent TERRANORA	18/2/2010	Clause 22 – Development near designated roads	1(c) Rural Residential	SEPP 1 objection relates to thirty metre building alignment to Terranora Road which is a designated road. Additions are proposed to observe a building line of 19.938 m which is considered to be acceptable due to the size of the allotment, the precedents set in the local area and the absence of impact on Terranora Road.	The extent of the SEPP 1 variation is that the building setback to Terranora Road, which is a designated road, will be less than thirty metres and the variation in the setback exceeds 10%.	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.

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23 [PR-CM] Results of the Department of Planning's Local Development Performance Monitoring Report 2008/09

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning report, "Local Development Performance Monitoring 2008/09", released on 21 February, 2010 with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

The Department of Planning commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07, 2007/08 and the most recent for 2008/09. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a state-wide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 103 in 2007/08 to 110 in 2008/09. This compares to the 2008/09 NSW average of 74 days.

However, when analysed in the context of other NSW councils, as well as those applications where the "stop the clock" measure has been applied for information requests and external referrals, Tweed Council's DA determination performance is actually very comparable to the State average. This is evidenced by the fact that approximately 75% of all Tweed Council DAs involve smaller residential developments (new single dwellings and alterations and additions to dwellings) assessed by Council's Building Unit. For the 2008/09 period, the average processing times (a net figure with allowance for "stop the clock") for these applications was 32 days, as compared to the State net average of 45 days, for all types of applications. This indicates that Tweed Council is processing the bulk of its DAs in a reasonable timeframe.

Notwithstanding, it is acknowledged that the processing times for all DA types, particularly the larger developments, needs to be improved. It is evident that Tweed Council's processing performance has suffered in recent years from the practice of accepting too many DAs with deficient information, and once in the system, allowing repeated opportunities for applicants to submit amended plans and additional information for clearly deficient proposals. Council has been working to re-address these deficiencies through the introduction of clearer, up-front lodgement (hard copy and electronic) guidelines and web information, stricter scrutiny of new DAs by staff at the time of lodgement, and improvement of internal processing systems. These actions should produce a more positive statistical result for the 2009/10 period.

RECOMMENDATION:

That the report on the results of the Department of Planning's Local Development Performance Monitoring Report 2008/09 be received and noted.

REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning (DOP) report, "Local Development Performance Monitoring 2007/09", released on 21 February 2010, with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

Copies of the report have been emailed separately to all Tweed Councillors prior to this meeting. The report can also be viewed on-line through the Department of Planning's web site www.planning.nsw.gov.au.

The Department of Planning commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07, 2007/08 and the most recent for 2008/09. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

It should be noted that the accuracy of the results produced in the report are off-set by the fact that virtually all NSW councils record their own assessment statistics in different forms of development categories and IT programs, and the raw data from these systems are then consolidated by the DOP into their own report classifications. Nonetheless, the final DOP report provides a good, indicative guide for Council's to benchmark and improve their assessment processes on a state-wide, regional and Department of Local Government size classification basis.

In terms of interpreting the report, there are a number of key definitions which underpin the collection of application processing times:

Gross determination time – full length of the development assessment process, from lodgement to determination.

Net Time – the gross time minus referral and/or stop-the-clock time.

Mean determination time – the mean or average of a set of data values, which is the sum of all of the data values divided by the number of data values (ie. for DAs, the total number of days taken, divided by the number of DAs determined)

Median determination time – the median of a set of date values is the middle value of the data set when it has been ordered.

Referral time – the time taken by State agencies to either grant concurrence consent (some DAs require council and agency consent), or to provide advice to council on a development proposal. It should be noted that a number of Councils, such as the Tweed Shire, currently do not have the technical capacity in its IT systems to record the referral time statistics, but arrangements are currently being organised to rectify this recording mechanism.

Stop the clock – the time taken by applicants to respond to requests by councils or agencies for further information on a DA.

Summary of Results for Tweed Council

Broader Application Results

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a state-wide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 103 in 2007/08 to 110 in 2008/09. (Refer to Page 110, Table 3-21) This compares to the 2008/09 NSW average of 74 days.

In terms of Section 96 applications (modifications of development consent), the mean gross determination for Tweed Council was 75 days in 2008/09 (Refer to Page 110, Table 3-21), compared to the NSW average of 53 days.

Other Key Statistics

The following statistics have been drawn from the DOP report as they apply to the Tweed LGA, and with a State average comparison, where available.

Table 2-17: Volume and Value of DAs and S96 (Page 95)

Number of DAs determined	Total estimated value of DAs determined	Total estimated value of DAs approved	Number of S96 determined
1,041	\$290.1M	\$281.4M	246

Table 2-19: Volume and Value of Complying Development Certificates (Page 105)

Number determined	% alterations and additions	% single new dwellings	% Commercial retail office	Total estimated value	% determined by Council	% determined by private certifiers
174	53	0	28	\$5M	37	63

Table 3-21: Determination times (days) for all Councils (Page 110)

	DA Mean Gross	DA Mean Net	DA Median Gross	DA Median Net	Section 96 Mean Gross
Tweed Council	110	49	60	35	75
All NSW Councils	74	45	42	29	53
DLG Statistical Division 5	83	39	42	25	49

Table 3-22 and Table 3-23: Mean gross and mean net DA determination times (days) for all councils by value (Pages 115 and 119)

	<\$100k	\$100-\$500k	<\$1M	\$1M-\$5M	\$5M-\$20M	>\$20M
Tweed Mean Gross	101	101	102	272	497	330
Tweed Mean Net	50	41	47	98	76	60
NSW Mean Gross	60	83	70	189	230	324
NSW Mean Net	39	50	44	102	113	157
DLG Division 5 Mean Gross	66	92	78	234	244	196
DLG Division 5 Mean Net	35	42	38	83	95	253

Table 3-24: Mean gross DA determination (days) by type (Page 124)

	Residential alterations and additions	Single new dwelling	Commercial Retail Office
Tweed	71	108	166
DLG Division 5	53	81	106

Table 3-25: Effect of stop-the-clock on DAs (Page 129)

	% of DAs with stop-the-clock
Tweed	64
DLG Division 5	54

Table 5-4: Staff allocated to development assessment (Page 160)

	Average DA per EFT – 2008/09	Total DAs determined	EFT DA staff
Tweed	65.1	1,041	16
DLG Division 5		1,354	25

Table 7-5: Construction and occupation certificates issues for all councils (Page 176)

	Construction Certificates 2007/08	Construction Certificates 2008/09	Occupation Certificates 2007/08	Occupation Certificates 2008/09
Tweed	1,214	848	1,229	1,001
DLG Division 5	1,492	1,170	1,108	970

Other Miscellaneous Facts

There were a number of omissions relating to the Tweed LGA in the DOP report:

- There was no data provided in respect of Council's Land and Environment Court appeal activity. A copy of Council's Register of 2008/09 Land and Environment Court Class 1 Appeals is attached to this report. It should be noted that most of these matters have cross-over time periods in other beyond the 2008/09 financial year monitoring period.
- There was no data provided in terms of the % of those DAs determined by Council, and those under delegated authority, seemingly an unexplained omission in the Department's report. Council officers have again reviewed the data for 2008/09 and it was identified that 23 out of the 1041 DAs determined were assessed by Tweed Councillors, a proportion of 2.2%, which compares favourably to the state average of 3.8%
- No data was provided in terms of Council's referrals for approval from government agencies. As previously explained, Council is seeking to rectify the current technical limitations in recording and reporting on this data.

Comparison of Tweed's Performance in the Context of Other North Coast Councils

- Tweed Council determined a total of 174 Complying Development Certificates, clearly the highest in the North Coast Region (**Refer to Page 104, Table 2-19**);
- Tweed Council's total determination of 1,041 DAs and total value of DAs of \$290.1M in (**Refer to Pages 92-95, Table 2-17**) are much greater than those councils in the North Coast Region: Ballina (682 and \$90.8M), Byron (662 and \$143.3M.), Kyogle (163 and \$9.8M.), Lismore (562 and \$65.1M.), and Richmond Valley (395 and \$59.5M.);
- Tweed Council's total determination of construction certificates and occupation certificates (**Refer to Pages 172-175, Table 7.5**) also are much greater than the other councils in the North Coast Region, as shown in the table below:

COUNCIL	CONSTRUCTION CERTIFICATES DETERMINED	OCCUPATION CERTIFICATES DETERMINED
Ballina	575	580
Byron	455	468
Kyogle	109	14
Lismore	405	250
Richmond Valley	301	209
Tweed	848	1,001

Other Specific Tweed Shire Influences

A major consideration in the assessment of applications in the Tweed Shire is its vast and, highly sensitive natural environment, which often demands detailed technical investigations into a range of complex issues, including bushfire risk, contamination, acid sulphate soils, native flora and fauna, biodiversity, flooding, and coastal erosion.

Another major impact upon Council's development assessment processes are the resource draining demands of a large number of Part 3A Major Projects and State Significant developments, which require significant, ongoing Council multi-disciplinary staff review and assessment, often within very tight timeframes. In the context of the North Coast Region, Tweed Council also carries a comparatively much greater workload and redevelopment pressure, as evidenced by the total number of current, undetermined Part 3A Major Projects and State Significant development proposals.

Overall Appraisal of Tweed Council's Performance

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a state-wide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 103 in 2007/08 to 110 in 2008/09. This compares to the 2008/09 NSW average of 74 days.

However, when analysed in the context of other NSW councils, as well as those applications where the "stop the clock" measure has been applied for information requests and external referrals, Tweed Council's DA determination performance is actually very comparable to the State average. This is evidenced by the fact that approximately 75% of all Tweed Council DAs involve smaller residential developments (new single dwellings and alterations and additions to dwellings) assessed by Council's Building Unit. For the 2008/09 period, the average processing times (a net figure with allowance for "stop the clock") for these applications was 32 days, as compared to the State net average of 45 days, for all types of applications. This indicates that the Tweed is processing the bulk of its DAs in a reasonable timeframe.

Notwithstanding, it is acknowledged that the processing times for all DA types, particularly the larger developments, needs to be improved. It is evident that Tweed Council's processing performance has suffered in recent years from the practice of accepting too many DAs with deficient information, and once in the system, allowing repeated opportunities for applicants to submit amended plans and additional information for clearly deficient proposals. Council has been working to re-address these deficiencies through the introduction of clearer, up-front lodgement (hard copy and electronic) guidelines and web information, stricter scrutiny of new DAs by staff at the time of lodgement, and improvement of internal processing systems. These actions should produce a more positive statistical result for the 2009/10 period.

One particular initiative that Tweed Council has taken to improve upon the efficiency of its development and building assessment processes is its commitment to providing a range of e planning services. This initiative has been strengthened by the participation in the Department of Planning's E Housing Pilot Project, for which Tweed Council has been selected as one of 12 NSW Councils to develop an end-to-end electronic lodgement process for complying developments under the NSW Housing Code. With the assistance of Federal Government Housing Affordability Fund finance, each of the 12 Councils will upgrade their existing systems, and work collaboratively towards a "go live" electronic lodgement process by late November 2010. The achievement of this goal will place Tweed Council as one of the States e planning leaders, and will provide Tweed businesses and its community with a much more efficient and affordable option for the assessment of smaller scale, residential developments.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Tweed Council's Register of Class 1 Land and Environment Court Appeals 2008/09 (ECM 13434555)
-

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

24 [CNR-CM] 2009/2010 Fees & Charges - New Waste Management Fees

ORIGIN:

Waste Management

SUMMARY OF REPORT:

Council resolved to public exhibit the additional waste management fees for 28 days at 17 November 2009 Council Meeting. No objections or comments were received on the additional new fees during the exhibition period. The additional fees relate to the multi bin system, as there are some varying service arrangements that have previously not been available. The new services are bulk bin recycling for domestic and some commercial properties, and compacting bulk bin services for garbage.

RECOMMENDATION:

That the following fees be adopted and included in Council's Fees and Charges Register:-

Bulk Bin Charges - Recycling Domestic Waste Management

**Size 1 bin per service \$40
Size 2 bin per service \$70
Size 3 bin per service \$90**

Bulk Bin Charges - Compacting Bulk Bins Domestic Waste Management

**Size 1 compacting bin per service \$30.95
Size 2 compacting bin per service \$57.90
Size 3 compacting bin per service \$80.45**

Bulk Bin Charges - Recycling Non-Domestic Waste Management

**Size 1 bin per service \$40
Size 2 bin per service \$70
Size 3 bin per service \$90**

REPORT:

Council resolved to public exhibit the additional waste management fees for 28 days at 17 November 2009 Council Meeting. No objections or comments were received on the additional new fees during the exhibition period. The additional fees relate to the multi bin system, as there are some varying service arrangements that have previously not been available. The new services are bulk bin recycling for domestic and some commercial properties, and compacting bulk bin services for garbage. The fees below are provided under EC2008-153, Council's waste management collection Contract with Solo Resource Recovery.

**Bulk Bin Charges - Recycling
Domestic Waste Management**

Size 1 bin per service \$40

Size 2 bin per service \$70

Size 3 bin per service \$90

**Bulk Bin Charges - Compacting Bulk Bins
Domestic Waste Management**

Size 1 compacting bin per service \$30.95

Size 2 compacting bin per service \$57.90

Size 3 compacting bin per service \$80.45

**Bulk Bin Charges - Recycling
Non-Domestic Waste Management**

Size 1 bin per service \$40

Size 2 bin per service \$70

Size 3 bin per service \$90

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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25 [CNR-CM] Release of Sewer Easement – 163 Tweed Coast Road, Chinderah

ORIGIN:

Water

SUMMARY OF REPORT:

In 2005 Council advised the owner of Lot 1 DP 227034 that it would release the sewer easement traversing this land once the sewer rising main within the easement was decommissioned.

In 2008 Council decommissioned the sewer rising main in conjunction with the construction of the new Kingscliff Wastewater Treatment Plant. Council has no future need for the sewer rising main or the easement over it.

RECOMMENDATION:

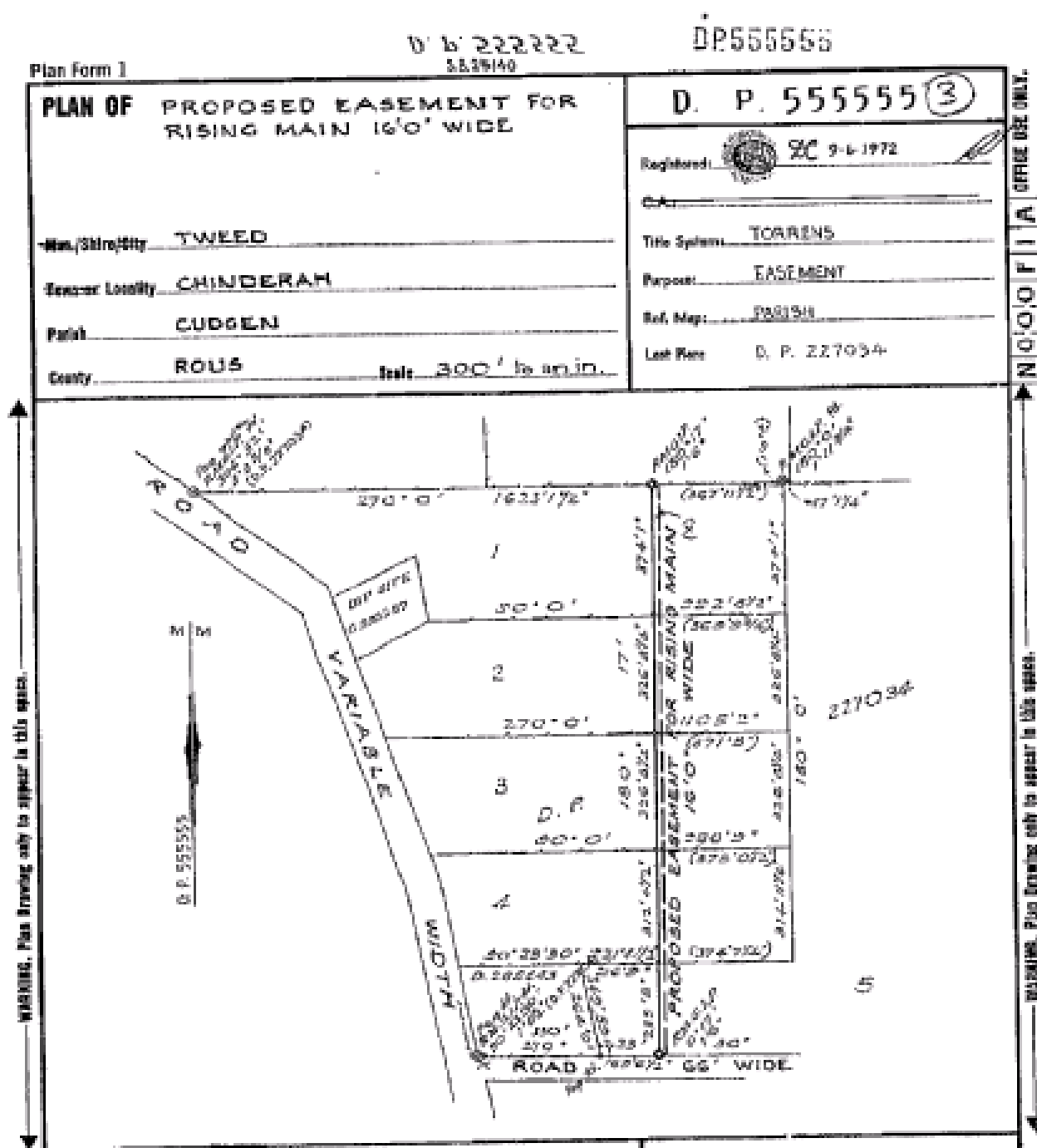
That:

- 1. The easement in favour of Council for access to the sewer rising main on Lot 1 DP 227034 be removed.**
- 2. All necessary documentation to be executed under the Common Seal of Council.**

REPORT:

In 2005 Council advised the owner of Lot 1 DP 227034 that it would release the sewer easement traversing this land once the sewer rising main within the easement was decommissioned.

In 2008 Council decommissioned the sewer rising main in conjunction with the construction of the new Kingscliff Wastewater Treatment Plant. Council has no future need for the sewer rising main or the easement over it.



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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26 [CNR-CM] Tweed District Water Supply Augmentation Options - Community Working Group Report

ORIGIN:

Water

SUMMARY OF REPORT:

The Community Working Group (CWG) was formed to assist Council in the selection of a preferred option from four shortlisted water supply augmentation options. The role of the group was to investigate the options in some detail, collect and disseminate information with stakeholders and the wider community, and to work with Council to identify the key environmental, social and cultural issues associated with each option. The members on the CWG represented a range of key interests associated with the selection of a preferred augmentation option. The CWG is consultative in nature and is not a decision making body.

The CWG was required to prepare a report representing the views, interests and issues of members, together with a summary of group recommendations for consideration by Council. The group has now completed its schedule of five meetings and presented its report to Councillors on Thursday 11 March.

The report prepared by the CWG will be circulated prior to the Council meeting.

Although the CWG struggled to reach a final position, the consultation process allowed for robust debate and some further community input into what will be a major infrastructure decision for Council. The CWG report is proposed to be placed on public display so that it can be referenced by the community before completing their own submissions to Council.

It is not proposed that the CWG report be adopted by Council but made available as a public document for the community to reference. The report is a compilation of the views, interests and issues of the individual members and areas where there was some common or majority position or finding.

The CWG made a number of suggestions for future community engagement which included:

- A mechanism to better engage the broader community who are generally complacent.
- While the CWG has learnt a lot from the process adopted, the CWG felt uncomfortable speaking on behalf of the whole Tweed community, and encourages Council to seek additional ways to engage the whole community in this process in the future.

To that end it is proposed that in the first instance the period to receive submissions on the Tweed District Water Supply Augmentation options be extended from 26 March to 30 April 2010.

Some members of the group also suggested it would be advantageous to also extend the current exhibition period of the Tweed District Water Supply – Draft Demand Management Strategy to have the same closing date as above. This request can be accommodated and would allow Council to consider both sides of the water supply issue concurrently.

Additionally it is proposed that a further report be provided to council on a number of key issues raised by the CWG.

RECOMMENDATION:

That Council:-

- 1. Extends the original closing date for public submissions on the Tweed District Water Supply Augmentation Options from 26 March to 30 April 2010.**
- 2. Extends the original closing date for public submissions on the Tweed District Water Supply – Draft Demand Management Strategy from 5 March to 30 April 2010.**
- 3. Places the Community Working Group Report on public display.**
- 4. Provides a further report to Council on a number of key issues raised by the Community Working Group.**

REPORT:

Background

A Water Supply Augmentation Options study is being undertaken to determine the best way to augment the water supply to meet the Shire's needs until 2036. The first stage of the study identified nine options for analysis and ranked these options using multi criteria Analysis (MCA) which include economic, social and environmental considerations. It proposed a short-list of 3 options and a contingency option for further investigation.

In the second stage of the Options study, the short-listed options are being assessed in more detail to determine a preferred option. This stage is based on more detailed information and studies of the short-listed options, together with a comprehensive Community Consultation process to further inform the MCA and provide feedback. Following completion of the Study, a preferred option will be recommended to Council.

The proposed process is considered to offer Council greater certainty about the findings of each phase before committing to further investment in the subsequent phase. By adopting this approach, the process also reduces risks by ensuring the requirements of the previous phases have been met and will not impede the subsequent phases.

Given the importance of augmenting the water supply to the region's long-term water security, it is considered of particular importance that the community is involved from the early stages of the process. Council can proceed to each subsequent phase with confidence that the community has been given adequate opportunity to give feedback and is generally supportive. There are increased risks of delays to the process if the community is not adequately involved.

Community Consultation

In summary, the Community Consultation Strategy chosen to inform the MCA in this current Stage of the study has comprised of:

1. Informing stakeholders and the broader community about the overall process to augmentation, work to date, the short-listed options, the MCA assessment method, and the Community Consultation process through:
 - Letters to specific stakeholders
 - Landholders
 - Interest & Community Groups
 - Government Agencies
 - Media coverage
 - Tweed Link
 - Media releases
 - Information & reports available
 - Factsheet summaries / Full reports
 - Website / TSC Offices / Libraries / Mailout (upon request)
 - 1800 number
 - Public stalls
 - River Festival
 - National Water Week
 - Shopping Centre stalls

2. Consulting with stakeholders and the broader community to provide additional information and receive specific feedback:
 - Individual Meetings
 - Affected Landholders
 - Aboriginal Advisory Committee presentations
 - Government Agencies
 - Community Group presentations (upon request)
 - Multiple Points of Contact
 - 1800 number (Q&A)
 - Email (TSCwater@tweed.nsw.gov.au)
 - Public submissions
 - Information and reports on exhibition and available to the public
 - Written submissions
 - Verbal submissions (1800 number)
3. Involving stakeholders and the broader community through the formation of a Community Working Group (CWG) comprising of independently selected stakeholder representatives.

Community Working Group

- Members (14 in total)
 - Councillors 2
 - Affected Landholders 2
 - Aboriginal representatives 2 (Chose to be observers only)
 - Environmental groups 2
 - Commercial & business groups 2
 - Residents & ratepayer groups 3
 - Fisher/catchment user groups 1
- Members other than Councillors and Aboriginal representatives were selected from nominees by an independent selection panel based on criteria such as:
 - Representativeness
 - Capacity for two-way Information sharing
 - Capacity and interest to investigate and contribute
 - Availability

The Community Working Group (CWG) was formed to assist Council in the selection of a preferred option from four shortlisted water supply augmentation options. The role of the group was to investigate the options in some detail, collect and disseminate information with stakeholders and the wider community, and to work with Council to identify the key environmental, social and cultural issues associated with each option. The members on the CWG represented a range of key interests associated with the selection of a preferred augmentation option. The CWG is consultative in nature and is not a decision making body.

The CWG was required to prepare a report representing the views, interests and issues of members together with a summary of group recommendations for consideration by Council. The group has now completed its schedule of five meetings and presented its report to Councillors on Thursday 11 March.

The report prepared by the CWG will be circulated prior to the Council meeting.

Although the CWG struggled to reach a final position, the consultation process allowed for robust debate and some further community input into what will be a major infrastructure decision for Council. The CWG report is proposed to be placed on public display so it can be referenced by the community before completing their own submissions to Council.

It is not proposed that the CWG report be adopted by Council but made available as a public document for the community to reference. The report is a compilation of the views, interests and issues of the individual members and areas where there was some common or majority position or finding.

The CWG made a number of suggestions for future community engagement which included:

- A mechanism to better engage the broader community who are generally complacent.
- While the CWG has learnt a lot from the process adopted, the CWG felt uncomfortable speaking on behalf of the whole Tweed community, and encourages Council to seek additional ways to engage the whole community in this process in the future.

To that end it is proposed that in the first instance the period to receive submissions on the Tweed District Water Supply Augmentation options be extended from 26 March to 30 April 2010.

Some members of the group also suggested it would be advantageous to also extend the current exhibition period of the Tweed District Water Supply – Draft Demand Management Strategy to have the same closing date as above. This request is can be accommodated and would allow Council to consider both sides of the water supply issue concurrently.

Additionally it is proposed that a further report be provided to council on a number of key issues raised by the CWG.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Community Working Group Report will be provided as a late Attachment due to the hand over from the Working Group scheduled for 11 March 2010.
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27 [CNR-CM] Drinking Water Quality Policy

ORIGIN:

Water

SUMMARY OF REPORT:

The Australian Drinking Water Guidelines recommends that each Water Authority adopt a specific policy on its commitment to drinking water quality. This report submits a draft Drinking Water Quality Policy for Council's consideration and to place on public exhibition for comment.

RECOMMENDATION:

That:-

- 1. Council places the draft Drinking Water Quality Policy on public exhibition for a period of six weeks to receive written submissions**
- 2. A further report be submitted to Council after the closing of the exhibition period.**

REPORT:

The Australian Drinking Water Guidelines (ADWG) recommends that each Water Authority adopt a specific policy on its commitment to drinking water quality. This report submits a draft Drinking Water Quality Policy for Council's consideration and to place on Public Exhibition for comment.

This policy will formalise Council's position on and commitment to Drinking water Quality and its management.

The ADWG recommend that a high level organisational commitment is required to ensure good and ongoing public health outcomes.

This commitment requires appropriate staffing, training of employees, adequate financial resources and active participation and reporting to Council and executive staff.

The draft is reproduced in full below:



Policy

Drinking Water Quality Policy

Version 1.0

Adopted by Council at its meeting on TBA
Minute No: TBA

Division:	Community and Natural Resources
Section:	Water
File Reference:	Water Management - Policy - General
Historical Reference:	N/A

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Drinking Water Quality Policy

OBJECTIVE

This policy describes Council's commitment to drinking water quality and how this will be achieved.

BACKGROUND

The Australian Drinking Water Guidelines (ADWG) (NHMRC/NRMMC, 2004) describes a holistic approach to drinking water management. Tweed Shire Council will implement the requirements of the ADWG through a Water Quality Management System (WQMS). This includes a Drinking Water Quality Policy.

Council describes its level of service in the Water Supply Activity Management Plan and its supporting documents, including Levels of Service, Performance Measurement and Targets.

POLICY

Tweed Shire Council is committed to managing its water supply effectively to provide high quality drinking water that protects public health and consistently meets the NHMRC/NRMMC Australian Drinking Water Guidelines, and consumer and other regulatory requirements.

To achieve this Council will implement a Drinking Water Quality Management System that is based on the following principles:

- Managing water quality at all points along the delivery chain from source water to consumer
- Using a risk-based approach in which potential threats to water quality are identified and managed
- Integrating the requirements of our consumers, stakeholders, regulators and employees into our planning
- Establishing regular monitoring of the quality of drinking water and effective reporting mechanisms to provide relevant and timely information, to promote confidence in the water supply and its management
- Developing appropriate contingency planning and incident response capability
- Continually improving our practices by assessing performance against corporate commitments and stakeholder expectations
- Implementing and regularly reviewing maintenance and asset management programs

All managers and employees involved in the supply of drinking water are responsible for understanding, implementing, maintaining and continuously improving the Drinking Water Quality Management System.

DEFINITIONS

ADWG: Australian Drinking Water Guidelines 6 (2004)
NHMRC: National Health and Medical Research Council
NRMMC: Natural Resource management Ministerial Council
WQMS: Water Quality Management System

KEY WORDS

Drinking Water Quality
Australian Drinking Water Guidelines
Water Quality Management System

RELATIONSHIP WITH LEGISLATION AND RELATED POLICIES

NHMRC/NRMMC, Australian Drinking Water Guidelines (2004)
NSW Health, Drinking Water Monitoring Program (2005)
Fluoridation of Public Water Supplies Regulations (2007)
The Code of Practice for the Fluoridation of Public Water Supplies (2002)

REVIEW

The Manager Water will be notified 6 months prior to the expiry date as a reminder that the policy requires review. This policy will be effective from 1 July 2010. This policy is to be reviewed and re-adopted every 3 years or as a consequence of changes to relevant legislation, related policy or changes to the Water Quality Management System.

POLICY – SUPPORTING INFORMATION

PROCEDURES

All procedures for implementing the policy are incorporated in the WQMS.

CONSULTATION

The WQMS describes the representative team which reviews the policy. This team includes relevant state government agencies, community representatives, Councillors, and Council staff.

ACCOUNTABILITIES and RESPONSIBILITY

Water Unit
Manager – Overall Unit performance
Water & Sewerage Operations Engineer – Treatment plant and reticulation operation
Treatment & Process Engineer – Treatment plant operation and review and implementation of WQMS
Senior Water Treatment Operator – Operation of treatment plant and bulk water facilities and implementation of WQMS

Treatment Plant Staff – Operation of treatment plant and bulk water facilities in accordance with WQMS
Reticulation Staff - Operation of distribution and reticulation system in accordance with WQMS

IMPLEMENTATION PLAN

Implementation plans for the Water Quality Policy are incorporated in the WQMS.

TRAINING PLAN

Training plans for the Water Quality Policy are incorporated in the WQMS.

COMPLIANCE

The WQMS incorporates the requirements of the relevant legislation and guidelines (see list of relevant legislation and guidelines above).

EFFECTIVENESS OF THIS POLICY

Council is required to meet Department of Health, NSW Office of water and Department of Environment, Climate Change and Water performance monitoring and reporting requirements.

POLICY ADVISOR

Water Unit Manager

FORMS

Nil

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

This policy will commit Council to providing the ongoing resources necessary to meet the stated policy objectives.

POLICY IMPLICATIONS:

This policy formally states Council's commitment to providing high quality drinking water in accordance with the Australian Drinking Water Guidelines.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

28 [CNR-CM] Acceptance of Grants – Waterways Program

ORIGIN:

Natural Resources Management Unit

SUMMARY OF REPORT:

Council's Waterways Program has recently received grant offers from the Northern Rivers Catchment Management Authority Biodiversity Grants Program (\$30,000) and the NSW Maritime Authority Better Boating Program (\$26,750). Funds will be used to undertake riparian management works at Byangum and Barneys Point, as well as maintenance of boat ramps at Fingal and Condong.

RECOMMENDATION:

That Council:

- 1. Accepts the grant from Northern Rivers Catchment Management Authority for the amount of \$30,000 for riparian works at Byangum and Barneys Point.**
- 2. Accepts the grant from NSW Maritime Authority for the amount of \$26,750 for Fingal Head and Condong Boat Ramps.**
- 3. Completes all documentation under the common seal of Council.**
- 4. Votes the expenditure.**

REPORT:

Biodiversity grants will be used to assist community groups at Byangum and Bimbadeen Avenue to rehabilitate foreshore vegetation on Council Land. Works will be undertaken by professional bush regenerators and training will be provided to volunteers to allow maintenance of sites in the long term.

Better boating program grants will be used to undertake repairs to the sub-tidal section of Fingal and Condong boat ramps to increase safety and structural stability.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council is required to match funding from the NSW Maritime Better Boating Program at a 1:1 ratio. Funds have been committed from the Waterways Asset Management budget allocation.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

29 [CNR-CM] Recreational Fishing Trust Grant - Fish In, Mozzies Out

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

Council has been offered a Recreational Fishing Trust Grant to undertake research and works to improve tidal flushing within an 18 hectare mangrove wetland on Terranora Broadwater to increase access for fish and reduce habitat suitability for mosquitoes.

Project partners include Griffith University, Industry and Investment NSW, NSW Land and Property Management Authority and Seagulls Fishing Club.

RECOMMENDATION:

That Council:-

- 1. Accepts the grant of \$59,382 over two years from Industry and Investment NSW for the *Fish In, Mozzies Out* project.**
- 2. Undertakes works in accordance with the funding agreement.**
- 3. Votes the expenditure.**

REPORT:

Council has been offered a Recreational Fishing Trust Grant to undertake research and works to improve tidal flushing within a mangrove wetland on Terranora Broadwater to increase access for fish and reduce habitat suitability for mosquitoes.

Project partners include Griffith University, Industry and Investment NSW, NSW Land and Property Management Authority and Seagulls Fishing Club.

The project aims to improve tidal flushing of isolated pools in an **18ha** mangrove wetland to increase access for fish, reduce habitat suitability for mosquitoes and facilitate 'trophic relay' (movement of energy for production) between mangroves and fish communities.

This will be achieved by:

- Sampling fish and invertebrates within the initially isolated mangrove pods prior and post undertaking minor strategic works to improve tidal flushing. Determining the degree to which increasing tidal flushing of the pools increases the use of these habitats by fish and other fauna.
- Assessing the contribution made to trophic connectivity (the degree and efficiency of energy transfer from mangroves to fish) in the form of fish production resulting from the works to improve tidal flushing; and
- Report on the outcomes of the project to influence mosquito management on the NSW and Australian coastline for better fish habitat outcomes.

Scientifically demonstrating that relatively small scale works can contribute to these outcomes is an important step toward instilling recreational fishers and the broader community with the desire to address the legacy of impacts arising from previous attempts to drain wetlands. The project also provides Councils and other groups with a practical case study.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council is contributing to the project by undertaking minimal habitat modification works and in-kind staff contributions from existing river management and entomology budgets.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Project Funding Agreement between Tweed Shire Council and NSW Industry and Investment (DW 13236129)

30 [CNR-CM] 2010/2011 Coordinating Coastal Community Engagement to Enhance & Connect Littoral Rainforest on the Tweed Coast – Funding Agreement – Contract NR-OGC-0910-6

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

Tweed Shire Council has been successful in its application for funding through the Northern Rivers Catchment Management Authority (NRCMA) for works that increase the engagement of coastal community organisations in delivering rehabilitation, restoration and conservation projects across a range of coastal environments in NSW. This project is part of the state-wide Caring for Country project “Engaging NSW Communities in Coastline Conservation” that the NRCMA is delivering in partnership with all NSW coastal Catchment Management Authorities over the years 2009 to 2011.

This project will engage coastal community groups and other partners in an aim to enhance and connect Littoral Rainforest on the Tweed Coast. Littoral Rainforest is listed as an endangered ecological community under both NSW and Federal threatened species legislation and as such its conservation and protection from threatening process is of high importance. This project will involve undertaking on-ground restoration works on approximately 40 hectares of Littoral Rainforest at Wooyung, Pottsville, Hastings Point, Cabarita, Casuarina and Fingal. The project will also involve on-ground works on a further 80ha of coastal lands targeting Weeds of National Significance, particularly Bitou Bush.

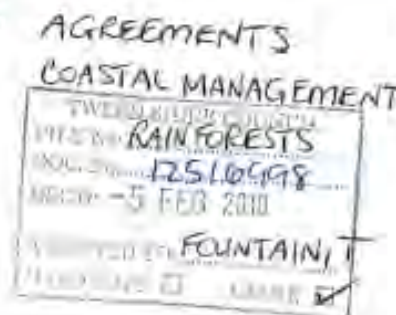
The total funding amount provided by NRCMA is \$50,000 while Council’s contribution will consist of \$15,000 in funds allocated from the Bush Futures Project.

RECOMMENDATION:

That:-

- 1. Council accepts the \$50,000 financial assistance from the Northern Rivers Catchment Management Authority (NRCMA) for the implementation of the project “Coordinating Coastal Community Engagement to Enhance and Connect Littoral Rainforest on the Tweed Coast”.**
- 2. All documentation be completed under the common seal of Council.**

REPORT:



31 January 2010

Attention: Tanya Fountain

Dear Tanya

RE: OFFER OF CONTRACT

CONTRACT NO.: NR-OGC-0910-6
CONTRACT NAME: Coordinating Coastal Community Engagement To Enhance & Connect Littoral Rainforest on the Tweed Coast

The Northern Rivers CMA is pleased to offer you the opportunity to deliver the above project.

Enclosed are two original Contracts for the project. Please arrange for both copies to be signed by TSC's General Manager on page 2 and return them both to the address below.

Upon receipt of the signed Contracts, the CMA will sign and return your final copy of the Contract. A purchase order will be forwarded to you in due course detailing when your payments are due.

When sending your invoices for payment it would be appreciated if you could please include the purchase order number on the invoice otherwise we will be unable to process it.

Please note that you will be paid according to your payment terms on your invoice. If you do not have any terms listed, our finance branch will automatically hold the payment for 30 days from date of invoice.

Please ensure that you have read and understood the terms of the contract, specifically the Special Conditions that may be relevant to this project.

The NRCMA looks forward to working in collaboration with you on this project. If you require any further information, please don't hesitate to contact Bronwyn Scott on 66 767 391.

Yours sincerely

On behalf of:
MICHAEL PITT
General Manager

All Correspondence to the General Manager - PO Box 618, Grafton NSW 2460
Tel: 02 6642 0622 - Fax: 02 6642 0640
Email: northern@cma.nsw.gov.au Web site: www.northern.cma.nsw.gov.au

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

\$15,000 will be contributed to the project from the Bush Futures Project fund.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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31 [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 Murwillumbah Business Chamber, declines the request for a waiver of fees for hire of the Murwillumbah Civic Centre Auditorium on 2 May 2010 for a Health Wellbeing and Beauty Expo.**
- 2. With reference to the request from Murwillumbah Evening Branch of Country Women's Association of NSW, provides the Murwillumbah Civic Centre Auditorium for a reduced fee of \$215 (including set-up) being 50% of the full fee of \$430 for the Annual Craft Expo on 10 and 11 September 2010, and that Council's support is recognised with the following acknowledgement "This program has been supported by Tweed Shire Council".**

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?
Murwillumbah District Business Chamber	Request fee be waived for hire of the Murwillumbah Civic Centre on 2 May 2010 for a Health Wellbeing & Beauty Expo.	\$430	That the request be declined as it is a commercial operation.	No
Country Women's Association of NSW	Request fee be waived or reduced for hire of Murwillumbah Civic Centre on 10 and 11 September 2010 for the Annual Craft Expo	\$215	That the fee be reduced to \$215 being 50% of the full fee of \$430.	Yes

A copy of each of the requests is reproduced below.

From: Mike Rayner [MikeR@tweed.nsw.gov.au]
Sent: Wednesday, 3 February 2010 8:58:19 AM
To: Kim Radnedge
Subject: Request Council sponsor our upcoming "Health Wellbeing & Beauty Expo" on Sunday May 2, 2010 by way of donating the \$431 hire fee for the Civic Centre, plus any additional hourly charge for setting up

Hi Kim
Task to David Oxen ham, thanks.
Mike

Mike Rayner | General Manager



p (02) 6670 2415 | f (02) 6670 2425 | e mrayner@tweed.nsw.gov.au | w www.tweed.nsw.gov.au
Civic and Cultural Centre Tumbulgum Road Murwillumbah NSW 2484 | PO Box 816 Murwillumbah NSW 2484 | ABN: 90 178 732 496

Customer Service: (02) 6670 2400 | 1300 292 872
Our values: transparency | customer focus | fairness | reliability | progressiveness | value for money | collaboration

Please consider the environment before printing this email. One tonne of paper is equivalent to 13 trees or 30 kL of water

From: Rani [mailto:mtwarning@onthenet.com.au]
Sent: Tuesday, 2 February 2010 11:37 AM
To: Mike Rayner
Cc: "Toni"
Subject: Health Wellbeing & Beauty Expo

Mike,

Further to my conversation with you recently, I would like to formally ask if the Tweed Shire Council would sponsor our upcoming "Health Wellbeing & Beauty Expo" on Sunday May 2, 2010.

Your sponsorship would be by way of donating the \$431 hire fee for the day, plus any additional hourly charge for setting up the partitions the evening before (providing you don't have it booked).


Sponsorship package:

1. Your logo would be on all print media advertising
2. A Banner could be welcome to be displayed in and/or around the venue
3. Announcements thanking sponsors over the PA during the day
4. Your logo on the official program handed to all visitors on the day and prior to promote the event.

We would really appreciate your participation as we are trying to keep the costs down and advertising up so as best to promote this micro business community of Murwillumbah & Surrounds.

We look forward to your response in this matter.

Thanks & regards,

 MDBC logo

Rani Groves - Director
0414 552 096 02 6679 5055

Ecm12385337

file:///C:/Documents and Settings/gabbya/DataWrks/temp/12385337/dwa13A.htm

24/02/2010



Country Women's Association of N.S.W.

Incorporated in 1931 by an Act of NSW Parliament

Murwillumbah Evening Branch

All Communications to be addressed to the "Secretary" Branch/Group
ABN 82 318 909 926

Miss Janet Twohill
371 Dulguigan Road
MURWILLUMBAH NSW 2484

26 January 2010

Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

CIVIC CENTRE - MURBAH - HIRE

TWEED SHIRE COUNCIL	
FILE No:	DONATIONS
DOC. No:	
REC'D:	29 JAN 2010
ASSIGNED TO:	CORBETT, G
HARD COPY <input type="checkbox"/>	IMAGE <input checked="" type="checkbox"/>

Dear Sir

Re: Hire of Murwillumbah Auditorium

Murwillumbah Evening Branch of CWA has secured the Murwillumbah Auditorium for their Annual Craft Expo to be held on 11 September 2010.

We now seek a waiver/reduction of the hire fees for Friday, 10 September 2010 between 12 noon and 4.30pm and Saturday, 11 September 2010 (all day).

If you require any further information regarding the above please do not hesitate to contact me on (02) 66721769 (a/h).

We look forward to your favourable response in the near future.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Janet Twohill', is written over a horizontal line.

Miss Janet Twohill
Hon. Secretary
Murwillumbah Evening Branch of CWA

— Pride in our Past — Faith in our Future —

DataWorks Document Number: 12168067

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:

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Nil.

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32 [CNR-CM] Community Buildings – Youth Facility

ORIGIN:

Director Community & Natural Resources

SUMMARY OF REPORT:

The Cabarita Beach Business Association has auspiced a successful community based youth program for the village of Bogangar to address issues within the community. The program has proven to be a success with the formation of a steering committee to run the program and the employment of a part time youth officer to run specific programs. Funding for the project is derived from Local Community Support Expenditure Committee (CDSE) to the amount of \$27,950 for the period from September 2009 to August 2010.

The committee has indicated its willingness to continue with the project and have requested some form of permanent premises from which to operate the program. Two separate requests had been made by the committee for Council to support the provision of a Youth Facility in the Bogangar locality. The first request relates to a 4,550m² parcel of Council land in Recreation Street, Bogangar which is zoned 6(a) open space and is classified as operational. The second request relates to the Camp Wollumbin site which is owned by the NSW Land and Property Management Authority.

Council's Section 94 Developer Contributions Plan No. 15 Community Facilities supports the proposal in that it allows for a Youth Facility to be constructed in Bogangar to the value of \$200,000. It is proposed that this facility will service the coastal areas from Kingscliff to Pottsville.

RECOMMENDATION:

That Council:-

- 1. Undertakes preliminary investigations and community consultation for the proposal to construct a youth facility on the Recreation Street site at Bogangar.**
- 2. Supports the Cabarita Beach Business Association in its approach to the NSW Land and Property Management Authority requesting the use of Camp Wollumbin as a Youth Facility.**

REPORT:

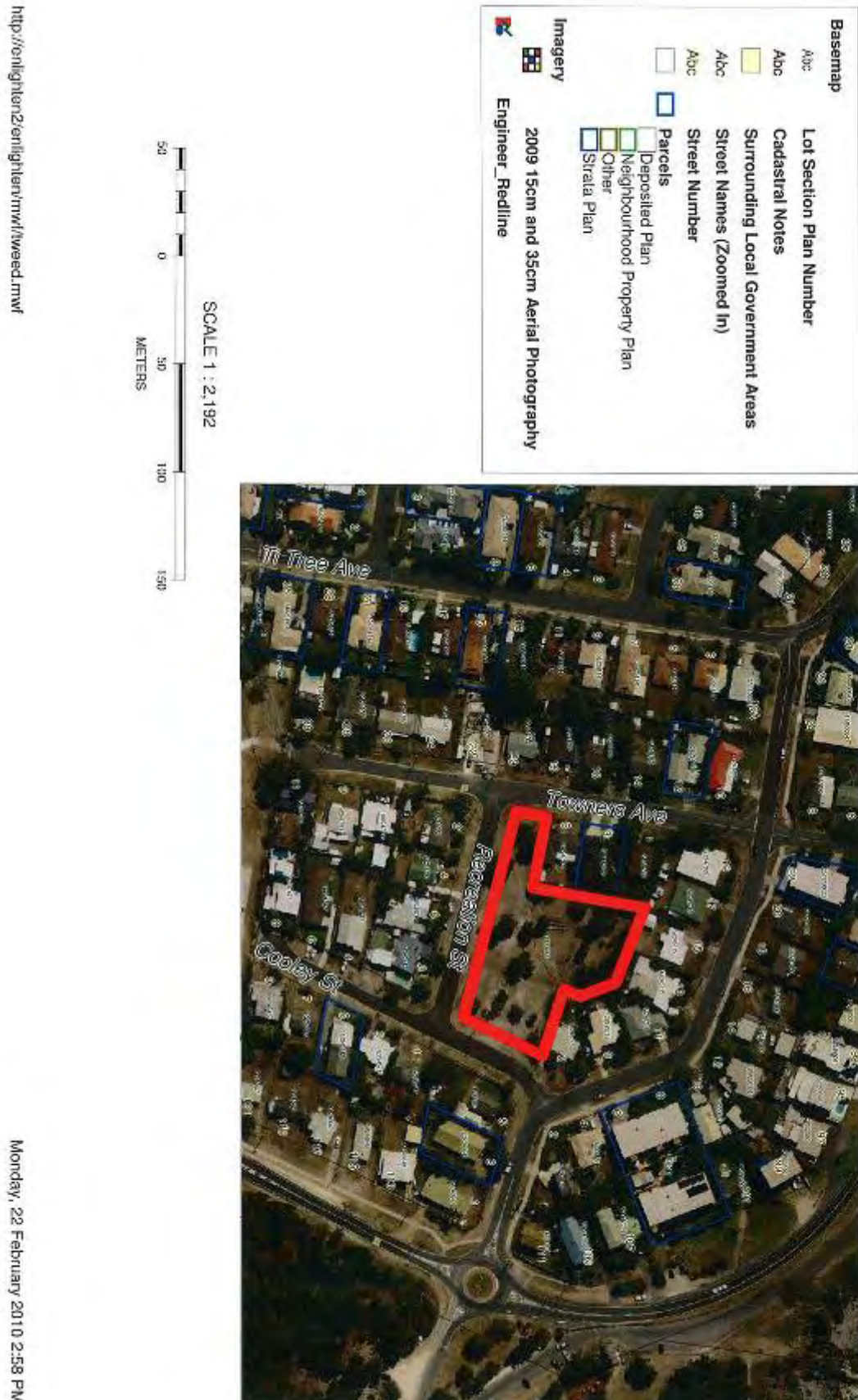
The Cabarita Beach Business Association has auspiced a successful community based youth program for the village of Bogangar to address issues within the community. The program has proven to be a success with the formation of a steering committee to run the program and the employment of a part time youth officer to run specific programs. Funding for the project is derived from Local Community Support Expenditure Committee (CDSE) to the amount of \$27,950 for the period from September 2009 to August 2010.

The committee has indicated its willingness to continue with the project and have requested some form of permanent premises from which to operate the program. Two separate requests had been made by the committee for Council to support the provision of a Youth Facility in the Bogangar locality. The first request relates to a 4,550m² parcel of Council land in Recreation Street, Bogangar which is zoned 6(a) open space and is classified as operational. The second request relates to the Camp Wollumbin site which is owned by the NSW Land and Property Management Authority.

Council's Section 94 Developer Contributions Plan No. 15 Community Facilities supports the proposal in that it allows for a Youth Facility to be constructed in Bogangar to the value of \$200,000. It is proposed that this facility will service the coastal areas from Kingscliff to Pottsville.

The two sites identified by the community are suited to the proposed youth facility. There are obvious issues associated with both however at this early stage it is considered that both options should be pursued. The Recreation Street site has the potential to impact on adjoining residents if not properly controlled and managed. The site is however in Council's control and there are currently no other proposed uses for the land. The Camp Wollumbin site is under the control of NSW Land and Property Management Authority and therefore there may well be other proposed conflicting uses of the site. The site is ideal in terms of location and facilities as it has been used for youth activities for many years.

Tweed Shire



Tweed Shire



<http://enlighten2/enlighten/mw/tweed.mwf>

Monday, 22 February 2010 2:55 PM

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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33 [CNR-CM] International Women's Day Grant

ORIGIN:

Community & Cultural Services

SUMMARY OF REPORT:

International Women's Day ("IWD") is celebrated across the world each year on 8 March. The day provides an opportunity for the community to recognise the achievements of women and their contribution to society. On this day, women can celebrate the progress that has been made but also contemplate those areas of women's lives where true equality has not yet been achieved.

The Office for Women's Policy 2010 IWD Grants encourage local Councils to organise an event in partnership with community organisations, that provide opportunities for women to participate in and celebrate IWD. The United Nations theme for the 2010 International Women's Day is "Empowering women to end poverty by 2015".

An event will be held on 8 March 2010 in Murwillumbah focussing on young women and celebrating their strengths, creativity and diversity.

Council will coordinate and run the event in partnership with St Joseph's Youth Service, a not-for-profit community group. A planning committee has been formed to oversee the celebration and facilitate the event.

RECOMMENDATION:

That Council:

- 1. Accepts the International Women's Day Grant of \$1,000 from The Office of Women's Policy, Premier & Cabinet for the International Women's Day event on 8 March 2010.**
- 2. Completes the relevant documentation and votes the expenditure.**

REPORT:

International Women's Day ("IWD") is celebrated across the world each year on 8 March. The day provides an opportunity for the community to recognise the achievements of women and their contribution to society. On this day, women can celebrate the progress that has been made but also contemplate those areas of women's lives where true equality has not yet been achieved.

The Office for Women's Policy 2010 IWD Grants encourage local Councils to organise an event in partnership with community organisations, that provide opportunities for women to participate in and celebrate IWD. The United Nations theme for the 2010 International Women's Day is "Empowering women to end poverty by 2015".

A grant to a maximum of \$1,000 (+GST) is available for community events and programs such as conferences, forums, awards and competitions to acknowledge and celebrate International Women's Day. Funding for 2010 IWD Grants is only available to NSW Local Government Councils.

An event will be held on 8 March 2010 in Murwillumbah focussing on young women and celebrating their strengths, creativity and diversity.

It will be an open event consisting of an afternoon tea and activities where women are invited to share their stories and celebrate their achievements. This will be followed by creating postcards that express ideas about how to "empower the community to end poverty for women in the Tweed Shire by 2015". These postcards will be displayed locally and then sent to relevant Government Ministers. A broad cross-section of the community will be invited encouraging women of different cultural backgrounds to attend.

Council will coordinate and run the event in partnership with St Joseph's Youth Service, a not-for-profit community group. A planning committee has been formed to oversee the celebration and facilitate the event.

The event will be of benefit to all women in the community but of particular benefit to the young women. Resources/information for women will be distributed on the day and benefit the recipients. An evaluation of the event will be prepared based on the number of attendees and their feedback in relation to the event.

In accordance with the condition of funding, a funding report will be provided to the Office for Women's Policy by 31 March 2010.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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34 [CNR-CM] Variations to EC2008-147 Banora Point WWTP: Concept and Detailed Design, Documentation and Associated Services

ORIGIN:

Water

SUMMARY OF REPORT:

On 17 March 2009 Council approved the engagement of consultant GHD Pty Ltd to carry out concept and detailed design, documentation and associated services for the new Wastewater Treatment Plant (WWTP) at Banora Point. GHD were engaged at a total amount of \$1,189,054 (all amounts above and below exclude GST).

The General Manager was given delegated authority to approve variations up to 20% of the original approval, being \$237,811.

Additional works were required of GHD to complete detailed design work. This includes completion of investigation and design works which could not have reasonably been identified prior to this engagement and completion of concept design works. These additional works are all essential to ensure that the upgraded WWTP is able to function efficiently and safely to meet its licence effluent discharge requirements.

The net increase in the cost of the GHD's engagement is currently estimated at \$243,868. It is noted that a significant portion of the additional work is a direct result of a scope increase from the requirement to include a third clarifier as part of the augmented works.

GHD has almost finalised the concept and detailed design documentation works but design services will continue through the tender, construction and commissioning phases of the project. These services are expected to continue under this engagement until December 2011. An increase in the approved allowance for variations is now required to ensure that this engagement can continue to respond in a timely manner to complete any additional works required to ensure the successful delivery of the upgraded Banora Point WWTP.

RECOMMENDATION:

That:-

- 1. Council approves the variations valued at a total amount of \$243,868 exclusive of GST under contract EC2008-147 Banora Point WWTP; Concept and Detailed Design, Documentation and Associated Services.**
- 2. Council approves a revised total sum of \$1,432,922 exclusive of GST for contract EC2008-147 Banora Point WWTP; Concept and Detailed Design, Documentation and Associated Services.**
- 3. The General Manager be given delegated authority to approve additional variations up to 10% above the revised GHD contract sum.**

REPORT:

On 17 March 2009 Council approved the engagement of consultant GHD Pty Ltd to carry out concept and detailed design, documentation and associated services for the new Wastewater Treatment Plant (WWTP) at Banora Point. GHD were engaged at a total amount of \$1,189,054, which included a fixed fee of \$908,272 and up to \$280,782 payable for Odour Investigation and specified 'rate only' items. (all amounts above and following exclude GST).

The General Manager was given delegated authority to approve variations up to 20% of the original approval, being \$237,811.

Additional works were required of GHD to complete detailed design work. This includes completion of investigation and design works which could not have reasonably been identified prior to this engagement and completion of concept design works. These additional works are all essential to ensure that the upgraded WWTP is able to function efficiently and safely to meet its licence effluent discharge requirements.

Variations to the engagement were required as follows: -

1) Modelling and Detailed Design of Additional Clarifier.

As part of earlier options investigation reports for the proposed WWTP upgrade it was not identified that an additional third clarifier would be required. Following the engagement of GHD and commencement of concept design works, detailed process modelling and risk analysis was completed and determined that the existing two clarifiers would not provide adequate settlement of solids under all conditions with the increased flow and loads to the upgraded WWTP. Therefore a third clarifier would be required to be constructed as part of this upgrade to ensure that final effluent quality is maintained within license limits.

Requirement for a third clarifier resulted in additional process modelling works and significant additional geotechnical, structural and civil design works to detail the structure and associated pump stations and pipework.

A proposed variation was accepted from GHD to complete these works for **\$132,174**.

2) Surge Analysis of the Inlet Rising Mains.

During investigations on site as part of design of the new WWTP inlet screen it was identified that there was a large surging of inflow from rising mains into the receiving channel of the inlet works. This surging effect could have detrimental impacts on the effective operation of the new inlet screen and its raw sewerage screening capabilities.

It was identified that additional modelling works and engineering analysis of the inlet rising mains should be completed to determine the cause of the identified flow surging. These additional works would include further site inspection and testing as well as modelling using specialised surge analysis software.

A proposed variation was accepted from GHD to complete these works for **\$6,550**.

3) Classification of Covered Tanks as Hazardous Areas

Odour modelling works completed as part of the concept design identified that several process tanks would require to have covering roofs installed and the airspace ventilated to a new odour treatment facility.

During the Early Tender Involvement Workshops with short listed Contractors it was identified during the risk allocation process that there may be potential explosive atmosphere risks associated with electrical equipment located below and around the covered process tanks.

It was identified that additional works should be completed to assess the risks, review similar installations and detail the specified requirements for electrical equipment with regard to all relevant standards. This work is required to quantify and mitigate risk where required from an identified potential electrical hazard.

A proposed variation was accepted from GHD to complete these works for **\$3,000**.

4) Structural Modifications to Existing Switchroom

Following detailed design of the electrical switchboard requirements it was identified that due to space limitations within the existing switchroom that existing doors to the building would need to be widened to allow additional mains switchboards to be installed. It was also identified that a structural review of the roof space would be required to confirm the allowance for new air conditioning ductwork and lighting systems.

Through structural review and detailing of modifications all new switchboards were able to be located within the existing switchroom. These additional design works have negated the requirement for a new building or extension to house switchboards and will have resulting in significant capital savings to the construction works.

A proposed variation was accepted from GHD to complete these works for **\$9,637**.

5) Design Revision for Plant Access Road and Widening of Culvert

Survey works completed as part of the detailed design of road works to the plant identified that the existing entrance to the WWTP partially passes through an area of private property adjacent to the plant.

Additional road design works were therefore required to realign the WWTP entrance. The design works also identified that the existing storm water culvert at the plant entrance must be widened. The existing culvert is a single lane width (4m). The culvert widening of the road entrance to two lanes will also significantly improve traffic safety through this area.

A proposed variation was accepted from GHD to complete these works for **\$11,499**.

6) Design for Provision of Air-Conditioning to the Electrical Switchroom

The detailed electrical design identified that the existing switchroom ventilation system was not capable of providing the cooling required for the heat load generated from the upgraded electrical system. It was therefore identified that a new air-conditioning system would be required for the existing switchroom. It was not identified in the original design brief that cooling systems would be required for the switchroom.

Provision of building services HVAC designs, mechanical and civil specifications were therefore required to be completed.

A proposed variation was accepted from GHD to complete these works for **\$8,865**.

7) Inclusion of Return Activated Sludge(RAS) Screen

It has been identified by the WWTP Operators that blockages and entanglement of mechanical equipment including pumps and mixers within the existing bioreactor tanks is a significant ongoing maintenance issue.

Raw sewerage to the plant is currently screened using a mechanical step screen located in the inlet works. During the concept design phase GHD process designers highlighted that an additional level of screening could be achieved through installation of mechanical screens on the Return Activated Sludge(RAS) flow stream. The RAS screen provides a secondary point subsequent to the inlet works whereby litter, hair and fibrous material can be removed from the process.

This additional screening was considered a significant advantage given the known issues of mechanical failures due to blockages and entanglement on the existing plant.

Detailing of the civil, mechanical and electrical components of the additional nominated screen were therefore required to be completed.

A proposed variation was accepted from GHD to complete these works for **\$11,303**.

8) Motor Schematics Wiring

It was identified subsequent to preparation of draft electrical design drawings that the wiring numbering and reference convention adopted by GHD was not consistent with that adopted in other Council treatment plants. This convention had not been detailed in information provided to the consultant.

It was considered that the benefits of maintaining a consistent system of electrical wiring numbering and drawing referencing warranted the additional cost of review and redrafting the electrical drawing set.

A proposed variation was accepted from GHD to complete these works for **\$3,629**.

9) Bioreactor Condition Assessment Report

The existing bioreactor tanks were originally constructed in 1987. These tanks are being retained as part of the proposed upgrade works. In January 2010 for operational reasons it was required to drain one of the existing bioreactors. It was identified that it would be advantageous while the bioreactors were drained to complete a condition assessment of the bioreactor tank and structures. This assessment would include inspection and removal of concrete core samples for laboratory analysis. The aim of the inspection being to provide an overall condition assessment, residual life estimate, and identify any major remediation issues.

As GHD were completing design modification to the Bioreactor it was highlighted that identification of any major remediation issues should be completed as part of the upgrade works. GHD had expert personnel available for completion of condition assessment works.

A proposed variation was accepted from GHD to complete these works for **\$22,636**.

10) Ecological Assessment and Review of Environmental Factors at Banora Point WWTP

As part of the completion of the concept design it was found that a flow balance tank and anaerobic process tank were required to be constructed to the north of the existing bioreactor tanks. Other infrastructure including proposed odour treatment facility and new chemical dosing facility are also required to be located in this area of the plant.

The original Environmental Impact Statement(EIS) prepared by GHD had not considered the location of structures to the north of the existing bioreactor tank. It was identified that an additional review of environmental factors(REF) should be completed for this portion of works to support a separate Part V planning approval.

As part of the Early Tender Involvement Workshops with short listed Contractors it was identified during the risk allocation process that there could be construction access restrictions to the existing plant. It was identified that a dedicated construction site access to the southern end of the site could be made via a temporary access road constructed in the drainage reserve located to the west of the plant. This temporary road would require a removal of vegetation on the verge of an existing track on the WWTP boundary. It was identified that an additional review of environmental factors(REF) should be completed for this portion of works to support a separate Part V planning approval.

Due to workload and timing commitments Council environmental officers were not able to complete the required REF works. As GHD had completed the original EIS there were identified advantages in their completion of the subsequent REF works.

A proposed variation was accepted from GHD to complete these works for **\$29,035**.

11) Specification of Solar System Requirements

Following review of the draft control building design and specification it was identified that in line with Council's Environmental Design Guidelines for Council Buildings that incorporation of solar panel-photovoltaic cells should be incorporated to supplement the buildings power demands. Incorporation of photovoltaic system was not allowed for in the original building design brief. Detailing of the photovoltaic system requirements, structural and electrical building considerations were therefore now required to be completed.

A proposed variation was accepted from GHD to complete these works for **\$5,540**.

8) Summary of Variations

Detail	Amount
<i>Current Variations (requiring approval)</i>	
Modelling and Detailed Design of Additional Clarifier	\$132,174
Surge Analysis of the Inlet Rising Mains	\$6,550
Classification of Covered Tanks as Hazardous Areas	\$3,000
Structural Modifications to Existing Switchroom	\$9,637
Design Revision for Plant Access Road and Widening of Culvert	\$11,499
Design for Provision of Air-Conditioning to the Electrical Switchroom	\$8,865
Inclusion of Return Activated Sludge(RAS) Screen	\$11,303
Motor Schematics Wiring	\$3,629
Bioreactor Condition Assessment Report	\$22,636
Ecological Assessment and Review of Environmental Factors at Banora Point WWTP	\$29,035
Specification of Solar System Requirements	\$5,540
Total Current Variations	\$243,868

The net increase in the cost of the GHD's engagement is currently estimated at \$243,868. It is noted that a significant portion of the additional work is a direct result of a scope increase from the requirement to include a third clarifier as part of the augmented works.

GHD has almost finalised the concept and detailed design documentation works but design services will continue through the tender, construction and commissioning phases of the project. These services are expected to continue under this engagement until December 2011. An increase in the approved allowance for variations is now required to ensure that this engagement can continue to respond in a timely manner to complete any additional works required to ensure the successful delivery of the upgraded Banora Point WWTP. Due to the current stage of design works it is anticipated that an allowance of 10% of the revised total engagement sum should be allowed for additional variations.

EC2008 147 Contract Value	
Original Contract Sum	\$1,189,054
Current Variation Work Sum	\$243,868
Revised Contract Sum	\$1,432,922

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

35 [EO-CM] SALT Surf Life Saving Club

ORIGIN:

Recreation Services

SUMMARY OF REPORT:

SALT Surf Life Saving Club (the club) was formed in 2005 and now has 93 patrolling members, 177 junior nippers and 99 associate members demonstrating a yearly growth rate of approximately 20%.

The club currently has use of a storage area and first aid room within the Council owned building located on Lot 173 DP 1075497 which is leased to Salt Developments Pty Ltd, and a clubroom and training area situated under the Salt Bar. However, the owners of this area have indicated that they wish to reclaim the space to augment their commercial operation.

The imminent loss of the area under the Salt Bar and the population growth factors on that part of the coast will impact on the ability of the club to service the community and its members. To respond to these challenges the club is proposing to expand east upon the existing building located at Lot 173 into Lot 901 DP 1066477 (Figures 1 & 2). Lot 901 is Council owned community land. The leasing of the land to the club for the construction of a surf life saving facility is consistent with the core objectives for management of community land categorised as a park or general community use under the Local Government Act 1993 (the act), but would require the development of a plan of management under the act with express authorisation for both the building and the lease.

Prior to progressing plans for the building, the club requires an indication from Council as to whether it will agree to leasing a portion of Lot 901 to the club for the purposes of constructing the proposed facility and to undertake the management plan process.

RECOMMENDATION:

That Council indicates its support for the proposal to lease a portion of Lot 901 DP 1066477 for the construction of surf life saving facilities subject to the adoption of a plan of management in accordance with the requirements of the Local Government Act 1993 with express authorisation for both the building and the lease.

REPORT:

SALT Surf Life Saving Club (the club) was formed in 2005 and now has 93 patrolling members, 177 junior nippers and 99 associate members demonstrating a yearly growth rate of approximately 20%.

The club currently has use of a storage area and first aid room within the Council owned building located on Lot 173 DP 1075497 which is leased to Salt Developments Pty Ltd, and a clubroom and training area situated under the Salt Bar. However, the owners of this area have indicated that they wish to reclaim the space to augment their commercial operation.

The imminent loss of the area under the Salt Bar and the population growth factors on that part of the coast will impact on the ability of the club to service the community and its members. To respond to these challenges the club is proposing to expand east upon the existing building located at Lot 173 into Lot 901 DP 1066477 (Figures 1 & 2). Lot 901 is Council owned community land. The leasing of the land to the club for the construction of a surf life saving facility is consistent with the core objectives for management of community land categorised as a park or general community use under the Local Government Act 1993 (the act), but would require the development of a plan of management under the act with express authorisation for both the building and the lease.

Prior to progressing plans for the building, the club requires an indication from Council as to whether it will agree to leasing a portion of Lot 901 to the club for the purposes of constructing the proposed facility and to undertake the management plan process.

Requirements of a plan of management for community land:

Under the provisions of the Local Government Act 1993, a plan of management for community land must identify the following:-

- (a) the category of the land,
- (b) the objectives and performance targets of the plan with respect to the land,
- (c) the means by which the council proposes to achieve the plan's objectives and performance targets,
- (d) the manner in which the council proposes to assess its performance with respect to the plan's objectives and performance targets,

Additionally, a plan of management that applies to just one area of community land must:-

- (a) include a description of:
 - (i) the condition of the land, and of any buildings or other improvements on the land, as at the date of adoption of the plan of management, and
 - (ii) the use of the land and any such buildings or improvements as at that date, and
- (b)
 - (i) specify the purposes for which the land, and any such buildings or improvements, will be permitted to be used, and
 - (ii) specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise, and

- (iii) describe the scale and intensity of any such permitted use or development.

Council must give public notice of a draft plan of management for which the period of public exhibition of the draft plan must be not less than 28 days. The public notice must also specify a period of not less than 42 days after the date on which the draft plan is placed on public exhibition during which submissions may be made to the council. Council must publicly exhibit the draft plan together with any other matter which it considers appropriate or necessary to better enable the draft plan and its implications to be understood.

Council must also hold a public hearing in respect of a proposed plan of management (including a plan of management that amends another plan of management) if the proposed plan would have the effect of categorising, or altering the categorisation of, community land.

After considering all submissions received by it concerning the draft plan of management, Council may decide to amend the draft plan or to adopt it without amendment as the plan of management for the community land concerned.

Comment

With consideration to the growth experienced at Salt Surf Life Saving Club and the immediate population growth factors including:-

- Completion of Salt stages 2,5,7 and 8
- Completion of the final stages of Casuarina
- Construction of Seaside City
- Development of Kings Forest and
- Development of Lot 490

the development of a strong and sustainable surf life saving club at Salt is important to service the needs of the coast into the future. Contribution Plan 16 – Emergency Facilities (Surf Lifesaving) allocates \$100,000 toward surf life saving infrastructure at Salt and it is considered that contributing to the construction of an expanded facility as proposed provides the best value for these funds.

The club anticipates construction costs in the order of \$1.5 million of which the club currently has \$50,000 to add to the \$100,000 from contribution plan 16. The clubs intent is to apply for relevant State and Federal Government programs, but are aware these programs generally require projects to be at a demonstrably advanced stage of planning and have received development consent.

It is noted that the club is also requesting Council consideration to additional funding toward the facility and assistance in the development application process.

Accordingly, it is recommended that Council indicates its support for the proposal to lease a portion of Lot 901 DP 1066477 to Salt Surf Life saving Club for the construction of surf life saving facilities subject to the adoption of a plan of management in accordance with the requirements of the Local Government Act 1993.



Figure 1

PROPOSED SALT
SLSC EXTENSIONS

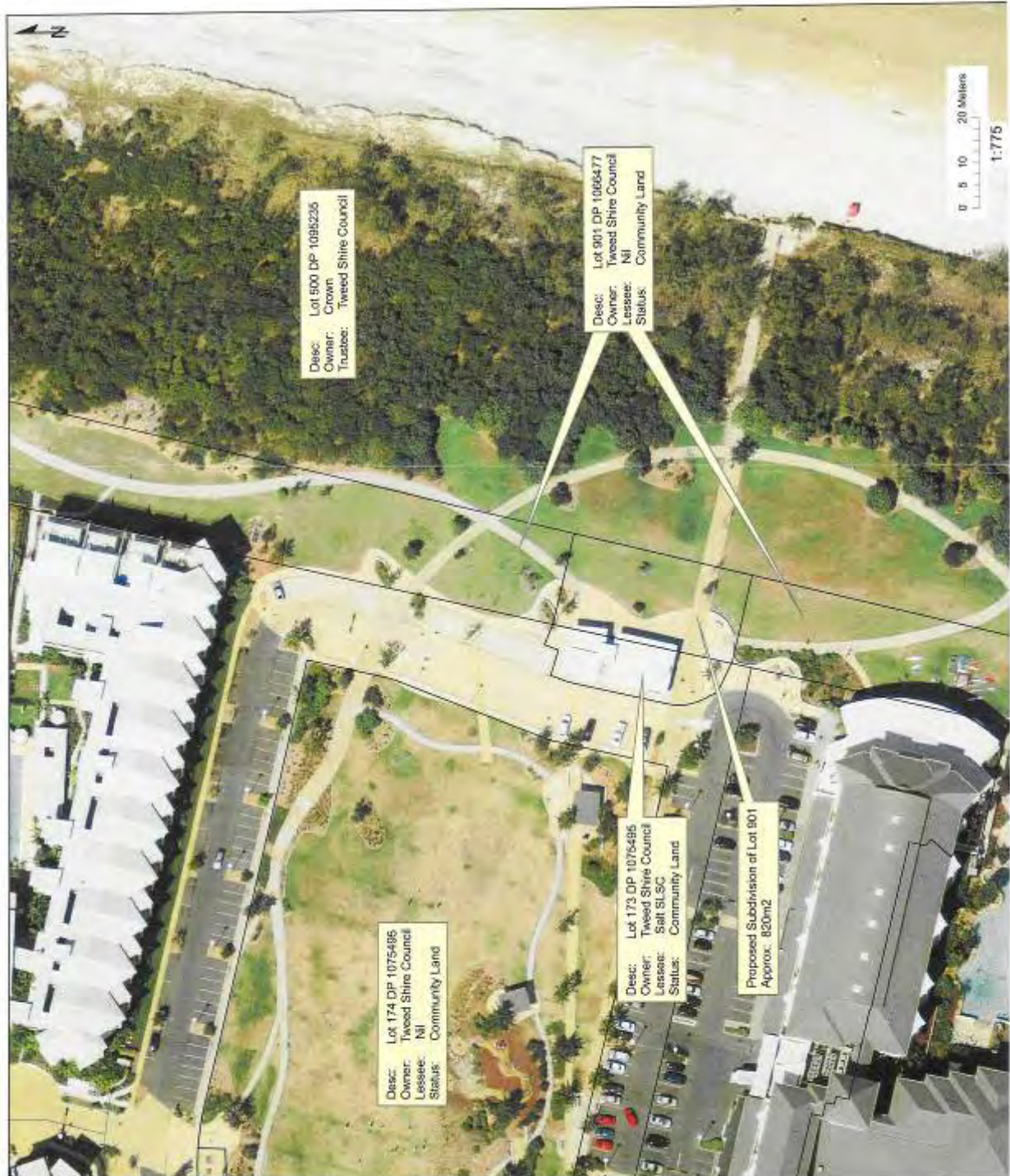


Figure 2

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Contribution of \$100,000 from CP 16.

POLICY IMPLICATIONS:

Requirement for development of a plan of management under the Local Government Act 1993.

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.

36 [EO-CM] Naming of Grandstand

ORIGIN:

Recreation Services

SUMMARY OF REPORT:

At its meeting held 15 December 2009, Council resolved to advertise the proposal to name the grandstand at Jim Devine Fields after Hubert Ehemann for 28 days for public comment.

At the close of comment no submissions were received.

RECOMMENDATION:

That Council supports the naming of the grandstand at Jim Devine Fields after Hubert Ehemann.

REPORT:

At its meeting held 15 December 2009, Council resolved advertise the proposal to name the grandstand at Jim Devine Fields after Hubert Ehemann for 28 days for public comment.

At the close of comment no submissions were received.

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.

37 [EO-CM] Naming of Buildings and Facilities on Council Sportsfields Draft Policy

ORIGIN:

Recreation Services

SUMMARY OF REPORT:

Council occasionally receives requests from sporting clubs and associations to name buildings or facilities at their home grounds after long serving or high achieving members. Council does not have a policy for considering such applications and consequently has in the past either applied the criteria within the adopted park naming policy or none at all.

Tennis Terranora recently requested consideration to naming the proposed new tennis facility at Terranora.

This request and the broader issue of naming sportsfields buildings and facilities was discussed by the Sports Advisory Committee where it was agreed that some of the criteria for park naming were not relevant to naming sports facilities, particularly the requirements for the person to be deceased. Numerous examples were cited of stadiums, grandstands etc throughout the country named after people that are still alive. The committee suggested a separate policy be considered by Council to cater for the naming of sportsfield buildings and facilities.

RECOMMENDATION:

That Council advertises the draft Naming of Buildings and Facilities on Sportsfields Policy as included in this report.

REPORT:

Council occasionally receives requests from sporting clubs and associations to name buildings or facilities at their home grounds after long serving or high achieving members. Council does not have a policy for considering such applications and consequently has in the past either applied the park naming policy or none at all.

The park naming policy reflects the Geographical Names Board requirements for naming geographical features and therefore the criteria are fairly rigorous. Of particular significance is the criterion that the person subject of the proposed naming must be deceased.

Tennis Terranora recently requested consideration to naming the proposed new tennis facility at Terranora.

This request and the broader issue of naming sportsfields buildings and facilities was discussed by the Sports Advisory Committee where it was agreed that some of the criteria for park naming were not relevant to naming sports facilities, particularly the requirements for the person to be deceased. Numerous examples were cited of stadiums, grandstands etc throughout the country named after people that are still alive. The committee suggested a separate policy be considered by Council to cater for the naming of sportsfield buildings and facilities.

Accordingly, it is requested that Council considers the adoption of the draft 'sportsfields buildings and facilities naming policy' as shown below. The draft policy is based on the adopted park naming policy with minor amendments to reflect the specific requirements of sportsfield buildings and facilities.

DRAFT NAMING OF BUILDINGS AND FACILITIES ON COUNCIL SPORTSFIELDS POLICY

Objective: *To provide a consistent, transparent and standard procedure for the naming of buildings and facilities on sportsfields under the control of Council*

Policy: *That Council adopt the following guidelines when considering and approving the naming of buildings or infrastructure on sportsfields under the control of Council where each application is to be assessed on its own merits.*

1. Application

Council requires an application for the naming of buildings and facilities on sportsfields under the control of Council to be in writing providing the following information:

- (i) a clear description of the building or facility to be named, including street address, locality, a clear description of the proposed item to be named ;*
- (ii) the proposed name and the reason for the choice of that proposed name,*
- (iii) any history of the land set aside on which the facility is located relative to the name proposed;*
- (iv) any history or historical involvement with the Tweed Shire area of the person or organisation after whom the naming is sought;*
- (v) contributions by the person or organisation to the Tweed Shire community which may warrant consideration for the proposed name;*

- (vi) *any history of service to the Tweed Shire community that was on a voluntary basis;*
- (vii) *any detailed information in relation to the service and its contribution to the betterment of the Tweed Shire community;*

2. Assessment Criteria

- (a) *Nominations will only be accepted by sporting organisations and not individuals*
- (b) *The person after whom the naming is sought should have made a significant and long term contribution to the sporting community of the Tweed and in particular with the sporting organisation using the facility or the development of the facility itself ;*
- (c) *The person after whom the naming is sought must be respected within the community;*
- (d) *The person after whom the naming is sought must have been a resident of the Tweed Shire;*
- (e) *Names of Aboriginal origin associated with the locality or associated with the historical background of the locality will be highly regarded, but must be accompanied by written approval of the name from the Local Aboriginal Land Council existing in the locality of public reserve to be named;*
- (f) *Proposed descriptive name refers to flora, fauna or other descriptive elements refers to local indigenous species and relates directly to the Tweed Shire area.*
- (g) *Prior ownership of the land is not sufficient reason to apply the owner's name, personal or corporate, to the building or facility;*

3. Approval Process

- (1) *If Council approves the application against the criteria listed above, then a report will be made to Council for a resolution to advertise the name in the Tweed Link or any other local newspaper inviting submissions from the public for a twenty eight (28) day submission period. Any submissions received will be considered in a further report to Council.*
- (2) *Proposal to be assessed against any submissions received and a recommendation for approval or otherwise to be made in report to Council.*

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Adoption of new Sportsfield Buildings and Facilities Naming Policy. Advertising for naming of Terranora tennis facility in accordance with draft policy if adopted.

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.

38 [EO-CM] Murwillumbah RSL - Sandakan Walk

ORIGIN:

Recreation Services

SUMMARY OF REPORT:

The Murwillumbah Returned Services League has approached Council to seek support for a proposed Sandakan Memorial Walk along the present footpath through Remembrance Place fronting the Murwillumbah Civic Centre.

In January 1945, 1023 Australian Prisoners of War in Sandakan were forced to march 265km from Sandakan to Ranau on the west area of North Borneo. By August 1945 only six survived. A number of prisoners forced to endure the walk were local soldiers.

The proposal is for the path to be representative of the Sandakan walk with information signage and plaques installed along the length of the path containing information about the soldiers and the walk. The existing path is a paved walkway that constantly has loose pavers and is overlaid with water in heavy rain events. It is proposed to replace the path with a concrete path and provide drainage to address the problem of water pooling on the path. Council staff has had discussions with the RSL on design options and how the proposal could be integrated into the new path construction.

The RSL propose to apply for funding for the project through the Department of Veteran Affairs. An indication of Council's support for the project would greatly assist their efforts to acquire funding.

RECOMMENDATION:

That Council supports the Murwillumbah RSL proposal to establish a Sandakan Memorial Walk along the present footpath through Remembrance Place.

REPORT:

As per Summary of Report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

39 [EO-CM] Road Closure Application - Lot 4 DP 1138338, Terranora

ORIGIN:

Design

FILE NO: GR3/12/7

SUMMARY OF REPORT:

Council has received a notice of application to close a section of Crown Road reserve within, west and east of Lot 4 in DP 1138338 at Terranora, from Department of Lands. Council has been requested to provide its consent or objection to the closure of this section of Crown Public Road.

An investigation of the Crown Road reserves has been conducted and it has been noted that no Council or other infrastructure currently exists within it. There is no current formation of the road reserve and no impact on any surrounding properties.

The road reserve is approximately 510m in length with the northern area of approximately 320m covered by a regional fauna corridor. The area has low ecological status and sensitivity. Approximately 200m of the southern section is treed and moderately vegetated.

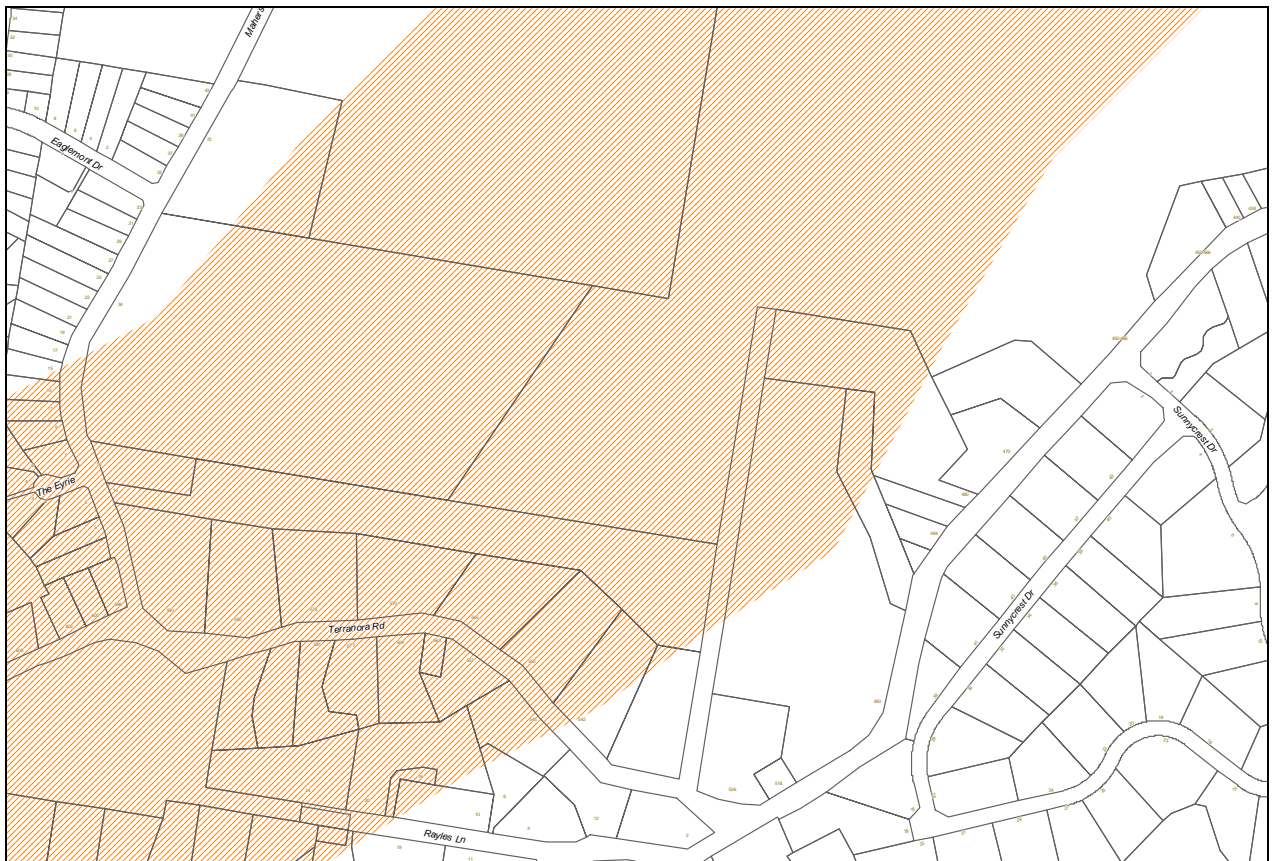
Clause 3 of Councils policy on Road Closures notes that roads not eligible for closure include those containing wildlife corridors.

It would therefore be recommended that Council objects to the closure and purchase by the applicant of the section of Crown road reserve within west and east of Lot 4 in DP 1138338 at Terranora.

RECOMMENDATION:

That Council objects to the closure and purchase by the applicant of the section of Crown road reserve within west and east of Lot 4 in DP 1138338 at Terranora as it is contrary to Council's policy.

Plan showing area of Regional Fauna corridor



Aerial photo showing vegetation



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.

40 [EO-CM] Road Closure Application - Lot 6 DP 841554 at Bungalora

ORIGIN:

Design

FILE NO: GR3/12/7

SUMMARY OF REPORT:

Council has received a notice of application to close a section of Crown Road reserve within Lot 6 in DP 841554 at Bungalora, from Department of Lands. Council has been requested to provide its consent or objection to the closure of this section of Crown Public Road.

An investigation of the Crown Road reserves has been conducted and it has been noted that no Council or other infrastructure currently exists within it. There is no current formation of the road reserve, no impact on any surrounding properties and no environmental impact within it.

It appears that this road may have been straightened in the previous DP 814144 with the new alignment dedicated as public road. The old road reserve has been left in place and possibly should have been closed at the time of dedication of the new road.

This application complies with Councils current policy on Road Closure and purchase in so far as it does not fall within the categories listed for road not eligible for closure. It does however fall within point 1 of the exceptions as the road can be considered redundant in terms of access to all surrounding properties.

It would therefore be recommended that Council does not object to the closure and purchase by the applicant of the section of Crown road reserve within Lot 6 in DP 841554 at Bungalora.

RECOMMENDATION:

That Council does not object to the closure and purchase by the applicant of the section of Crown road reserve within Lot 6 in DP 841554 at Bungalora.

REPORT:

Council has received a notice of application to close a section of Crown Road reserve within Lot 6 in DP 841554 at Bungalora, from Department of Lands. Council has been requested to provide its consent or objection to the closure of this section of Crown Public Road.

An investigation of the Crown Road reserves has been conducted and it has been noted that no Council or other infrastructure currently exists within it. There is no current formation of the road reserve, no impact on any surrounding properties and no environmental impact within it.

It appears that this road may have been straightened in the previous DP 814144 with the new alignment dedicated as public road. The old road reserve has been left in place and possibly should have been closed at the time of dedication of the new road.

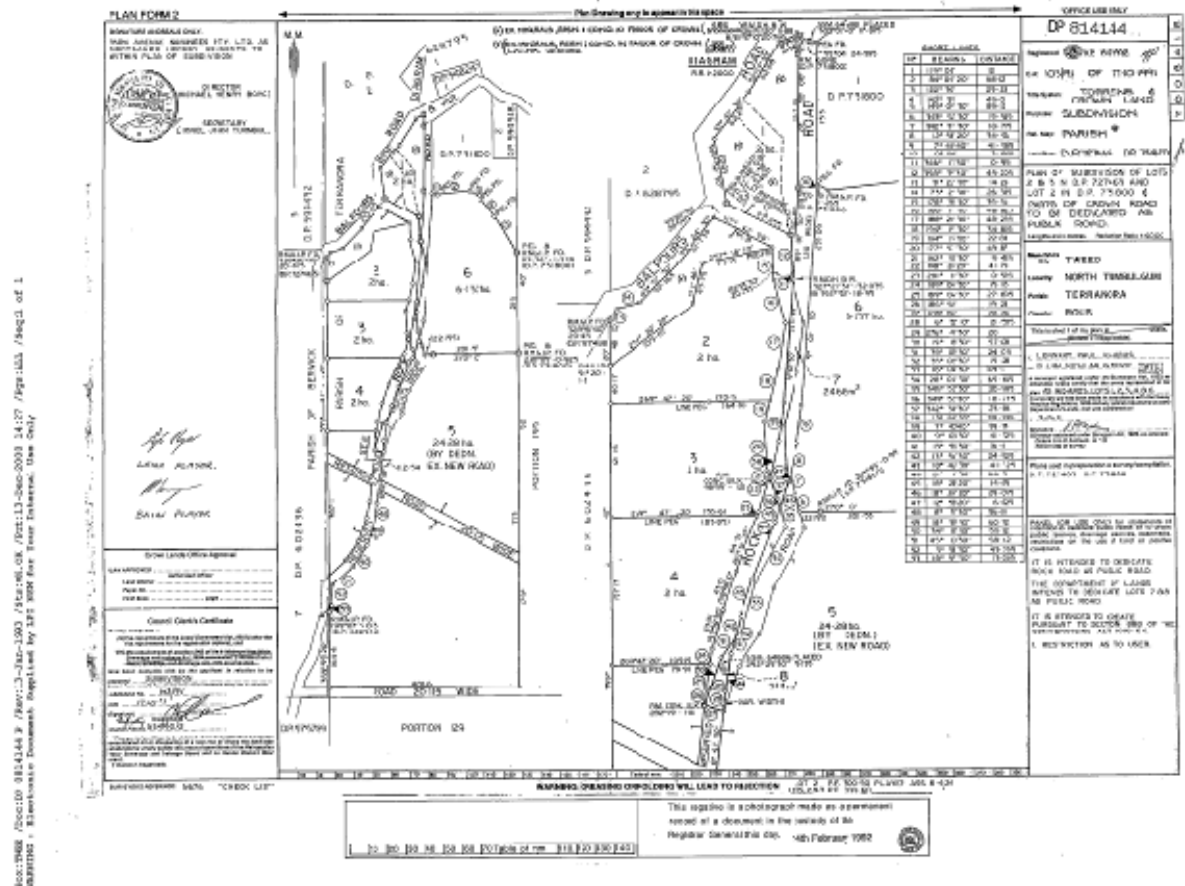
This application complies with Councils current policy on Road Closure and purchase in so far as it does not fall within the categories listed for road not eligible for closure. It does however fall within point 1 of the exceptions as the road can be considered redundant in terms of access to all surrounding properties.

It would therefore be recommended that Council does not object to the closure and purchase by the applicant of the section of Crown road reserve within Lot 6 in DP 841554 at Bungalora.

Below is a plan showing the proposed Road Closure.



Copy of DP 814144 showing dedication of new section of Rock Road



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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41 [EO-CM] Road Closure Application - Piggabeen

ORIGIN:

Design

FILE NO: GR3/12/7

SUMMARY OF REPORT:

Council has received a notice of application to close a section of Crown Road reserve from Department of Lands within and separating Lot 10 DP 1074375 from Piggabeen Creek at Piggabeen. Council has been requested to provide its consent or objection to the closure of these sections of Crown Public Road.

Council's road closure policy provides under roads not eligible for closure:-

- "1. Roads providing or capable of providing, physical access to rivers, creeks, lakes, beaches and their foreshores.
2. Roads capable of providing physical access to other roads, public and private properties....
5. Roads whose future highest and best use for Council is judged to be of more economic worth than the current land value.
6. Roads that could potentially be developed for vehicle, cycle, pedestrian or equestrian use as the Shire grows."

It is recommended pursuant to the above provisions within Council's Road Closure Policy that Council objects to the closure of the Crown public road within and separating Lot 10 DP 1074375 from Piggabeen Creek at Piggabeen.

RECOMMENDATION:

That Council objects to the closure of the Crown public road within and separating Lot 10 DP 1074375 from Piggabeen Creek at Piggabeen.

REPORT:

Council has received a notice of application to close a section of Crown Road reserve from Department of Lands within and separating Lot 10 DP 1074375 from Piggabeen Creek at Piggabeen. Council has been requested to provide its consent or objection to the closure of these sections of Crown Public Road.

This road reserve leads directly to and around Piggabeen Creek. Councils Policy on Road Closure notes at Clause 1 roads not eligible for closure include those providing or capable of providing physical access to rivers, creeks lakes, beaches and their foreshores.

Council is currently implementing foreshore regeneration within the region of the Tweed Shire and are utilising road reserves which adjoin the creeks and rivers to allow access to these areas. Council has encountered problems with land owners where access to the foreshore area is only available through private property. While Council are not seeking to fully construct the road reserves along the foreshores, the road reserves do provide an unimpeded access for regeneration works to be completed.

There otherwise appears to be no environmental impact within this section of road reserve although the foreshore area is moderately treed and vegetated at this time. The road is part of a network of road reserves and whilst the neighbouring properties currently use other roads to access their properties this road is capable of providing an alternate access should it be required.

Council's road closure policy provides under roads not eligible for closure:-

- "1. Roads providing or capable of providing, physical access to rivers, creeks, lakes, beaches and their foreshores.
2. Roads capable of providing physical access to other roads, public and private properties....
3. Road reserves containing wildlife corridors, significant flora, marketable timber and scenic escarpments....
5. Roads whose future highest and best use for Council is judged to be of more economic worth than the current land value.
6. Roads that could potentially be developed for vehicle, cycle, pedestrian or equestrian use as the Shire grows."

It is recommended pursuant to the above provisions within Councils Road Closure Policy that Council objects to the closure of the Crown public road within and separating Lot 10 DP 1074375 from Piggabeen Creek at Piggabeen.

Below is a plan showing the proposed Road Closure:-



Aerial photo showing the vegetation and foreshore area:-



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.

42 [EO-CM] EC2009-155 Supply of Electricity for Street Lighting

ORIGIN:

Contracts

FILE NO: EC2009-155

SUMMARY OF REPORT:

Council previously entered a Retail Electricity Supply Agreement (RESA) for the Shire wide unmetered Street Lighting supply. The agreement is with Energy Australia and expires on 30 June 2010. The current agreement was formed utilising State Contract No.777 (managed by the NSW Department of Commerce).

To ensure continuation of competitive electricity supply to the non-metered street lighting network, Council Tender EC2009-155 has been advertised and will close on 10 March 2010. It is anticipated that submissions from Energy Suppliers will have strict validity periods (7 days) and a quick Council resolution may be required.

A Late Report with full details of the Tender Submissions due to be received on 10 March 2010 will be presented to the Council at its meeting 16 March 2010.

RECOMMENDATION:

That details of the tender submissions for EC2009-155 Supply of Electricity for Street Lighting will be provided at the Council meeting for determination.

REPORT:

A Late Report with full details of the Tender Submissions due to be received on 10 March 2010 will be presented to the Council at its meeting 16 March 2010.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The recommendations in this report are consistent with Council's Procurement Policy, Procurement Procedure and Contracts Management Process document.

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

43 [TCS-CM] Local Government and Shires Association – Request for Assistance with Legal Costs – Murray Shire Council

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

A formal request has been received from the Local Government and Shires Association of New South Wales for Council to give consideration to contribute towards assisting Murray Shire Council with legal costs that it has incurred.

The matter concerns the interpretation of setback from stream and river banks. Murray Shire Council contends that the judgement of Pain J is relevant and capable of providing guidance to all councils that rely on the same terminology relating to setbacks from rivers and other watercourses and the Land and Environment Court has now clarified what has long been a contentious issue for many councils' in NSW that adopt similar LEP definitions.

RECOMMENDATION:

That Council contributes \$393.34 towards legal costs incurred by Murray Shire Council.

REPORT:

A formal request has been received from the Local Government and Shires Association of New South Wales for Council to give consideration to contribute towards assisting Murray Shire Council with legal costs that it has incurred – refer below:

Local Government
Association of NSW



Shires Association
of NSW

Our ref: R90/1046-02

20 January 2010

General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

LAND & ENVIRONMENT COURT.
DEVELOPMENT - APPLICATIONS
LGSA - GENERAL

TWEED SHIRE COUNCIL	
FILE No.	LEGAL - COSTS
DOC. No.	
RECD.	-5 FEB 2010
ASSIGNED TO:	RAYNE C.M.
HARD COPY	<input type="checkbox"/>
IMAGE	<input checked="" type="checkbox"/>

Dear Sir/Madam,

Re: Murray Shire Council – Request for Assistance with legal costs

Murray Shire Council has approached the Associations for assistance with legal costs in litigation in which it has been involved.

Summary of Facts

Murray Shire Council (the Council) approved a development application by KSK Development Pty Limited for a tourist development at Moama on the 6 February 2007 subject to conditions.

A third party objector sought a declaration that the development consent was invalid and of no effect due to a failure of the council to refer the DA to the Department of Planning for concurrence to vary the 60 metre setback from the bank of the Murray River.

A further issue in dispute was whether the 60 metre setback should be taken from an identified point referred to by the council as the high bank or alternatively some other interpretation of the Murray LEP of "bank" or "bed".

The Council filed a submitting appearance and the Land and Environment Court found in favour of the third party objector and deemed that the development consent was invalid.

KSK Developments Pty Limited lodged a fresh development application with Council on 13 March 2008. This was for a tourist development and community land subdivision.

Council referred the DA to the Department of Planning pursuant to SEPP 1 for concurrence to the variation of the setback from the Murray River.

The Department of Planning responded to the referral by indicating that it would not provide concurrence to the sought variation.

As a result of this the applicant elected to submit an amended site plan and a second referral was made to the Department of Planning who made an initial response that it was proposing not to provide concurrence to the second referral.

The Department of Planning eventually confirmed that it would not provide concurrence despite further submissions being made by the applicant.

The Council resolved to approve the new DA on 16 December 2008 with a condition requiring that no building be located within 60 metres of the high bank of the Murray River. This was to ensure that the setback distance was measured from the high bank in accordance with Council's interpretation of the Murray LEP.

Prior to this approval, the applicant filed Class One proceedings in the Land and Environment Court and these proceedings stayed on foot to challenge the condition requiring the 60 metre setback from the high bank of the river.

A hearing of the preliminary point of law was heard before Pain J on 2 April 2009 requiring the interpretation of the definition of "bed" and "bank" as defined in the Murray LEP.

The definitions used in the Murray LEP are consistent with definitions utilised in many Local Environmental Plans and used in the Surveying Regulation 2006 and other legislation.

The Applicant submitted that the definition of "bed" required the "bank" must be the point where the average or mean water level rested.

Council submitted that the Applicants' construction of the words "bed" and "bank" were incorrect. It was asserted that the definition was expansive, not limited only to the definition of the average water level.

Council relied on the initial words in the definition of "bed" namely "the whole of the soil of the channel in which the river flows..." Council argued that these preceding words took precedent and the words following "including" were to be taken as inclusive rather than exclusive of the starting point that the "bed" of the river constitutes the whole of the soil of the channel.

A judgement was handed down on 6 April 2009 in relation to the preliminary question of law in the Class 1 proceedings.

The Court noted that the general rule of statutory construction is that words should be interpreted so that all are given their meaning and effect. The Court reasoned that the “bank” must therefore be identified as a single point.

On 9 June 2009 the Class 1 proceedings were discontinued.

Council contend that the judgement of Pain J is relevant and capable of providing guidance to all councils that rely on the same or similar terminology relating to setbacks from rivers and other watercourses and the Land and Environment Court has now clarified what has long been a contentious issue for many councils in NSW that adopt similar LEP definitions.

Council state that this was a “test case” whereby the outcome has been of benefit to all councils.

The Joint Committee of the Associations have considered that the significance of this decision and it was decided that it was sufficiently important to all councils to warrant the giving of support.

The Council incurred the sum of \$34,657.83 in defending its position. Your Council’s proportion of this amount, calculated in accordance with the formula used to determine your Association fees, is \$393.34, and I would appreciate receipt of your Council’s cheque for this amount at your earliest convenience.

Yours sincerely



Peter Coulton
Director Corporate Services

The matter concerns the interpretation of setback from stream and river banks. Murray Shire Council contends that the judgement of Pain J is relevant and capable of providing guidance to all councils that rely on the same terminology relating to setbacks from rivers and other watercourses and the Land and Environment Court has now clarified what has long been a contentious issue for many councils’ in NSW that adopt similar LEP definitions.

In turn the Joint Committee of the Associations has considered that the significance of this decision and it was decided that it was sufficiently important to all councils to warrant the giving of support.

This case has relevance to Council and the requested contribution of \$393.34 is recommended for payment.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Expenditure of \$393.34 will be expensed to Planning Legal costs.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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44 [TCS-CM] In Kind and Real Donations - October to December 2009

ORIGIN:

Financial Services

SUMMARY OF REPORT:

Details of in kind and real donations for the period October to December 2009 are reproduced in this report for Council's information.

RECOMMENDATION:

That Council notes total donations of \$22,962.41 for the period October to December 2009.

REPORT:

Council maintains a register of in kind and real donations. Details of these donations for the period October to December 2009 are reproduced as follows:-

Financial Assistance			
Amount	Recipient	Donated Item	Date
\$25.00	Uki Public School	Donation - Annual School Awards	26/11/2009
\$25.00			

Goods and/or Materials			
Amount	Recipient	Donated Item	Date
\$96.00	Bilambil Landcare	6 Trees & 12 Shrubs	6/10/2009
\$24.00	Wollumbin High School	6 Shrubs	23/10/2009
\$120.00			

Provision of Labour and/or Plant & Equipment			
Amount	Recipient	Donated Item	Date
\$472.34	Tweed Agricultural Society	Provision of Labour & Council Plant	06/11/2010
\$204.50	Life Education Van Relocation	Provision of Labour & Council Plant	04/12/2009
\$474.47	Street Christmas Decorations	Provision of Labour & Council Plant	04/12/2009
\$1,151.31			

Rates			
Amount	Recipient	Donated Item	Date
\$1,252.80	Bilambil Literary Society	Council Rates 2009/2010	5/11/2009
\$1,573.90	Trustees Literary Institute Tyalgum	Council Rates 2009/2010	5/11/2009
\$980.90	Kunghur Public Hall	Council Rates 2009/2010	5/11/2009
\$1,587.80	Uki School of Arts	Council Rates 2009/2010	5/11/2009
\$1,551.00	Burringbar School of Arts	Council Rates 2009/2010	5/11/2009
\$980.90	Stokers Siding Hall	Council Rates 2009/2010	5/11/2009
\$1,910.70	Twin Towns Youth Club	Council Rates 2009/2010	5/11/2009
\$2,435.80	Tweed Coast Community Centre	Council Rates 2009/2010	5/11/2009
\$810.80	Crabbes Creek Hall	Council Rates 2009/2010	5/11/2009
\$1,375.30	Legacy Club of Coolangatta/Tweed Heads	Council Rates 2009/2010	5/11/2009
\$3,871.40	Legacy Club of Coolangatta/Tweed Heads	Council Rates 2009/2010	5/11/2009
\$747.10	The autumn Club	Council Rates 2009/2010	5/11/2009
\$19,078.40			

Tweed Link Advertising			
Amount	Recipient	Donated Item	Date
\$81.00	Various Community Notices	Advertising	13/10/2009
\$56.70	Various Community Notices	Advertising	20/10/2009
\$162.00	Various Community Notices	Advertising	27/10/2009
\$121.50	Various Community Notices	Advertising	03/11/2009
\$67.50	Various Community Notices	Advertising	10/11/2009
\$40.50	Various Community Notices	Advertising	17/11/2009
\$162.00	Various Community Notices	Advertising	24/11/2009
\$148.50	Various Community Notices	Advertising	01/12/2009
\$839.70			

Room Hire			
Amount	Recipient	Donated Item	Date
\$71.00	Northern Rivers Symphony Orchestra	Room Hire - Tweed Heads Civic Centre	07/10/2009
\$101.50	Twin Towns Garden Club	Room Hire - Tweed Heads Civic Centre	12/10/2009
\$101.50	Twin Towns Garden Club	Room Hire - Tweed Heads Civic Centre	09/11/2009
\$180.00	Tweed Heads Hospital Memorial Service	Room Hire - Tweed Heads Civic Centre	19/11/2009
\$360.00	Tweed Heads Hospital Volunteers	Room Hire - Tweed Heads Civic Centre	11/12/2009
\$85.00	Christmas Day Needy Lunch	Room Hire - Tweed Heads Civic Centre	24/12/2009
\$360.00	Christmas Day Needy Lunch	Room Hire - Tweed Heads Civic Centre	25/12/2009
\$29.00	Twin Towns Friends	Room Hire - South Tweed HACC	14/10/2009
\$29.00	Twin Towns Friends	Room Hire - South Tweed HACC	11/11/2009
\$29.00	Twin Towns Friends	Room Hire - South Tweed HACC	09/12/2009
\$86.00	Red Cross	Hall Hire - South Tweed Heads Community Hall	16/12/2009
\$82.00	Tweed Heads Hospital Auxiliary	Room Hire - Tweed Heads Meeting Room	05/10/2009
\$82.00	Tweed Heads Hospital Auxiliary	Room Hire - Tweed Heads Meeting Room	02/11/2009
\$70.00	Christmas Day Lunch Committee	Room Hire - Tweed Heads Meeting Room	19/11/2009
\$82.00	Tweed Heads Hospital Auxiliary	Room Hire - Tweed Heads Meeting Room	07/12/2009
\$1,748.00			
\$22,962.41	Total Donations 2nd Quarter		

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.

45 [TCS-CM] Monthly Investment Report for Period Ending 28 February 2010

ORIGIN:

Financial Services

SUMMARY OF REPORT:

The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Cl. 212 of the Local Government (General) Regulations and Council policies.

Council had \$123,449,770 invested as at 28 February 2010 and the accrued net return on these funds was \$438,209 or 4.26% annualised for the month.

RECOMMENDATION:

That in accordance with Section 625 of the Local Government Act 1993 the monthly investment report as at 28 February 2010 totalling \$123,449,770 be received and noted.

REPORT:

Report for Period Ending 28 February 2010

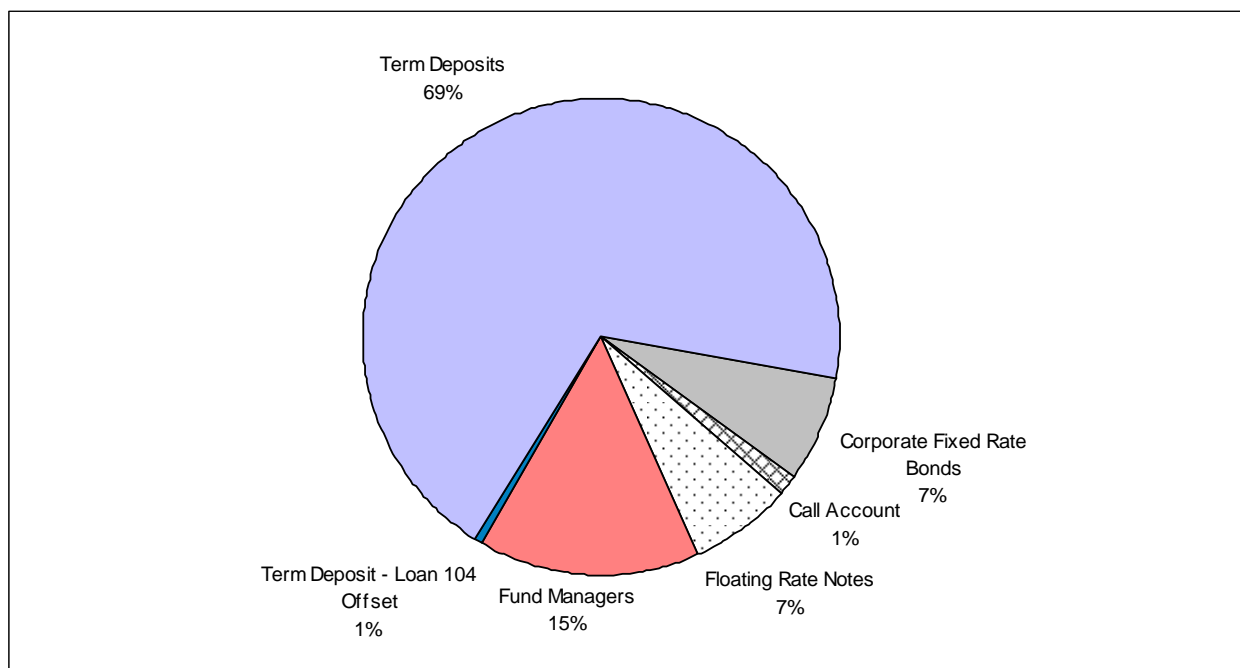
The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies.

1. RESTRICTED FUNDS AS AT 1 JULY 2009

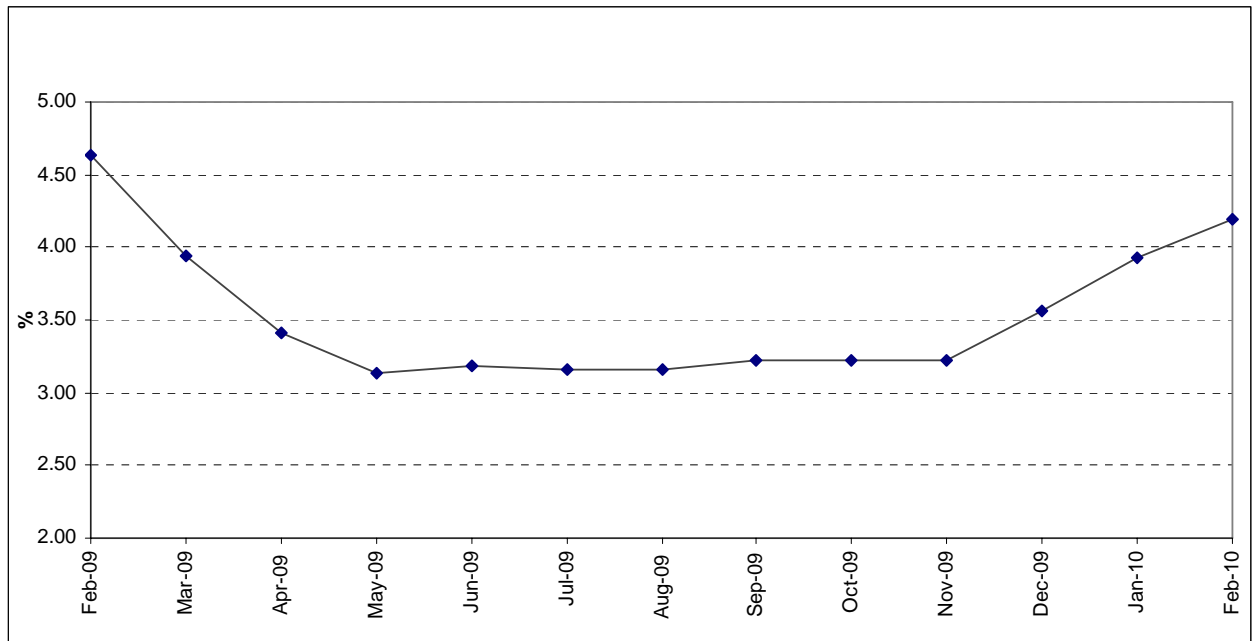
Description	(\$'000)			
	General Fund	Water Fund	Sewer Fund	Total
Externally Restricted	15,427	13,980	14,908	44,315
Crown Caravan Parks	10,145			10,145
Developer Contributions	29,762	19,327		49,089
Domestic Waste Management	8,035			8,035
Grants	3,794			3,794
Internally Restricted	13,816			13,816
Employee Leave Entitlements	1,685			1,685
Grants	2,535			2,535
Unexpended Loans	5,889			5,889
Total	91,088	33,307	14,908	139,303

Note: Restricted Funds Summary next update September 2010

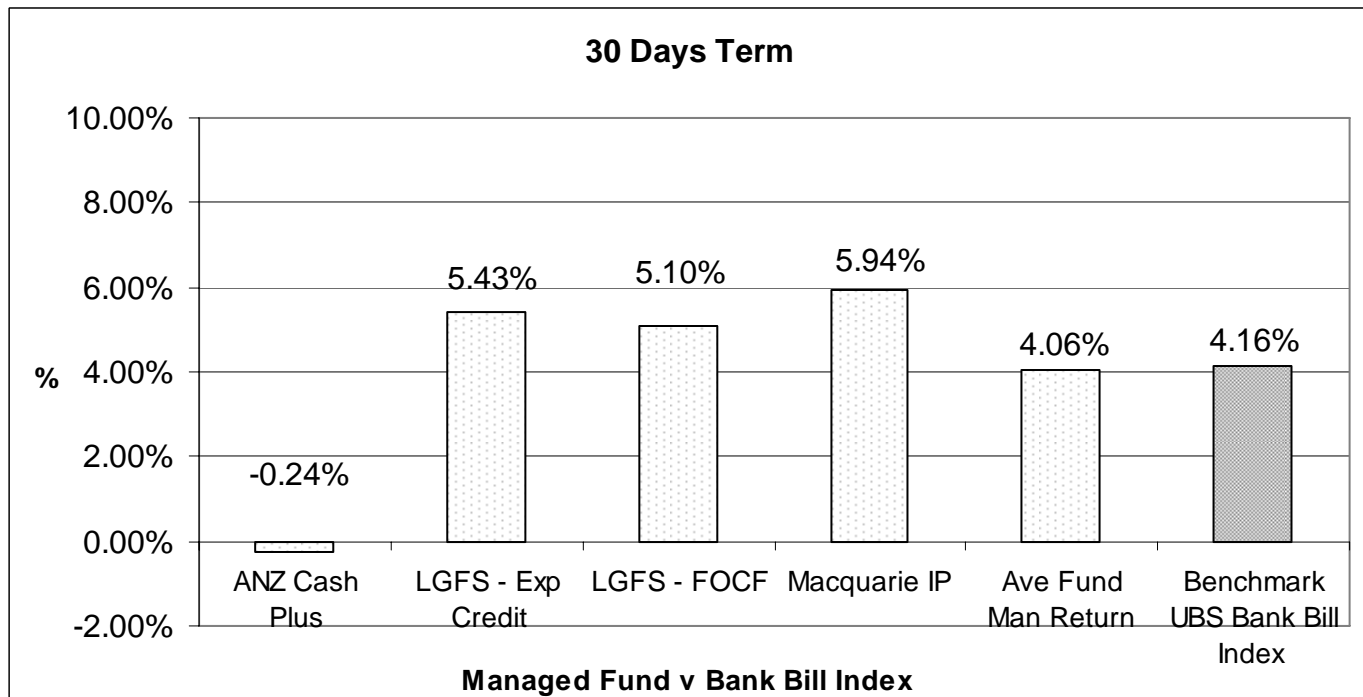
2. CURRENT INVESTMENT PORTFOLIO BY CATEGORY



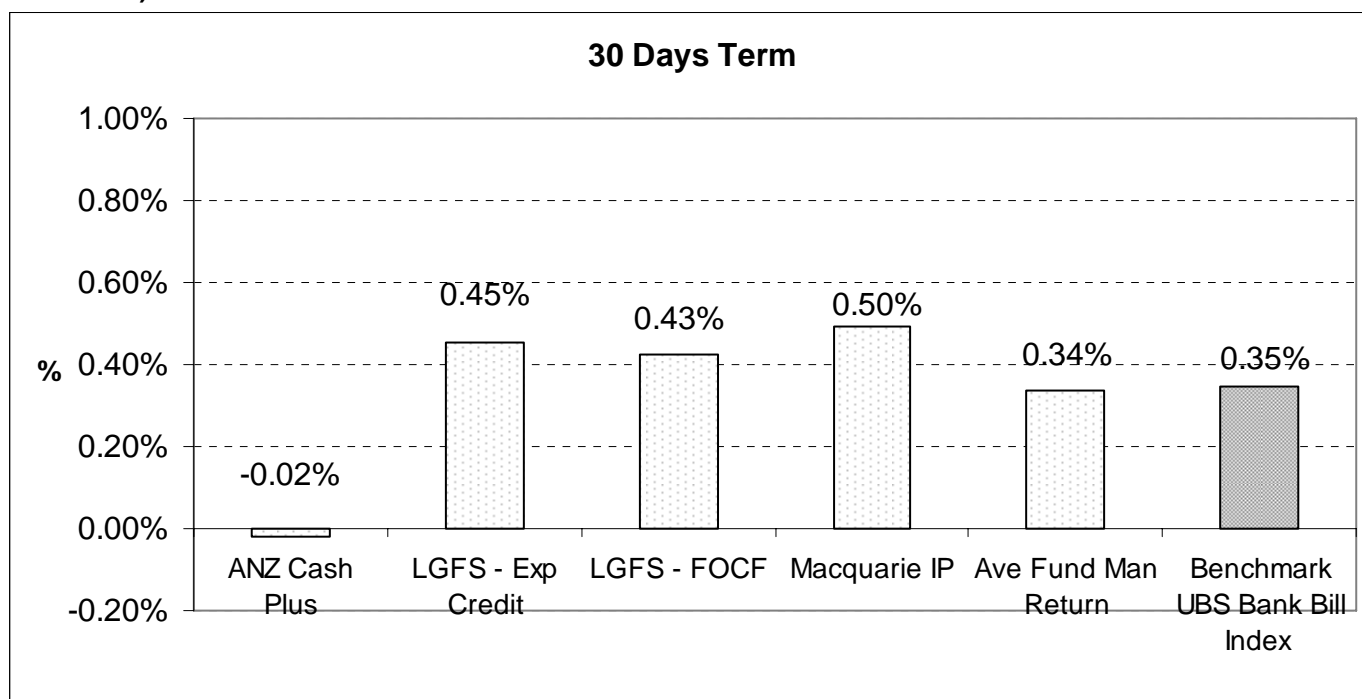
3. INVESTMENT RATES - 90 DAY BANK BILL RATE (%)



4. FUNDS MANAGERS PERFORMANCE FOR MONTH - NET OF FEES (ANNUALISED)



5. FUNDS MANAGERS PERFORMANCE FOR MONTH - NET OF FEES AND CAPITAL VALUE CHANGES (NOT ANNUALISED)



6. FUND MANAGERS - DETAILED INFORMATION

Fund	Credit Rating	Percentage of Total Fund Managers Current Month	Fund Managers Balance end of Previous month	Fund Managers Balance end of Current month	Distribution for Month/Quarter	Coupon Paid
ANZ Cash Plus	AA	3.00%	\$731,237	\$548,884	\$0	Monthly
LGFS - Enhanced Cash	n/a	31.27%	\$5,697,795	\$5,720,962	\$1,743	Monthly
LGFS - FOCF	AA-	35.71%	\$6,508,943	\$6,533,808	\$0	Quarterly
Macquarie IP	A	30.02%	\$11,466,553	\$5,491,762	\$0	Quarterly
Total		100%	\$24,404,528	\$18,295,417	\$1,743	

Redemptions were made during the month from Macquarie IP and ANZ Cash Plus.

7. DIRECT SECURITIES

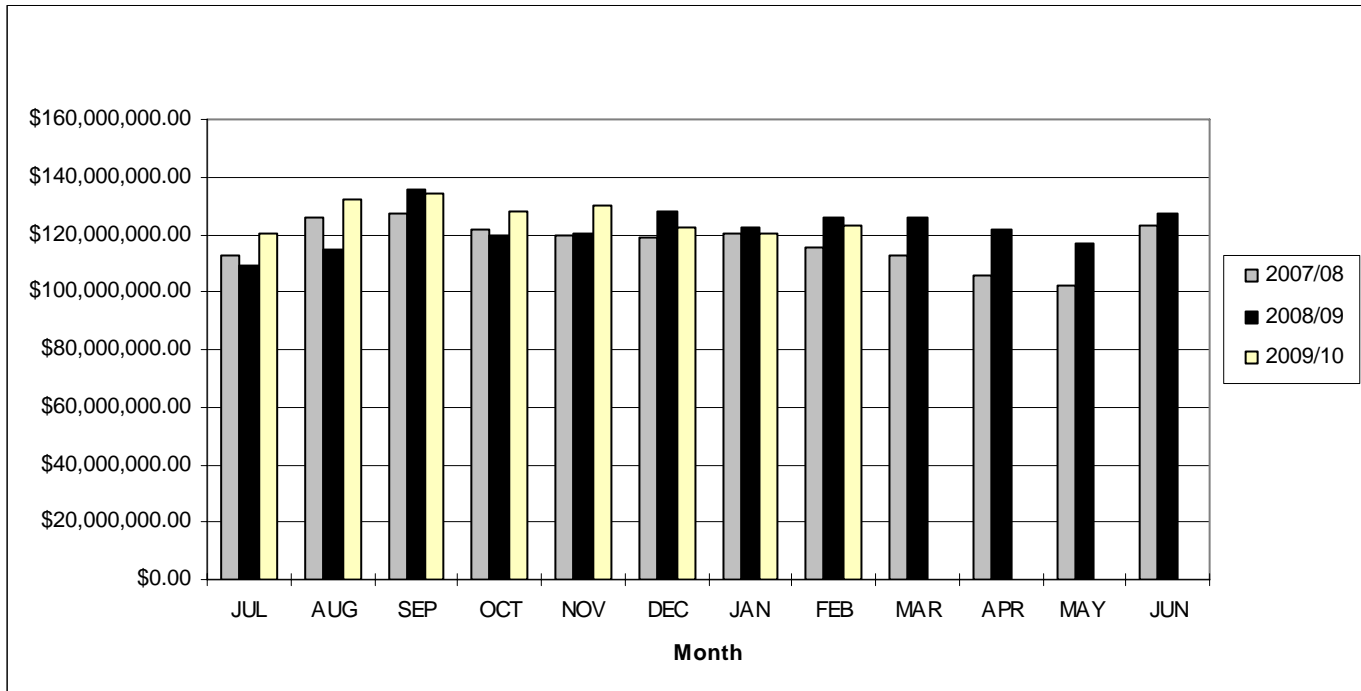
Investment Type	Final Maturity	Counterparty/ Product Name	Face Value	Market Value	% Return on Face Value	Credit Rating
Bond	08/11/2011	ANZ	1,000,000.00	1,040,380.00	5.15	AA
Bond	22/04/2013	ANZ	1,000,000.00	1,099,850.00	8.65	AA
FRN	17/08/2010	ANZ	1,000,000.00	990,938.00	4.26	AA
Bond	02/12/2010	Bank of Queensland	1,500,000.00	1,519,275.00	5.55	BBB+
Bond	02/12/2010	Bank of Queensland	1,000,000.00	1,012,850.00	6.00	BBB+
FRN	20/07/2010	CBA	1,000,000.00	1,004,838.09	4.47	AA
FRN	21/01/2011	CBA	1,000,000.00	1,005,738.56	4.66	AA
FRN	17/04/2012	CBA	1,000,000.00	1,016,546.36	4.41	AA
FRN	23/11/2012	Deutsche Bank	1,000,000.00	862,785.00	4.92	A+
FRN	24/01/2011	Macquarie/HSBC	2,000,000.00	1,976,537.59	4.83	A
FRN	08/03/2012	Members Equity	2,000,000.00	1,923,920.00	5.14	BBB-
Bond	22/01/2018	CBA Zero Coupon Bond	2,000,000.00	2,200,000.00	7.28	AA
Bond	24/09/2012	Westpac	1,000,000.00	1,065,910.00	4.90	AA
Bond	24/09/2012	Westpac	1,000,000.00	1,065,910.00	5.15	AA
ABS = Asset Backed Security		Total	17,500,000.00	17,785,478.60	5.38	
Bond = Fixed Rate Bond						
CDO = Collateralised Debt Obligation						
FRN = Floating Rate Note						

8. TERM DEPOSITS

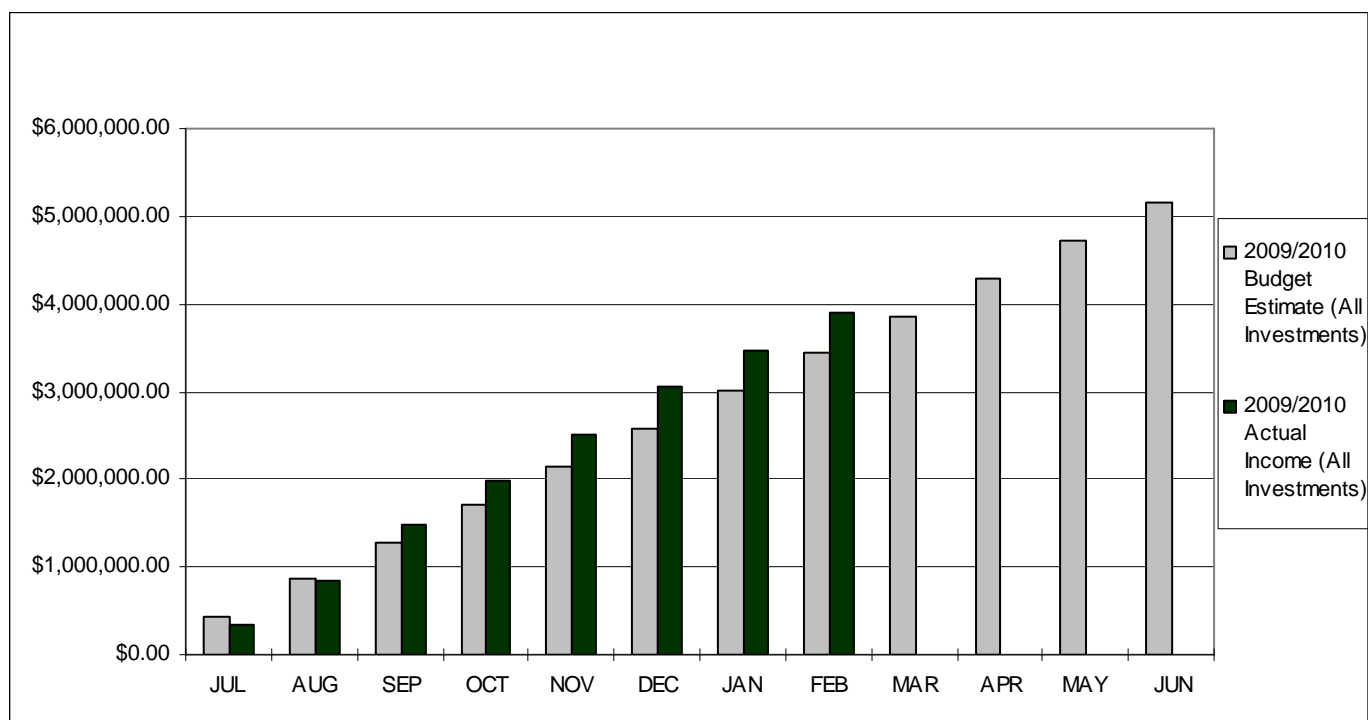
TERM DEPOSITS SORTED BY MATURITY AS AT 28/02/10						
Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield	INCOME RECEIVABLE
30-Nov-09	01-Mar-10	LGFS	5,000,000.00	730	5.030	503,000.00
02-Dec-09	02-Mar-10	IMB	1,000,000.00	90	5.400	13,315.07
01-Sep-09	03-Mar-10	NAB	4,000,000.00	183	4.930	98,870.14
10-Sep-09	09-Mar-10	NAB	2,000,000.00	180	4.910	48,427.40
17-Nov-09	16-Mar-10	Adelaide Bendigo Bank	2,000,000.00	119	5.400	35,210.96
21-Dec-09	22-Mar-10	LGFS	1,000,000.00	24	4.820	3,169.32
25-Nov-09	25-Mar-10	Police CU Ltd SA	1,000,000.00	118	5.400	17,457.53
05-Jan-10	06-Apr-10	Police & Nurses Credit Society Ltd	1,000,000.00	91	6.000	14,958.90
12-Jan-10	12-Apr-10	LGFS	2,000,000.00	90	4.890	24,115.07
11-Jan-10	13-Apr-10	Savings & Loans Credit Union	1,000,000.00	92	6.200	15,627.40
14-Jan-10	13-Apr-10	SGE Cr Union	1,000,000.00	89	6.100	14,873.97
28-Oct-09	28-Apr-10	CBA	868,875.00	182	4.505	19,517.79
18-Feb-10	18-May-10	IMB	1,000,000.00	89	5.377	13,110.31
25-Feb-10	18-May-10	QLD Police CU	1,000,000.00	82	5.920	13,299.73
27-May-09	27-May-10	ANZ	2,000,000.00	365	4.450	89,000.00
19-Feb-10	15-Jun-10	QLD Country CU	1,000,000.00	116	6.000	19,068.49
09-Feb-10	15-Jun-10	Suncorp Metway	2,000,000.00	126	6.050	41,769.86
17-Feb-10	22-Jun-10	CUA	1,000,000.00	125	5.940	20,342.47
19-Feb-10	22-Jun-10	New England CU	1,000,000.00	123	6.000	20,219.18
03-Feb-10	05-Jul-10	Westpac Bank	3,000,000.00	152	6.600	82,454.79
11-Jan-10	13-Jul-10	Westpac Bank	2,000,000.00	183	6.600	66,180.82
12-Jan-10	20-Jul-10	Bank of QLD	2,000,000.00	189	6.400	66,279.45
16-Sep-09	20-Jul-10	Suncorp Metway	2,000,000.00	307	5.200	87,473.97
16-Sep-09	20-Jul-10	Suncorp Metway	2,000,000.00	307	5.200	87,473.97
03-Feb-10	03-Aug-10	Suncorp Metway	3,000,000.00	181	6.500	96,698.63
17-Feb-10	03-Aug-10	Westpac Bank	3,000,000.00	167	6.600	90,591.78
21-Aug-09	24-Aug-10	Bank of QLD	2,000,000.00	368	5.300	106,871.23
01-Sep-09	01-Sep-10	NAB	4,000,000.00	365	5.530	221,200.00
11-Feb-10	07-Sep-10	Citibank	1,000,000.00	208	6.280	35,787.40
10-Dec-09	14-Sep-10	Westpac Bank	1,000,000.00	278	6.750	51,410.96
19-Jan-10	21-Sep-10	Westpac Bank	2,000,000.00	245	6.630	89,005.48
07-Oct-09	05-Oct-10	Suncorp Metway	1,000,000.00	363	6.010	59,770.68
05-Nov-09	05-Oct-10	Westpac Bank	2,000,000.00	334	6.260	114,566.58
09-Feb-10	12-Oct-10	Westpac Bank	2,000,000.00	245	6.800	91,287.67
20-Oct-09	19-Oct-10	Bank of QLD	1,000,000.00	364	6.050	60,334.25
20-Oct-09	19-Oct-10	Bankwest	1,000,000.00	364	6.000	59,835.62
17-Feb-10	26-Oct-10	Westpac Bank	2,000,000.00	251	6.760	92,973.15
23-Feb-10	09-Nov-10	Bank of QLD	2,000,000.00	259	6.300	89,408.22
01-Dec-09	07-Dec-10	Westpac Bank	2,000,000.00	370	6.800	137,863.01
10-Dec-09	14-Dec-10	NAB	1,000,000.00	369	6.650	67,228.77
03-Dec-09	14-Dec-10	Westpac Bank	1,000,000.00	376	7.050	72,624.66
05-Jan-10	21-Dec-10	Suncorp Metway	1,000,000.00	350	6.900	66,164.38
16-Dec-09	21-Dec-10	Westpac Bank	1,000,000.00	370	7.000	70,958.90

17-Feb-09	16-Feb-11	Elders Rural Bank	1,000,000.00	729	4.620	92,273.42
17-Feb-09	17-Feb-11	Adelaide Bendigo Bank	2,000,000.00	730	4.700	188,000.00
02-Apr-08	01-Apr-11	Suncorp Metway	3,000,000.00	1095	8.300	747,000.00
12-Nov-08	11-Nov-11	Suncorp Metway	4,000,000.00	1094	6.880	824,846.03
12-Nov-08	16-Nov-11	Investec Bank	1,000,000.00	1099	6.880	207,153.97
			85,868,875.00	5.976		

9. MONTHLY COMPARISON OF TOTAL FUNDS INVESTED

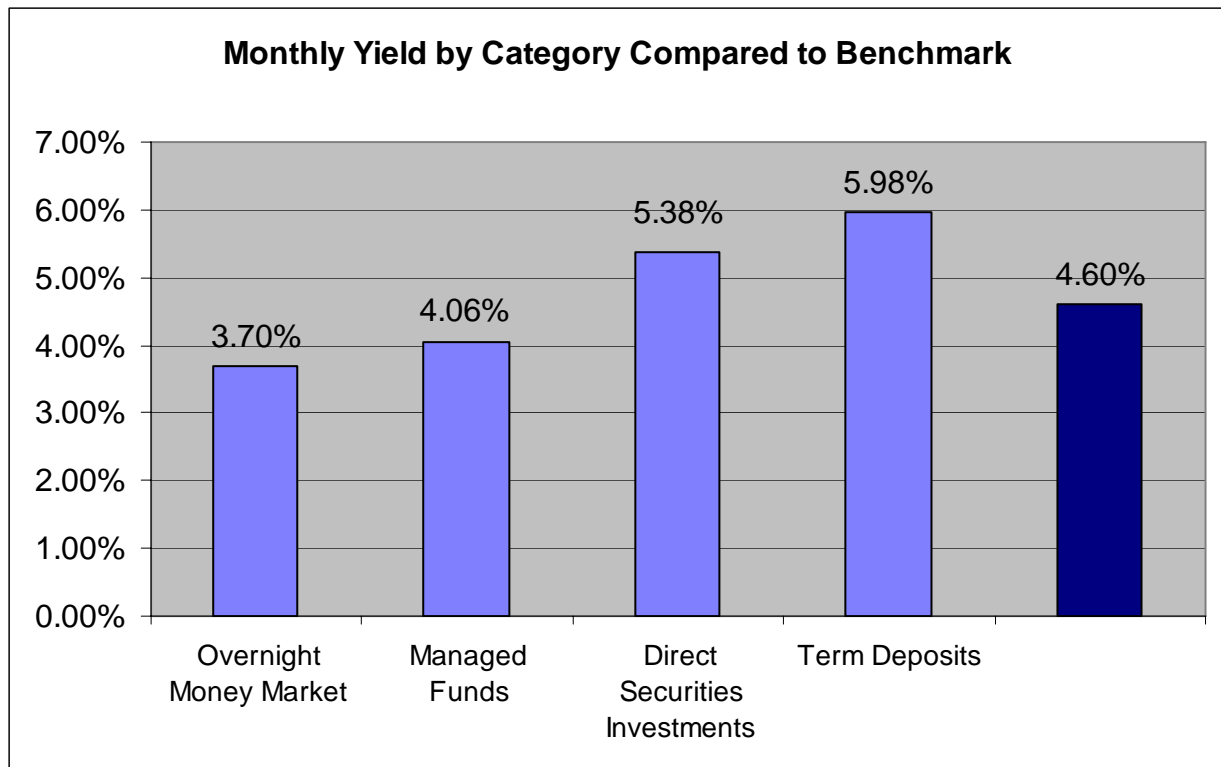


10. TOTAL PORTFOLIO INCOME YEAR TO DATE



11. PERFORMANCE BY CATEGORY

Category	Face Value	Market Value	Average Yield	Above/(Below) 30 day BBSW Benchmark
Overnight Money Market	\$1,500,000.00	\$1,500,000.00	3.70%	-0.90%
Managed Funds	\$18,295,416.78	\$18,295,416.78	4.06%	-0.54%
Direct Securities Investments	\$19,500,000.00	\$17,785,478.60	5.38%	0.78%
Term Deposits	\$76,868,875.00	\$85,868,875.00	5.98%	1.38%
	\$116,164,291.78	\$123,449,770.38	4.60%	Benchmark 30 Day UBS Bank Bill Index



12. SECTION 94 DEVELOPER CONTRIBUTIONS - MONTHLY BALANCES REPORT PERIOD ENDING 28 FEBRUARY 2010

Contribution Plan		End of month Balance	Contributions received this month
	Plan Description		
01			
	DCP3 Open Space	-3,674,190.63	
02	Western Drainage	-454,595.30	
03	DCP3 Community Facilities	-33,036.60	
04	TRCP	-11,549,188.25	-257,404.00
05	O/Space	-1,305,267.61	-24,431.00
06			
	Contribution Street Trees	-180,924.88	
07	West K'Cliff	-811,157.17	
10	Cobaki Lakes	161.33	
11	Libraries	-1,530,462.48	-17,137.00
12	Bus Shelters	-25,071.16	-666.00
13	Cemeteries	-6,780.67	-3,360.00
14	Mebbin Springs	-68,391.18	
15			
	Community Facilities	-1,233,796.13	-1,152.00
16	Surf Lifesaving	-398,584.08	
18	Council Admin - Tech Support	-1,639,493.69	-11,056.22
19	Kings Beach	-1,043,015.30	
20	Seabreeze Estate	-570.56	
22			
	Shirewide Cycleways	-456,605.85	-4,071.00
23			
	Shirewide Carparking	-1,759,078.92	-31,814.00
25	Salt Development	-772,797.29	
26			
	Plan 26 Shirewide Open Space	-3,904,660.24	-69,563.50
27			
	Tweed Hds Masterplan & Streetscaping	-76,271.18	
28	Seaside City	640.07	
91	DCP14	-81,846.11	
92	Public Reserve Contributions	-102,895.62	
94	Terranora Village Footpath	113,949.00	
95	Bilambil Heights	-490,121.25	
96	Community Fac Shire Wide	-68,156.40	
98			
	Marana Park Roundabout	0.00	
Total		-31,552,208.15	-420,654.72

13. ECONOMIC COMMENTARY

Global Economy

The US economy expanded by more than expected with Q4 2009 GDP revised from 5.7% to 5.9% annual pace. This was due to a boost in business investment.

Unemployment in the US fell to 9.7%. There was weakness in construction but job growth in manufacturing.

The US Federal Reserve Bank kept the cash rate at 0 to 0.25% in February. The discount rate increased by 0.25% to 0.75%. The discount rate is the rate at which the banks can borrow overnight from the Federal Reserve.

CPI in China was 1.5% in January. Exports surged 21% and imports jumped 85.5% in January.

China will maintain an appropriate monetary stance and a proactive fiscal policy as it seeks to counter the lingering impact of international credit crunch. China will target 8% growth in GDP and an inflation rate of about 3%.

Domestic Economy

The Reserve Bank of Australia (RBA) increased the cash rate to 4.00% on 2 March, noting "global financial markets are functioning much better than they were one year ago and the extraordinary support from governments and central banks are gradually being wound back. Credit conditions remain difficult in some major countries as banks continue to face loan losses associated with the period of economic weakness. Concerns regarding some sovereigns (Greece) remain elevated."

In Australia, economic conditions in 2009 were stronger than expected, after a mild downturn a year ago. The rate of unemployment appears to have peaked at a much lower level than earlier expected. Labour market data and a range of business surveys suggest growth in the economy may have already been close to trend for a few months. There are some signs that the process of business sector deleveraging is moderating, with the pace of decline in business credit lessening and indications that lenders are starting to become more willing to lend to some borrowers. CPI inflation has risen somewhat as temporary factors that had been holding inflation to unusually levels are now abating. Inflation is expected to be consistent with the 2% to 3% target in 2010.

Council's Investment Portfolio Performance

The ANZ Cash Plus Fund has been closed to new deposits and redemptions since November 2008 and is in the processing of being wound up. The current exit fee of approximately 1% of the amount redeemed is viewed as favourable compared with exit fees during the past year ranging between 5% and 12%. During January Council withdrew the maximum amount (\$182,000) possible from the ANZ Cash Plus Fund. Council has approximately \$552,000 remaining in the Fund. As funds are progressively withdrawn they will be diverted to higher yielding term deposits.

Most investment categories out-performed the UBS 30 day bank bill benchmark this month. Overall, the investment portfolio has returned 2.00% pa above the 30 day UBS bank bill index for the last 12 month period.

An indication of Portfolio performance is provided by totalling investment income for the month and disregarding changes in capital values. Council had \$123,449,770 invested as at 28 February, 2010 and the accrued net return on these funds was \$438,209 or 4.26% annualised for the month.

14. INVESTMENT SUMMARY AS AT 31 DECEMBER 2009

GENERAL FUND

COLLATERISED DEBT OBLIGATIONS	0.00	
COMMERCIAL PAPER	0.00	
CORPORATE FIXED RATE BONDS	9,004,175.00	
FLOATING RATE NOTES	\$8,781,303.60	
ASSET BACKED SECURITIES FUND MANAGERS	0.00	
	3,817,752.38	
TERM DEPOSIT - LOAN 104 OFFSET	868,875.00	
TERM DEPOSITS	47,000,000.00	
CALL ACCOUNT	1,500,000.00	70,972,105.98

WATER FUND

TERM DEPOSITS FUND MANAGERS	24,000,000.00	
	11,735,127.71	35,735,127.71

SEWERAGE FUND

TERM DEPOSITS FUND MANAGERS	14,000,000.00	
	2,742,536.68	16,742,536.68

TOTAL INVESTMENTS	123,449,770.37
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It should be noted that the General Fund investments of **\$70 million** are not available to be used for general purpose expenditure. It is virtually all restricted by legislation and council resolution for such purposes as unexpended loans, developer contributions, unexpended grants and various specific purpose reserves such as domestic waste, land development and employee leave entitlements.

All Water and Sewerage Fund investments can only be expended in accordance with Government regulation and Council resolution.

Statutory Statement - Local Government (General) Regulation 2005 Clause 212

I certify that Council's investments have been made in accordance with the Local Government Act 1993, the Local Government (General) Regulations and Council's investment policies.



**Chief Financial Officer
(Responsible Accounting Officer)**

46 [TCS-CM] Code of Conduct - Complaint against Cr K Milne

ORIGIN:

Director

SUMMARY OF REPORT:

A Code of Conduct complaint from a local resident against Cr Milne was referred to a Conduct Review Committee for determination in accordance with the relevant sections of the Code of Conduct and the Conduct Review Committee/Sole Reviewer Policy.

RECOMMENDATION:

That Council receives and notes the report and findings of the Conduct Review Committee into the complaint against Cr Katie Milne and determines any appropriate actions in accordance with the Conduct Review Committee recommendations.

REPORT:

On 31 December 2009, Council received a complaint dated 29 December 2009 from Ms Barbara Fitzgibbon lodged against Cr Milne.

The nature of the complaint was two fold:

1. It was alleged that Cr Milne's conduct where she appeared as Applicant Katie Milne in her attempt to stop the Repco Car Rally in the Federal Court is of the same nature as that identified and condemned by the Daly Inquiry during investigations into political donations at the local level – ie. conduct where personal interests and Tweed Shire councillor responsibilities have been allowed to collide and official standards of conduct knowingly disregarded.
2. Advertisements and media statements by the No Rally Group have advised that donations can be sent to Cr Milne at Tweed Shire Council's PO Box. It is alleged that any donation paid to Cr Milne, or to any entity created to bank monies to be used to pay Cr Milne's court costs, can be seen to be an action that is affording Cr Milne a personal benefit of value and that this has the potential to create the perception that Cr Milne's voting patterns could be seen to be directly linked with this.

The complaint was referred to a Conduct Review Committee comprising Ms Maryann Andersen, Mr David Gibson and Mr Glen Ratjens to investigate the complaint.

The Conduct Review Committee (CRC) has made the following recommendations:

- "1. The CRC recommends that Council censure Cr Milne for her conduct which we have found has breached sections 8.3(b), 8.3(e) and 8.4 of the Code.*
- 2. The CRC recommends that Council request the Office (Division) of Local Government clarify the provisions of Section 8.3 of the Model Code of Conduct.*
- 3. The CRC recommends that Council review the Conduct Review Committee/Reviewer Operating Guidelines in the Code (Section 14) to give more clarity to the procedures, the role of the support person and the confidentiality agreement as a matter of urgency."*

A complete copy of the Conduct Review Committee report received on 9 March 2010 is reproduced below:

TWEED SHIRE COUNCIL

**Report and Findings
of the
Conduct Review Committee
into
complaints against Cr Katie Milne**

6 March 2010

TWEED SHIRE COUNCIL

Report and Findings of the Conduct Review Committee into complaints against Cr Katie Milne

1. The Complaints

- 1.1 In a letter dated 29 December 2009 Ms Barbara Fitzgibbon lodged complaints against Cr Katie Milne which can be summarised as follows:
 - 1.1.1 Cr Milne used her position as a councillor in the Federal Court case she initiated to stop the World Rally
 - 1.1.2 Cr Milne used or allowed to be used her position as a councillor in the campaign to raise funds to pay the legal costs awarded against her
 - 1.1.3 Cr Milne used or allowed to be used her council address to receive funds
 - 1.1.4 Cr Milne sought or accepted money or other benefits of more than a token value.
- 1.2 Ms Fitzgibbon likened the situation to that covered by the Public Inquiry into Tweed Shire Council by Emeritus Professor Maurice Daly (Daly Inquiry) where councillors who received political donations in their election campaigns voted in a manner favouring the funding agent.
- 1.3 Ms Fitzgibbon alleged that the conduct subject of the complaints breached sections 8.2, 8.3(b), 8.3(c), 8.3(d), 8.4, 8.5 and 10.15 of the Code of Conduct (the Code).

2 Code of Conduct

- 2.1 Section 8.2 of the Code defines gifts and benefits as follows:

"Notwithstanding clause 8.1, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel."

2.2 Section 8.3, Gifts and Benefits, of the Code states:

"You must not:

- a) seek or accept a bribe or other improper inducement*
- b) seek gifts or benefits of any kind*
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty*
- d) accept any gift or benefit of more than token value*
- e) accept an offer of money, regardless of the amount."*

2.3 Section 8.4 of the Code states:

"Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical."

2.4 Section 8.5 of the Code states:

"You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council."

2.5 Section 10.15 of the Code states:

"You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body."

3 Appointment of the Conduct Review Committee

- 3.1 The Conduct Review Committee (CRC) constituted of Maryann Andersen, David Gibson and Glen Ratjens was appointed by way of email from Mr Troy Green, Council's Director, Technology & Corporate Services, dated 12 January 2010. The General Manager had delegated his responsibilities under the Code to Mr Green in this particular matter.

4 Proceedings

4.1 On 13 January the CRC assessed the complaint against the Complaint Assessment Criteria in section 13.1 of the Code as follows:

- a) *“whether there is any prima facie evidence of a breach of the code of conduct”*

There is prima facie evidence of breaches of sections 8.3, 8.8, 10.12 and 10.15 of the Code.

- b) *“whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager”*

Based on the information available, yes.

- c) *“whether the complaint is trivial, frivolous, vexatious or not made in good faith”*

No.

- d) *“whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct”*

Yes, the complaint could reasonably constitute a breach of the code of conduct.

- e) *“whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police”*

Based on the information available, no.

- f) *“whether there is an alternative and satisfactory means of redress”*

No alternative means of redress is apparent.

- g) *“how much time has elapsed since the events the subject of the complaint took place”*

Events subject of the complaint commenced with the injunction by Ms Katie Milne to stop the world rally in August 2009, and the fundraising advertisements and events continued up to the lodgement of the complaint.

h) *"how serious the complaint is and the significance it has for council"*

The complaint is potentially very serious.

i) *"whether the complaint is one of a series indicating a pattern of conduct."*

No.

4.2 As a result of the initial assessment, the CRC initially set 21 and 22 January 2010 to meet and enquire into the complaint. On 14 January 2010 Council advised Cr Milne of the substance of the complaints, meeting dates and advising that a copy of the complaint would be provided on receipt of a signed confidentiality undertaking.

4.3 On 19 January 2010 Cr Milne advised that the dates were "not possible". Consequently the CRC set 1 and 2 February 2010 to enquire into the complaint. Cr Milne was informed of the new dates on 19 January 2010.

4.4 On 22 January Cr Milne advised that she was still finding it difficult to find a support person and asked for the matter to be postponed by a "week or two". She also advised that she wished to provide the CRC with a written submission prior to the meeting date.

4.5 On 25 January 2010 Cr Milne was advised that the CRC agreed to postpone the meeting until 8 and 9 February 2010.

4.6 The CRC received a written submission from Cr Milne dated 3 February 2010. The CRC responded to procedural aspects raised by Cr Milne on 4 February 2010 advising that its function was to investigate the events that led to the complaint and determine if there had been a breach of the Code. Cr Milne was also advised that the confidentiality undertaking related only to information that she (or other participants) became aware of during the course of the enquiry and that it was open to anyone to make reasonable comment on the CRC's report when this is made public. The confidentiality agreement was included and Cr Milne was advised that a copy of the complaint would be made available on receipt of the signed agreement.

- 4.7 On 8 February the CRC convened at the Tweed Heads Civic Centre. David Gibson was elected Chairperson. Ms Barbara Fitzgibbon and Mr Neil Baldwin, Council's Manager Corporate Governance/Public Officer were interviewed. Prior to Mr Baldwin's interview an email was received from Cr Milne with an amended confidentiality agreement. The CRC responded, advising Cr Milne that she was not at liberty to amend the confidentiality agreement. A copy of the complaint, without the complainant's details was made available to her.
- 4.8 On 9 February Cr Milne presented at the Tweed Heads Civic Centre with a support person and an observer. The observer was asked to leave. Cr Milne refused to sign the confidentiality agreement. The interview proceeded with Cr Milne reading from a prepared statement and answering questions from members of the CRC. Cr Milne was asked to submit her statement with any other response she may wish to make by 12 February.

5 Material examined

5.1 Material examined by the CRC included:

- Tweed Shire Council Code of Conduct, Conduct Review Committee/ Sole Reviewer Policy
- "Help Stop the Repco Rally" advertisements in The Tweed Shire Echo 10 December and 17 December 2009, and The Murwillumbah Weekly December 20, 2009 - January 2, 2010.
- various press articles
- letter from Council's Manager Corporate Governance/Public Officer to Cr Milne dated 29 December 2009, email response of 8 January 2010 to Mr Neil Baldwin and Mr Baldwin's reply of 11 January 2010
- various other letters and emails between Cr Milne, and Mr Baldwin and Mr Troy Green
- various letters between Mr Green and Mr Baldwin
- various letters between Mr Green and Ms Fitzgibbon
- email from Cr Milne to Weekly News and Tweed Echo dated 8 January 2010
- statement from the Mayor to Council Meeting 19 January 2010

- undated media release by Cr Milne following Mayor's statement
- First and Second Report of the Tweed Shire Council Public Inquiry
- Submission and material provided by Ms Fitzgibbon
- Submission from Cr Milne dated 3 February 2010 and second submission from Cr Milne received 12 February 2010.

6. Analysis of Evidence

- 6.1 In late August 2009 Ms Milne sought an injunction in the Federal Court to stop the World Rally. Tweed Shire Council took no part in the case. The injunction was not granted and costs were awarded against Ms Milne.
- 6.2 On 10 December 2009 an advertisement appeared in The Tweed Shire Echo. The advertisement, "Help Stop the Repco Rally", stated in part "Anti-rally groups standing up for the environment and lifestyle of the Tweed Valley have set a target of \$42,000 for their legal fund, mostly to pay costs ordered against Tweed Shire Councillor Katie Milne". The ad directed money to be paid to the No Rally Group (NRG) or into a CBA account.
- 6.3 A further "Help Stop the Repco Rally" advertisement appeared in The Tweed Shire Echo of 17 December 2009. This advertisement had different wording to the former advertisement stating "Tweed Shire Cllr Katie Milne challenged the Repco Rally in Federal Court. No Rally Group seeks donations to cover her costs". The first payment option was to donate directly to Katie Milne giving her Council address. Other options directed donations to the NRG or to two different CBA accounts.
- 6.4 An advertisement in similar terms to the advertisement that appeared in The Tweed Shire Echo on 17 December 2009, appeared in the Murwillumbah Weekly of December 20, 2009 – January 2, 2010.
- 6.5 On 29 December 2009 Council's Manager Corporate Governance/Public Officer, Mr Neil Baldwin, wrote to Cr Milne expressing concern over the content of advertisements and articles in The Weekly and The Tweed Shire Echo highlighting sections 8.3, 8.8, 10.12 and 10.15 of the Code. He advised that it was Cr Milne's "... responsibility to correct the public record and adhere to the adopted Code of Conduct". He also advised that funds sent to Council's Post Office Box would not

be accepted and would be returned to the sender. Mr Baldwin in his interview with the CRC stated that only letters addressed to the General Manager would be opened by Records. Letters addressed to individual councillors go into the councillor's "pigeon hole" for their attention.

- 6.6 Cr Milne advised Mr Baldwin by email on 8 January 2010 that she had "...taken action to seek advice on these matters and rectify any problems accordingly." She went on "To clarify (apart from the address issue) are you suggesting that:

1. I cannot refer to myself as a councillor, and
2. I cannot receive any fundraising?"

Mr Baldwin responded on 11 January suggesting that it "... may be advisable to seek independent legal advice".

- 6.7 Cr Milne told the CRC that she had not placed the advertisements. On receipt of Council's letter she had rung NRG's Media Officer. She rang The Echo and The Weekly over the Christmas break and left a message on their answering machines. She followed this up with an email dated 8 January 2010 to The Weekly and The Echo which stated:

"The address for Donations to help with the No Rally Fundraiser has been incorrectly advertised as Councillor Katie Milne's address at Council.

"Council has been returning any donations as this action was taken as an individual and not as part of a Council role.

"The address should be No Rally Fundraiser, P.O. 309 Murwillumbah, 2484.

"Please indicate if you wish your donation to be for the legal expenses of the general fund.

"Thank you for all your support and hope to see you at the regent cinema movie fundraiser 20th Jan for "The Age of Stupid"."

- 6.8 The Mayor, Cr Warren Polglase issued a statement at the Council Meeting on 19 January 2010 clarifying that the action taken by Ms Milne in seeking an injunction to stop the Repco World Rally was taken by her in her personal capacity not as a member of Council. The action was not supported or funded by Council. The statement went on:

"I would like to place on public record that this Council does not support or condone the action of Ms Milne in her personal capacity and any reference to her

as a Councillor or use of Council address or resource to support her ongoing campaign is not with Council's sanction." This statement was reported in the Tweed Daily News and the Tweed Shire Echo on 21 January 2010.

- 6.9 Following the Mayor's statement, Cr Milne Issued a media release apologising if it had not been clear that the Court action was taken as a "... private citizen and not as a Councillor." She asked the press to "...please stop referring to me in the future as a Councillor in any of these private matters." She went "It was a genuine mistake that the No Rally Group advertised my Council P.O. Box as one of the addresses for the Fundraiser. The correct address is ... I sincerely apologise for any confusion I may have caused. No abuse of my Councillor position or the PO Box was intended."
- 6.10 When asked what her involvement with the NRG was Cr Milne responded that she has no official involvement with them and is not an executive member. She is on their email list but does not believe she is a member. She has attended some of their meetings and the film fund raiser. Cr Milne told the CRC that she was aware through her email membership that the NRG had plans to raise money to fund her legal costs but these were never finalised and she did not know if she was going to accept the funds.
- 6.11 In her second submission to the CRC received on 12 February 2010, Cr Milne states "...I have not received any donation, either directly or indirectly, in relation to the payment of my court costs from anyone ... I may well consider doing so at some future time. If and when I do, I will consider any potential conflict of interest issues and any relevant requirements for disclosure, as I am required to do under the relevant statutory provisions and the Code."
- 6.12 When asked by the CRC if she had received any money from any individuals or organisations Cr Milne replied in the first instance that Council had sent it back. When asked again she replied that she had been sent money and that she had forwarded it onto the No Rally Group. She believed it was mis-sent. She again stated that she had not ever taken or accepted any money. She added as with any normal mail, wrong post box, you send it on, which is what she believed the General Manager did.

7 Findings

- 7.1 The proceedings in the Federal Court to stop the World Rally were initiated by Ms Milne as an individual not a member of Council. Tweed Shire Council took no part in the proceedings. We find that Cr Milne did not breach the Code of Conduct in relation to the first complaint.
- 7.2 The offending advertisements referring to "Tweed Shire Cllr Katie Milne..." and giving the Council PO address for donations that appeared in the Tweed Shire Echo on 17 December 2009 and Murwillumbah Weekly of December 20, 2009 – January 2, 2010 were placed by the No Rally Group, not Cr Milne. On becoming aware of the issues, Cr Milne attempted to remedy the situation by contacting the papers and the NRG over the Christmas break. This was followed up with an email on 8 January 2010 to the papers and by a media statement which appeared in the press on 28 January 2010¹⁰ apologising for any confusion. We find that Cr Milne did not breach the Code of Conduct in relation to the second and third complaints.
- 7.3 However in relation to Cr Milne's role in the NRG's fund raising to cover the cost incurred by her in the Court case, we find that Cr Milne has breached 8.3(b) of the Code which states:

"You must not ... (b) seek gifts or benefits of any kind".

Cr Milne was aware of the fundraising by the NRG. She knew that the purpose was to pay her court costs and she took an active part in the fund raising (she spoke at the film fundraiser on 20 January 2010).

- 7.4 Section 8.3(e) of the Code states:

"You must not ... (e) accept an offer of money, regardless of the amount".

This section is all encompassing and needs to be interpreted with commonsense. For instance it could refer to a gift of money from parents at Christmas or on your birthday. However that is not the case in this instance. Cr Milne admitted that she had received money following the advertisements and that she had forwarded this on to the NRG. We find that Cr Milne has breached section 8.3(e) of the Code.

- 7.5 Cr Milne likened her actions in forwarding the money she received to Council's actions, which it was not. Council stated that it would return any money received to the sender. Cr Milne forwarded it to the NRG. Section 8.4 of the Code states:

"Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical."

Cr Milne did not return the money to the donor, nor did she disclose it. We find that Cr Milne has breached section 8.4 of the Code.

- 7.6 The complainant likened the situation to that investigated by the Daly Inquiry. Central to the Daly Inquiry were issues surrounding donations from a pro-development group to Council candidates and the expectation that, once elected, the person or group would follow the principles or policies of the funding agent. The circumstances in the current complaint are different to those presented in the Daly Inquiry. The concern of the complainant was that any donation may give rise to an expectation on the part of the donor to vote in a certain manner. Section 8.3(c) of the Code states:

"You must not ... accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty."

Whilst the CRC has not found a breach of this section of the Code, councillors need to exercise care in such cases, and also in cases where issues come before Council involving an organisation with which they are affiliated. Under the Code the onus is on the individual councillor to identify a conflict of interest and take appropriate action (section 7.2).

8 Recommendations

- 8.1 The CRC recommends that Council censure Cr Milne for her conduct which we have found has breached sections 8.3(b), 8.3(e) and 8.4 of the Code.
- 8.2 The CRC recommends that Council request the Office of Local Government clarify the provisions of Section 8.3 of the Model Code of Conduct.
- 8.3 The CRC recommends that Council review the Conduct Review Committee/Reviewer Operating Guidelines in the Code (section14) to give more clarity to the procedures, the role of the support person and the confidentiality agreement as a matter of urgency.



David Gibson

Chairperson

Conduct Review Committee

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If Council were of the mind to adopt the Conduct Review Committees recommendations it will need to do so in accordance with Section 440G of the Local Government Act 1993 reproduced below:

“440G Formal censure of councillor for misbehaviour

- (1) A council may by resolution at a meeting formally censure a councillor for misbehaviour.*
- (2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.*
- (3) A council may pass a formal censure resolution only if it is satisfied that the councillor has misbehaved on one or more occasions.*
- (4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.*
- (5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.”*

Review Panel Fees and costs associated with obtaining legal advice for the Committee will be expended against the allocated budget provisions.

POLICY IMPLICATIONS:

The Conduct Review Committee/Reviewer Operating Guidelines in the Code (Section 14) have been revised and are subject to a further report in this business paper to give more clarity to Sole Reviewers and Panel members on the procedures for conducting an Inquiry, including the role of a Confidentiality Agreement in accordance with the Ombudsman's Guidelines for Conducting Investigations.

The role of the support person has also been clarified, by outlining the function that they are able to provide during the interview process.

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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REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

47 [SUB-CCDAC] Minutes of the Community Cultural Development Advisory Committee meeting held Thursday 4 February 2010

Venue:

Coolamon Cultural Centre

Time:

3.30pm

Present:

Ms Lesley Buckley (Cultural Development Officer), Ms Lesley Mye (Aboriginal Liaison Officer), Mr Michael Lill, Mr Max Boyd AM, Mr Ian Holston, Ms Judith Sutton, Dr Glenda Nalder, Ms Joan Daniels, and Ms Diane Wilder

Apologies:

Mr Gary Corbett (Manager Community and Cultural Services), Ms Barbara Carroll; Cr. Barry Longland and Mr Phil Villiers

Moved: Judith Sutton

Seconded: Joan Daniels

The apology from CAC Chairperson, Cr. Barry Longland was noted. Max Boyd AM was elected to chair the meeting.

Carried unanimously

Minutes of Previous Meeting:

Moved: Joan Daniels

Seconded: Ian Holstein

RESOLVED that the Minutes of the Community Cultural Development Advisory Committee meeting held Tuesday 15 December 2009 be accepted as a true and accurate record of the proceedings of that meeting.

It was noted that the Minutes of the last meeting should be amended to reflect the attendance of the Aboriginal Liaison Officer Ms Lesley Mye, as the name was omitted from those present.

Carried unanimously

Business Arising:

1. Australian Business Arts Foundation AbaF

- CDO tabled the draft Project Plan and Communications Strategy to be presented to the Business Arts Tweed project team at their first meeting on 8 February.
- The Plan has been developed as a draft strategy and a framework for further input from the BAT team
- A budget will be required to manage the 12-month program
- Expenditure will cover cost of a Project Manager, plus event and marketing costs

2. Auditoria Business Plan

- CDO is finalising a Report to the Executive Management Team for Council's consideration
- It was noted that at their last meeting, the Committee recommended to Council an amendment to the Business Plan's Executive Summary to include a statement reflecting the importance of cultural infrastructure. This recommendation was unanimously adopted by Council at its meeting of 19 January 2010.
- The endorsed "statement" will be used in all reports and future publicity in line with the adoption and implementation of the Business Plan.

3. Tweed Auditorium Refurbishment

- CDO advised that further information regarding the breakdown of construction costs has been requested from the Federal Government's Regional and Local Community Infrastructure Committee. This information was lodged at the end of January.

4. Living Libraries Project

- The first session for 2010 of this very successful project will commence at the Coolamon Cultural Centre on the last Friday of February.

5. Public Art

5.1 Cabarita Streetscape Upgrade

- CDO is finalising the Brief for input from the Public Art Advisory Committee.
- Four Public Art opportunities/sites have been identified, these are:

1 Entry Statement – a new Entry Statement is proposed for the southern end of Cabarita.

2 Historical Interpretation– to assist pedestrian movement around alfresco dining areas, a series of 3 interpretative object panels will be commissioned

3. Street Furniture/Seating - innovative, interactive, contemporary, robust while at the same time functional. Primary function is an art object, secondary consideration is seating

4. Sculptural Artwork - designed as a pause point and object of interest and set within a garden bed and seating.

5.2 Fingal Boat Harbour

- Council's Public Art Advisory Committee and Indigenous Public Placemaking Committee met on Tuesday 2 February to discuss concept plans for Fingal Boat Harbour and to assist in the identification of public art opportunities within the upgrade.
- Interactive play equipment has been identified as a possibility
- Lesley Mye and Ian Bentley, TSC Landscape Architect will now consult with the Tweed Byron Local Aboriginal Land Council; Minjungbal Museum and the Aboriginal Advisory Committee to table the concept and gather ideas and stories
- Funds have been allocated from the Federal Government's Regional and Local Community Infrastructure Program

5.3 Toilet Block Mural Designs

- CDO advised that the CCDAC recommendation regarding the request for a program of mural creation on public toilets depicting the flora and fauna of the Tweed to overcome the problem of graffiti was unanimously adopted by Council on the 19 January 2010.

General Discussion

This item raised further discussions on two issues:

Issue 1. Management and maintenance of Public Art assets in the Shire.

- In line with discussions on the cost of maintaining future toilet block murals, Mr Boyd advised that \$12,000 had already been spent this year on the removal of graffiti and that mural design had been seen to assist in deterring graffiti vandalism. The cost of maintaining public art murals in comparison with the current costs of graffiti removal would be far less.
- CDO advised that the annual budget of \$3,000 for Public Art Maintenance in general was unrealistic. This issue has recently been raised by Council's Public Art Advisory Committee who advise that it is critical that a suitable and realistic budget be allocated to properly maintain these assets.
- It was also noted than any increase in the budget should not impact on existing budget lines. The last budget increase for Public Art was sourced from the Tweed River Art Gallery budget and this has obvious repercussions on their annual program.
- The Committee discussed the need for an audit of current costs incurred in line with the management and maintenance of Public Art.

Moved: Michael Lill

Seconded: Dr Glenda Nalder

RECOMMENDATION:

That given the growth of public art assets, the Committee recommends to Council that the current amount of \$3,000 for public art maintenance be doubled, and that the budget for this is not sourced from the existing budgets of other units.

Carried unanimously

Issue 2. Public Art process and the inclusion of Artists in the design process.

- Discussion took place regarding the need to integrate artists in the early stages of concept development for public placemaking and that this principle was clearly outlined in Council's Placemaking and Public Art Policy. In line with the recent proposals tabled at the Public Art Advisory Committee, this principle needs to be reinforced.

6. Heritage Migration Project

- The Project Team are currently working on Stage 1 of the project, which includes: (a) identifying six interviewees (b) potential connecting objects and (c) schedule for the project

- The Project is progressing well with an effective team: Kathryn King (Acting Senior Museum Curator); Lesley Mye; Lesley Buckley; Magali McDuffie, (Filmmaker); Mary Lee Connery, (Historian); Brian & Faye O'Keefe, (Transcribers); Lance Skinner, Lakhmir Singh-Gerwal, Sylvia Singh-Gerwal and Norma Mann.

7. Murwillumbah Theatre Company

- Discussion was held on the ongoing concerns that Murwillumbah Theatre Company have raised with both Council and the media in line with the increased fees and charges and the repercussions of same on their ongoing viability.
- Points raised concerned the value of the performing arts to the local economy and the cultural and social sustainability of our community and the need for Council to foster and support key organisations that have for some time contributed to the cultural vitality of the Tweed.

Moved: Diane Wilder

Seconded: Ian Holson

RECOMMENDATION:

That in light of the contribution that the Murwillumbah Theatre Company makes to the community, the Cultural Advisory Committee recommends that Council reconsiders its decision to retain the newly set fees and charges, which inevitably will have a very adverse impact on the survival of Murwillumbah Theatre Company. Further that Council consider accepting the reduced figure that the theatre company is prepared to pay for rehearsals for an interim period of one-year.

8. Arts NSW State-wide audit of publicly owned cultural facilities

- CDO, Acting Senior Museum Curator and Tweed River Art Gallery Director have recently completed an audit for the State Government on all TSC cultural infrastructure. CDO was contacted by the audit consultants, Positive Solutions, thanking TSC for providing a very thorough response.

9. Seed Funding

- CDO advised the Committee that the recommendation to Council from their meeting on 5 November 2009 that the Cultural Seed Fund be maintained was adopted by council on 15 December 2009
- CDO advised that there was currently \$1,113 left in the Cultural Seed Fund budget deliberations

Request for Seed Funding

A request for Cultural Seed Funding has been received from the Unity Festival Committee in partnership with Murwillumbah Community Centre and the Northern Rivers Community Legal Centre. Three multicultural networking events are planned for March, June and September of this year.

The networking events aim to build on the relationships fostered by the first Unity Festival held in November 2009 and to promote further opportunities for information sharing in a social context.

Moved: Michael Lill

Seconded: Ian Holston

RESOLVED that the Committee approve the Unity Festival's request of \$500 to support these networking activities.

Carried unanimously

General Business:

1. 2010-2011 Budget Review

CDO tabled the results from the cultural sector planning and a list of priority projects that have been identified by the various sectors, and put forward a proposed budget for these items in order to implement these projects in the 2010 - 2011 financial year. The Committee endorsed the proposed budget.

Moved: Ian Holston

Seconded: Joan Daniels

RECOMMENDATION:

That Council includes these budget items in the 2010 – 2011 Budget.

2. Arts Northern Rivers – Service Agreement

CDO advised that Gary Corbett (MCCS) and David Oxenham (DCNR) are to meet with Lois Randal, (RADO) to discuss the Service Agreement.

2. Community Services Coordinator

CDO advised that the CSC position had recently been advertised and that Cultural Development would sit under the umbrella of new supervisor.

3. Aboriginal Liaison Officers Report

Lesley Mye advised the Committee that the Catch and Cook Project in January 2010 was an outstanding success and the feedback on the project has been extremely positive.

The activity was held with the aim to engage and educate young people in fishing, safe boating, legal requirements when boating and fishing, interaction with Elders and community members in appropriate cultural activities. Partnerships were formed between Tweed Shire Council, NSW Police and Koori Communications, with assistance further provided by St. Josephs Youth Service, Murwillumbah Community Centre, Tweed Byron Local Aboriginal Land Council, NSW Saltwater Recreational Fishing Trust (NSW Department of Primary Industries).

Over the five days of the project, a total of 179 young people, 20 elders, and 65 community members attended with a program of activities to build rapport and trust and provided an opportunity to find their own identity, goals and realise their importance in the community.

The Committee congratulated Lesley on the outstanding success of the project.

Next Meeting:

The next meeting of the Community Cultural Development Advisory Committee will be held on Thursday 4 March 2010.

The meeting closed at 6.15pm.

EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

Item 1 - Management and Maintenance of Public Art Assets in the Shire
If an increased budget for Public Art Maintenance is to be considered by Council it needs to include consideration of all sources of funding and not exclude the Unit for which the request will benefit.

Item 7 - Murwillumbah Theatre Company
Recommendation requires clarification to accord with Council's Fees and Charges.

Item 9 - Seed Funding
The Committee has resolved to contribute \$500 for supporting networking activities for the Unity Festival. This resolution will require the approval of Council.

EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

Item 1 - Management and Maintenance of Public Art Assets in the Shire
That given the growth of Public Art Assets, the Committee recommends to Council for it to consider in its next budget a doubling of the current amount of \$3,000 for public art maintenance.

Item 7 - Murwillumbah Theatre Company
That:-

1. In light of the contribution that the Murwillumbah Theatre Company makes to the community, the Cultural Advisory Committee recommends that Council reconsiders its decision to retain the newly set fees and charges, which inevitably will have a very adverse impact on the survival of Murwillumbah Theatre Company.
2. Negotiations occur with the Murwillumbah Theatre Company in relation to suitable fees payable for rehearsals for an interim period of one (1) year.

Item 9 - Seed Funding
That Council approves the donation of \$500 to the Unity Festival Committee for the multi cultural networking events in March, June and September 2010.

48 [SUB-AAC] Minutes of the Tweed Shire Council Aboriginal Advisory committee Meeting held Friday 5 February 2010

Venue:

Minjungbal Museum, Kirkwood Road Tweed Heads South 2486

Time:

9am

Present:

Councillor Holdom (Tweed Shire Council), David Oxenham (Tweed Shire Council), Gary Corbett (Tweed Shire Council), Garth Lena (Minjungbal Museum), Jackie McDonald (TWAECG), Desrae Rotumah (Tweed Coop/Minjungbal Museum), Joyce Summers (Canowindra), Maureen Logan (Community Elders), Russell Logan (Community)

Guests Observers:

Councillor Milne (Tweed Shire Council), Vince Connell (Tweed Shire Council), Ian Bentley (Tweed Shire Council), Mark Kingston (Tweed Shire Council), Rick Nolan (Employment Plus), Ian Fox, Stephan Schnierer (SCU), Hayley Egan (SCU), Damian Jacobsen (SCU), Glenda Nalder, Beck Couch, Sue Wheatley (NSW Police) and Val Mye (Community).

Apologies:

Lesley Mye, Aunty Bakoi Boulton and Chris Morgan Inspector Jago

Moved: Maureen Logan

Seconded: Garth Lena

RESOLVED that the apologies be accepted

Carried unanimously

The Chair was declared vacant and nominations were called. Jackie McDonald was nominated and was unanimously elected to Chair the meeting.

Ms McDonald opened the meeting with a welcome to all present and paid respect to Elders past and present

Minutes of Previous Meeting:

Moved: Garth Lena

Seconded: Joyce Summers

RESOLVED that the committee suspend standing orders to deal with specific issues

Carried unanimously

Minutes of Previous Meeting:

Moved: Councillor Holdom

Seconded: Maureen Logan

RESOLVED that the Minutes of the Tweed Shire Council Aboriginal Advisory Committee meeting held Friday 6 November 2009 be accepted as a true and accurate record of the proceedings of that meeting.

Carried unanimously

Business Arising:

Item from Meeting held Friday 6 November 2009

BA 1 Fingal Boat Harbour - Regional Local Community Infrastructure Plan

Ian Bentley tabled the concept plan for the Southern Fingal Boat Harbour and advised that the project will be completed by September 2010.

Mr Bentley advised the committee that the concept plan was tabled at the Public Art Community and members of the IPPP Sub Committee who requested that the concept plan be submitted to the Aboriginal Advisory Committee.

General discussion was undertaken

The Committee agreed that the Aboriginal Liaison Officer arrange a meeting with the Fingal Aboriginal Community and Ian Bentley on site to discuss the Concept plan for Fingal Boat Harbour.

Item from Meeting held Friday 6 November

BA 2 David Oxenham -Tweed Shire Council Tweed Water Supply Augmentation

Councillor Holdom gave a summary of the Community Working Group process to date and the inspections of the two dam options. Councillor Holdom confirmed that it is a daunting process however a decision is required on a path forward.

David Oxenham provided a summary of the process to date.

Council presented 4 options to Aboriginal Advisory Committee at last meeting in November 2009 (including 2 options for which preliminary archaeological overview have been carried out by members of the Aboriginal Advisory Committee and Council's consultants). The 4 options include the raising of Clarrie Hall Dam, Byrrill Creek Dam, connection to South East Queensland, and a contingency option which includes connection to South East Qld, Rous and groundwater. Council will use 4 short-listed options to determine best option to proceed with. Council embarked on a Public Consultation Process in October and setup a Community Working Group (CWG) in November 2009. Aboriginal Advisory Committee provisionally nominated Jackie MacDonald and Kyle Slabb to attend the first Community Working Group in December 2009. Council's understanding is that the Aboriginal Advisory Committee prefers for Council to continue to consult directly to the Aboriginal Advisory Committee rather than through the Community Working Group. Ms McDonald expressed some concern over the community being asked to choose an option of which all will result in the destruction of Aboriginal Cultural Heritage. David Oxenham advised that the Community Working Group had met 3 times. They are currently discussing environmental and social impacts of the options. Council continues to send Mr McDonald and Kyle Slabb all information from the Community Working Group to remain informed. There are another 2 more meetings. Public information sessions are to be held from 2pm-7pm at Tweed Heads 10/02, Murwillumbah 18/02, and Pottsville 23/02. The CWG will prepare a report with recommendations to Council and the community.

Submissions from the community 26.03.2010

Recommendations to Council 20.05.2010

David Oxenham advised that the ideal situation for Council is where the Aboriginal Community provides feedback to the selection of a Preferred Option by end of March 2010. The Aboriginal Advisory Committee expresses some reservations about having to make a choice between options given the cultural impacts of them.

BA 3 Department of Environment, Climate, Change and Water – Aboriginal Heritage Information Licence Agreement

Desrae Rotumah requested clarification of what this item was about. Ian Fox and Dr Glenda Nalder provided some understanding of the new process. There was a concern that there was greater access to the register and that it could circumvent the consultation process.

Item from Meeting held Friday 2 October 2009

BA 4 Draft Tweed Shire Aboriginal Cultural Heritage Information for Council's web site – Interim Development Application Process

Vince Connell distributed a list of actions and updates in relation to addressing Aboriginal Heritage in the Development Application process. Mr Connell provided an update on the process and work done to date in consultation with Department of Environment, Climate, Change and Water (DECCW) and Tweed Byron Local Aboriginal Land Council (TBALC). It is still a work in process and there are some critical issues to address in relation to what information is available and how.

Mr Connell tabled the draft proposed wording as an introduction to the Aboriginal Heritage and the Development Application process.

Councillor Milne raised that perhaps a shire wide Cultural Heritage Study.

General discussion was undertaken on potential funding sources and what the process might be.

Examples of current projects in Kyogle and other Local Government Areas.

Councillor Milne raised there is potential for developers to contribute more to the Aboriginal Community through Section 94 or some other means. Ms McDonald support more outcomes for Aboriginal Community through the development process.

Moved: Garth Lena

Seconded: Councillor Holdom

RECOMMENDATION: That Council on behalf of the Aboriginal Advisory Committee write to the Minister for Planning, Minister for Aboriginal Affairs, and the Premier New South Wales requesting consideration to amend section 94 legislation to provide community benefits to compensate for the erosion and loss of the Cultural Landscapes.

Carried unanimously

Item from Meeting held Friday 2 October 2009

BA 5 Kings Forest Estate Development

No action to report from this item. Discussion was undertaken on the inclusion of Cobaki Lakes in this proposal

Item from Meeting held Friday 5 September 2007

BA Memorandum of Understanding (MOU)

Previous meeting had resolved to sign the MOU at the February 2010 committee meeting. Desrae Rotumah, Dr Nalder and Ms McDonald separately raised some concerns over the MOU.

Discussion over what clans should be included. Also what actions should be included?

Item deferred until the March 2010 meeting

Item from Meeting held Friday 2 October 2009

BA 7 The Rise Estate Development

Mr Corbett tabled an email from Steve Macrae representative for the developers of the Rise Estate advising that they would be open to be involved in discussions with Council and the community only after the approval of the project by the State Government is granted

Moved: Maureen Logan

Seconded: Councillor Holdom

RESOLVED that Business Arising from Friday 6 November 2009 meeting has been dealt with

Carried unanimously

Agenda Items:

AI 1 Southern Cross University Research Project – Cultural Fisheries in Northern NSW

Stephan Schnierer Southern Cross University (SCU) – School of Environmental Sciences. deals with Aboriginal Rights, Aboriginal Resources particularly in the aquatic environment. Mr Schnierer provided handout on the research project. He introduced Damian Jacobsen who is considering being a part of the project.

Project has been funded at a Federal Level and looks at Cultural Fisheries. NSW Act now recognises cultural fishing. He is looking for community awareness of the project and support for the same. Mr Schnierer wants to engage the community and requesting advice on community involvement. Project will look at relevance of fish, try to quantify catch, assist in establishing data base, and build capacity of community to conduct research. Through Dave Edwards a meeting will be held soon to engage the community.

The Chairperson thanked Mr Schnierer for his attendance and briefing.

AI 2 Mark Kingston Tweed Shire Council Draft Far North Coast Regional Conservation Plan

—

Mr Kingston provided an introduction to himself and his role a Biodiversity Program Leader. Mr Kingston provided process and background of the Draft plan and the relationship to Aboriginal Cultural Heritage. Draft plan release in December 2009 with comments due in by end January 2010. Advised that the document is very heavy reading and difficult to understand and comprehend.

Plan advises there are 44 registered sites within the NSW Far North Coast Strategy that are contained within urban development areas. Mr Kingston also provided summary of areas of biodiversity that could be impacted. Recognises that no detailed assessment of Cultural heritage within the plan area.

Meeting decided to have further discussion on the draft plan for the next meeting.

MOVED: Joyce Summers

SECONDED: Maureen Logan

RESOLVED: That Council Officers provide advice to DECCW that the Draft Far North Coast Regional Conservation Plan has been considered by Aboriginal Advisory Committee and the following interim comment and requests provided.

1. That an extension to the deadline for submission be provided to allow further consideration by the Aboriginal Community of the draft plan.
2. Cultural Heritage aspects do not seem to be fully included within the draft plan in that there is no mention within the Summary and Objectives or the title.
3. Need to consider the implication of the inclusion of the existing identified cultural sites within the plan that could give rise to pre-emptive damage or destruction.
4. The plan is difficult to comprehend and understand.
5. The Aboriginal Community is mostly unaware of the draft plan.

Carried unanimously

General Business:

GB 1 Parking Naming
Confidential Item

GB 2 Community Concerns.

The Committee advised that the Aboriginal Community has concerns over the invitations of Aboriginal Community members to the opening of the Gold Coast airport.

History of how this occurred was provided.

Discussion was undertaken about the artefacts and their future as Community has concerns re: same.

GB 3 Ian Fox - Second Stage of the Wollumbin Cultural heritage Values Study

Ian Fox – Formally advised the Aboriginal Advisory Committee that stage 2 of Wollumbin Cultural Heritage values study has commenced. Over the next 18 months a team will be interviewing community members.

Mr Fox requested from the Aboriginal Advisory Committee who should be consulted on in regard to Wollumbin which is the aspect of the study. Committee indicated that they would consider his request.

GB 4 Draft Terranora/Cobaki Management Plan

Ms McDonald advised that updates on Cultural Heritage issues need to be provided re:
Draft Terranora Cobaki Management Plan.
Item to be deferred until the March meeting

Next Meeting:

The next meeting of the Tweed Shire Council Aboriginal Advisory Committee will be held Friday 5 March 2010.

The meeting closed at 1.15pm

EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

Item BA 4 Draft Tweed Shire Aboriginal Cultural Heritage Information for Council's web site – Interim Development Application Process.
Nil.

Item GB 1 Parking Naming
Confidential item.

EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

Item BA 4 Draft Tweed Shire Aboriginal Cultural Heritage Information for Council's web site – Interim Development Application Process
That Council on behalf of the Aboriginal Advisory Committee write to the Minister for Planning, Minister for Aboriginal Affairs, and the Premier New South Wales requesting consideration to amend section 94 legislation to provide community benefits to compensate for the erosion and loss of the Cultural Landscapes.

Item GB 1 Park Naming
Confidential item.

49 [SUB-TRC] Minutes of the Tweed River Committee Meeting held Wednesday 10 February 2010

Venue:

Canvas and Kettle Meeting Room

Time:

9:00am

Present:

Robert Quirk (NSW Cane Growers' Association); Carl Cormack (NSW Maritime Authority); Martin Dobney (Action Sands Chinderah); Claire Masters (Tweed Landcare Inc); Errol Wright (Tweed River Charter Operators); Lance Tarvey (Department of Environment, Climate Change & Water); Judy Robinson (Fingal Head Community Representative); Max Boyd (Community Representative); Jane Lofthouse, Tom Alletson, Mark Kingston (Tweed Shire Council).

Informal:

Nil

Apologies:

Cr Katie Milne (Chair); Cr Dot Holdom; Richard Hagley (Department of Environment, Climate Change & Water); David McPherson (NSW Land & Property Management Authority); Pat Dwyer (Department of Industry & Investment NSW); Rhonda James (Restoration Industry); Peter Baker (Tweed Agriculture Representative); Kyle Slabb (Tweed Byron Local Aboriginal Land Council); David Oxenham; Sebastien Garcia-Cuenca, (Tweed Shire Council); Bob Loring (Department of Primary Industries - Fisheries).

Minutes of Previous Meeting:

Moved: Max Boyd

Seconded: Lance Tarvey

RESOLVED that the Minutes of the Tweed River Committee meeting held Thursday 9 December 2010 be accepted as a true and accurate record of the proceedings of that meeting with the exception that Cr Milne was "endorsed" as Chair and that the Duranbah Drainage Union be noted as the 'Duranbah Swamp Drainage Union'.

Claire Masters queried Rhonda James' representation. It was confirmed that following Council's last call for nominations to Tweed River Committee, Rhonda James nominated as an individual and was appointed on the basis of her knowledge and contribution on behalf of the bush regeneration industry.

Business Arising:

Item from Meeting held 9 December 2009

Draft Cobaki and Terranora Broadwater Catchment Management Plan

Feedback on the CMP requested from all agencies and community sector representatives. Copy of document on CD to Judy, Robert and Martin.

An email will be sent to all requesting feedback, noting that it is important to endorse the plans if it is judged to be acceptable. Discussion that all feedback and finalisation of plan to occur at the April meeting. All comments from Committee requested by 17 March 2010.

Item from Meeting held 9 December 2009
Stotts Channel Dredging

Held over to April meeting.

Robert Quirk requested that he be excused from further involvement in the project.

Item from Meeting held 9 December 2009
CMA Attendance

Robert Quirk described his understanding of CMA staff attending Tweed River Committee - not likely due to staff levels. Suggest staff come on an "as needs" basis. Invite Peter Boyd to discuss collaboration opportunities and current CMA thinking on important issues, for example CAP implementation progress.

Chinderah and Budd Park River Bank Stabilisation - Update

Committee advised of progress on both revetment works projects. Chinderah on hold awaiting final advice from Federal Government on funding. Budd Park on hold pending investigations by Council on an integrated redevelopment of the Budd Park and Rainforest Information Centre area.

Noted that there was no existing evidence of red colouration in stormwater drains in Chinderah as per Cr Milne's query at last meeting (visual inspection by TA).

Far North Coast Regional Conservation Plan

This plan was discussed. Mark Kingston summarised the plan as focusing on the conservation offsets required to achieve the urban land release component of the Far North Coast Regional Strategy. Contradictions with respect to conservation and zoning for development. Mark Kingston has prepared a submission.

Agenda Items:

1. Tweed River Nature Link Concept

The nature link proposal as submitted to Council was circulated to all members and following a summary of the proposal by Tom Alletson, opinion of all committee members was sought, with the objective of advising Council on a response to TEDEC.

Carl Cormack - Condong bridge is a limiting factor for large vessels.

Errol Wright - It's a good vision. Tweed to Tumbulgum 20 years "All for it". More wharves good. One at Chinderah. Needs millions. Infrastructure must be publicly available. Doubts viability.

Martin Dobney - Good concept. Does it create need for dredging?

Mark Kingston - Community lost connection to River. Increase use of and value of river to community. Erosion issues. Benefit to community.

Claire Masters - Can more people be in attendance at meeting to discuss it? Suggests tourism Contribution Levy on user-pays principal. Sees environmental problems. Does not think it feasible.

Lance Tarvey - Concerned re impact on Stotts Island. Scope to promote the River.

Max Boyd - Advocated concept some years ago. Agrees in principal. Commuter use if possible. Erosion adverse impact. Not give anything away - need to see if it will work.

Judy Robinson - How does it fit in with Bank Erosion Study? Need to link existing tourism use better.

Robert Quirk - Support in principal. Maintain River's role in people's lives. Careful putting public money into project.

Moved: Max Boyd

Seconded: Martin Dobney

RECOMMENDATION:

That Council be advised that the Committee is:

1. Very much in favour of linking and promoting existing low impact uses of the River.
 2. Broadly supportive of the concept, subject to reservations relating to environmental constraints, particularly existing levels of riverbank erosion and potential worsening of bank erosion.
 3. Concerned that the public cost of infrastructure development and maintenance could be significant; and
 4. Recommends that any facilities developed would need to be available for public use.
-

General Business:

(1) Tweed Shire LEP 2010:

A presentation will be arranged for the Tweed River Committee and Tweed Coastal Committee following a Natural Resource Management Unit workshop on the document.

(2) ARC Application on ASS Research:

Approved in accordance with Sebastian Garcia-Cuenca's recommendations. It was suggested that Council write to the Dickinsons to thank them for their significant contribution to the remediation of ASS issues within Blacks Drain.

(3) Anchorage Island

Water quality good. Slight build up of sand on riverside of gates.

- (4) Representation of Charter Boat Operators Association
Errol Wright is standing down as the representative of the Charter Boat Operators Association. Scott Peterson has been nominated to replace Errol as the association representative.

Moved: Carl Cormack

Seconded: Max Boyd

RESOLVED that Scott Peterson to represent Charter Operators Association.

2. Gold Coast Airport

Max Boyd - Invite Gold Coast Airport to present to the Tweed River Committee with emphasis on their strategies to contain and treat runoff to Cobaki Broadwater, particularly in case of spills.

3. Flooding Risk Management in Tweed

Max Boyd - Iain Dinham is the only Council officer looking at flooding issues - 3 days per week.

Worried about impacts of floods over 1:50 years intensity. Flood model needs more detailed development. Not enough people and equipment to help people in the case of an extreme event. 10's of 1000's of residents will be affected, and emergency facilities will be isolated. Notifications may be inadequate. Public education is required.

4. Acknowledgement of Traditional Custodians

It was noted by Robert Quirk that at the last Tweed River Committee meeting Cr Milne made an acknowledgement of the Tweed traditional owners and it was agreed that there should be an appropriate acknowledgement at all future Tweed River Committee meetings.

Next Meeting:

The next meeting of the Tweed River Committee will be held 14 April 2010.

The meeting closed at 12:30.

EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

Nil.

EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

1. Tweed River Nature Link Concept

As per the Committee's recommendation being:

That Council be advised that the Committee is:

- 1. Very much in favour of linking and promoting existing low impact uses of the River.***
 - 2. Broadly supportive of the concept, subject to reservations relating to environmental constraints, particularly existing levels of riverbank erosion and potential worsening of bank erosion.***
 - 3. Concerned that the public cost of infrastructure development and maintenance could be significant; and***
 - 4. Recommends that any facilities developed would need to be available for public use.***
-

50 [SUB-LTC] Minutes of the Local Traffic Committee Meeting held Tuesday 18 February 2010

VENUE:

Mt Warning Meeting Room

TIME:

Commencing at 10.30am

PRESENT:

Committee Members: Cr Barry Longland (Deputy Mayor), Ms Liz Smith, Roads and Traffic Authority, Snr Constable Paul Henderson, NSW Police, Mr Geoff Provest MP, Member for Tweed, Mr Col Brooks representing Mr Thomas George MP, Member for Lismore.

Informal: Mr John Zawadzki (Chairman), Mr Ray Clark, Mr Rod Bates, Ms Judith Finch (Minutes Secretary).

APOLOGIES:

Mr Thomas George MP, Member for Lismore, Mr Danny Rose, Mr Paul Brouwer.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

RESOLVED that the Minutes of the Local Traffic Committee Meeting held 17 December 2009 be adopted as a true and accurate record of proceedings of that meeting..

SCHEDULE OF OUTSTANDING RESOLUTIONS

[LTC] Schedule of Outstanding Resolutions 18 February 2010

From Meeting held 26 November 2009

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.

-
3. [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.

-
4. [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.

BUSINESS ARISING

Nil.

A. FORMAL ITEMS SECTION

DELEGATIONS FOR REGULATORY DEVICES

A1 [LTC] Eucalyptus Drive, Banora Point Parking Limits

ORIGIN:

Planning & Infrastructure

FILE NO: ECM; 12532526; Traffic - Committee; Parking Zones; School Zones; Centaur Primary; Eucalyptus Drive

SUMMARY OF REPORT:

Request received from the school crossing supervisor at the marked crossing on Eucalyptus Drive servicing Centaur Primary School, Banora point to adjust the current on-road 15 minute parking limits.

At the Local Traffic Committee meeting held 13 September 2007 the following was recommended and resolved by Council at its meeting of 2 October 2007:-

"RESOLVED that 15 minute parking limits (8:00am to 9:30am and 2:30pm to 4:00pm), excluding the bus zones, be installed on road parking spaces in Eucalyptus Drive."

It is now requested that these times be varied to commence at 2.00pm, due to the Primary and High Schools finishing at 2.30pm.

RECOMMENDATION TO COMMITTEE:

That the existing afternoon 15 minute parking limits on Eucalyptus Drive, Banora Point be extended to 2.00pm on school days.

RECOMMENDATION TO COUNCIL:

That the existing afternoon 15 minute parking limits on Eucalyptus Drive, Banora Point be extended to 2.00pm on school days.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

A2 [LTC] Eucalyptus Drive Banora Point

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 12277879; Eucalyptus Drive; Traffic - Committee; School Zones; Centaur Primary; Pedestrian Crossings; Pedestrian - Safety

SUMMARY OF REPORT:

Request received for improvement of safety for children and the school crossing supervisor at Centaur Primary School, Eucalyptus Drive, Banora Point. The existing marked pedestrian crossing should also be made into a children's crossing with appropriate linemarking and flags installed. The school crossing supervisor should place the flags when on duty.

It is considered that the effectiveness of the combined pedestrian crossing/children's crossing will be an improvement to the existing marked pedestrian crossing.

RECOMMENDATION TO COMMITTEE:

That the existing marked zebra crossing on Eucalyptus Drive Banora Point be upgraded to include a "Children's Crossing" with appropriate signage and linemarking.

RECOMMENDATION TO COUNCIL:

That the existing marked zebra crossing on Eucalyptus Drive Banora Point be upgraded to include a "Children's Crossing" with appropriate signage and linemarking subject to a commitment being obtained from the Centaur Primary School to erect the crossing flags when the Crossing Supervisor is unavailable on a particular day.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

A3 [LTC] St Josephs Primary School, Frances Street, Tweed Heads

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 11972179; Traffic - Committee; Parking Zones; School Zones; Signs - Traffic Issues; Frances Street; Enid Street; LN 7888

SUMMARY OF REPORT:

Request received following an on site meeting with the Principal of St Josephs Primary School, Tweed Heads for the installation of "No Parking 2.30pm - 4.00pm School Days" on Frances Street, along the frontage of the Catholic Hall, a length of approximately 30m extending from Enid Street. This is the result of planned works on the school site which have just commenced and the temporary relocation of the kindergarten students to the Hall. This will be for a period of approximately six months whilst construction is taking place.

RECOMMENDATION TO COMMITTEE:

That a "No Parking 2.30pm to 4.00pm School Days" zone be installed on Frances Street for a 6 month period between the existing "No Stopping" sign near Enid Street to the end of the double centre lines on the frontage (north side of Frances Street) of the Catholic Hall.

RECOMMENDATION TO COUNCIL:

That a "No Parking 2.30pm to 4.00pm School Days" zone be installed on Frances Street, Tweed Heads for a 6 month period between the existing "No Stopping" sign near Enid Street to the end of the double centre lines on the frontage (north side of Frances Street) of the Catholic Hall.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

B. INFORMAL ITEMS SECTION

GENERAL TRAFFIC ADVICE

B1 [LTC] Tweed Valley Banana Festival

ORIGIN:

Planning & Infrastructure

FILE NO: 12570521; Tweed River; Parks - Booking; Parks - Budd; Parks - Knox Park; Roads - Closures - Temporary; Festivals - Tweed Valley Banana; Queensland Road; Murwillumbah Street; Wharf Street; Commercial Road; Wollumbin Street; Nullum Street

SUMMARY OF REPORT:

Request received for temporary road closures for the Tweed Valley Banana Festival street parade to be held on Saturday 21 August 2010 from 12 noon to 1.30pm with the route being as follows:-

"Show Ground - Queensland Road - Murwillumbah Street - Wharf Street - Commercial Road - Wollumbin Street - Nullum Street - Knox Park.

Street closure and traffic control on and off Murwillumbah Bridge will be handled by the SES subject to availability, utilizing Tweed Shire Council Road closure and directional signs.

The alternative will be as we did for 2009 when the SES was not available due to other commitments, will be with 225 Army Cadet Unit for street closure and the employment of council contract staff for traffic control."

It is recommended that Council approves road closures associated with conduct of the Banana Festival on 21 August 2010 subject to standard conditions including the development and compliance with a Traffic Control Plan and NSW Police approval.

It was suggested that it is now a requirement for persons erecting and dismantling traffic control signage and barricades to obtain a appropriate authorisation from the Roads and Traffic Authority of NSW.

COMMITTEE ADVICE:

That Council approves road closures associated with conduct of the Banana Festival on 21 August 2010 subject to standard conditions including the development and compliance with a Traffic Control Plan and NSW Police approval.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Col Brooks

PRESENT. DID NOT VOTE - Geoff Provest

B2 [LTC] ANZAC Day Dawn Service and Main Service Wharf Street Tweed Heads

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 9830764; Traffic - Committee; Control; Ceremonies - ANZAC Day; Parks - Chris Cunningham; Community Events on Ccl Admin Land; Parking - Zones; Wharf Street; Stuart Street

SUMMARY OF REPORT:

Request received for the ANZAC Day Dawn Service, Main Service and march using Wharf Street Tweed Heads into the Chris Cunningham Park. The Dawn service is from 5.30am to 6.30am and the Main service from 9.30am to 12.30pm. It is proposed to close off Griffith Street Coolangatta at the Wharf Street and Stuart Street Tweed Heads intersections to allow for the march from Goodwin Park via Scott Street and Griffith Street Coolangatta and right into Wharf Street, Tweed Heads finishing in Chris Cunningham Park.

The ANZAC Day Service, main service and march are the same as previous years.

It is recommended that the Wharf Street Tweed Heads entrance on to Griffith Street Coolangatta be temporarily closed for the ANZAC Day Dawn March and Main March on 25 April 2010 at 5.30 to 6.30am and again at 9.30am to 12.30pm under NSW Police control.

COMMITTEE ADVICE:

That the Wharf Street Tweed Heads entrance onto Griffith Street Coolangatta be temporarily closed for the ANZAC Day Dawn March and Main March on 25 April 2010 at 5.30 to 6.30am and again at 9.30am to 12.30pm under NSW Police control.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

B3 [LTC] Myrtle Lane Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 12533643; Traffic - Committee; Parking Zones; Safety; Pedestrian - Safety; Directional Signs

SUMMARY OF REPORT:

Request received for the parking and signage in Myrtle Lane Murwillumbah to be reassessed.

"Half way up the lane cars are parking too close to the bend in the lane and making it very dangerous for traffic to pass. The lane is very narrow and to pass a parked car you must drive on the wrong side of the road.people park in the lane all the time rather than parking in Eyles Ave where there is loads of room to park. Eyles Ave is also much wider and has a greater sight distance especially for larger vehicles.This lane is very popular with pedestrians as this hill is a great walk for fitness and for the view, people have no choice but to walk on the road as there is no footpath. Please consider a NO PARKING AT ANY TIME sign for this bend in Myrtle Lane as the sight distance is inappropriate for parking."

Council officers will investigate this matter on site and report to the Committee.

COMMITTEE ADVICE:

That the request for 'No Parking at Any Time' signage for the bend in Myrtle Lane is not supported as drivers need to drive to suit the street environment and there is no history of crashes.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Col Brooks

PRESENT. DID NOT VOTE - Geoff Provest

B4 [LTC] ANZAC Day March - RSL Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: 11764579 Tweed District Rescue Squad; Traffic- Committee; Control; Police; ANZAC Day

SUMMARY OF REPORT:

Request received for approval for the ANZAC Day March on 25 April 2010 with assembly at 10.00am, March off at 10.30am and completion at 11.20am involving a public assembly of approximately 300 persons. The March is from Murwillumbah Post Office on Murwillumbah Street to the War Memorial, Remembrance Place at the Civic Centre, Tumbulgum Road. Twelve vintage cars will be involved to carry disabled veterans.

Permission is sought to temporarily close the following roads:-

Murwillumbah Street from Queen Street
Proudfoots Lane from Brisbane Street
Brisbane Street from Wollumbin Street
Commercial Road from Wollumbin Street
Proudfoots Lane from Commercial Road
Queen Street from Murwillumbah Street
Tumbulgum Road from Old Ferry Road

Detours are proposed using Queensland Road via Byangum, Wollumbin Street and Old Ferry Road via Ewing Street.

This ANZAC Day March with assembly is the same as previous years.

It is recommended that the ANZAC Day March with assembly on 25 April 2010 be approved subject to standard conditions, NSW Police approval and compliance with the Traffic Control Plan provided with the application.

COMMITTEE ADVICE:

That the ANZAC Day March with assembly on 25 April 2010 be approved subject to standard conditions, NSW Police approval and compliance with the Traffic Control Plan provided with the application.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Col Brooks

PRESENT. DID NOT VOTE - Geoff Provest

B5 [LTC] Terranora Road Banora Point

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 11727091; Terranora Road; Traffic - Committee; Speed Zones; Safety; LN 12194; Pollution - Noise; Kerb & Gutter

SUMMARY OF REPORT:

Request received in relation to enter and exit at the Ocean View Banora Point complex at 2-4 Terranora Road Banora Point. The request is for:-

- "(1) Place speed bumps on both sides of Terranora Road. The eastern end coming off the highway from lights or Tweed River Bridge be placed about 30 metres from the commencement of our entry. The western side about 30 metres prior to Kittiwake Street intersection driving towards the traffic lights.*
- (2) Erect a suitable speed sign, say maximum 50kph at the commencement of the off lane driving towards Terranora Road.*

.... Another problem that will be alleviated is the noise factor from drivers that have extremely loud exhaust systems and drive extremely fast to reach the single lane before others on the main lane"

Council's traffic database indicates the following speeds for Terranora Road east of Pacific Drive: 12/02/2009 - 64km/h, 29/06/2004 - 60km/h. The speed limit for Terranora Road in this vicinity is 50km/h. Two vehicle accidents were reported in this vicinity over the period 2003 to 2008. These were right-through accidents where vehicles turning right into Kittiwake Street from Terranora Road collided with a oncoming vehicle.

Terranora Road is a major distributor road within Tweed Shire carrying approximately 8,000 vehicles per day. Speed bumps are not recommended on highly trafficked roads. Speed bumps can also generate noise.

The first of the requested speed bumps is located only 30m from the signalised intersection. This may have queuing impacts on the signal operation and could also lead to rear end type collisions.

A speed sign is located within close proximity to the intersection indicating a 50km/h limit.

It was suggested that the owners contact Council officers with possible amendments to their driveway configuration to improve entry and exit. It was noted however that any amendments to the driveway would be at the owner's cost.

The Roads and Traffic Authority of NSW Representative advised that the request for signage to limit exhaust brake noise be forwarded to the Roads & Traffic Authority of NSW.

COMMITTEE ADVICE:

That:-

A. No action be taken as:-

1. Speed humps are inappropriate at this particular location.
2. The existing speed limit signage is appropriate.
3. "Keep Clear Pavement Markings" are only intended for emergency vehicles.
4. Signage such as "Aged Persons Residence" is not standard road signage.

B. The request for "limit exhaust brake noise" signage be forwarded to the Roads and Traffic Authority of NSW for consideration.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

B6 [LTC] Recreation Street, Tweed Heads

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 12286401; 12536014; Traffic - Committee; Parking - Illegal; LN 21646; Recreation Street

SUMMARY OF REPORT:

Request received in relation to parking problems in Recreation Street when the Tweed Court is in session.

"On court sitting days, cars are parked across the access to Tweed Rubber Goodyear Tyre Service, on the grass nature strip and in client parking bays, causing inconvenience and disruption to the business."

Council's rangers can provide infringement notices for unlawfully parked vehicles. Council has no jurisdiction over vehicles parked off street on private property which are not considered road related areas.

COMMITTEE ADVICE:

That no action be taken as Council's rangers can provide infringement notices for unlawfully parked vehicles.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

B7 [LTC] Kingscliff Triathlon

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 12526062; Traffic - Committee; Safety; Control; Bicycle Matters - General; Marine Parade, Kingscliff; Wommin Bay Road, Kingscliff; Chinderah Bay Drive, Chinderah

SUMMARY OF REPORT:

Request received for temporary road closures for Marine Parade, Wommin Bay Road and Chinderah Bay Drive for the Kingscliff Triathlon on Sunday 7 March 2010 from approximately 6.00am to 11.00am.

The triathlon involves the following events:-

1. Swimming
2. Bike Ride
3. Running

Traffic control plans will be submitted to the meeting. This will be the first time this event will be held in Kingscliff.

COMMITTEE ADVICE:

That the Committee endorses the following road closures for the Kingscliff Triathlon on the 7 March 2010 subject to Police approval, standard conditions and the development and implementation of a Traffic Control Plan:-

6.00 - 10.00am Marine Parade Kingscliff Central
6.30 - 10.30am SLSC car park
7.00 - 10.30am Marine Parade, Wommin Bay Road, Chinderah Bay Road
7.00 - 10.30am Creek parkway
7.00 - 10.30am Marine Parade South

11.00am all roads opened

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

Cr Longland left the meeting at 12.15pm

B8 [LTC] Crescent Street, Cudgen

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 5050277; 4817393; 7166473; Traffic - Committee; Speed Zones; Control; Safety; Crescent Street; Cudgen

SUMMARY OF REPORT:

Following the Local Traffic Committee meeting of 24 September 2009 Council resolved on the 20 October 2009 that:-

"Two 'rubber type' speed humps be installed in Crescent Street Cudgen in locations determined by Council's Traffic Engineer in consultation with local residents."

In accordance with Council's resolution a letter box drop was conducted advising local residents that Council anticipates installing two speed humps. The proposed locations of the two rubber speed humps were also provided. These locations were considered the most suitable by Council officers as they were located with adequate approach sight distance and away from bends.

One e-mail "concern" and two telephone objections were received from residents located adjacent to the proposed speed humps. One telephone objector advised that she would provide an e-mail response regarding the matter but an e-mail has not been received as yet. Her concerns related to noise generation and also advised that other residents nearby to the proposed speed humps wouldn't like them for the same reason. The "other nearby residents" included parents with very young children who need their sleep. The other telephone objector was very concerned about the potential noise and also the potential glare of proposed lights which will illuminate a speed hump into their house.

It would be unreasonable to relocate the proposed locations only metres further away from that originally proposed and then conduct another resident survey showing these slightly different locations.

The Committee's advice regarding this matter is requested.

COMMITTEE ADVICE:

That Council officers consider the effectiveness of the speed hump installation on Crescent Street Cudgen after a period of 6 months.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest

PRESENT. DID NOT VOTE - Col Brooks

B9 [LTC] Peter Street and George Street, Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 9992421; 12522722; 10740054; Traffic- Committee; Peter Street; George Street; Traffic - Speed Zones; Access to Property - Driveways; Signs - Traffic - Issues; Traffic - Safety

SUMMARY OF REPORT:

Request received for a 'Stop' sign on Peter Street at the intersection of George Street, Murwillumbah.

"I believe a comprehensive review of the Peter St and George St junction is justified for the below listed reasons.

Firstly, in the dark on dipped headlights, the only thing between a vehicle coming down Peter St and a 2 metre drop onto houses in the lower section of George Street is a flimsy wooden fence and a solitary Give Way sign.... Check out the long skid marks on Peter St before they wear off....

Secondly, drivers arriving at the junction, even in daylight, have two hazards to negotiate:

- 1. Looking right (East), they cannot see a moving vehicle hidden in the dip at the end of Tweed Street. A truck can hide in this dip.*
- 2. Even when turning left from Peter St, they still have to be aware of traffic approaching from the West because (as mentioned in my previous letter), George St is so narrow at this point that it is almost impossible to turn and stay on the correct side of the white line, particularly for longer vehicles.*

Also the following matters:-

- 1. Speeding of vehicle on George and Mooball Streets*
- 2. Narrow road width at the intersection of Peter Street and George Street*
- 3. Inadequate warning in Peter Street of the T junction"*

Traffic speed surveys on George Street to the west indicate an 85th percentile speed of 60km/h. There is no history of crashes at this intersection. The sight distance at the intersection and 85th percentile speed will be measured by Council officers and reported to the meeting.

Council officers measured the following:-

Sight distance (1.15m to 1.15m)

Intersection to east - 118m

Driveway to east - 64m

85th percentile speed = 56km/hr to east

The existing lane widths are between 2.6m and 2.4m

The existing sight distance at the George Street / Peter Street intersection is sufficient under relevant guidelines. Therefore the installation of a 'Stop' sign is unwarranted.

The Committee considered that the installation of a sight board at the intersection may be a safety improvement.

The Committee noted that the 85th percentile speeds on George Street were within acceptable limits.

The Committee also noted that the narrow road width at this intersection is a matter for Council consideration.

COMMITTEE ADVICE:

That a D4-4 sight board be installed at the T intersection of George Street with Peter Street, Murwillumbah.

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Col Brooks

PRESENT. DID NOT VOTE - Geoff Provest

B10 [LTC] Local Traffic Committee 2010 Meeting Schedule

ORIGIN:

Planning & Infrastructure

FILE NO: Traffic Committee

SUMMARY OF REPORT:

The following dates are proposed for Local Traffic Committee meetings in 2010 (Thursdays):-

18 February

25 March

22 April

20 May

24 June

22 July

19 August

23 September

21 October

25 November

16 December

As Committee members would be aware Local Traffic Committee meetings will commence at 10.30am and end at 1.00pm, depending on the extent of the Agenda. B-double applications will be considered following completion of the Local Traffic Committee Agenda.

COMMITTEE ADVICE:

That the following meeting schedule be endorsed for Local Traffic Committee meetings in 2010:-

18 February
25 March
22 April
20 May
24 June
22 July
19 August
23 September
21 October
25 November
16 December

FOR VOTE - Councillor Barry Longland, Snr Constable Paul Henderson, Liz Smith, Geoff Provest, Col Brooks

NEXT MEETING:

The next meeting of the Local Traffic Committee will be held 25 March 2010 in the Mt Warning Meeting Room commencing at 10.30am.

There being no further business the Meeting terminated at 12.45pm.

EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

Nil.

EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

As per Committee's recommendations:

A1 [LTC] Eucalyptus Drive, Banora Point Parking Limits

That the existing afternoon 15 minute parking limits on Eucalyptus Drive, Banora Point be extended to 2.00pm on school days.

A2 [LTC] Eucalyptus Drive Banora Point

That the existing marked zebra crossing on Eucalyptus Drive Banora Point be upgraded to include a "Children's Crossing" with appropriate signage and linemarking subject to a commitment being obtained from the Centaur Primary School to erect the crossing flags when the Crossing Supervisor is unavailable on a particular day.

A3 [LTC] St Josephs Primary School, Frances Street, Tweed Heads

That a "No Parking 2.30pm to 4.00pm School Days" zone be installed on Frances Street, Tweed Heads for a 6 month period between the existing "No Stopping" sign near Enid Street to the end of the double centre lines on the frontage (north side of Frances Street) of the Catholic Hall.

51 [SUBCOM] Minutes of Subcommittees/Working Groups Circulated to Councillors, No Decision Required

- 1 Minutes of the Tweed River Regional Museum Advisory Committee held 21 January 2010 (ECM 12621226).
 2. Minutes of the Tweed Coastal Committee Meeting held Wednesday 10 February 2010 (ECM 13443103).
 3. Minutes of the Tweed River Art Gallery Advisory Committee Meeting held Thursday 18 February 2010 (ECM 13577137).
-

ORDERS OF THE DAY

- 52 **[NOR-Crs K Skinner, W Polglase, D Holdom] [PR-CM] Development Codes for Cobaki Lakes Concept Plan and Kings Forest Concept Plan– Residential Community Development - Council Submission to the Department of Planning**

NOTICE OF RESCISSION:

Councillor K Skinner, W Polglase and D Holdom move that resolution at Item 17, Minute No 75, from the meeting held 16 February 2010 being:

.... that: -

1. Council:-

1. *Endorses the forwarding of a draft submission to the Department of Planning on the Development Codes for Cobaki Lakes and Kings Forest, as attached to this report.*
2. *Requests the State government require an independent review of the proposals for Cobaki Lakes and Kings Forest developments in regard to outcomes for*
 - a) *sustainability,*
 - b) *urban design,*
 - c) *employment,*
 - d) *social planning (especially for youth and ageing populations),*
 - e) *Indigenous cultural heritage,*
 - f) *open space,*
 - g) *environment,*
 - h) *water and sewerage outcomes,*
 - i) *or any other relevant issues,*

and recommendations to enhance these outcomes.

This review to be undertaken by an appropriate organisation, such as the Institute of Sustainable Futures, University of Technology Sydney.

2. *The General Manager writes to the Department of Planning and request an extension of time for lodgement of a submission on the current project application for the central lakes at Cobaki Lakes, until 17 March 2010*
3. *ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

4. *Council writes to the Minister of Planning NSW requesting that, before any approvals are given, the Department be requested to conduct further consultation to familiarise Tweed residents with the new housing types as proposed.*
5. *Council provides a report to the next Council meeting:*
 - a) *Detailing the amounts and totals collectable from the Developer contributions plans applicable to these developments, and*
 - b) *The ability of Council to meet current and projected costs associated at the various stages of these new developments, including but not limited to infrastructure costs, community facilities and bushland restoration.*
6. *This report to include the various methods of addressing any gaps or shortfalls envisaged in the planning of these developments such as through enhancing the s94 developer contributions or establishing Voluntary Planning agreements for Cobaki Lakes and Kings Forest Greenfield sites to address these issues.*
7. *Council writes to the NSW Department of Planning to request special consideration due to review these issues.*

be rescinded.

53 [NOM-D Holdom] [PR-CM] Development Codes for Cobaki Lakes Concept Plan and Kings Forest Concept Plan– Residential Community Development - Council Submission to the Department of Planning

NOTICE OF MOTION:

Councillor D Holdom moves that:

1. Council endorses the forwarding of a draft submission to the NSW Department of Planning on the Development Codes for Cobaki Lakes and Kings Forest, as reported to the Council Meeting of 16 February 2010.
 2. The General Manager writes to the NSW Department of Planning to request an extension of time, for lodgement of a submission on the current project application for the central lakes at Cobaki Lakes, to 31 March 2010
 3. Council writes to the Minister of Planning New South Wales, requesting that before any determination is made, the NSW Department of Planning be requested to conduct consultation with residents to familiarise them with the new housing types being proposed by the applicant.
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54 [NOM-Cr Van Lieshout] Vision Statement

NOTICE OF MOTION:

With continual messages on economic and environmental pressures which will become part of our everyday lives in the future – the need to set strategic measures to embrace the predicted changes has become significantly apparent to all levels of Government.

Whilst the Tweed Shire Council has a strategic plan through our LEP currently on exhibition that includes specific areas which address these issues - we as Council have a responsibility to set a “Vision Statement” which will create a platform on which to build sound future decision making.

More than ever the opportunity exists to set a futuristic model which embraces sustainable economic and environmental practices ensuring viability in providing services for our community whilst attracting business ventures which provide employment, education and sustainable solutions yet retaining the unique lifestyle and landscape which we now enjoy.

Councillor J van Lieshout moves:

That Council embraces the Vision to pursue future opportunities and practices which ensure sustainable solutions that provide:

1. Economic growth which includes employment for residents of all ages and socio-economic levels in agricultural industry and food related & eco tourism.
 2. Engagement of consultancy services in relation to the above initiatives through local relative educational and professional stakeholders which enhance the opportunity for world standard practices and outcomes.
 3. Sustainable Environmental initiatives in all areas of proposed development and services.
 4. Adoption of Affordable Housing Initiatives for the aged and low-income levels which include opportunities through the Housing Affordability Fund and Not-for-profit Sector in joint venture with Council and Developer stakeholders.
 5. Agricultural Business Opportunities by preparing updated planning and subdivision controls which facilitate and encourage new levels of agricultural methods that provide niche products and services for local, national and export markets.
 6. Innovative sustainable services in transport, recreation, health and well being for the aged and youth community.
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55 [NOM-Cr D Holdom] Policy - Building Sustainability Index

NOTICE OF MOTION:

Councillor D Holdom moves that Council's Planning Reform Unit investigates and reports back to Council on the following, a Tweed Shire Council Policy Document based on the principles of BASIX (Building Sustainability Index) for Commercial/Industrial development.

56 [NOM-Cr D Holdom] Notification Process - Aboriginal Cultural Heritage Matters

NOTICE OF MOTION:

Councillor D Holdom moves that:

1. Council notifies the Tweed Byron Aboriginal Land Council (TBALC) of any Cultural Heritage damage to Aboriginal Artefacts on any land within the Tweed Shire; whether that be private or public land, within 48 hours of confirming that Artefacts have been damaged by whatever means, and
 2. At the next Ordinary Meeting of Council, the Director Planning and Regulation notifies the said damage, by way of a Confidential Attachment to the Ordinary Business Paper, under "Reports from the "*Director Planning and Regulation*"; and
 3. The General Manager formally writes to TBALC advising the Executive of TBALC of this decision and requests from TABLC, in writing, a list of whom Council is to advise of any damage in the first instance and by what formal means.
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57 [NOM-Cr D Holdom] Affordable Housing

NOTICE OF MOTION:

Councillor D Holdom moves that Council officers, in conjunction with the resolution at Item 54 of 16 February 2010, undertake to investigate and report back on the model (as supplied) for Affordable Housing and the possible establishment of an Affordable Housing Committee by Tweed Shire Council, the report to include a full set of Draft Terms of Reference for such a committee.

UNDER SEPARATE COVER:

1. Clarence Valley Affordable Housing Strategy 2007 (ECM 13529324)
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QUESTION ON NOTICE

**58 [QON-Cr D Holdom] Public Information Displays/Consultation Sessions -
Tweed Water Supply**

QUESTION ON NOTICE:

Councillor D Holdom asked:

Can the Director Community and Natural Resources update Councillors on the three public information displays/consultation sessions held (with regard to informing residents of the two major issues; social and environmental) concerning the Tweed's water supply ie total numbers of residents who attended the individual sessions and overall numbers, examples of questions asked by residents attending, how many information kits were distributed by officers at sessions, general feed back from those who attended any of the three sessions and supply the information kits to the five Councillors not on the working group?

**59 [QON-Cr D Holdom] Information Displays/Consultation Sessions held with
regard to the Draft Tweed (Shirewide) Local Environmental Plan (LEP) 2010
and the Draft Tweed City Centre LEP 2009**

QUESTION ON NOTICE:

Councillor D Holdom asked:

Can the Acting Director Planning and Regulation update Councillors on the information displays/consultation sessions held with regard to the Draft Tweed (Shirewide) Local Environmental Plan (LEP) 2010 and the Draft Tweed City Centre LEP 2009 ie total numbers of residents who attended the individual sessions and overall numbers, examples of questions asked by attendees, how many LEP information kits have been distributed by officers and general feed back from those who attended any of the four sessions?

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CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH ACTING GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES IN COMMITTEE

1 [SUB-CON-AAC] Item from the Minutes of the Tweed Shire Council Aboriginal Advisory Committee Meeting held Friday 5 February 2010

*Confidential Nature of this Item: The Local Government Act 1993 Clause 10A(2)
(a) personnel matters concerning particular individuals (other than councillors)*

General Business:

GB 1 Park Renaming

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE

2 [EO-CM] Naming of a Council Public Bridge - Chillingham

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