



**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 21 September 2010**

held at Murwillumbah Cultural & Civic Centre  
commencing at 3.30pm

### **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 17 August 2010 and Minutes of the Extraordinary Council Meeting held Monday 30 August 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Minutes of the Ordinary Council Meeting held Tuesday 17 August 2010 (ECM 20466826)
  2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 17 August 2010 (ECM 20466619).
  3. Minutes of the Extraordinary Council Meeting held 30 August 2010 (ECM 20797976).
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## SCHEDULE OF OUTSTANDING RESOLUTIONS

### 2 Schedule of Outstanding Resolutions

#### FOR COUNCILLOR'S INFORMATION:

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:** To be reported to a future Council Meeting.

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16 February 2010

#### REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

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

88

Cr D Holdom

Cr P Youngblutt

**RESOLVED** that Council:

1. Proceeds with both the Burringbar/Mooball Sewerage Scheme and the Tyalgum Water Treatment Plant without receiving upfront grant funding approval from the Country Towns Water Supply and Sewerage Program.
  2. Writes to the Minister to obtain a commitment to obtain future grant funds retrospectively.
  3. Meets all the grant funding approval requirements and applies for grant funding retrospectively for these projects.
-

4. Officers bring forward a report on options to provide sufficient capacity to service those lands immediately adjacent to the villages of Burringbar (Area 8) and Mooball (Area 9) identified in the Urban Release Strategy.

**Current Status:** Letter to the Minister yet to be completed and report to be prepared. Negotiations under way with proponents of Mooball (Area 9).

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

90

Cr B Longland

Cr J van Lieshout

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

- (a) Landholder/proponent funded sewerage and reuse strategy to facilitate the development of Urban Land Release Strategy Areas 5, 6 and 7, and Employment Land Release Area 7;
- (b) Memorandum of Understanding (MOU) covering terms of reference, risk allocation, timings and scope for the strategy stages and to obtain agreements for the proposal to fund the various stages of the strategy; and
- (c) Preparation of a report to Council with MOU and funding agreements for Council approval before proceeding with engaging consultants for the preparation of the strategy.

**Current Status:** Letter sent to landholders regarding negotiations with a direct outcome being the Landholders/Proponents are currently reviewing options.

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## 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.

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

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**18 MAY 2010**

**ORDERS OF THE DAY**

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

**1**

**Cr K Skinner**

**Cr D Holdom**

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

**Current Status:** Further investigations being undertaken.

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**15 JUNE 2010**

**REPORTS FROM THE DIRECTOR PLANNING AND REGULATION**

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

**Updated by Minute 459 of Meeting held 20 July 2010 as follows:**

**459**

**Cr K Skinner**

**Cr J van Lieshout**

**RESOLVED** that in respect of the resolution of Item 11 of the Business Paper of its meeting of 15 June 2010, relating to a Section 96 application for the Development Application DA08/1171.01 for an Amendment to Development Consent DA08/1171 for the Addition of a Deck to Existing Cabarita Surf Life Saving Club, Council determines a preferred position from the following three options in respect of the request made by the Cabarita Surf Club (through a letter to Council dated 6 July 2010) for amended arrangements for payment of Section 64 and Section 94 contributions to Council, Council recommends to modify the Item 11 resolution of 15 June 2010 Council Meeting in the following manner:

1. That:
  - (a) The Cabarita Beach Surf Life Saving Club enter into a loan with Council for \$56,730.76 (being 50% of the current Tweed Roads Contribution Plan, Shirewide Car Parking and Section 64 contributions) interest free. In terms of a suitable guarantee for the loan, Cabarita Beach Surf Life Saving Club shall be responsible for preparing and seeking agreement with Council on a binding legal agreement, and, or mortgage caveat. Subject to satisfactory arrangements being made in relation to the proposed loan arrangement above, Council will make a donation of \$56,730.76 being 50% of the current contributions as detailed in Conditions 3A and 4A of Development Consent for DA08/1171.01;
  - (b) The 10 year period of the above loan be fixed, and that Council will not increase the base contribution payment of \$56,730.76, and the loan will be interest free for the loan period; and
  - (c) Notwithstanding the terms of Condition 3A of Development Consent for DA08/1171.01, which requires payment of required Section 94 payments prior to the issue of a Construction Certificate, that Council agrees that repayments on the loan identified in the above Point 1(a) shall not commence until a period of 18 months after the date that an Occupation Certificate is issued in respect of Development Consent for DA08/1171.01; and
2. Council officers bring back a report identifying the sources of funding to be donated to the Cabarita Beach Surf Life Saving Club.

**Current Status:** A further report to Council is to be submitted.

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20 July 2010

**ORDERS OF THE DATY**

**73 [NOM-Cr Polglase] Crown Land at Pottsville**

**520**

**Cr W Polglase  
Cr D Holdom**

**RESOLVED** that:-

1. A Councillors' workshop be held with Land and Property Management Authority and Tweed Shire Council Staff with reference to their Crown Land at Pottsville:

2. If the community wishes to have a meeting with Council, such a meeting be organised.

**Current Status:** A workshop on this matter is scheduled for Tuesday 14 September 2010.

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## MAYORAL MINUTE

### 3 [MM] Mayoral Minute for the period 06 August to 05 September 2010

Councillors,

#### COMMITTEE MEETINGS

##### Attended by the Mayor

- 13 Aug 2010 - NOROC Meeting – Murwillumbah Civic Centre, Council Chambers
  - 18 Aug 2010 - Tweed River Art Gallery (TRAG) Advisory Committee – TRAG, Mistral Road, Murwillumbah
  - 20 Aug 2010 - Richmond Tweed Regional Library Committee Meeting - Lismore City Council Chambers (also attended by Crs Holdom and Milne)
  - 02 Sep 2010 - Tweed River Art Gallery (TRAG) Foundation meeting – TRAG, Mistral Road, Murwillumbah
- 

#### INVITATIONS:

##### Attended by the Mayor

- 06 Aug 2010 - Murwillumbah Chamber of Commerce Breakfast – Murwillumbah Services Club, Wollumbin Street, Murwillumbah
- 07 Aug 2010 - Pigabeen Cobaki Community Hall Centenary & afternoon tea - Pigabeen Cobaki Community Hall (Crs Holdom, Longland, Van Lieshout also advised their attendance)
- 08 Aug 2010 - Tweed Shire Council Family Fun Day, Local Government Week - Salt Central Park, Salt Village, Kingscliff (Crs Holdom, Longland, Van Lieshout also advised their attendance)
- 09 Aug 2010 - Murwillumbah War Widows Guild 25th Anniversary Book Launch - Murwillumbah Services Club, Wollumbin Street, Murwillumbah
- 10 Aug 2010 - Tweed Head South Rotary Club Meeting - Tweed Sports Club, Minjungbal Drive, Tweed Heads
- 11 Aug 2010 - 4CRB Radio Talkback with the Mayor – 4CRB Radio, 8 Stevenson Court, Burleigh Heads
- 11 Aug 2010 - Year 10 Students “Meet the Mayor” – St James Primary School, Banora Point

- 15 Aug 2010 - Anglican Harvest Festival Thanksgiving Service - All Saints Church, 26 Byangum Rd, Murwillumbah
- 15 Aug 2010 - Sandakhan Memorial Walkway Opening by RSL Murwillumbah - Cenotaph, Tumbulgum Rd, Murwillumbah
- 17 Aug 2010 - Kingscliff & District Chamber of Commerce Breakfast - Saltbar Beach Bar & Bistro, Bells Blvd, Kingscliff
- 17 Aug 2010 - Citizenship Ceremony for 25 new citizens - South Sea Islander Room, Tweed Civic Centre
- 19 Aug 2010 - Opening of new 4CRB Building - 8 Stevenson Court, Burleigh Heads
- 21 Aug 2010 - Banana Festival Parade – Murwillumbah Showgrounds to Knox Park, Murwillumbah
- 24 Aug 2010 - Donations and Festival Funding Presentation – Council Foyer, Murwillumbah Civic Centre
- 25 Aug 2010 - South Sea Islander Recognition Day, official flag raising - Cudgen Burial Ground (also attended by Cr Dot Holdom)
- 25 Aug 2010 - 4CRB Radio Talkback with the Mayor – 4CRB Radio, 8 Stevenson Court, Burleigh Heads
- 27 Aug 2010 - Sandakhan Officials from North Borneo, presentation of books to Mayor for Library - Sandakhan Walkway, Tumbulgum Road
- 28 Aug 2010 - "For the Love of Tweed" Grafitti Action Day, Tweed Valley Church Youth Group - Boyds Bay Bridge, the bypass bridge and the Skate Park at Tweed Heads South (also attended by Crs van Lieshout, Holdom and Skinner)
- 30 Aug 2010 - Murwillumbah Legacy 62nd Anniversary Wreath Laying & celebration of National Legacy Week - Murwillumbah Services Memorial Club, Wollumbin Street
- 30 Aug 2010 - Lions Cabarita, Greenback & Community Funds Presentation Dinner - Cabarita Sports & Bowls Club
- 31 Aug 2010 - Opening of gross pollutant traps at Jack Evans Boat Harbour (JEBH) – Coral Street Park, JEBH
- 02 Sep 2010 - Tweed Heads Bowls Club Sponsors Dinner - Blue Room, Tweed Heads Bowls Club
- 03 Sep 2010 - Murwillumbah Chamber of Commerce Breakfast - Murwillumbah Services Club
- 05 Sep 2010 - Tweed Valley Church Awards Presentation for Aboriginal & Sth Sea Island Students - Tweed Heads Civic Centre



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

- 13 Aug 2010 - Red Cross AGM – Visions, Twin Towns Clubs & Resorts (Crs van Lieshout and Longland advised their attendance)
- 18 Aug 2010 - Vietnam Veterans Day Wreath Laying and lunch - Kingscliff Cenotaph and Cudgen Leagues Club (attended by Cr Skinner)
- 27 Aug 2010 - Brooke Davidson's funeral - Tweed Heads Crematorium - (Crs Holdom and van Lieshout advised their attendance)
- 30 Aug 2010 - Funeral of Mrs Billi Turney, OAM, former TSC Councillor - Pioneer Park, Fraser Drive, South Tweed (attended by Cr Dot Holdom)
- 02 Sep 2010 - Kids in Community Tweed Shire Awards - Twin Towns Services Club, Tweed Heads (attended by Cr Dot Holdom)
- 03 Sep 2010 - Book Launch, Remnants of Gondwana, hosted by Department of Environment, Climate Change and Water - Mavis's Kitchen, Mt Warning (Cr Longland advised his attendance)

**Inability to Attend by or on behalf of the Mayor**

- 06 Aug 2010 - Opening of the Country & Regional Living Expo - Rosehill Gardens Grand Pavilion, James Ruse Drive, Rosehill
- 16 Aug 2010 - Tweed Head South Rotary Club Meeting - Tweed Sports Club, Minjungbal Drive
- 17 Aug 2010 - Southern Cross Geo Science official launch – Southern Cross University, Lismore Campus
- 22 Aug 2010 - Tweed River Spectacular – Budd Park, Murwillumbah
- 30 Aug 2010 - Tweed Head South Rotary Club Meeting - Tweed Sports Club, Minjungbal Drive
- 31 Aug 2010 - Tweed Chamber of Commerce Meeting - Tweed City Centre Management Offices

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**CONFERENCES:**

**Conferences attended by the Mayor and/or Councillors**

- 16 Aug 2010 - LGSA One Association Taskforce - Star City, Sydney

**Information on Conferences to be held**

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

- 8-12 Nov 2010 - National Conference of the Stormwater Industry Association – Sydney – Registration \$1145 pp, 3 days
- 10-12 Nov 2010 - 19<sup>th</sup> NSW Coastal Conference hosted by Eurobodalla Shire – Batemans Bay, NSW - \$750 registration, 2.5 days
- 23 Nov 2010 - LGSA “Modernising Local Government” Focus Group – Coffs Harbour – 1 day
- 28-29 Sep 2010 - 2010 Inaugural Policy Workshop on ‘The Future of Australia’s Mid-sized Cities’ – La Trobe University, Bendigo Campus – \$450 registration, 2 days OR \$895, 4 days including joint registration for 2 day workshops on ‘The Sustainability of Australia’s Country Towns’
- 4-8 Apr 2011 - Greenhouse 2011, The Science of Climate Change – Cairns Convention Centre - \$1440 Registration, plus \$150 per optional tour, 5 days

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**SIGNING OF DOCUMENTS BY THE MAYOR:**

- 10 Aug 2010 - Mortgage Documents – Westpac – Banora Point Wastewater Treatment Plant and Burringbar Mooball Sewerage Scheme
- 10 Aug 2010 - Lease – Optus Mobile Pty Ltd – Round Mountain Reservoir, Bogangar
- 17 Aug 2010 - Release of and Creation of Easement – Lots 129 and 130, DP1039348, Elrond Drive Kingscliff
- 17 Aug 2010 - Release of Easement – 163 Tweed Coast Road, Chinderah
- 20 Aug 2010 - Contract of Employment – General Manager
- 26 Aug 2010 - Section 88B instrument – Easement – Lot 2, DP727324, Murwillumbah
- 30 Aug 2010 - Transfer – Land Acquisition for Road and Compensation – Cudgen Rd, Duranbah
- 30 Aug 2010 - Request – Land Acquisition – Limpinwood Rd, Limpinwood
- 30 Aug 2010 - Lease – Tweed Visitors’ Information Centre

**RECOMMENDATION:**

**That:-**

- 1. The Mayoral Minute for the period 06 August to 05 September 2010 be received and noted.**
  - 2. The attendance of Councillors at nominated Conferences be authorised.**
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## ORDINARY ITEMS FOR CONSIDERATION

### REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE GENERAL MANAGER

#### 4 [GM-CM] 2011 and 2012 Surf Life Saving NSW Championships at Kingscliff

#### ORIGIN:

General Manager

FILE NO: Surf LifeSaving; Surf LifeSaving Club - Cudgen

#### SUMMARY OF REPORT:

Tweed Shire Council was successful in its application to NSW Surf Life Saving to host the 2011 and 2012 Surf Life Saving NSW Championships in conjunction with Cudgen Headland Surf Life Saving Club. An agreement between Surf Life Saving Australia NSW and Tweed Shire Council has been negotiated and is a confidential attachment to this report. The report recommends that Council enters into the agreement in the terms outlined.

#### RECOMMENDATION:

**That Council endorses:**

1. **Execution of the Agreement between Surf Life Saving Australia NSW and Tweed Shire Council to host the 2011 and 2012 Surf Life Saving NSW Championships.**
2. **ATTACHMENT 1 as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**
  - (d) **commercial information of a confidential nature that would, if disclosed:**
    - (i) **prejudice the commercial position of the person who supplied it, or**
    - (ii) **confer a commercial advantage on a competitor of the council, or**
    - (iii) **reveal a trade secret**

**REPORT:**

Tweed Shire Council has been successful in its application to NSW Surf Life Saving to host the 2011 and 2012 Surf Life Saving NSW Championships in conjunction with Cudgen Headland Surf Life Saving Club. An agreement between Surf Life Saving Australia NSW and Tweed Shire Council has been negotiated and is a confidential attachment to this report. The report recommends that Council enters into the agreement in the terms outlined.

Council's obligations under the Agreement include payment of a fee of \$60,000 plus the provision of various in-kind services. While the value of the in-kind services is estimated to be \$40,000, as a result of some sponsorship and negotiations with Cudgen Headland Surf Life Saving Club to provide some of the in-kind services, the real cost to Council is estimated to be \$20,000. Council's commitment to the Championships will therefore be in the order of \$80,000 which is in accordance with the endorsed allocation embodied in Council's resolution from August 2009.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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** - Agreement between Surf Life Saving Australia New South Wales and Tweed Shire Council (ECM 21153196)
-

**5 [GM-CM] Reporting of Code of Conduct Complaints**

**ORIGIN:**

**General Manager**

**FILE NO: Code of Conduct**

**SUMMARY OF REPORT:**

Council's Code of Conduct Clause 12.33 states that:

*The general manager must report annually to council on code of conduct complaints. This report should include, as a minimum, a summary of the:*

- a) number of complaints received,*
- b) nature of the issues raised by complainants, and*
- c) outcomes of complaints.*

**RECOMMENDATION:**

**That Council receives and notes the Code of Conduct Complaint Report for the period 1 July 2009 to 30 June 2010.**

**REPORT:**

**Number of Complaints**

Council received 24 Code of Conduct complaints for the period 1 July 2009 to 30 June 2010. Of the 24 complaints, 8 were referred to a Sole Reviewer, 2 were referred to a Conduct Review Committee and 14 were dealt with by the General Manager.

Complaints are initially assessed under Clause 13 – Complaint Assessment Criteria of the Code of Conduct.

**13 COMPLAINT ASSESSMENT CRITERIA**

*13.1 The general manager or Mayor, in the case of a complaint about the general manager, will assess a complaint alleging a breach of the code of conduct to determine if the matter should be referred to the conduct review committee/reviewer. In assessing the complaint, the general manager and Mayor will have regard to the following grounds:*

- a) whether there is any prima facie evidence of a breach of the code of conduct*
- 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*
- c) whether the complaint is trivial, frivolous, vexatious or not made in good faith*
- d) whether the conduct the subject of 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*
- f) whether there is an alternative and satisfactory means of redress*
- g) how much time has elapsed since the events the subject of the complaint took place*
- h) how serious the complaint is and the significance it has for council*
- i) whether the complaint is one of a series indicating a pattern of conduct.*

*13.2 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the general manager or the Mayor, in the case of complaints about the general manager.*

*13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.*



### **Nature of Issues raised by Complainants**

The nature of the complaints can be broadly summarised as below.

Release of confidential information	-	1 complaint
Inappropriate public comments	-	10 complaints
Conflict of interest	-	6 complaints
Prejudice against members of the public	-	5 complaints
Illegal activity	-	1 complaint
Acts of discourtesy	-	1 complaint

### **Outcomes of complaints**

It was determined that in 17 cases there had been no breach of Council's Code of Conduct when assessed against the criteria of Clause 13 of the Code of Conduct.

In two cases recommendations of training in Council's Media Policy and Code of Conduct were adopted and in another case a recommendation of opening improved lines of communication was also adopted.

In another two cases breaches were received and noted by Council with no further action.

In one case Council censured a Councillor.

In two cases the General Manager had discussions with individual Councillors with regard to ensuring their actions conformed with Council's Code of Conduct.

Council has not received a Code of Conduct complaint since 23 April 2010.

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

Expenses incurred by Sole Reviewer and Conduct Review Panel have been allowed within the adopted budget.

### **POLICY IMPLICATIONS:**

As per the requirements of the Code of Conduct V1.6.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**6 [GM-CM] Tweed Kenya Mentoring Program - Ochilo Safe Water Project, Final Report**

**ORIGIN:**

**General Manager**

**FILE NO: Water Management - Mentoring Kenya**

**SUMMARY OF REPORT:**

This report provides Council with a copy of the final report on the Ochilo Safe Water Project (Safe Water 3) completed by the Tweed Kenya Mentoring Program in April this year.

Sebastian Garcia-Cuenca, Council's Sustainable Agriculture Program Leader travelled to Kenya to deliver this project, and was successful in installing a water purification system, as well as strengthening connections between the Tweed Community and our Kenyan partners.

**RECOMMENDATION:**

**That Council receives and notes the report on the Tweed Kenya Mentoring Program's Safe Water 3 Project at Ochilo.**

**REPORT:**

In April 2010 Sebastian Garcia-Cuenca travelled to Kenya to deliver the Tweed Kenya Mentoring Program's third Safewater Project. The project was implemented in the grounds of a primary school in the village of Ochilo, which is located in the same vicinity as the previous Tweed Kenya Mentoring Program Safe Water Projects, the Siaya District of western Kenya.

Preparations for installation of the project commenced several months prior to Sebastian's arrival and included the construction of a concrete kiosk to house filtration equipment. While the technical aspects of this project progressed relatively smoothly, the political dynamics of the recipient community provided some challenges to project completion.

As well as delivering the Safe Water Project, this trip to Kenya resulted in the distribution of more soccer equipment to youths participating in Tweed Kenya Mentoring Program facilitated environmental education activities in Nairobi and the donation of uniforms from Crystal Creek Public School to an orphanage.

A detailed report on the project is included as an attachment to this report.

The Tweed Kenya Mentoring Program is planning an event at the Chinderah Sustainable Living Centre in conjunction with this year's Tweed River Festival.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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. [GM-CM] Tweed Kenya Mentoring Program - Ochilo Safe Water Project, Final Report - Report on Project Delivery - ECM 21155295
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## **7 [GM-CM] Draft Community Engagement Strategy**

### **ORIGIN:**

**Communications and Marketing**

### **SUMMARY OF REPORT:**

Tweed Shire Council placed its Draft Community Engagement Strategy Version 1.0 on public exhibition from Tuesday 22 June 2010 to Tuesday 20 July 2010, in accordance with Section 160 of the *Local Government Act 1993* (NSW).

Council invited submissions from the public on the Draft Community Engagement Strategy by placing advertisements in the Tweed Link and the On Exhibition page of Council's website, during a submission period from 22 June 2010 to 3 August 2010.

A total of sixteen (16) submissions were received by Council during the public exhibition period and are summarised in the body of this report. A number of changes have been made to the draft strategy in response to these submissions, which are also outlined in the report.

This Strategy will provide the framework for public engagement for all Council's strategic planning and decision making processes. That will include the formulation of the Community Strategic Plan's own community engagement strategy, which has been entitled Engaging the Community.

A report to the August Council meeting provided information regarding some confusion between the exhibited over-arching Community Engagement Strategy and the specific community engagement strategy which Council is required to develop to accompany the soon to be released 10-Year Community Strategic Plan. While the two documents share similar titles, they are independent of one another, as explained in the August business paper.

The over-arching Community Engagement Strategy is a long-term strategy outlining how Council informs, consults, involves and collaborates with the community throughout all stages of Council projects.

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

**RECOMMENDATION:**

**That Council:**

- 1. Adopts the overarching Community Engagement Strategy Version 1.0.**
- 2. Deletes the Communications Policy Version 1.1.**

## REPORT:

Tweed Shire Council placed its draft Community Engagement Strategy Version 1.0 on public exhibition from Tuesday 22 June 2010 to Tuesday 20 July 2010, in accordance with Section 160 of the *Local Government Act 1993* (NSW).

Council invited submissions from the public on the draft Community Engagement Strategy by placing advertisements in the Tweed Link and the On Exhibition page of Council's website, during a submission period from 22 June 2010 to 3 August 2010.

A total of sixteen (16) submissions were received by Council during the public exhibition period and are summarised in the body of this report. A number of changes have been made to the draft strategy in response to these submissions and are also outlined in the report.

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

It applies to engagement processes for the whole Council, outlining how it informs, consults, involves and collaborates with the community throughout all stages of Council projects.

The strategy:

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

### **Creating the Community Engagement Strategy**

The draft strategy was created from many resources, including Council's in-house administrative and operational reviews, other local government community engagement strategies and the International Association of Public Participation's (IAP2) best practice methods.

While most of the methods are traditional engagement methods, technology advancements provide opportunities for Council to improve the ways it communicates. The Inform stage in particular focuses on websites, contact centres and the Tweed Link as Council's primary forms of informing.

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

The Tweed Link's value as a primary source of information about Council activities was highlighted by an independent survey conducted in May 2010. It revealed 78 per cent of

respondents read the Tweed Link every week, while 90 per cent read it at least every couple of weeks. Encouragingly, 55 percent of respondents said they had modified their behaviour as a result of information in the Tweed Link, most notably their household habits such as recycling and water/energy use, attending an event or cultural/recreational facility, lodging a submission or attending public meetings.

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

The Engagement Matrix will guide staff through the strategy's minimum standards for engagement, supported by internal tools available on Council's intranet.

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

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

### **Social Justice**

The Community Engagement Strategy incorporates numerous engagement methods to involve people who otherwise can find it difficult to participate in public discussion.

- A high emphasis on online methods and Web 2.0 technologies provides innovative and exciting ways to get the message to people with limited mobility, are reluctant to attend or speak at public forums or have lifestyles that don't enable them to get to meetings. Online forums enable them to have their say.
- It is proposed to provide public internet access at Council's Customer Service Centres and libraries, to ensure these online methods are available to all residents.
- 1800 telephone submission services provide a voice for people who are unable or reluctant to attend or address public forums.
- Community information sessions will take Councillors and Council staff out to the communities, rather than expecting people to come to Council.
- Citizens Panel membership will be randomly selected, ensuring it comprises a representative cross section of the community, not just people who currently contribute to public discussions.

### **Citizens Panel**

The Draft Community Engagement Strategy incorporates the creation of a Citizens Panel which would be an unbiased and statistically representative portion of the community.

The citizens panel would not be a decision making body. Instead, its aim is to provide ongoing comment and general feedback on various issues for consultation, to provide a broad and representative view from the Tweed community.



The panel will proportionately represent the Tweed's four geographical areas based on localities – Tweed Heads and Surrounds, Tweed Coast, Murwillumbah and Surrounds and Rural.

The Citizens Panel will comprise 800 members, which is a statistically representative sample size of the Tweed community, to be selected randomly from the shire's ratepayers (including non-residential ratepayers) and residents. A sample of this size will ensure it is representative of the broad Tweed community, within an accuracy level of +/- 3.5 per cent, which is well above industry accepted levels.

It had been proposed the Citizen Panel would be recruited by randomly selecting residents' names from the electoral roll. Due to legislation changes in 2004, the NSW Electoral Commission now rarely provides copies of the electoral roll. Any applications to obtain a copy of the roll must be in writing. Council wrote to the NSW Electoral Commissioner, Mr Colin Barry, requesting a copy of the electoral roll for the purposes of recruitment to the Citizens Panel. The NSW Electoral Commissioner refused Council's application to gain an electronic copy of the roll.

The recruitment of Citizen Panel members will now be undertaken by random selection from two databases, with demographic targets for gender, age and geographical distribution. The databases are:

- **Ratepayers:** Includes all Tweed resident-ratepayer households and non-resident ratepayers. With an average 2.4 people per home, ratepayer households represent more than 64,000 residents, which is approximately 71 per cent of the total Tweed population. Note: Council would advise ratepayers they can 'opt out' of the database for the citizens panel selection if they desire.
- **Resident non-ratepayers:** Non-ratepayers residing permanently in the Tweed. Resident non-ratepayers who would like to be considered for selection through the random selection process to the Citizens Panel will be able to register on the database. A comprehensive promotion campaign would be conducted by Council to invite non-ratepayer residents to register on the database. Non-ratepayer residents will be required to provide proof of their identity and physical address, through accepted forms of identification such as a NSW Driver's License or utilities bill.

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

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

#### **PUBLIC COMMENTS RECEIVED**

A total of 16 submissions were received, eight from community organisations, with eight from individuals.

A number of amendments were made to the draft Community Engagement Strategy in response to these submissions:

- Removed the section on the Integrated Planning and Reporting Framework to avoid confusion with the Community Strategic Plan's Engaging the Community strategy.
- Included a section on social justice, to outline how the engagement methods seek to achieve equity and access for all community members to participate in community debate.
- Added specific references to how a number of the engagement methods will provide the community with direct access to the elected councillors.
- Expanded the list of engagement methods to include Councillors' Community Cuppas, informal information forums which will take the elected councillors out into the community.
- Added specific references to how interest groups and community groups would be involved in the engagement process.
- Removed the explanation of the Citizens Panel from the strategy, to include as an appendix instead. While a number of submissions indicated that greater detail was needed on how the panel will be formed and how it will operate, removing that explanation from the strategy would avoid an overemphasis of the panel's role in the overall engagement process. It is just one of many engagement methods in the strategy.

Submissions related to the draft Community Engagement Strategy are summarised as follows:

### **Draft Community Engagement Strategy submissions received**

#### ***Summary of written submissions received from individuals***

##### **Mr Roger Graf**

- Strategy will bring community together to enhance future policy.

Citizens Panel:

- Questioned how the Citizens Panel membership selection process will achieve accurate representation of the Tweed Community.

##### **Responsible officer comments**

*The proposed size of the Citizens Panel, with 800 members, is a large enough proportion of the Tweed population to be statistically representative of the wider Tweed community. By choosing those members randomly – using a computerised random selection program – the principles of statistical analysis dictates that the composition of a panel that size will reflect the demographics and geographic distribution of the entire community to an accuracy of +/- 3.5%.*

*The panel's selection database will be derived primarily from Council's ratepayer database, which is Council's most comprehensive list of residents and non-resident property owners. A major public education campaign will then invite all non-ratepayer residents to register on the database, giving the entire community an opportunity to be involved. This method will not ensure every resident is on the selection database but it is the best method available to Council.*

**Mr George Corkill**

Citizens Panel

- Concept of citizens panel is absurd. Panel would be an unnecessary expense to ratepayers.
- Councillors have been elected to govern the shire and it's up to them to find out what is best for the shire. They should be able to rely on Council staff to provide impartial information and advice.

*Responsible officer comments*

*The Citizens Panel will not assume any of the responsibilities of the elected councillors but will be a valuable tool for the Councillors to inform themselves about the opinions and priorities of the community.*

*The size of the panel and the method of choosing its members will ensure it is a statistically representative form of feedback, so Council can be confident its views reflect the opinions of the entire Tweed community. While the panel is only one type of community engagement to inform the councillors, the methods of forming and conducting the panel will engage people who are unlikely to participate in other forms of consultation.*

**Mr Eddy Kemp**

- Draft Community Engagement Strategy is a step in the right direction.

**Mr Bob McDonald**

- Draft Community Engagement Strategy does not meet the requirements of the Local Government Amendment (Planning and Reporting) Act 2009, which guides the creation of a Community Strategic Plan and a community engagement strategy as part of an Integrated Planning and Reporting Framework which all NSW councils must have in place by July 2011.

*Responsible officer comments*

*A separate Engaging the Community strategy, which meets the requirements of the Act, has been created exclusively for the Community Strategic Plan.*

*The integrated planning framework guidelines do not relate to the draft Community Engagement Strategy addressed in this report. This over-arching strategy has been devised independently of the framework process, to guide the consultation processes for all of Council's strategic planning and decision making.*

*For this reason and to avoid the type of confusion evident in some submissions, reference to the Integrated Planning and Reporting Framework has been deleted from this Community Engagement Strategy. Principles in the framework were incorporated in this Community Engagement Strategy, which led to the initial reference in the draft strategy, even though it is not necessary for this proposed over-arching strategy to comply with the framework's guidelines.*

## **Ms Kim Hollingsworth**

Council meetings should be streamed live on the internet and on a video screen in the council chambers foyer, so people who cannot sit in the public gallery can stay informed.

### Responsible officer comments

*Council is actively pursuing actions from the Telecommunications Infrastructure Action Plan to improve broadband throughout the shire. Improved broadband is required to fully benefit from any streaming that might occur in the future. Podcasting or streaming Council meetings is a matter for Council and would require amendments to Council's Code of Meeting Practice.*

### Citizens Panel

- Draft Community Engagement Strategy needs to explain what will happen if someone declines to be on the Citizens Panel.

### Responsible officer comments

*Citizens Panel members will be chosen using a computerised random selection program - devised by an external software development consultant - with names sourced from two selection databases.*

*The random selection process will create two lists of panel nominees, with separate lists for ratepayers and non-ratepayer residents so their proportions on the panel reflect their numbers in the broader community. The order in which nominees appear on those lists will also be random.*

*Those nominees will then be contacted by Council, starting with the first names on the lists, and invited to join the panel. If someone declines to be on the Citizens Panel, the invitation would be extended to the next person on the list and the process will continue until all 800 positions are filled.*

### Youth Panel

- Concerned that youths have greater opportunity to be involved than adults, because of the recruiting processes for the Citizens Panel and the Youth Panel.

### Responsible officer comments

*The Citizens Panel and Youth Panel are just two of many engagement methods prescribed in the Community Engagement Strategy. Both are designed to encourage input from people who might otherwise be unlikely to participate in public discussion. Interested and motivated individuals and groups will always have other convenient opportunities to provide their input.*

## **Ms Menkit Prince**

### Citizens Panel

- The silent majority is apathetic and uninformed. It is better to get the views of interested people.

Responsible officer comments

*The draft Community Engagement Strategy retains all existing forms of effective community engagement so interested and motivated members of the public have many different ways to participate and have their say.*

*However, it is important that every member of the community is encouraged to get involved and has the opportunity to participate. The Citizens Panel is one of many methods in the draft strategy designed to take the debate to the community, to encourage more people to get involved so feedback is more representative of the entire shire.*

- The Citizens Panel will be comprised largely of people living on the coast, who have no interest in issues affecting the rural area.

Responsible officer comments

*Issues specific to the shire's rural areas will generally only be referred to Citizens Panel members from the 'Rural' zone.*

*When the whole panel is consulted on shire wide issues, the discussion process will match each panel member's comments with the zone in which they reside.*

*These measures are in place to ensure the opinions of the less populated zones are heard. But for the overall panel to be statistically representative of the shire, panel member numbers must reflect the geographical distribution of the total population.*

- Concerned that Council could manipulate the list of names on the Citizens Panel's selection databases.

Responsible officer comments

*All Tweed residents and ratepayers will be encouraged to ensure their names are on the selection databases. From those databases, a computerised random selection program – created by an external software development consultant - will automatically create two lists of proposed panel members (ratepayers and non-ratepayer residents). The order in which nominees appear on those lists will also be random.*

*Those nominees will then be contacted by Council, starting with the first names on the lists, and invited to join the panel. If someone declines to be on the Citizens Panel, the invitation would be extended to the next person on the list and the process will continue until all 800 positions are filled. All three steps would eliminate any potential for the panel membership to be manipulated.*

Three submissions with the same content were received from three individuals.

**Mr Ari Ehrlich**

**Ms Elizabeth Jack**

**Mr Yves Picard**

- The term involve/collaborate needs further explanation. They are separate stages in the IAP2 process.

Responsible officer comments

*The engagement methods listed in the Involve/Collaborate section of the draft strategy matrix could be either involve or collaborate, depending on the type of project and the nature of the engagement.*

- Engagement processes in the draft strategy replace access for community groups with a system of random selection of 800 people.

Responsible officer comments

*The panel is not replacing any existing methods of community engagement. Interest and community groups are included in the strategy's list of stakeholders and would often be targeted for engagement methods such as meetings by invitation, site tours and direct mail. The strategy's Methods of Engagement list has been revised to indicate this involvement.*

**Summary of written submissions received from community organisations**

**Save Jack Evans Boat Harbour Committee**

- The draft strategy is a good concept provided residents' input is taken onboard and acted upon.

**Tweed District Residents and Ratepayers Association**

Citizens Panel:

- Citizens Panel concept appears to be poorly researched and naïve and does not refer to the experiences of other local authorities.

Responsible officer comments

*Online Citizens Panels have been established and utilised effectively by many local governments in Australia and overseas. Most of these panels are open to every interested person to register and participate in panel forum discussions.*

*However, a random selection process is needed for the panel to be statistically representative of the wider community, so Council can be confident the views expressed are indicative of the entire population.*

*Onkaparinga Council in South Australia has successfully operated a randomly selected online citizens panel since 2009, enjoying a high level of community participation and member retention.*

- Council will struggle to find 800 willing participants who are adequately informed and literate.

Responsible officer comments

*Citizens Panels operated by numerous other Australian local governments have attracted good levels of community participation.*

*The random selection process for Tweed Shire Council's Citizens Panel will ensure it has members with varying levels of education, to mirror the education levels of the wider community.*

*The Citizens Panel is one of several initiatives in the draft strategy to encourage more people to be interested and involved in Council activities.*

*All Citizens Panel members will be provided with sufficient and balanced information to make educated comment about discussion topics.*

- All interested people will have some bias.

*Responsible officer comments*

*Each individual panel member will have an opinion on an issue. But for the panel as a whole, the statistically representative nature of the panel will ensure the overall views expressed by its members will mirror the views of the entire community.*

- Council should go to informed volunteers for informed input.

*Responsible officer comments*

*The draft Community Engagement Strategy retains all existing forms of effective community engagement so interested and motivated members of the public have many different ways to participate and have their say.*

### **Murwillumbah Ratepayers and Residents Association**

- Wants chaired meetings to be retained as a method of engagement.

*Responsible officer comments*

*Public meetings are not an effective method of two-way communication. They are generally poorly attended, often attract the same small portion of the community and do not provide an effective forum for the community to offer feedback.*

*Many residents are typically unable to attend these meetings or don't feel comfortable speaking at these forums, which are regularly dominated by interest groups.*

*There are numerous other methods of engagement which are much more time and resource efficient and give everyone a chance to participate. They include various face-to-face forums, such as community information sessions, which are more effective in two-way exchanges of information and opinion.*

Citizens Panel:

- Two-year term for Citizens Panel members might not be long enough.

*Responsible officer comments*

*A longer participation term is most likely to be embraced by motivated members of the community who are already involved in public debate and utilise other options for input. Their ongoing involvement on the panel, while other positions are vacated for new members, could compromise the representativeness of the panel's membership.*

### **Pottsville Community Association**

- Association wants to be part of the Council planning and decision making undertaken as part of the strategy.

Responsible officer comments

Community groups such as residents and community associations are included in the strategy's list of stakeholders and would often be targeted for engagement methods such as meetings by invitation, site tours and direct mail. The strategy's Methods of Engagement list has been revised to outline this involvement.

**Caldera Institute**

- Council should outline the methodology used to develop the draft Community Engagement Strategy.

Responsible officer comments

The strategy was developed from a combination of best-practice methods based on research and enquiries to similar organisations. It has been created from many resources including Council's in-house administrative and operational reviews, other local government community engagement strategies and best practice methods from the International Association of Public Participation (IAP2).

- A panel of community members and councillors should review the draft strategy and public comments to underpin a transparent partnership between the Council and community.

Responsible officer comments

This is the councillors' role by considering this report, which has been compiled from submissions received during the public exhibition period. Copies of all submissions are included as an attachment to this report, for the councillors' and the community's information.

- Community Boards should be created for collaboration at policy and strategic level, involving community members with specialist knowledge.

Responsible officer comments

In response to this submission, Council could investigate a possible restructure of its advisory committees. The restructure could include the areas of responsibility for advisory groups and how their input on an issue is presented to Council.

- The strategy should allow for regular dialogue between the community and councillors.

Responsible officer comments

The strategy includes a number of engagement measures which bring councillors in contact with the community, such as public displays and information sessions, Community Conversations, presentations at meetings and Council-facilitated community events. In response to submissions, the explanations for these methods have been revised to outline the councillors' involvement.

In addition, Councillors' Community Cuppas have been added and will take councillors out to communities throughout the shire.

Citizens Panel:

- The Citizens Panel membership size is appropriate but should use smaller geographic boundaries to better address district and localised issues.



Responsible officer comments

*A division of the panel's Rural zone into smaller districts was considered, in response to this submission. It was decided the proposed system of four zones was the most suitable mix between localising panel membership – to ensure the views and interests of particular districts were identified – and creating a Citizens Panel which is manageable.*

*The identified zones divide the shire into its four distinct demographic zones – the urban communities of the Tweed Heads and surrounds, the coastal villages, the regional community that is Murwillumbah and its surrounds and the shire's rural areas.*

*Further dividing the Rural district into smaller areas would make it more difficult to fill the allocated places and would diminish the panel's overall representativeness of the entire shire.*

*The specific interests of rural towns and districts will be represented by residents and progress associations, who will play prominent roles in other forms of engagement outlined in the strategy.*

- Clearer guidelines are needed for the strategy's matrix. It should clearly identify the triggers for when the Citizens Panel will be engaged.

Responsible officer comments

*The matrix includes triggers – for example, 'every time' and 'on specific occasions' – which are as specific as possible while allowing the necessary level of flexibility to accommodate the various Council projects and strategies which will utilise the Community Engagement Strategy.*

*Case studies revealed a need to allow some flexibility in the triggers because of the considerable variations between Council activities. More specific triggers would require a number of additional project categories – in addition to shire-wide high impact, shire-wide low impact, locality-based high impact and locality-based low impact – which would create a matrix which is much more complex and less practical.*

*More specific definitions could also make it impractical to allocate a project to a particular category.*

- Strategy needs to explain how balanced and factual information will be presented to the panel members.

Responsible officer comments

*The guidelines for the Citizens Panel have been removed from the overall Community Engagement Strategy and attached as a separate appendix, in response to public submissions and to emphasise that the panel is only one method of engagement in the strategy. A separate appendix for the Citizens Panel has allowed greater detail about how the panel will be formed and will operate, including the provision of information to its members.*

*Information provided to the Citizen Panel members will be the same as the content readily available to the wider community as part of other methods of consultation on that issue.*

*While Council is always careful to ensure information is factual and unbiased, it will also be subject to the safeguard of public scrutiny. Any additional information requested by panel members during a discussion or supplied to clarify a matter will also be accessible for scrutiny by the broader community – either on the panel's online homepage (which anyone will be able to access) and as part of the summary at the end of each panel discussion.*

*Issues which are particularly complex and demand specialist knowledge will not be referred to the Citizens Panel and will utilise more appropriate methods of engagement.*

*In addition, panel discussions will be moderated by an independent consultant to ensure they are conducted properly.*

- The institute applauds the provision of printed material to acknowledge not all people are computer literate.

### **Tyalgum District Community Association**

- The strategy should focus more on Council's Community Strategic Plan and its requirements under the Integrated Planning and Reporting Framework.

#### Responsible officer comments

*A separate community engagement strategy, which meets the requirements of the Act, has been created exclusively for the Community Strategic Plan.*

*The integrated planning framework guidelines do not relate to the draft Community Engagement Strategy addressed in this report. This strategy has been devised independently of the framework process, to guide the consultation processes for all of Council's strategic planning and decision making.*

- The strategy should outline how community groups will be engaged.

#### Responsible officer comments

*Community and interest groups are included in the strategy's list of stakeholders and would often be targeted for engagement methods such as meetings by invitation, site tours and direct mail. The strategy's Methods of Engagement list has been revised to outline this involvement.*

- The strategy must identify relevant stakeholder groups and outline methods to engage each group.

#### Responsible officer comments

*The strategy has been revised to better outline methods to engage the various stakeholder groups. An exhaustive list of stakeholders and specific engagement methods would not be practical in a strategy which needs to be concise to be functional.*

Citizens Panel:

- Details of the Citizens Panel should be contained in a separate document.

Responsible officer comments

*The guidelines for the Citizens Panel have been removed from the overall Community Engagement Strategy and attached as a separate appendix, in response to public submissions and to emphasise that the panel is only one method of engagement in the strategy.*

- The strategy must outline what decisions the Citizens Panel can make and outline the councillors' responsibilities.

Responsible officer comments

*The Citizens Panel will not be a decision making body. It will be one of the strategy's methods of ensuring the community's views and priorities are conveyed to the elected councillors to assist their decision making. Under the Local Government Act 1993, the councillors are empowered – as elected representatives – to make decisions on behalf of the community.*

*The panel will further inform the councillors by encouraging the input of people who are otherwise unlikely to participate in public discussion. The panel's composition will also mean the councillors can be confident the views expressed by the panel are representative of the wider community.*

- Half the Citizens Panel members will stop participating during the 12-month term, leaving inadequate representation of the Rural zone.

Responsible officer comments

*High attrition rates have not been experienced by the citizens panels of other local governments.*

*Tweed Shire Council will liaise regularly with its Citizens Panel members to encourage their ongoing involvement.*

**No Rally Group**

- Draft strategy is a step in the right direction, in some ways.
- The number of methods allocated to each stage of engagement in the strategy indicates their relative importance to Council. It appears listening to the community ranks lower than informing

Responsible officer comments

*The number of methods is no indication of the relative importance of the different stages on engagement. There is a greater number of effective methods available to inform.*

- Distinguishing between community groups and interest groups creates a false division.

Responsible officer comments

*For the purposes of identifying stakeholders within the strategy, community groups have been interpreted as groups whose charter is general service to the community, such as Rotary, Lions and the Salvation Army. Interest groups are defined as organisations formed to address particular issues, such as the environment, business and progress groups for particular towns and districts. This distinction does not cast any aspersions on their relative value to the community but it indicates there might be a difference in how and when they are engaged.*

- The strategy does not adequately recognise the role of interest groups or outline methods to engage identified stakeholder groups.

Responsible officer comments

*Interest groups are included in the strategy's list of stakeholders and would often be targeted for engagement methods such as meetings by invitation, site tours and direct mail. The strategy's Methods of Engagement list has been revised to indicate this involvement. In addition, members of these groups will be able to participate as private citizens through other engagement methods.*

- Draft strategy needs to be rejected and its development needs to start from scratch.
- The draft strategy fails to adequately address the Local Government Amendment (Planning and Reporting) Act 2009 requirements and guidelines of the Division of Local Government.

Responsible officer comments

*A separate community engagement strategy, which meets the requirements of the Act, has been created exclusively for the Community Strategic Plan.*

*The integrated planning framework guidelines do not relate to the draft Community Engagement Strategy addressed in this report. This strategy has been devised independently of the framework process, to guide the consultation processes for all of Council's strategic planning and decision making.*

- Council meetings should be streamed live on the internet for people who cannot attend meetings.

Responsible officer comments

*Council is actively pursuing actions from the Telecommunications Infrastructure Action Plan to improve broadband throughout the shire. Improved broadband is required to fully benefit from any streaming that might occur in the future. Podcasting or streaming Council meetings is a matter for Council and would require amendments to Council's Code of Meeting Practice.*

- The strategy lacks social justice principles to acknowledge the right of all residents to participate.

Responsible officer comments

*There are numerous methods in the draft strategy to make community discussion available to all residents. They include enhanced online methods and phone services,*

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*assisting people with limited mobility, the provision of internet access at Council's libraries and customer service centres and community conversations and information sessions which take council out into the community. Social justice is also enhanced by the inclusion of interest groups among stakeholders to be engaged.*

*A 'social justice' section has been incorporated into the strategy to better define these measures.*

- Community access is a transparent way residents can determine what matters are raised with Council, but only rates a brief mention in the draft strategy.

*Responsible officer comments*

*The strategy has been created to help Council plan how it engages the community on particular issues. Community access has not been listed as one of the available methods of engagement, because Council cannot dictate what issues are raised at these sessions. So while Community Access is a valuable forum for members of the public to provide information to Council, it cannot be included in any communication plan for a particular issue.*

- The 'Empowerment' section should be expanded and include town meetings and plebescites.

*Responsible officer comments*

*The International Association for Public Participation guidelines used to create the draft strategy define empowerment as placing the final decision-making power in the hands of the public. Council is bound by the Local Government Act 2003, which stipulates that councillors are the designated decision makers, as elected representatives of the community. Therefore, the guidelines provided by the Act and the IAP2 do not allow for the inclusion of specific methods under the banner of Engagement.*

*As a result, the Community Engagement Strategy seeks to empower the community by optimising the flow of public opinions and priorities to the councillors, to assist in their decision making.*

- The draft strategy's matrix shows a preference for small, secret meetings, which have led to distrust of Council.

*Responsible officer comments*

*Smaller meetings and information sessions have proven to be more effective in the exchange of information between Council and the community. These meetings outlined in the strategy will not be secret; many of them will be open to everyone and will be widely publicised.*

Citizens Panel

- The draft strategy does not outline who will serve as the Citizens Panel's independent moderator.

*Responsible officer comments*

*It is proposed Council would recruit a consultancy firm which specialises in facilitating online forums for governments and other organisations. This firm would moderate the Citizens Panel's online forums and provide a report summarising panel feedback at the end of each discussion.*

- Selecting Citizens Panel members from a ratepayer database, requiring non-ratepayer residents to register, favours people from a higher socio-economic group.

Responsible officer comments

*The ratepayer database is Council's most comprehensive list of residents, after Council was denied adequate access to the electoral roll. The ratepayer database is the best option available to Council and the fact is an incomplete list is not sufficient reason to forfeit the benefits of a Citizens Panel.*

*A major public education campaign will be conducted by Council to invite all non-ratepayer residents to register on the database, giving the entire community an opportunity to be involved.*

*Council would have preferred to use the electoral roll but, as outlined in this report, a copy of the roll has not been made available.*

- The Citizens Panel is not a suitable alternative to surveys because of its sampling errors and bias.

Responsible officer comments

*The Citizens Panel will not replace surveys of the wider community, which will continue to be conducted when their considerable expense can be justified by the nature of the issue.*

*Surveys of the broad community have their own sampling errors and bias because they rely on people agreeing to participate.*

- Panel membership should be constructed on more variables than age, gender and location.

Responsible officer comments

*The principles of statistical analysis stipulate that the size and random method of selecting the Citizens Panel will ensure other demographic variables in the community are reflected in the panel's composition. The proposed size, 800 members, is a large enough proportion of the Tweed population to be statistically representative of the wider Tweed community, to a high level of accuracy.*

- The Citizens Panel hardly seems worth the effort if it is only used on rare occasions.

Responsible officer comments

*Citizens Panel members will only be used for a handful of discussions each year because:*

- *Council is conscious it cannot overburden people who volunteer to be on the panel.*
- *The panel will not be a suitable method of engagement for all Council projects.*

*However, panel members could also be invited to participate in a number of surveys which are less time-intensive. They may also be invited to join focus or reference groups, without identifying them as panel members.*

- Questions how information and questions to the Citizens Panel will be formulated to ensure they are fair and not loaded.

Responsible officer comments

*Information provided to the Citizen Panel members will be the same as the content readily available to the wider community for other methods of consultation on that issue. While Council is always careful to ensure information is factual and unbiased, it will also be subject to the safeguard of public scrutiny. Any additional information requested by panel members during a discussion or supplied to clarify a matter will also be accessible for scrutiny by the broader community – either on the panel's online homepage (which anyone will be able to access) and as part of the summary at the end of each panel discussion.*

*In formulating questions presented to the panel, Council will refer to the experience of the independent consultants engaged to facilitate the Citizens Panel. Their expertise will help ensure the questions are not loaded.*

- The Citizens Panel is a disappointing move from face-to-face discussions.

Responsible officer comments

*The panel is not replacing any existing methods of community engagement. The Community Engagement Strategy includes a number of face-to-face methods, including public speaking, Community Cuppas and conversations, information sessions and stakeholder collaborations.*

*The anonymity provided by the Citizens Panel forums will have benefits not provided by other forms of engagement, encouraging input from people who are otherwise unlikely to participate in public discussion.*

- The Youth section should be reworked to include real strategies to engage youth.

Responsible officer comments

*Apart from the draft strategy's section on the Youth Panel, youths are not referred to separately in the document because they are covered by stakeholder categories such as 'residents', 'interest groups' and 'schools, education and training institutions'.*

*The draft's explanation of the Youth Panel has been removed from the strategy – along with the Citizens Panel section – to be incorporated as a separate appendix to the strategy. This has been done in response to public submissions and to emphasise that the panels are only one method of engagement in the strategy.*

### **Caldera Environment Centre**

- The draft strategy is an inadequate response to the Integrated Planning and Reporting Framework legislation.

Responsible officer comments

*A separate community engagement strategy, which meets the requirements of the Act, has been created exclusively for the Community Strategic Plan.*

*The integrated planning framework guidelines do not relate to the draft Community Engagement Strategy addressed in this report. This strategy has been devised*

*independently of the framework process, to guide the consultation processes for all of Council's strategic planning and decision making.*

- Council does not have enough public meetings to inform and develop policy. They create a feeling of participation and empowerment.

*Responsible officer comments*

*Public meetings are not an effective method of two-way communication. They are poorly attended, generally attract the same small proportion of the community and do not provide an effective forum for the community to offer feedback.*

*Many residents are typically unable to attend these meetings or don't feel comfortable speaking at these forums, which are often dominated by interest groups.*

*There are numerous other methods of engagement which are much more time and resource efficient and give everyone a chance to participate. They include various face-to-face forums, such as community information sessions, which are more effective in two-way exchanges of information and opinion.*

- Questions whether a randomly selected Citizens Panel can be representative.

*Responsible officer comments*

*The principles of statistical analysis stipulate that the size and random method of selecting the Citizens Panel will ensure demographic variables in the community are reflected in the panel's composition. The proposed size, 800 members, is a large enough proportion of the Tweed population to be statistically representative of the wider Tweed community, to a high level of accuracy.*

*The panel process divides the shire into four zones, so issues specific to one zone can be referred to panel members from that area.*

- Many panel members will be ignorant and apathetic. Questions why they should be consulted.

*Responsible officer comments*

*It is important that every member of the community is encouraged to get informed and has the opportunity to participate. The draft strategy includes a number of measures to take the debate to the community, to encourage more people to get involved so feedback is more representative of the entire shire.*

- It is inevitable that questions to the Citizens Panel will be biased, ambiguous and edited, so its feedback lacked credibility. The community should know how the questions were developed and how panel feedback is presented to the decision makers.

*Responsible officer comments*

*In formulating questions presented to the panel, Council will refer to the experience of the independent consultants engaged to facilitate the Citizens Panel. Their expertise will help ensure the questions are not loaded.*



*This firm would moderate the Citizens Panel's online forums and provide a report summarising panel feedback at the end of each discussion, to present to the councillors.*

## TABULATED SUMMARY OF SUBMISSIONS

Name	Issue
Roger Graf	<ul style="list-style-type: none"> <li>* Strategy will bring community together to enhance future policy.</li> <li>* Citizens Panel membership selection process.</li> </ul>
George Corkill	<ul style="list-style-type: none"> <li>* Citizens Panel an unjustified cost to ratepayers.</li> <li>* Citizens Panel Citizens Panel It's up to elected councillors to find out what is best for the shire. They should be able to rely on staff to provide impartial advice and information. Expert consultants can be engaged as required</li> <li>* Panel would only comprise self-interest group representatives who would not represent the best interests of all citizens</li> </ul>
Save Jack Evans Boat Harbour Committee, Secretary Stephanie Deane	<p>Good concept provided residents input is taken onboard</p>
Tweed District Residents & Ratepayers Association. President Laurie Ganter	<ul style="list-style-type: none"> <li>* Strategy does not support panel concept, which is poorly researched and naïve</li> <li>* Unlikely to find 800 people properly informed and document literate. Will panel members be tested to ensure they have the necessary literacy?</li> <li>* All interested residents have some bias</li> <li>* Questions the number of residents with broadband internet access</li> <li>* Council should go to interested volunteers for informed input</li> </ul>
Murwillumbah Ratepayers & Residents Association. President Robyn Lemaire	<ul style="list-style-type: none"> <li>* Is citizens panel separate from 800 randomly selected people?</li> <li>* Maximum 2-year team might not be long enough</li> <li>* How will resident associations continue to be involved?</li> <li>* Strategy objectives should include social justice</li> <li>* Will there be chaired meetings, when consultation really occurs?</li> </ul>
Pottsville Community Assoc. Sec. Mike Wells	<ul style="list-style-type: none"> <li>* Association wants to be part of the strategy and be part of council planning and decision making.</li> </ul>
Caldera Institute Anne Duke	<ul style="list-style-type: none"> <li>* Should outline the methodology used in developing the strategy. This would establish transparency in dialogue between the community and Council.</li> <li>* A panel of independent community members and councillors - advised key council staff - should be review the draft and community comment. This would minimise the risk of community mistrust and misunderstanding, and underpin a strong and transparent partnership between the community and council in developing and implementing the Community Strategic Plan.</li> <li>* Citizens Panel membership size is appropriate but should use smaller geographic boundaries to better address issues of district and localised impact. Eg. Uki &amp; District, Burringbar/Mooball, Chillingham &amp; District. This would acknowledge and accommodate connections to localities and differences between suburbs and localities.</li> <li>* Should be clear triggers on when to consult with citizens panel.</li> <li>* Need to explain how council will ensure information provided to the panel will be unbiased and factually presents both sides of an issue.</li> <li>* Applaud the provision of printed material, to acknowledge not all people are computer literate. Will council provide options for translation if required?</li> <li>* Clearer guidelines needed for matrix. Vague terms such as 'in most circumstances' and 'on specific occasions' can suggest ad hoc decision making and a lack of transparency.</li> </ul>

Name	Issue
	<ul style="list-style-type: none"> <li>* Trigger level for Citizens Panel for high impact issues - shirewide and localised - should be 1 and not 3, because it's a key tool in the strategy. Would underpin the strategy's credibility in the community.</li> <li>* Draft is missing specialist involvement for collaboration at policy and strategic level; eg. Community Boards for issues such as Environment &amp; Sustainability, Social &amp; Community Planning, Rural &amp; Urban Development.</li> <li>* Boards could include expert community members, a councillor and a Council executive staff member. These boards would have an advisory role but their intent and composition would vary considerably from the existing, mainly single-issue, advisory committees.</li> <li>* Strategy should allow regular dialogue between the community and councillors - as the elected community representatives - in addition to formal access sessions. Could have community 'village voice' meetings in shires and suburbs, perhaps quarterly. This would build dialogue and understanding between council and the community, with councillors regularly going to the community to listen to their ideas.</li> </ul>
Eddy Kemp	Engagement strategy is a step in the right direction
Bob McDonald	<ul style="list-style-type: none"> <li>* Engagement strategy is not appropriate and needs to be redrafted.</li> <li>* Draft appears to be centred around a desire to create a Citizens Panel, which is only about output/project consultation.</li> <li>* Draft strategy doesn't meet the requirements of the Act.</li> <li>* Councillors and directors should present themselves at public meetings around the shire to explain the process.</li> <li>* We don't need 800 randomly selected ratepayers, who generally want the councillors to get on with it and make good decisions.</li> </ul>
Tyalgum District Community Association Coordinator Verdandi Worldtree	<ul style="list-style-type: none"> <li>* Engagement strategy needs to concentrate on identifying the community's priorities and aspirations for the future and achieving these goals.</li> <li>* Strategy should focus more on the Strategic Plan and how it will be developed. Planning and reporting guidelines outline clear requirements for producing a Strategic Plan.</li> <li>* Local Government Planning &amp; Reporting framework diagram should be included in the engagement strategy.</li> <li>* Strategy is too vague and concentrates more on technological innovation than the requirements of the DLG P&amp;R Manual.</li> <li>* TDCA doesn't understand the 'engagement matrix' and how it relates to the CSP.</li> <li>* Strategy is a jumble of jargon which will confuse the average ratepayer.</li> <li>* Strategy must be based on social justice principles.</li> <li>* Details of citizens panel should be contained in a separate document.</li> <li>* Strategy must outline what decisions the Citizens Panel members can make and what are the councillors' responsibilities.</li> <li>* About a half of the Citizens Panel members will stop participating during the 12-month term. If there are only 80 Rural zone members on the panel initially, there will probably be less than 50 after 12 months. There are more than 50 rural localities in the Tweed, so each locality would be lucky to have one member contributing to the panel. This is not good representation.</li> <li>* Strategy does not outline how community groups will be engaged.</li> <li>* CES must identify relevant stakeholder groups and outline methods to engage each group.</li> <li>* TDCA wants an interested parties model, rather than a Citizens Panel 'lucky dip' method, for the strategic plan.</li> </ul>

Name	Issue
Kim Hollingworth	<ul style="list-style-type: none"> <li>* Video screen needed in council chambers foyer for live footage of council meetings, because a severe back injury prevents her from sitting or standing in the public gallery.</li> <li>* Council meetings should be streamed live on the web, so all stakeholders could participate and groups at risk of exclusion, such as the elderly and people with a disability, could stay informed.</li> <li>* Citizens panel members could stay better informed if meetings were live on the web.</li> <li>* Formally requests to be included in the CES.</li> <li>* CES should outline what happens if someone declines to be on the Citizens Panel, to ensure the process remains unbiased.</li> <li>* Youths can simply register for the Youth Panel and won't have to wait for random selection. So they have greater opportunity for representation than an adult.</li> </ul>
Menkit Prince	<p>Citizens Panel will be comprised largely of people living on the coast, who have no interest in issues affecting the rural area.</p> <ul style="list-style-type: none"> <li>* It's better to get the views of interested people. The 'silent majority' is apathetic and uninformed, so how valuable in its input?</li> <li>* Suggests most of the 800 panel members will have no knowledge of the issues or time to study them.</li> <li>* There's no transparency in the process when TSC could manipulate the selection database.</li> <li>* Picking names out of a hat is not the best practice for taking care of an area as environmentally sensitive as the Tweed.</li> <li>* Organisations caring for wildlife should be considered as key stakeholders.</li> </ul>
No Rally Group Michael McNamara	<ul style="list-style-type: none"> <li>* Draft strategy is a move in the right direction, in some ways.</li> <li>* Number of actions allocated to each stage of engagement indicates their relative importance to council. It appears listening to the community ranks lower.</li> <li>* Distinguishing between community groups and interest groups creates a false division.</li> <li>* Draft does not adequately recognise the role of interest groups to represent community interests and views.</li> <li>* Draft fails to outline methods to engage each identified stakeholder group.</li> <li>* Draft strategy fails to adequately address Local Government Amendment (Planning and Reporting) Bill 2009 requirements and guidelines of Division of Local Government. Variations from guidelines must be justified.</li> <li>* If adopted strategy remains non-compliant, community members will raise concerns with the Division of Local Government.</li> <li>* Strategy lacks social justice principles, to acknowledge the rights of all residents to participate and increase access for residents from disadvantaged groups.</li> <li>* Should broadcast Council meetings and community access live on the internet, for people who can't get to the public gallery.</li> <li>* Draft plan needs to be rejected and development of plan needs to start from scratch.</li> <li>* Draft does not set out an appropriate timeline for implementation of strategy.</li> <li>* Local Government Act includes provisions for plebescites as non-binding indications of community wishes but not mentioned in strategy.</li> <li>* Community Access is a rare transparent way residents can determine what matters are raised with council but not mentioned in strategy. Presenters should be able to ask Councillors questions.</li> <li>* Draft does not explain how advisory committees operate and benefit the community.</li> </ul> <p>Tweed Link should include 'letters to the editor' and list meeting dates for all</p>

Name	Issue
	<p>community and interest groups.</p> <ul style="list-style-type: none"> <li>* Who will serve as the citizens panel's independent moderator?</li> <li>* The citizens panel is not a suitable alternative to surveys because of sampling errors and bias.</li> <li>* Empowerment section should be expanded, include town meetings and plebescites,</li> <li>* Matrix shows a preference for small 'secret' meetings, which have led to distrust of Council. Suggests deals are done behind closed doors.</li> <li>* Citizens panel is just one action but takes up an inordinate amount of space and resources.</li> <li>* Panel composition should be constructed on more variables than age, gender and location. Draft does not outline how small business, farmers, welfare agencies, resident ratepayers, non-resident ratepayers, unemployed people and other identifiable groups will be represented.</li> <li>* Selecting panel members from a ratepayer database, requiring non-ratepayer residents to register, favours people from a higher socio-economic group, in contradiction to social justice values.</li> <li>* Only people with strong views or vested interests are likely to agree to join panel, causing sampling errors.</li> <li>* Draft does not outline what will happen if nominee declines to join the panel. How will they be replaced?</li> <li>* How will the panel's representative nature be maintained if members withdraw from the panel?</li> <li>* Panel hardly seems worth the effort if it's only used on rare occasions.</li> <li>* How will questions to panel be formulated to ensure they are fair and not loaded?</li> <li>* Draft does not explain what range of information will be provided to panel members so they can make informed decisions.</li> <li>* Panel is a disappointing move from face-to-face discussion which is open and transparent.</li> <li>* Online forums and emails risk uninformed and hastily constructed views.</li> <li>* Panel could create an informal and unelected alternative power base on local issues and development decisions.</li> <li>* Youth section should be reworked to include real strategies to engage youth.</li> </ul>
<p>Caldera Environment Centre Coordinator Paul Hopkins</p>	<ul style="list-style-type: none"> <li>* Draft engagement strategy an inadequate response to integrated framework legislation.</li> <li>* Representative/stakeholder committee process is more transparent and more likely to reach beneficial conclusions than disconnected and uninformed citizen panel members.</li> <li>* Council does not have enough public meetings to inform and develop policy. They create a feeling of participation and empowerment.</li> <li>* Tweed Link is an important asset which should be made more timely and relevant. Should include letters to the editor.</li> <li>* Can a randomly selected citizens panel be truly representative?; eg. the rural zone has a relatively small population but covers a huge area and has great environmental and ecological value.</li> <li>* Many panel members will be ignorant and apathetic. Why should they be consulted?</li> <li>* Who will frame and interpret questions to the panel? Bias, ambiguity and editing is inevitable, so the results lack credibility.</li> <li>* No transparency. The community cannot know how questions were developed or how panel feedback is presented to the decision makers.</li> <li>* The panel's integrity and intent are distorted by the lack of empowerment and action steps.</li> <li>* Five-minute addresses at Public Access are inadequate for all but the</li> </ul>

Name	Issue
	simplest issues. Workshops are more valuable. * Workshop needed on community engagement between council officers and people who lodged submissions.
Ari Ehrlich	* The term involve/collaborate needs further explanation. They are separate stages in the IAP2 process. * Engagement processes in the draft strategy replace access for community groups with a system of random selection of 800 people.
Elizabeth Jack	* The term involve/collaborate needs further explanation. They are separate stages in the IAP2 process. * Engagement processes in the draft strategy replace access for community groups with a system of random selection of 800 people.
Yves Picard	* The term involve/collaborate needs further explanation. They are separate stages in the IAP2 process. * Engagement processes in the draft strategy replace access for community groups with a system of random selection of 800 people.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Draft Community Engagement Strategy 1.0 (ECM 21264041).
2. All submissions received (ECM 21267458).

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**8 [GM-CM] Tweed Tourism Quarterly Performance Report - April to June 2010**

**ORIGIN:**

**General Manager**

**SUMMARY OF REPORT:**

As required by the current agreement (extended to 30 September by resolution 16 March 2010) between Tweed Tourism and Council a quarterly performance report and summary financial statement are to be provided for Council's review. This report provides the Tweed Tourism's Quarterly Reports for the quarter 1 April to 30 June 2010. All financial information that is of a 'commercial in confidence' nature in this report has been provided in a confidential attachment.

**RECOMMENDATION:**

**That Council endorses:**

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

REPORT:



**Tweed Tourism  
June Quarter Report**

**1. VISITOR INFORMATION CENTRES**

**Movement in visitor numbers at each VIC previous year**

2009 - 2010

	2009/10	2008/09	Variance	2009/10	2008/09	Variance
	WHRC			Tweed Heads		
Sept Qtr	6840	6471	5.70%	7007	6750	3.81%
Dec Qtr	6162	6029	2.21%	8991	5304	69.51%
Mar Qtr	6996	6142	13.90%	7676	5462	40.53%
Jun Qtr	6514	5813	12.06%	7702	5319	44.80%
<b>Total</b>	<b>26,512</b>	<b>24,455</b>	<b>8.41%</b>	<b>31376</b>	<b>22835</b>	<b>37.40%</b>

- Murwillumbah again showed a growth in visitor numbers to last year bringing the overall increase in visitors for the quarter to 12% and 8.41% year to date. Great result considering last year the numbers where visitor numbers declined. Good to see the numbers beginning to grow again.

- Tweed Heads again showed substantial growth for the quarter in visitor numbers in comparison to the same quarter last year. A positive trend showing after 8 months of the new location of the centre.

- Locals continue to frequent centres, however it was the visitors from NSW most dominant in Tweed, and Queenslanders have the higher number of visitations in Murwillumbah.

- European visitors where again the highest to both centres, with visitors from the USA, Canada and New Zealand increasing in Tweed.

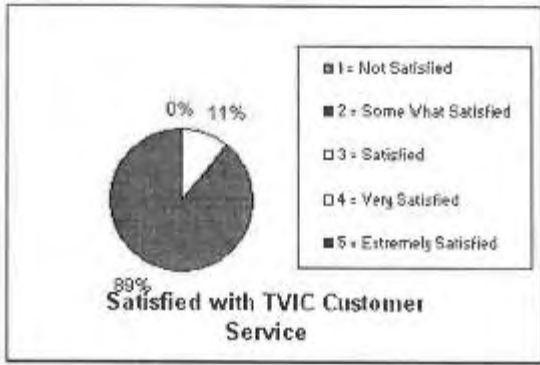
**Quality of service at Visitor Information Centres**

- Surveys for the last quarter, results show that 89% of visitors to the VIC's were extremely satisfied, 11% very satisfied with the quality of customer service received. Majority of visitors surveyed were happy with the range of brochures and information provided as well as the interpretative displays.

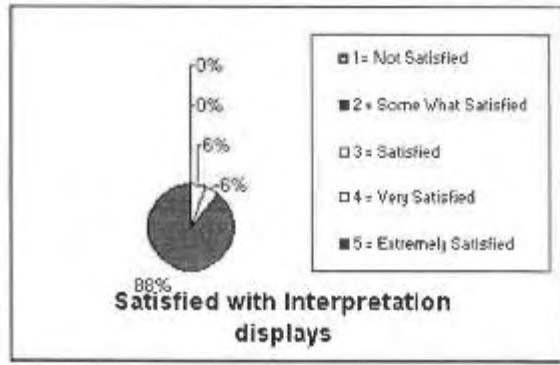
- Whilst most feedback was positive, there were still a few comments regarding caravan access and disappointment that the Art Gallery is closed on Mondays.



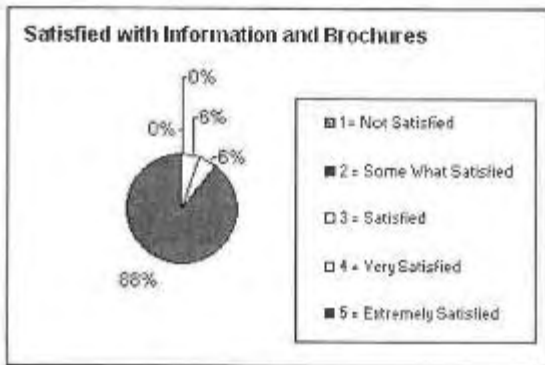




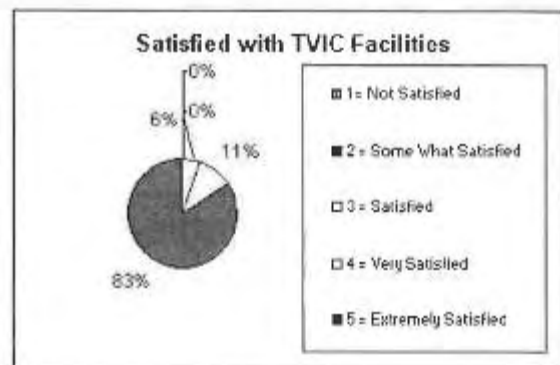
Were our visitors satisfied with our customer service.



Were our visitors satisfied with our displays.



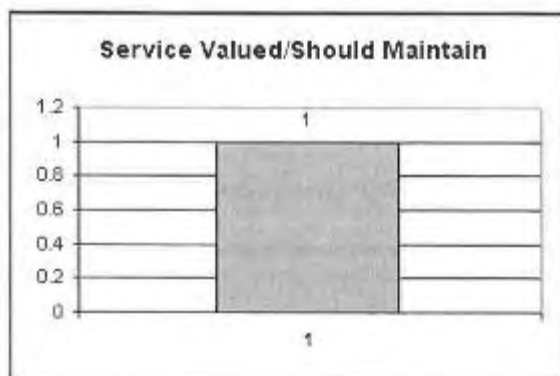
Were our visitors satisfied with our range of information.



Were our visitors satisfied with our facilities.



Were our visitors satisfied with the quality of retail products



Is our service valued and should it be maintained

## 6. PRODUCT DEVELOPMENT

### Art & Culture

The Arts Connecting Communities action plan initiated by the Australian Business Arts Foundation (AbaF) is on hold till Tweed Shire Council replaces Lesley Buckley who was in charge of the project.

Presented at the official launch of Caldera Arts and participated in the one day workshop on 25 May at the Tweed River Regional Art Gallery for artists to inform them of Australia's Green Cauldron and discuss avenues to promote and raise awareness of the region in relation to arts.

Assisted with plans for the launch of Lou, the movie shot in and around Murwillumbah, and participated on the night at the Regent Cinema on Thursday 17 June.

Meetings held with Graeme Stevenson, a local and internationally known artist, in relation to a television program with him riding a Harley motorbike from professional artist to professional artist, discussing the elements of art and showcasing the countryside along the way. He wishes to have the first series filmed in the Northern Rivers. He has had interest expressed from Australia, the United States and Japan in relation to the shows. - Assisted with contacts that could provide footage of the region.

### Festivals

Working with a small group on a new festival called the Tweed Valley Food Jazz and Art Festival to be held at the Murwillumbah Showgrounds in July 2011. It will showcase Tweed produce, local musicians and artists and incorporate cooking demonstrations, fresh produce displays, ticketed meal events, guest chefs and farmers, and roving jazz musicians amongst other things. It is planned initially as a one-day event with the idea to grow it over time to encourage longer stays in the region.

Continuing to develop relationships with a number of festivals and events such as That Festival, a music festival which will be held in Cabarita for the second year; the Tyalgum Classical Music Festival; the Regal Rubies Red Hatters group; and the Unity Festival amongst others.

Tweed Tourism is providing its logo for use on posters and websites which link back to Tweed Tourism's website for accommodation bookings. Also including festival information in Tweed Tourism newsletters and the 'What's On in the Tweed' monthly guide. Assisting in cross promotion of festivals.

Initial discussion occurring in relation to a Back to the Bush Festival to be held in Tyalgum in 2011. It is to incorporate elements of bush poetry and might be considered as an addition to the Tyalgum Diggers Sports and Rodeo Day to encourage an extended length of stay for visitors to the region.

### Taste the Tweed

*Seafood Discovery Trail* – A questionnaire for the SDT participants has been developed to look at ways to increase the public's awareness of the trail and to encourage more patronage. Topics such as the use of social media, discount vouchers, progressive seafood

lunches and dinners, and other possible events are covered. A Calendar of Events has been included on the website and material is being collected for inclusion.

*Farmers Market* – Due to issues with Knox Park the Farmers Market will now be held at the Murwillumbah Showground on a Wednesday morning. The Development Application is being revised accordingly. A share of the proceeds will go towards the maintenance of the Showground.

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

*Taste the Tweed @ Twin Towns* – will be held again during the month of September. - Have assisted with farmers and local produce. A number of long-term fresh produce contracts have been developed as a result of last year's event. - In the process of developing a farm tour/s to be held as part of the month long event.

*Foodscapes* – Spent two days taking the Foodscape owners, (Byron based business), around the Tweed farms to assist with their plans to expand into the Tweed region with Farm Tours.

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

### **Environment**

*National Landscapes* - Have been unsuccessful with the last two funding applications but presently looking at breaking the required work into smaller pieces and making a start on those. There is a small pool of money on the table from existing stakeholders. Byron Bay has agreed to have a representative on the AGC Working Group. - Now in discussions with Qld NPWS for their representative.

### **Birds**

Exploring the possibility of a combined bird tour with O'Reilly's Rainforest Retreat and the Tweed region. O'Reilly's already has an international reputation but really only has rainforest bird species whereas the Tweed combines coastal, river, rainforest and hinterland species. This would be considered primarily for the international market place and would initially only be offered a few times per year to test it's popularity.

### **Walks**

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

### **Sports**

Ride the Rim is a series of bike rides on 17, 18, 19 September 2010 coordinated by the Wollumbin Bicycle User Group. Tweed Tourism has assisted with accommodation options, placing of posters in the VICs, dissemination of information via our newsletters and 'What's on Guide' and links on their website.

### **Network Nights**

The last Network Night was held at Tweed Ultima and included an Expo by participating members. The next Network Night is planned for Tuesday 28 September at Komune, Coolangatta and the final Annual General Meeting/Christmas Party is to be held at Salt Tavern 25 November (TBC).

## 7. PUBLIC RELATIONS

In addition to compiling the Tender we have had some excellent PR coverage in the last quarter. Highlights include:

- Holidays for Couples – feature article in Winter issue to accompany member advertising
- Sunday Telegraph, Sunday Mail and other News Limited – double-page feature article on the region in connection with the release of the movie, *Lou*
- Extensive local coverage on the movie's release and red carpet premiere in Murwillumbah
- ABC Radio – Interviewer Kim Dennison has featured a number of lengthy interviews with Tweed identities on her show, including Charlie Ebell from Mavis' Kitchen and Zeta Grealy from Zeta's Coffee.
- The Ultimate Travel Magazine – feature article featuring a number of Tweed operators
- Courier Mail Q Weekend Magazine – full page feature on The Beach at Cabarita
- Sunday Mail – double page feature article on family holidays in the Tweed
- Unique Places to Stay – double page feature article to accompany member advertising
- Holidays with Kids – full page feature on Peppers and Salt Village

Media coverage was also achieved for individual members including:

- Wollumbin Palms – two small articles in the Gold Coast Bulletin
- Komune – inclusion in Australian Traveller article
- Castle on the Hill – media generated for their guest speakers
- Tweed Coast Tours & Charters – Daily News story on Les' new bus
- Caldera Artfest – helped secure Country Energy fellowship sponsorship

Additionally, we worked very hard to ensure the Tweed was given the best chance for representation in Tourism Australia's *There's Nothing Like Australia* campaign, with close to 50 individual entries posted up on the site. As part of this campaign, we also encouraged tourism operators and members of the public to contribute their submissions by:

- Distributing a press release to local media
- Emailing all Tweed Tourism members
- Emailing local photographers
- Emailing the PR representatives for various Tweed operators

Media initiatives pending:

- Getaway will be visiting next week to film at Silk Pavilions and whale watching
- Courier Mail famil was carried out in July; monitoring in progress
- Food writer, Sheridan Rogers visited the region in early August
- Ocean Road Magazine – 8 page spread on Tweed food producers, shot at Mavis' Kitchen
- Sydney Morning Herald famil carried out in July; monitoring in progress

And we have worked with Tourism NSW and Northern Rivers Tourism on a number of initiatives including the Corroborree famil, a health-focussed famil, winter family holidays promotions and best beaches promotions.



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. **Confidential Attachment** – Tweed Tourism Quarterly Financial Report – April to June 2010 (ECM 20464372)
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**9 [GM-CM] Tweed Economic Development Corporation (TEDC) Quarterly Financial Report - April to June 2010**

**ORIGIN:**

**Business and Economic Development**

**SUMMARY OF REPORT:**

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

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

**RECOMMENDATION:**

**That Council endorses:**

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

**REPORT:**

**Tweed Economic Development Corporation Ltd  
Quarterly Report to Tweed Shire Council  
April to June 2010**



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Tweed Economic Development Corporation Quarterly Report to Tweed Shire Council January to March 2010

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**3. On Going TEDC Activities.**

**Meetings attended:**

- \* Attended TSC/USA Consul General Presentation Art Gallery April 13<sup>th</sup>.
- \* Attended Agriculture Workshop TSC/ Combined Rural Industries April 14<sup>th</sup>.
- \* Telecommunications infrastructure Work Shop TSC/Vertel April 15<sup>th</sup>
- \* Meeting Tweed BFG Sextons Hill Monday April 19<sup>th</sup>
- \* Meeting Dr Kathi Hold Damant QUT Murwillumbah Master Plan April 29<sup>th</sup>
- \* TSC/ Consultants/ M'Bah World Heritage Rain Forrest Center Redevelopment W/S April 30<sup>th</sup>
- \* Tweed Chamber May 11<sup>th</sup>
- \* Innovation Kitchen launch Ballina May 11<sup>th</sup>
- \* Meeting THG Investor Information session May 12<sup>th</sup>
- \* Tweed Coast Rotary Presentation May 12<sup>th</sup>
- \* TEDC/SCU Grow Business Event May 18<sup>th</sup>
- \* Tweed Tourism Network Meeting May 19<sup>th</sup>
- \* Meeting manager ANZ Global Markets & Manager ANZ Corporate Banking May 20<sup>th</sup>
- \* Meeting Brad Fergusson RAMS Finance May 20<sup>th</sup>
- \* Meeting BFG Alliance Sextons Hill May 21<sup>st</sup>
- \* Home Based Business Event May 24<sup>th</sup>
- \* Meeting Aus-Industry May 24<sup>th</sup>
- \* Meeting Dr Holt-Damant QUT, Vince Connell / Phil Youngblutt TSC, Master Plan for south Murwillumbah/May 26<sup>th</sup>
- \* TSC E-Planning/Telecom Infrastructure Community Access Workshop Tweed Heads May 26<sup>th</sup>
- \* TSC E-Planning / Telecom Infrastructure Community Access W/S M'Bah May 27<sup>th</sup>
- \* Presentation Industry Central/ SEQ UDIA Group (40 business and media representatives) May 28<sup>th</sup>
- \* Meeting Reid McGill June 2<sup>nd</sup>
- \* Rams Home Loan Presentation June 22<sup>nd</sup> 2010 at Seagulls
- \* Home based Business Network meeting June 28<sup>th</sup> 2010
- \* Meeting Stocklands, Industry Central re arrangements for Trade Expo.
- \* Meeting Alan Evans Repco Rally Australia
- \* Meeting with representatives from Stocklands/Industry Central Re Expo Sponsorship June 28<sup>th</sup>

**4. New Business Inquiry's/ Meetings- Confidential**

- \* New freight Forwarding Business, Wharf Central Tweed Heads
- \* Meeting, Developers and Consultants Re; Redevelopment of land at Border Park Raceway and possible relocation of facility to Industry Central.
- \* Chicken Processing Plant Potential Relocation – Final decision to relocate elsewhere.
- \* Meeting CB Richard Ellis re Investor Inquiry

**5. TEDC Work Program**

- \* The January 2010 edition of the Tweed Pulse was extremely well received and resulted in a second print run with 750 total copies printed and distributed.
- \* TEDC arranged an initial 600 print run of the June/July 2010 edition and was followed up by a further 400 copies being printed for the Sydney Expo, with all copies distributed.
- \* TEDC has also updated the Tweed Journey Publication, which was formally presented to Murwillumbah and Tweed Chambers of Commerce as well as forwarded to all members and presented to council and councillors.
- \* TEDC has also completed the Monthly TEDC Newsletter which again has been distributed through normal distribution channels.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. **Confidential Attachment** - Quarterly Financial Statement April to June 2010 (ECM 20916920).
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**10 [GM-CM] Tweed Economic Development Corporation (TEDC) - Council Appointed Board Members**

**ORIGIN:**

**General Manager**

**SUMMARY OF REPORT:**

Council resolved on 18 May 2010:

*"That Council advises the Tweed Economic Development Corporation (TEDC) and Tweed Tourism that those Councillors and staff on the respective boards will stand down from their current positions until 30 September 2010."*

The TEDC funding agreement which ceases on 1 October 2010 provided for Councillor and General Manager appointed Directors onto the TEDC Board.

The TEDC Constitution states:

- "29. (a) *The Board of Directors shall consist of 3 Appointed Directors and 9 Elected Directors.*
- (b) *The Appointed Directors shall comprise:*
- (i) *2 councillors of Tweed Shire Council; and*
  - (ii) *a person employed by Tweed Shire Council.*

*The Appointed Directors shall be appointed by resolution of Tweed Shire Council, and that Council may by resolution remove and replace from time to time any of the Appointed Directors."*

As Council will no longer be a major funding contributor to TEDC and has no formal undertaking with the TEDC Board from 1 October 2010 this report recommends that Council removes these Directors positions with effect from 30 September 2010.

Furthermore, Council advises TEDC that it will no longer nominate Appointed Directors to the TEDC Board.

**RECOMMENDATION:**

**That Council:**

- 1. Removes all Appointed Directors from the Tweed Economic Development Corporation (TEDC) Board.**

2. **Advises the Tweed Economic Development Corporation (TEDC) that it will no longer appoint Councillors or staff to the positions of Appointed Directors.**

## REPORT:

On Thursday 13 May 2010 Councillors participated in a Workshop on "Probity and Conflict of Interest", particularly as relevant to the tender for the provision of economic and tourism services.

It was clear that significant issues of both probity and conflict of interest could arise if Councillors and staff appointed to the Boards of Tweed Tourism and the Tweed Economic Development Corporation (TEDC) remained in their positions during the tendering period.

As a result Council resolved on 18 May 2010 that it advise TEDC and Tweed Tourism that those Councillors and staff on the respective boards would stand down from their current positions until 30 September 2010.

The final decision of the tender process was to award all parts of the economic development and tourism tender, except for the demographic and economic data component, to Tweed Tourism.

As a result of this decision Council has no ongoing contractual arrangement with TEDC. Accordingly, it is recommended that Council appointed Directors to TEDC, Cr van Lieshout, Cr Skinner and the General Manager appointed Council officer, Director of Planning and Regulation, Mr Vince Connell, resign their Directorships effective 30 September 2010.

The TEDC funding agreement which ceases on 1 October 2010 provided for Councillor and General Manager appointed Directors onto the TEDC Board.

The TEDC Constitution states:

- "29. (a) *The Board of Directors shall consist of 3 Appointed Directors and 9 Elected Directors.*
- (b) *The Appointed Directors shall comprise:*
- (i) *2 councillors of Tweed Shire Council; and*
  - (ii) *a person employed by Tweed Shire Council.*

*The Appointed Directors shall be appointed by resolution of Tweed Shire Council, and that Council may by resolution remove and replace from time to time any of the Appointed Directors."*

As Council will no longer be a major funding contributor to TEDC and has no formal undertaking with the TEDC Board from 1 October 2010 this report recommends that Council removes these Directors positions with effect from 30 September 2010.

Council appointed Directors to the Tweed Tourism Board are Cr van Lieshout, Cr Skinner and the General Manager appointed Council officer, Manager Business and Economic Development, Mr Richard Adams. At the present time it is unclear whether the new organisation will offer Council a position on the Board. If the Board does extend an invitation to Council, further discussion will be required in regard to the appropriateness of accepting such an invitation.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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 THE DIRECTOR PLANNING AND REGULATION

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

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

#### MATTERS FOR CONSIDERATION

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

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**11 [PR-CM] Development Application DA10/0255 for a 19 Lot Subdivision  
Comprising Four (4) Stages at Lot 56 DP 1030322, Collins Lane, Casuarina**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0255 Pt1**

**SUMMARY OF REPORT:**

The proposed development is to undertake a four stage, nineteen (19) lot torrens title subdivision.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) Environmental Protection (Coastal Lands) zone.

The SEPP 1 objection relates to a small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands). The 7(f) zoned land represents approximately 11.7% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size requirement of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed lots 14 to 19.

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent variation of the applicable development standard in accordance with the Department of Planning directive.

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

**RECOMMENDATION:**

**That Development Application DA10/0255 for a 19 lot subdivision comprising of four (4) stages at Lot 56 DP 1030322, Collins Lane, Casuarina be approved subject to the following conditions:**

## GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects, amended details dated 9 June 2010, and the following plans:
  - COLLINSLNE\_SUB\_01 (Rev 01) - Stage 1 (Sheet 1 of 5), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_02 (Rev 01) - Stage 2 (Sheet 2 of 5), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_03 (Rev 01) - Stage 3 (Sheet 3 of 5), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_04 (Rev 01) - Stage 4 (Sheet 4 of 5 – As Amended in Red), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_05 (Rev 01) – Building Envelopes (Sheet 5 of 5), prepared by Planit Consulting Pty Ltd and dated June 2010,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. A Subdivision Works Accredited Certifier (SWAC) shall be appointed to assume the responsibility for certifying the compliance of the completed public infrastructure (refer to Development Construction Specification C101.01 for variations).

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

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

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

[GEN0275]

5. The development is to be staged as follows:
  - Stage 1 includes Lots 1 to 7, with Lot 8 being a residual lot,
  - Stage 2 includes Lots 8 to 13, with Lot 14 being a residual lot. The existing house on proposed Lot 13 is to be demolished as part of Stage 2. The extension of Collins Lane and formation of new cul-de-sac head is included in Stage 2.

- Stage 3 includes Lots 14, 15, 17 and 18. Lot 16 is a residual lot.
- Stage 4 includes Lots 16 and 19. The existing guest wing on proposed Lot 19 is to be demolished as part of Stage 4.

[GENNS01]

6. No residential, associated buildings or structures are permitted on land zoned 7(f) Environmental Protection (Coastal Lands).

[GENNS02]

#### **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. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

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

[PCC0585]

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

[PCC0865]

12. 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.

#### **URBAN ROAD**

- (a) Construction of the extension of Collins Lane, including partial reconstruction, to an urban bitumen sealed road standard; 7.5m between kerbs with a 9m radius cul-de-sac. Stormwater discharge from this new road shall be connected directly in to the existing stormwater system in the adjoining reserve, and not via open headwall discharge. This is a requirement of Stage 2.

#### **OTHER**

- (b) Construction of all necessary civil works required for the various stages of the development, including but not limited to: earthworks; stormwater infrastructure; water and sewer servicing infrastructure; other service provisions.

[PCC0875]

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

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

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

[PCC0985]

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

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 – Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
  - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

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

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

[PCC1155]

16. Prior to the issue of a construction certificate for Stage 2 a demolition plan shall be submitted for the existing structure on proposed Lot 6 and proposed Lot 19 and approved by the General Manager or his delegate. All demolition works for Lot 6 shall comply with that approved plan.

Prior to the issue of a construction certificate for Stage 4 a demolition plan shall be submitted for the existing structure on proposed Lot 19 and approved by the General Manager or his delegate. All demolition works for Lot 19 shall comply with that approved plan.

[PCCNS01]

17. Prior to the issue of any construction certificate, the applicant is required to submit Work-as-Executed information, test results and engineering certification on any subdivisional civil works that were previously constructed on the site under either of the Council-issued construction certificates CC04/0402 and CC04/0403. All sewer junctions on new infrastructure are to be clearly nominated.

[PCCNS02]

18. The Stage 1 release must address (not necessarily construct) the stormwater management requirements for Stage 2 also. This is due to the requirement for all lots to infiltrate roofwater, and have a surcharge overflow path to the street. Lots 8 to 13 (Stage 2) have inconsistent fall away from the street, and the applicant is required to address any land reshaping requirements as Part of Stage 1. Some site filling may be necessary to achieve this.

[PCCNS03]

**PRIOR TO COMMENCEMENT OF WORK**

19. 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]

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

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

[PCW0025]

21. 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]

22. 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]

23. 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]

24. 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]

25. Prior to the commencement of works sedimentation and erosion control measures shall be placed and maintained which are effective in preventing the discharge of sediment materials outside the boundary of the property.

[PCWNS01]

**DURING CONSTRUCTION**

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

[DUR0005]

27. 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]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

29. 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]

30. 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]

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

[DUR0815]

32. 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]

33. 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]

34. 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]

35. 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]

36. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Collins Lane in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Development Engineering Section before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

37. 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]

38. 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]

39. 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]

40. The footpath area is to be graded to the kerb and turfed for the full frontage of the site. This is relevant for Stage 2 only.

[DUR1865]

41. 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]

42. 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) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections - on maintenance
- (i) 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]

43. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.  
[DUR1905]
44. 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]
45. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.  
[DUR2025]
46. 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]
47. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.  
[DUR2205]
48. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.  
[DUR2355]
49. 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]
50. 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]
51. 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.  
[DUR2435]

52. Any imported material shall be from an approved source and free from any contaminants.

[DURNS01]

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

[USE0225]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

54. 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]

55. 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:

##### **Stage 1**

Water DSP6:	7 ET @ \$11020 per ET	\$77140
South Kingscliff Water Levy:	7 ET @ 256 per ET	\$1792
Sewer Kingscliff:	7 ET @ \$5295 per ET	\$37065

##### **Stage 2**

Water DSP6:	5 ET @ \$11020 per ET	\$55100
South Kingscliff Water Levy:	5 ET @ 256 per ET	\$1280
Sewer Kingscliff:	5 ET @ \$5295 per ET	\$26475

##### **Stage 3**

Water DSP6:	4 ET @ \$11020 per ET	\$44080
South Kingscliff Water Levy:	4 ET @ 256 per ET	\$1024
Sewer Kingscliff:	4 ET @ \$5295 per ET	\$21180

##### **Stage 4**

Water DSP6:	1 ET @ \$11020 per ET	\$11020
South Kingscliff Water Levy:	1 ET @ 256 per ET	\$256
Sewer Kingscliff:	1 ET @ \$5295 per ET	\$5295

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]

**56. 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.

**Stage 1**

**(a) Tweed Road Contribution Plan:**

45.5 Trips @ \$955 per Trips \$43453

(\$868 base rate + \$87 indexation)

S94 Plan No. 4

Sector7\_4

LCA4 - Casuarina: \$7235

45.5 trips at \$159 per trip

(\$144 base rate + \$15 indexation)

**(b) Shirewide Library Facilities:**

7 ET @ \$792 per ET \$5544

(\$792 base rate + \$0 indexation)

S94 Plan No. 11

- (c) **Bus Shelters:**  
7 ET @ \$60 per ET \$420  
(\$60 base rate + \$0 indexation)  
S94 Plan No. 12
- (d) **Eviron Cemetery:**  
7 ET @ \$120 per ET \$840  
(\$101 base rate + \$19 indexation)  
S94 Plan No. 13
- (e) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
7 ET @ \$1759.9 per ET \$12319.30  
(\$1759.9 base rate + \$0 indexation)  
S94 Plan No. 18
- (f) **Casuarina Beach/Kings Forest Community Facilities:**  
7 ET @ \$1611 per ET \$11277  
(\$1311 base rate + \$300 indexation)  
S94 Plan No. 19
- (g) **Casuarina Beach/Kings Forest Open Space:**  
7 ET @ \$1231 per ET \$8617  
(\$717 base rate + \$514 indexation)  
S94 Plan No. 19
- (h) **Cycleways:**  
7 ET @ \$447 per ET \$3129  
(\$447 base rate + \$0 indexation)  
S94 Plan No. 22
- (i) **Regional Open Space (Casual)**  
7 ET @ \$1031 per ET \$7217  
(\$1031 base rate + \$0 indexation)  
S94 Plan No. 26
- (j) **Regional Open Space (Structured):**  
7 ET @ \$3619 per ET \$25333  
(\$3619 base rate + \$0 indexation)  
S94 Plan No. 26



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**Stage 2**

- (a) **Tweed Road Contribution Plan:**  
32.5 Trips @ \$955 per Trips **\$31038**  
((\$868 base rate + \$87 indexation)  
S94 Plan No. 4  
Sector7\_4  
LCA4 - Casuarina: **\$5168**  
32.5 trips at \$159 per trip  
((\$144 base rate + \$15 indexation)
- (b) **Shirewide Library Facilities:**  
5.6918 ET @ \$792 per ET **\$4508**  
((\$792 base rate + \$0 indexation)  
S94 Plan No. 11
- (c) **Bus Shelters:**  
5.3 ET @ \$60 per ET **\$318**  
((\$60 base rate + \$0 indexation)  
S94 Plan No. 12
- (d) **Eviron Cemetery:**  
5.619 ET @ \$120 per ET **\$674**  
((\$101 base rate + \$19 indexation)  
S94 Plan No. 13
- (e) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
5.4828 ET @ \$1759.9 per ET **\$9649.18**  
((\$1759.9 base rate + \$0 indexation)  
S94 Plan No. 18
- (f) **Casuarina Beach/Kings Forest Community Facilities:**  
5.6922 ET @ \$1611 per ET **\$9170**  
((\$1311 base rate + \$300 indexation)  
S94 Plan No. 19
- (g) **Casuarina Beach/Kings Forest Open Space:**  
5.6938 ET @ \$1231 per ET **\$7009**  
((\$717 base rate + \$514 indexation)  
S94 Plan No. 19

<b>(h) Cycleways:</b>	
5.6874 ET @ \$447 per ET	<b>\$2542</b>
( <b>\$447 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 22</b>	
<b>(i) Regional Open Space (Casual)</b>	
5.6968 ET @ \$1031 per ET	<b>\$5873</b>
( <b>\$1031 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 26</b>	
<b>(j) Regional Open Space (Structured):</b>	
5.6932 ET @ \$3619 per ET	<b>\$20604</b>
( <b>\$3619 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 26</b>	
<b>Stage 3</b>	
<b>(a) Tweed Road Contribution Plan:</b>	
26 Trips @ \$955 per Trips	<b>\$24830</b>
( <b>\$868 base rate + \$87 indexation</b> )	
<b>S94 Plan No. 4</b>	
<b>Sector7_4</b>	
<b>LCA4 – Casuarina:</b>	<b>\$4134</b>
26 trips at \$159 per trip	
( <b>\$144 base rate + \$15 indexation</b> )	
<b>(b) Shirewide Library Facilities:</b>	
4 ET @ \$792 per ET	<b>\$3168</b>
( <b>\$792 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 11</b>	
<b>(c) Bus Shelters:</b>	
4 ET @ \$60 per ET	<b>\$240</b>
( <b>\$60 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 12</b>	
<b>(d) Eviron Cemetery:</b>	
4 ET @ \$120 per ET	<b>\$480</b>
( <b>\$101 base rate + \$19 indexation</b> )	
<b>S94 Plan No. 13</b>	

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- (e) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
 4 ET @ \$1759.9 per ET **\$7039.60**  
 (\$1759.9 base rate + \$0 indexation)  
 S94 Plan No. 18
  - (f) **Casuarina Beach/Kings Forest Community Facilities:**  
 4 ET @ \$1611 per ET **\$6444**  
 (\$1311 base rate + \$300 indexation)  
 S94 Plan No. 19
  - (g) **Casuarina Beach/Kings Forest Open Space:**  
 4 ET @ \$1231 per ET **\$4924**  
 (\$717 base rate + \$514 indexation)  
 S94 Plan No. 19
  - (h) **Cycleways:**  
 4 ET @ \$447 per ET **\$1788**  
 (\$447 base rate + \$0 indexation)  
 S94 Plan No. 22
  - (i) **Regional Open Space (Casual)**  
 4 ET @ \$1031 per ET **\$4124**  
 (\$1031 base rate + \$0 indexation)  
 S94 Plan No. 26
  - (j) **Regional Open Space (Structured):**  
 4 ET @ \$3619 per ET **\$14476**  
 (\$3619 base rate + \$0 indexation)  
 S94 Plan No. 26
- Stage 4**
- (a) **Tweed Road Contribution Plan:**  
 6.5 Trips @ \$955 per Trips **\$6208**  
 (\$868 base rate + \$87 indexation)  
 S94 Plan No. 4  
 Sector7\_4
  - LCA4 – Casuarina:** **\$1034**  
 6.5 trips at \$159 per trip  
 (\$144 base rate + \$15 indexation)

- (b) Shirewide Library Facilities:**  
1 ET @ \$792 per ET **\$792**  
(**\$792 base rate + \$0 indexation**)  
S94 Plan No. 11
- (c) Bus Shelters:**  
1 ET @ \$60 per ET **\$60**  
(**\$60 base rate + \$0 indexation**)  
S94 Plan No. 12
- (d) Eviron Cemetery:**  
1 ET @ \$120 per ET **\$120**  
(**\$101 base rate + \$19 indexation**)  
S94 Plan No. 13
- (e) Extensions to Council Administration Offices  
& Technical Support Facilities**  
1 ET @ \$1759.9 per ET **\$1759.90**  
(**\$1759.9 base rate + \$0 indexation**)  
S94 Plan No. 18
- (f) Casuarina Beach/Kings Forest Community Facilities:**  
1 ET @ \$1611 per ET **\$1611**  
(**\$1311 base rate + \$300 indexation**)  
S94 Plan No. 19
- (g) Casuarina Beach/Kings Forest Open Space:**  
1 ET @ \$1231 per ET **\$1231**  
(**\$717 base rate + \$514 indexation**)  
S94 Plan No. 19
- (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]

**57. 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.

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

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

**Heavy Haulage Component**

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

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

where:

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

and:

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

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

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

**Admin.** Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

**58. 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]

59. Prior to the issue of a Subdivision Certificate for Stage 2, a maintenance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

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

[PSC0235]

61. 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]

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

[PSC0485]

63. 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]

64. 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]

65. **Subdivision Certificates for each Stage of the development will not be issued by the General Manager until such time as all conditions of this Development Consent, relevant to the particular Stage being released, have been complied with.**

[PSC0825]

66. **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) **The existing 'Right of Carriageway 10 wide, 16 wide and variable in width' encumbering the site, is to be extinguished as part of the Stage 2 works.**
- (c) **The existing Council-imposed title restrictions over the property are to be reiterated by all Stages of the proposed development, via inclusion in the 88B instrument of the plan of subdivision. These restrictions cover: the restricted building area within the site; stormwater discharge infiltration requirements; and pet and plant restrictions.**

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

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

**Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.**

[PSC0835]

67. **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]

68. **Pursuant to Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979 (As amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000, the following Development Consents shall be surrendered by lodgement of the prescribed information, suitably executed, PRIOR to the issue of a Subdivision Certificate for the nominated stage of the development;**

**Stage 1: - DA02/1009 and associated CC04/0403**

**- DA02/1708 and associated CC04/0402**

**- DA09/0048**

**Stage 2: - DA04/1023**

**- DA08/0749**

**- DA09/0109**

**- DA04/0151 (relating to the dwelling on proposed Lot 13)**

**Stage 4: - DA05/1294**

[PSC0875]

- 69. 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]

- 70. 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]

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

[PSC0925]



72. 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]

73. 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]

74. 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]

75. 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, where required. 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]

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

**Asset Protection Zones**

1. At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of '*Planning for Bush Fire Protection 2006*' and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.

**Water and Utilities**

2. Water, electricity and gas are to comply with section 4.1.3 of '*Planning for Bush Fire Protection 2006*'.

**Access**

3. Public road access shall comply with section 4.1.3 (1) of '*Planning for Bush Fire Protection 2006*', except that a through road is not required in this case.

**Design and Construction**

4. The existing dwellings are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

**REPORT:**

**Applicant:** Mr D O'Rourke  
**Owner:** Mr D O'Rourke  
**Location:** Lot 56 DP 1030322 Collins Lane, Casuarina  
**Zoning:** 2(e) Residential Tourist  
**Cost:** N/A

**BACKGROUND:**

The subject site is located off the end of Collins Lane (but has frontage to Casuarina Way) within the central precinct for Casuarina (approved Stage 4). It is essentially a rectangular shaped block with a 92 metre frontage to Casuarina Way and a depth of 143 metres to create a total site area of 1.16 hectares. The subject site is generally level (as a result of fill for the subdivision) and is clear of any significant vegetation; however the site is partially identified as bushfire prone.

The lot was created under Development Consent K99/1732. Since this time there have been numerous approvals over the land as follows:

- 0612/2001DA – approved construction for a dwelling and internal pool;
- DA02/1009 – approved a ten lot subdivision;
- DA02/1077 – approved multi dwelling housing (triplex – which has since been surrendered);
- DA02/1708 – approved a seven-lot community title subdivision;
- DA04/0151 – approved detached dual occupancy;
- DA04/1023 – approved storage shed;
- DA05/1294 – approved alterations and additions to an existing detached house (guest wing);
- DA08/0749 – approved cabana, driveway, carpark, storage shed and tennis court;
- DA09/0048 – approved 18 lot community title subdivision; and
- DA09/0109 – approved detached storage shed.

It should be noted that this application was originally submitted as a thirteen (13) lot subdivision, in the form of twelve (12) residential lots and one residual lot. The residual lot was subject to a separate development application (DA09/0048.01), which was lodged concurrently with DA10/0255. Upon Council's advice that the proposed method of subdivision (seeking to have two opposing approvals for subdivision) was not considered to be lawful nor desirable, the applicant withdrew DA09/0048.01 and amended this application as noted below.

Proposal

The proposed development is to undertake a four stage, nineteen (19) lot torrens title subdivision.

The proposed subdivision will be delivered over four (4) stages, with all lots to be of varying size and utilise varying points of access. The stages, proposed lot sizes and access points are summarised in the table below:

Proposed Lot	Size (m <sup>2</sup> )	Accessed from
<b>Stage 1</b>		
1	456.37	Casuarina Way
2	456.57	Casuarina Way
3	456.57	Casuarina Way
4	456.57	Casuarina Way
5	456.57	Casuarina Way
6	456.57	Casuarina Way
7	456.57	Casuarina Way
8 (Residual)	7035.61	Collins Lane
<b>Stage 2</b>		
8	464.26	Collins Lane
9	469.09	Collins Lane
10	534.42	Collins Lane
11	464.20	Collins Lane
12	547.10	Collins Lane
13	453.90	Collins Lane
14 (Residual)	4102.64	Collins Lane
<b>Stage 3</b>		
14	615.44	Collins Lane
15	697.44	Collins Lane
16 (Residual)	1394.88	Collins Lane
17	697.44	Collins Lane
18	697.44	Collins Lane
<b>Stage 4</b>		
16	697.44	Collins Lane
19	697.44	Collins Lane

The subject site accommodates an existing vehicular access from Collins Lane. The existing Collins Lane cul-de-sac head and right of carriageway is to be maintained as part of Stage 1. The proposed development incorporates an extension to Collins Lane as part of Stage 2, which would allow the extinguishment the existing right of way. A new cul-de-sac head will be constructed as part of Stage 2.

There are three existing dwellings located over the site. One of these is to remain, with the subdivision being designed to accommodate the house within its own parcel of land (proposed Lot 16 in Stage 4). The second dwelling (located partially on proposed Lot 13) is to be demolished as part of Stage 2 of the development. The third dwelling (the guest wing located on proposed Lot 19) is to be demolished as part of Stage 4 of the development.

The proposed development will require several existing approvals to be surrendered. An appropriate condition of consent has been applied in this regard.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

### Summary

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

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









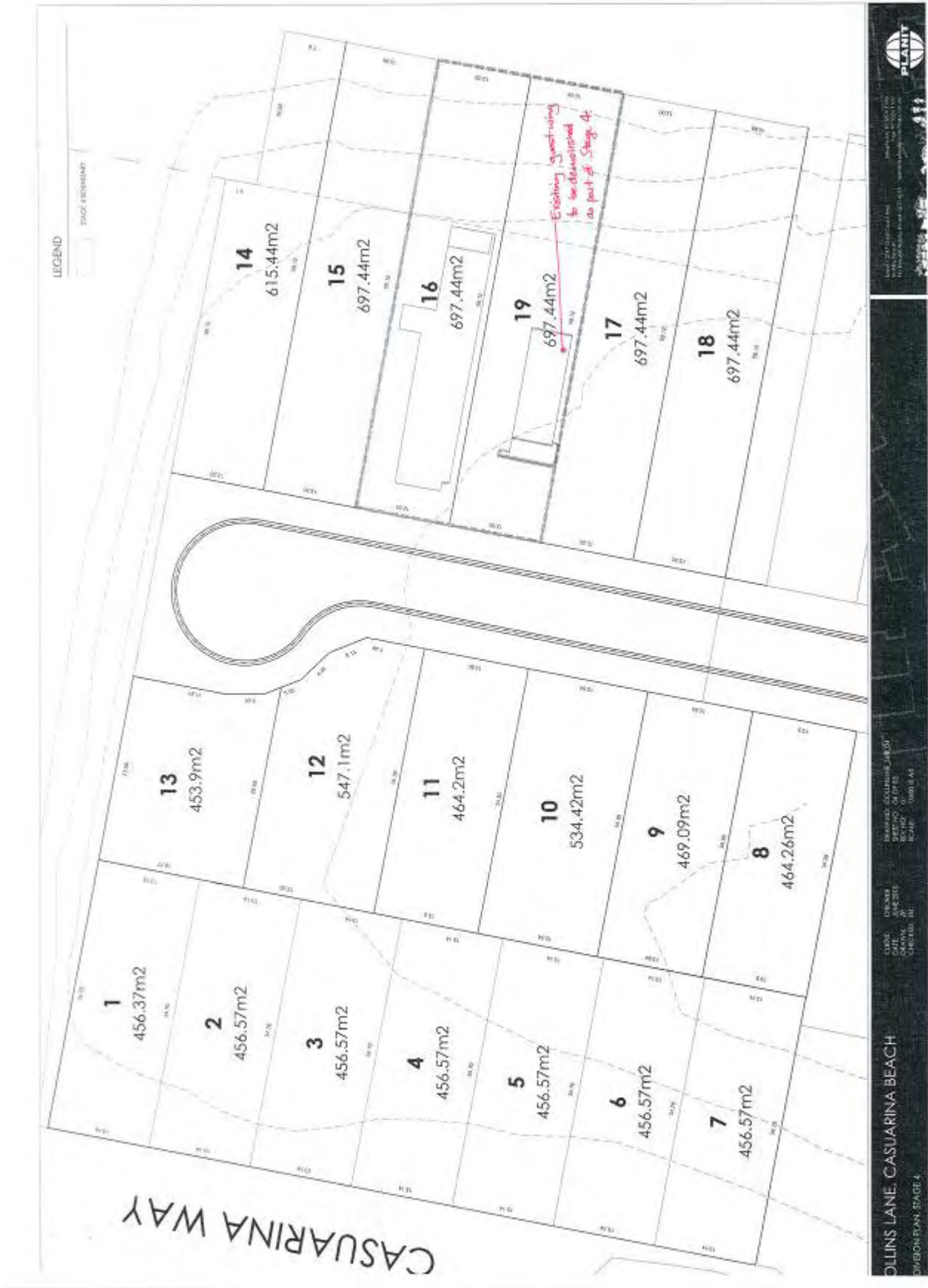


**PLANET**

OLLINS LANE, CASUARINA BEACH  
DEVELOPMENT PLAN, STAGE 3

CLIENT: CITY OF CASUARINA  
DATE: 20 AUG 2010  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
CITY OF CASUARINA

ISSUANCE: 20 AUG 2010  
SHEET NO: 01 OF 01  
REVISED: 01  
SCALE: 1:1000  
PAGE: 1 OF 4





**OLLINS LANE, CASUARINA BEACH**  
SUBDIVISION BUILDING ENVELOPE

CLIENT: SHYRINE  
DATE: 20th April 2010  
DRAWN BY: [unintelligible]  
CHECKED BY: [unintelligible]

QUANTITIES: QUANTITIES 1:1000  
SCALE: 1:1000

PLANIT

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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

**Clause 5 - Ecologically Sustainable Development**

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*. The subject site is an existing infill site and therefore the proposed development is considered to be in keeping with the ESD principles.

**Clause 8 - Consent considerations**

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

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

In this instance, the subject site is part zoned 2(e) Residential Tourism, the primary objectives of which are outlined below.

The proposed subdivision is considered consistent with the primary objective of the zone as it will be for residential use.

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

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

#### Clause 11 - Zone objectives

The site is part zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands).

#### **2(e) Residential Tourist Zone**

##### Primary objective

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

##### Secondary objective

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

The proposed development for a nineteen (19) lot subdivision of a residential development lot within the Casuarina Beach Estate is considered to be consistent with the objectives of the 2(e) zone.

#### **7(f) Environmental Protection**

##### Primary objectives

- *To identify land susceptible to coastal erosion and protect it from inappropriate development.*
- *To protect and enhance the scenic and environmental values of the land.*

##### Secondary objective

- *To allow for other development that is compatible with the primary function of the zone.*

The proposed subdivision is considered to be appropriate in the 7(f) zone as the majority of the proposed residential lots (68%) are wholly within the land zoned 2(e) Residential Tourist. Only 6 of the 19 allotments incorporate a portion of 7(f) Environmental Protection zoned land (in the eastern most portion of each).

Any future residential dwelling / structure will be required to be situated entirely within the 2(e) zone and no buildings or associated structures will be permitted in the 7(f) zone. The approved use of all allotments will be residential, which is consistent with the surrounding land uses.

#### Clause 15 - Essential Services

The proposal can be adequately serviced by way of existing water and sewer mains within the locality, whilst augmentation and embellishment of the existing stormwater facilities can also be satisfactorily achieved subject to compliance with the provisions of Tweed DCP Section A5 and conditions of consent.

The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

#### Clause 16 - Height of Building

A 3 storey height limit encumbers the allotment. No buildings are proposed as part of this application.

The proposal is considered to be consistent with the provisions of Clause 16 of TLEP 2000.

#### Clause 17 - Social Impact Assessment

Having regard to the provisions of DCP Section A13, a detailed social impact assessment is not required.

#### Clause 27 - Development in Zone 7(f) Environmental Protection (Coastal Lands)

The objective of Clause 27 is to protect land that may be susceptible to coastal erosion processes from inappropriate development. It is considered that the proposed nineteen (19) lot Torrens title subdivision will not impact on the behaviour of the sea, beach or dune, landscape or scenic quality of the locality, and any native vegetation.

The existing 3m wide easement to drain sewer in the 7(f) zone has been previously approved as public infrastructure (which is a permissible use). The proposal seeks to relocate the existing sewer line (which services one house) and relocate it in alignment with the sewer infrastructure south of the subject site.

Having a public sewer line within the 7(f) zone is consistent with surrounding development and in this instance is considered acceptable.

#### Clause 35 - Acid Sulfate Soils

The subject site is identified as possessing Class 4 Acid Sulphate Soils. Council's Environmental Health Unit has advised that the site has been subject to significant earthworks and disturbances for historical sand mining and construction of the original Casuarina Beach subdivision. Any ASS which may have been present on the site would have been exposed previously. Further, the approved ASSMP for Casuarina Beach required treatment of materials below 5m AHD, west of the old coast road (which does not apply to the subject land).

It is considered that the proposal complies with the requirements of Clause 35 of the TLEP 2000.

#### Clause 39 - Contaminated Lands

The site is existing residential land and is part of the greater Casuarina Beach Estate. Council Environmental Health Unit has advised that in accordance with a Council Resolution of 21 November 2001, no further testing for contamination was necessary.

It is considered the proposal complies with the requirements of Clause 39 of the TLEP 2000.

#### Clause 39A - Bushfire Protection

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act a permit is required for subdivisions on land subject to bushfire hazard.

The NSW Rural Fire Services has given their general terms of approval for the development and appropriate conditions of consent have been imposed.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 32B: Coastal Lands

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

##### Clause 33: Coastal hazard areas

The proposal is for subdivision of an existing residential allotment within the Casuarina Beach Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard.

Council's Natural Resources Management Coordinator has noted the following:

*'The reviewed 2100 Hazard line (to include the NSW Government's Sea Level Rise benchmarks) is now aligned with the 7(f) zoning, therefore the requirements of this zone is applicable. There are no further requirements or considerations considered necessary for this proposal with regard to Coastal Hazards'.*

It is considered the proposed subdivision is in accord with the Coastline Management Manual and the existing subdivision patterns within the area.

The proposal is compliant with Clause 33.

#### Clause 43: Residential development

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

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

#### SEPP No. 1 - Development Standards

As discussed, a SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

The 7(f) zoned land represents approximately 11.7% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed lots 14 to 19.

Whilst justification is provided, the applicant draws Council attention to *'the established subdivision pattern and existing controls and covenants which dictate management of 7(f) zoned properties within Casuarina Beach Estate. The proposal has been designed to be consistent with this existing situation'.*

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 proposed subdivision has been designed to replicate the existing layout with regard to the 'beach front' allotments and is clearly representative of the established subdivision pattern.*



*In this regard the established subdivision pattern provides 'beach front' residential allotments (inclusive of the subject site) which incorporates a part 2(e) / 7(f) zoning. This configuration sees all 7(f) zoned land within the existing residential allotments provide areas less than 40 hectares. An effective visual representation of this situation can be found within Council's zoning maps.*

*The proposed layout inclusive of lot size variation is clearly in keeping with the existing subdivision pattern and will enable the continued development of the Casuarina Beach estate in a coordinated and consistent manner. Granting of development consent inclusive of the proposed lot size variation will not result in an excess or avoidable impact.*

*Despite the lot size variation all existing 'beach front' allotments within Casuarina Beach achieve land uses generally in accord with the objectives of the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas.*

*By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'beach front' allotments and that of the subject property. No adverse impacts will result to the established environmental character'.*

#### **Assessment of the applicant's submission:**

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

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

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

The objectives of the Clause 21A are:

- *to protect the ecological or scenic values of coastal lands,*
- *to protect land that may be susceptible to coastal erosion processes from inappropriate development.*

The proposed development is considered to be consistent with the objectives of Clause 21A in that the ecological or scenic values of the coastal lands are maintained; and land susceptible to coastal erosion processes will be protected from inappropriate development, by way of restrictions of use applied to each new allotment.

The objection is considered to be well founded. As such, strict compliance with the minimum lot size for land zoned 7(f) is considered unreasonable and unnecessary in this instance.

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

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

The proposal provides for a 19 lot Torrens title subdivision in an existing subdivision that incorporates a development with access to utility services and is within close proximity to community facilities. The subject allotment has been identified for subdivision since the creation of the Casuarina Beach Estate.

The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the above 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 Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f). As such, the proposed non-compliance with clause 21A of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this particular case, as only a minor portion of the site (11.7%) is zoned 7(f) Environmental Protection (Coastal Lands) and the proposed subdivision will have no impact upon that particular zone. That is, the area of land zoned 7(f) will remain unchanged, with all new development required to be located entirely within the 2(e) zoned.

The streetscape and amenity of the locality will remain relatively the same, noting that the subject site is infill development within a well established residential precinct of Casuarina Beach estate.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with clause 21A of 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.

### Conclusion

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under clause 21A is considered unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support.

In addition, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- *The majority of the proposed residential lots are within the land zoned 2(e) Residential Tourist while only the eastern strip of proposed Lots 14 to 19 consists of 7(f) Environmental Protection;*
- *Any residential dwellings will be situated entirely within the 2(e) zone. No buildings or associated structures would be permitted in the 7(f) zone;*
- *The proposed uses of the land would be residential, which is consistent with the surrounding land uses.*

### SEPP No. 55 - Remediation of Land

The land has been sand mined in the past and areas of radiation have been discovered in the Casuarina Beach area. In relation to this development, Council's environmental Health Unit are satisfied that on the basis of the information submitted to Council, that further investigation is not required for radioactive material.

### SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development will be considered compatible with existing and approved development for the locality upon completion of the proposed subdivision works.

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

Under the Draft LEP 2010, the subject site is zoned R1 – General Residential and E2 Environmental Protection. The proposed development is considered to be consistent with the objectives of both zones.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the R1 land currently zoned 2(e) is identified as Lot Size code G, which requires 450m<sup>2</sup>; the E2 land currently zoned 7(f) is identified as Lot Size code AB2, which requires 40ha.

Clause 4.6 of the Draft LEP 2010 relates to exceptions to development standards, to allow a degree of flexibility. The proposed subdivision is consistent with clause 4.6 in that: the applicant has lodged a written request that seeks to

justify the contravention of the development standard (SEPP1 Objection); Council is satisfied that the written request adequately addresses all matters; the proposal will be in the public interest; and concurrence has been granted.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

It appears that each allotment has been designed to enable a dwelling house to be erected that will be fully compliant with the relevant Site and Building Design controls contained within Section A1.

A2-Site Access and Parking Code

The property has frontage to both Casuarina Way and Collins Lane. Proposed Lots 1 to 7 (Stage 1) will have individual access driveways directly fronting Casuarina Way. Lots 8 to 13 and 14 to 19 will have individual access from the proposed extension of Collins Lane (which will be constructed in Stage 2 of the development).

Council's Development Engineer has raised no concerns with regard to site access and parking.

A5-Subdivision Manual

The proposed Torrens title subdivision generally complies with the requirements of Section A5 of the DCP. With regards to the relevant provisions regulating lot size and dimensions, all allotments are compliant meeting both the 450m<sup>2</sup> minimum lot size and providing sufficient width and length to accommodate the required 10m by 15m building envelope.

Council's Development Engineer has noted the following with respect to the proposed subdivision:

Title restrictions

*'The following easements and restrictions currently encumber the site, per DP 1030322::*

- *Easement for drainage of sewage 3 wide, 4 wide, 5 wide, 6 wide, 8 wide, 16 wide and variable width. (Actual affectation is 8m to 13m wide in 7(f) zone).*
- *Easement for drainage of water, 5 wide, 6 wide, 8 wide and variable width. (Actual affectation is 8m to 13m wide in 7(f) zone).*
- *Easement for electricity supply, 2 wide, 3 wide, 10 wide and variable width. (10m)*
- *Right of Carriageway 10 wide, 16 wide and variable in width (10m). This will need to be extinguished as part of the Stage 2 works.*
- *Easement for water supply, 10 wide and variable in width. (10m)*
- *Restrictions on the use of land x 4:*

- 7(f) zone – no building.
- Infiltration requirement for stormwater.
- Plants, dog and cat restrictions.
- Private restriction re: building matters.

*The first three of these restrictions will be required to be reiterated within the proposed subdivision's 88B instrument.*

*New easements will need to be created over any new sewer or stormwater infrastructure that is to be dedicated to Council'.*

#### Earthworks / Landforming

*'The creation of the individual allotments shall not require any significant earthworks to be undertaken.*

*However minor reshaping of the site will be necessary to ensure all lots fall to either a street frontage or existing reserve. The subdivision will have a mandated roofwater infiltration requirement, with surcharge flows directed to a street frontage or reserve.*

*To facilitate this, Lots 8 to 13 will be reshaped. Some fill may need to be imported.*

*Suitable conditions relating to site filling will be imposed'.*

#### Road Network

*'The property has frontage to Casuarina Way as well as Collins Lane. Both roads are fully constructed with (modified) K & G and an asphalt pavement in good condition: Casuarina Way having an 11m wide carriageway and Collins Lane having a 7.5m wide carriageway.*

*Casuarina Way does not require any road modifications or improvements.*

*Collins Lane will require:*

- *Removal of the current cul-de-sac head and reconstruction as a straight road.*
- *The subsequent extinguishment of the existing Right-of-Carriageway over the current cul-de-sac head.*
- *An extension of the existing road through the site, to terminate in a cul-de-sac head with a minimum radius of 9m.*

*This proposal will extend this arm of Collins Lane from approximately 150m long to over 220m long. While this is not strictly compliant with Council's desired maximum cul-de-sac length of 100m, it is considered to be a reasonable alternative to the previously approved 'Community Title' option for the site.*

*The lots in the cul-de-sac comply with Council's minimum requirement of a 9m kerb line frontage.*

*An existing dwelling and the existing concrete driveway within the site will need to be removed to implement this Collins Lane construction'.*

### Lawful Point of Discharge

*'There are multiple legal discharge points, being the road frontages as well as the adjoining Public Reserve to the north. The reserve will be the legal discharge point for the extension of Collins Lane, similar to the previously approved CC04/0402 & CC04/0403 – and NOT as indicated on the applicant's plan (open headwall discharging into the reserve). A direct connection to the existing stormwater line within the reserve will be required. This will be covered by a condition of consent, and pursued at the time of CC submission for Stage 2.*

*Stages 1 and 2 will not require any specific stormwater works as all those lots fall out to the street – however the Stage 1 release must address (not necessarily construct) the stormwater management requirements for the entire development. This is due to the requirement for all lots to infiltrate roofwater, and have a surcharge overflow path to the street. Lots 7 to 12 have adverse fall away from the street, and the applicant must determine the most appropriate stormwater scheme for the site. Some site filling may be necessary to achieve, which may involve Lot 6, being Stage 1'.*

### Water Supply

*'Council's reticulated potable water supply is available to the area. The existing water main in Collins Lane will need to be partly removed, relocated and extended, while ensuring the existing service of properties remains unaffected. The applicant's submission is inappropriate in this regard, however such details will be pursued upon submission of a construction certificate.*

*Recommended conditions of consent shall require the provision of service in accordance with Council's standards'.*

### Effluent Disposal

*'Council's piped effluent disposal infrastructure is available within the area, and currently services the site.*

*Part of the required sewer infrastructure for this development has already been constructed, per DA02/1009 and the associated CC04/0403. This line runs along the Casuarina Way frontage, then diverts THROUGH proposed Lot 2 to Lot 13. It is likely that some of this line will need to be relocated.*

*Work-as-Executed information, test results and engineering certification will be required for this previously completed work, prior to the Stage 1 release.*

*The applicant proposes to extend the existing sewer system to service the development. Adequate spare capacity exists within the system to allow for this.*

*The existing house connections to the dwellings on Lots 16 & 19 will require relocation and removal of the old service prior to issue of the subdivision certificate for Stage 3.*

*Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards'.*

B5-Casuarina Beach

The provisions of Section B5 relate to the land within the Casuarina Beach Estate. It is considered that the proposed infill subdivision is compliant with all relevant requirements of Section B5.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

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

Clause 92(a) Government Coastal Policy

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

Demolition

The existing dwelling on Lot 6 and the guest wing on proposed Lot 19 is to be demolished. Council's Environmental Health Unit requires a demolition plan to be submitted and approved prior to the issue of a construction certificate for each relevant stage. A condition of consent has been applied in this regard.

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

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

The proposal is consistent with the surrounding residential character. The site's suitability has been demonstrated throughout the assessment of the proposal including the assessment of the minimal environmental impacts and consistency with environmental planning instruments and the DCP.

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

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

A condition of consent has been applied requiring the surrender of conflicting previous approvals, at different stages of the development.

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

The proposal was originally notified for a period of fourteen days from Monday 9 August to 23 August 2010. No submissions were received. As a result of the changes (13 lots to 19 lots), the revised proposal was re-notified for a further 14 days. No submissions were received.

Department of Planning

As noted above, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f).

NSW Rural Fire Services

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act, the proposed subdivision was referred to the NSW RFS as Integrated development. The NSW RFS has granted a bushfire safety authority, subject to conditions of consent which have been applied.

**(e) Public interest**

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

**OPTIONS:**

1. Adopt the recommendation and resolve to approve the development application with conditions.
2. Resolve to refuse the development application with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**12 [PR-CM] Development Application DA10/0283 for Re-subdivision of 16 Lots into 23 Lots at Lots 1-16 Section 8 DP 14895, Casuarina Way, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0283 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a development application for the re- subdivision of land at Lots 1 – 16 in Section 8 DP 14895 situated at Casuarina Way, Kingscliff (Seaside City Northwest precinct).

The proposal involves subdividing the existing 16 allotments in the northwest precinct (on the western side Casuarina Way) which are approximately 1000m<sup>2</sup> into 23 allotments varying in size between 450 m<sup>2</sup> and 744 m<sup>2</sup>. Lots 36 - 47 are proposed in clusters of four allotments incorporating a battle axe format. The houses developed on these allotments will need to be carefully designed in accordance with the recommended conditions of consent given the minimum allotment size of 450m<sup>2</sup>.

The proposal is the second major re-subdivision within the Seaside City development. The first major re-subdivision was DA08/0755, which sought approval to re-subdivide 18 of the south west allotments into 24 smaller allotments. This application proceeded to the NSW Land & Environment Court where the applicant challenged many of Council's draft conditions of consent. Throughout the proceedings the interpretation of the following documents were challenged:

- Tweed DCP Section B11 Seaside City;
- Tweed S94 Plan No. 28 Seaside City;
- Seaside City Planning Agreement (S94) between Tweed Shire Council and Richtech Pty Ltd.

Following a Section 34 Mediation Conference the applicant was issued with a development consent by the court.

This application has been lodged generally in accordance with the adopted principals as per the Court determination and accordingly many of the recommended conditions have been duplicated from the DA08/0755 determination.

The application is reported to Council for determination as the proposal incorporates a SEPP 1 Objection to Clause 20(2)(a) of the Tweed LEP 2000 which imposes a 40ha standard on land zoned 7(l) Environmental Protection (habitat). The western boundary of these allotments is already burdened by a slither of 7(l) zoned land and accordingly this application merely seeks to duplicate the existing arrangement over the additionally proposed allotments (4 of which are affected by the 7(l) zone).

**RECOMMENDATION:**

**That Development Application DA10/0283 for a re-subdivision of 16 lots into 23 lots at Lots 1 - 16 Section 8 DP 14895, Casuarina Way, KINGSCLIFF be approved subject to the following conditions:**

**GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and Preliminary Plan of Subdivision Plans:**

- Sheet 1 of 2 Sheets prepared by Brian Darryl Raaen and dated 10/08/2010**
- Sheet 2 of 2 Sheets prepared by Brian Darryl Raaen and dated 10/08/2010**

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

[GEN0005]

**2. This subdivision application has approved 23 single dwelling allotments only (no duplex sites have been approved by this application). Each allotment is to be a minimum of 450m<sup>2</sup> in size (excluding battle handles) as indicated on the approved plan.**

[GEN0005]

**3. All works shall comply with the Seaside City, Kingscliff Construction Environmental Management Plan prepared by Cardno and dated 6 July 2007 to the satisfaction of the Council.**

[GEN0005]

**4. All works shall comply with the Radiation Investigation and Remediation Action Plan prepared by Cardno and dated 23 May 2008 to the satisfaction of the Council**

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

[GEN0045]

**6. Subject to Condition 71, 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]

**7. 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]

**8. All works shall comply with the Acid Sulfate Soils Management Plan prepared by Cardno and dated 23 May 2008 to the satisfaction of the Council.**

[GEN0005]

**9. All works shall comply with the Seaside City Northwest Subdivision Erosion and Sediment Control Plan prepared by Cardno and dated 8 April 2010.**

[GEN0005]

10. As required by condition 11 below the primary revegetation/restoration works within the riparian buffer as detailed within the approved Plan of Management for existing Lots 1 to 9 Section 8 DP 14895 zoned 7(l) Environmental Protection (Habitat) must be completed within 12 months of the issue of this development consent.

[GEN0005]

**PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

11. A Plan of Management must be prepared for the riparian buffer of existing Lots 1 to 9 Section 8 DP 14895 zoned 7(l) Environmental Protection (Habitat) by suitably qualified person with knowledge and experience in the local vegetation reference community (Littoral/ riparian rainforest) and submitted to Director Planning and Regulation for approval. The Plan of Management must provide the following:

- planting and maintenance details to enable local native species to cover the riparian buffer including at least two trees per lot selected from the list within the approved vegetation management plan for DA05/0793
- management of the 5m Asset Protection Zone
- potential impacts and methods to avoid these impacts arising upon the ecological values of the riparian corridor: disturbance of native flora and fauna as a result of intrusion by humans and domestic animals: increased fire risk: rubbish dumping: weed invasion and vegetation clearing. The Plan of Management is to include an Implementation Schedule in accordance with the draft guidelines attached which provide for progress reports on implementation of the plan to be given to the Council no less than once per year for a period of five years not later than on each anniversary of the date of this development consent or until a dwelling is constructed on the affected lots.

[PCCNS01]

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

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

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

[PCC0275]

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

14. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

[PCC0485]

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

[PCC0585]

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

[PCC0865]

17. 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.

#### **RIGHT OF CARRIAGEWAY**

- (a) The right of carriageways providing access to proposed lots 37, 38, 39, 41, 42, 43, 45, 46 and 47 shall be constructed with a 4.5m wide concrete pavement and shall also comply in general terms with Council's Driveway Access to Property Policy.

[PCC0875]

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

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
  - Rights of Carriageway
  - stormwater drainage

- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

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

[PCC0985]

#### 19. 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 6m 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]

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

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

[PCC1155]

21. Prior to the issue of a Construction Certificate for this development all works necessary to provide infrastructure and services to the proposed 23 lots as approved under Construction Certificate CC08/0473 shall be completed to the satisfaction of the General Manager.

[PCNS01]

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

22. 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]

23. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

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

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

[PCW0025]

25. Any 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]

26. 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 complianceThe 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]

27. 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]

28. 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**

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

[DUR0005]

30. 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]

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

**A. Short Term Period - 4 weeks.**

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

**B. Long term period - the duration.**

$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

32. Any 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]

33. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.
- [DUR0815]
34. 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]
35. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.
- [DUR0995]
36. 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]
37. 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]
38. 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]
39. 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]
40. A concrete footpath 1.2 metres wide is to be constructed on a compacted base along the entire frontage of the site to Casuarina Way in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

41. 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]

42. 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) Rights of Carriageway
- (b) Pathways, footways, bikeways - formwork/reinforcement
- (c) Final inspections - on maintenance
- (d) 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]

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

[DUR2015]

44. 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]

45. 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]

46. 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]

47. 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]

48. All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.

[DURNS01]

49. Noise from the proposed works shall not be permitted to unreasonably impact the amenity of any residential premise.

[DURNS01]

50. All construction activities that generate dust shall cease when average wind speeds exceed 15m/s(54 km/h). The applicant shall be responsible for providing a calibrated wind meter on site to monitor wind speeds. The wind meter must be located so that it is easily accessed by relevant supervisors and Council Officers. This data must be able to be produced to Council on request.

[DURNS02]

#### **PRIOR TO ISSUE OF A SUBDIVISION CERTIFICATE**

51. 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]

52. 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 DSP6:	23 ET @ \$11020 per ET	\$253460
South Kingscliff Water Levy:	23 ET @ 256 per ET	\$5888
Sewer Kingscliff:	23 ET @ \$5295 per ET	\$121785

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

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

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

[PCC0265/PSC0165]

53. Section 94 Contributions

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

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

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

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

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

- 
- (a) **Tweed Road Contribution Plan:**  
**45.5 Trips @ \$955 per Trips** **\$43453**  
**(\$868 base rate + \$87 indexation)**  
**S94 Plan No. 4**  
**Sector7\_4**
- (b) **Shirewide Library Facilities:**  
**7 ET @ \$792 per ET** **\$5544**  
**(\$792 base rate + \$0 indexation)**  
**S94 Plan No. 11**
- (c) **Bus Shelters:**  
**7 ET @ \$60 per ET** **\$420**  
**(\$60 base rate + \$0 indexation)**  
**S94 Plan No. 12**
- (d) **Eviron Cemetery:**  
**7 ET @ \$120 per ET** **\$840**  
**(\$101 base rate + \$19 indexation)**  
**S94 Plan No. 13**
- (e) **Community Facilities (Tweed Coast – North)**  
**7 ET @ \$581 per ET** **\$4067**  
**(\$581 base rate + \$0 indexation)**  
**S94 Plan No. 15**
- (f) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
**7 ET @ \$1759.90 per ET** **\$12319.30**  
**(\$1759.9 base rate + \$0 indexation)**  
**S94 Plan No. 18**
- (g) **Cycleways:**  
**Plan No. 22 states \$47 per m<sup>2</sup> for 715m<sup>2</sup> of cycleway.**  
**This equates to \$84, 012 credit**  
**Minus \$2, 682 (DA08/0755) = \$81, 330 credit for works in kind.**  
**Minus \$447 (DA09/0816) = \$80, 883 credit for works in kind.**  
**Minus \$447 (DA09/0822) = \$80,386**  
**An additional 7 lots for DA10/0283 (\$3129)**
-

Leaves a credit of \$77,257

Therefore NIL charge

(\$447 base rate + \$0 indexation)

S94 Plan No. 22

(h) Seaside City Structured Open Space:

7 ET @ \$3585 per ET

\$25095

(\$3585 base rate + \$0 indexation)

S94 Plan No. 28

[PCC0215/PSC0175]

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 maintenance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

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

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

[PSC0785]

- 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) Rights of carriageway with a minimum width of six (6.0m) meters shall created over the accessways to proposed lots .37, 38, 39, 41, 42, 43, 45, 46 and 47**
- (c) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority**
- (d) 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.**
- (e) Restriction as to user regarding the riparian buffer described within the approved Plan of Management for the riparian buffer – this area must be subject to an approved restoration program and managed as a natural area in perpetuity. Burden: Part existing Lots 1 to 9 Section 8**

**DP 14895 zoned 7(l) Environmental Protection (Habitat) Benefit: Tweed Shire Council**

- (f) **Restriction as to user regarding the riparian buffer– primary works as described within the approved Plan of Management for the site must be completed prior to the occupation of any building on the site**  
**Burden: Part existing Lots 1 to 9 Section 8 DP 14895 zoned 7(l) Environmental Protection (Habitat) Benefit: Tweed Shire Council**
- (g) **Restriction as to user regarding dog and cat ownership and control on all residential lots in the following terms:**
- **Owners of dogs within the development shall have their yards fenced as to securely contain a maximum of one (1) dog per allotment and the ownership of cats within the development shall be restricted to one (1) de-sexed cat per allotment and such cats shall be restrained within the house or a secure night cage between the hours of 6.00pm and 6.00am.**
  - **No dog shall be registered without the consultation of a dog-proof compound which must be approved by Council and the relevant fee paid by the applicant.**
  - **No owner can retrieve a dog that has been impounded unless they can demonstrate to Council they have a secure compound.**

**Burden: Lots 1 to 16 Section 8 DP 14895. Benefit: Tweed Shire Council**

- (h) **Restriction as to user indicating that part of the lots zoned 7(l) Environmental Protection (Habitat) are located within the 50m Cudgen Creek buffer area and no building works, swimming pools or structures are to be placed within this buffer area. Burden: Part Existing Lots 1 to 9 Section 8 DP 14895 zoned 7(l) Environmental Protection (Habitat) Benefit: Tweed Shire Council**
- (i) **Restriction as to user creating the asset protection zone as described in detail at Conditions 73 and 74 of this consent.**

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

**Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.**

[PSC0835]

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 – Water Reticulation
- (b) Compliance Certificate – Sewerage Reticulation
- (c) 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. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

65. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation (including household connections) 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.

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP – Section A5 – Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005.

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 to all allotments 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. Prior to issue of a subdivision certificate a validation statement for the subject development stage regarding radiation monitoring, from a suitably qualified person, shall be provided to Council to the satisfaction of the General Manager or his delegate. Monitoring and investigation shall include both surface and depth monitoring. The validation statement shall confirm compliance with the approved remediation action plan, include details of monitoring undertaken, the nature and depth of materials on site, and establish that the site is suitable for the proposed use.

[PSCNS01]

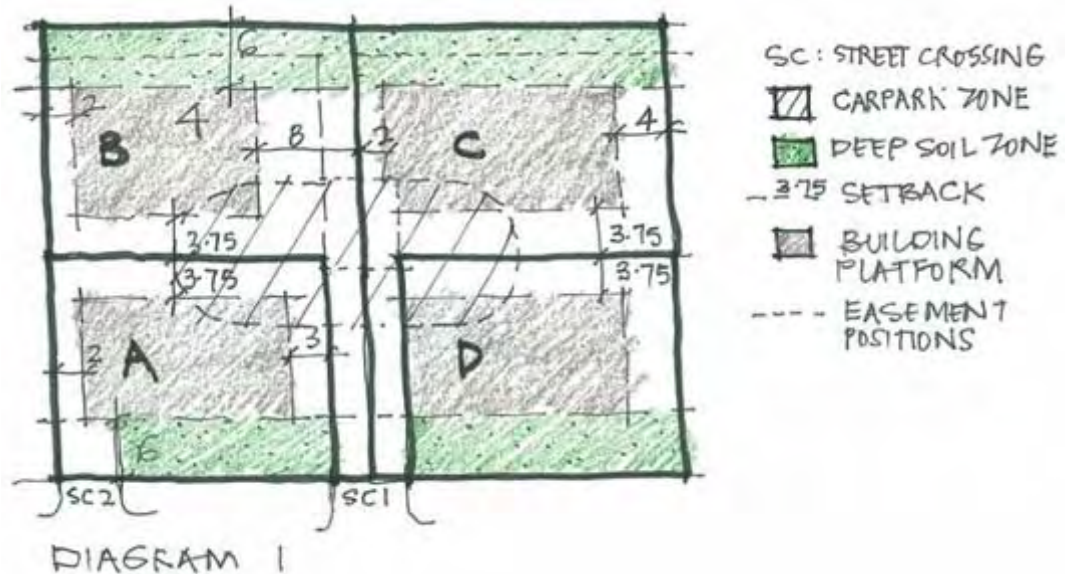
69. Prior to the issue of a subdivision certificate surface radiation monitoring of Lot 1971 DP 133919 and Lot 500 DP 727420 shall be completed to the satisfaction of the General Manager or his delegate. Prior to the issue of a subdivision certificate a validation statement of surface radiation levels on Lot 1971 DP 133919 and Lot 500 DP 727420 shall be completed to the satisfaction of the General Manager or his delegate which establishes that the sites are suitable for the use.

[PSCNS01]

70. Prior to issue of a subdivision certificate, all infrastructure works approved in Stage 1 of Development Consent DA 05/1464 as modified from time to time must be completed to the satisfaction of the Council.

[PSCNS02]

71. The battleaxe allotments will be developed in accordance with the principles illustrated in Diagram 1 below:



These provisions are to be read in conjunction with the Coastal Housing provisions described in Tweed Shire Council DCP 2008: Section B11 – Seaside City.

These provisions are applicable as guiding principles and are described by a layout common to the four individual clusters of lots in the application which are designated Lots A, B, C and D on Diagram 1.

The principles underpinning these clusters/battleaxe allotments are:

- (i) the maximum number of driveway footpath crossings applicable to each cluster will be 2. Crossings will be allowed in the central location between allotments and adjacent to the southern boundary of Lot A. Not other crossing positions will be allowed.
- (ii) If a single street crossing is nominated all carparking for the lots will be located generally in the area designated on Diagram 1.
- (iii) A 3.75 metre setback, shall apply on either side of the common north-south boundary between Lots A and B, and between Lots D and C, to provide a minimum of 7.5 metres separation distance between habitable rooms. Garages and Carports may intrude into this setback.
- (iv) A deep soil zone will be provided in the 6 metre setback of Lots A and D along the frontage to Casuarina Way and in the 6 metre setback to the rear boundary of Lots B and C.
- (v) Each lot will contain a 30% landscape provision inclusive of deep soil areas previously nominated.
- (vi) Each lot will have additional minimum setbacks as designated on the attached Diagram 1 (carports and garages excepted) to provide for effective privacy, screening and solar access.

If there is any inconsistency between this condition and the controls in the Tweed Shire DCP 2008, then this condition prevails to the extent of the inconsistency.

72. Any future dwellings on the standard allotments (proposed Lots 25-35) must comply with Tweed DCP Section A1 and B11 Seaside City in relation to landscaping (30% as per B11), setbacks, height and density.

73. In satisfaction of the RFS' GTA condition (1) a 15m wide Asset Protection Zone (APZ) to the west for Lots 25 to 35 (inclusive) must be provided at the commencement of building works as follows:
- (a) 5m of the APZ to be situated on Lots 25 to 35 (inclusive) and Lots 37, 38, 41, 42, 45 and 46; and
  - (b) 10m of the APZ to be situated on the adjoining unnamed road reserve (which borders Lot 1971).
74. In satisfaction of the RFS' GTA condition (1), 15m wide Asset Protection Zone (APZ) to the north for Lots 46 and 47 (inclusive) must be provided at the commencement of building works as follows:
- (a) 9m of the APZ to be situated on Lots 46 and 47 (inclusive) and
  - (b) 6m of the APZ to be situated on the adjoining unnamed road reserve.

#### **GENERAL TERMS OF APPROVAL**

##### **Bushfire Safety Authority**

**As Required Under Section 100B of the *Rural Fires Act 1997***

##### **Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

1. Future dwellings will require a minimum 15 metre APZ to the west and north. The APZ shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

##### **Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

##### **General Advice – consent authority to note**

This approval is for the subdivision of the land only. Future DA for the erection of a dwelling within this subdivision will be subject to the requirements as set out in 'Planning for Bush Fire Protection 2006'.

**REPORT:**

**Applicant:** Seaside City Developments  
**Owner:** Richtech Pty Ltd  
**Location:** Lots 1-16 Section 8 DP 14895 Casuarina Way, Kingscliff  
**Zoning:** Part 2(e) Residential Tourist and Part 7(I) Environmental Protection (Habitat)  
**Cost:** N/A

**BACKGROUND:**

Seaside City History

Seaside City comprises a 32 hectare parcel of land. Seaside City was approved for subdivision in the 1920s and comprises 205 titled lots (including the area between Cudgen Creek and the development). Richtech Ltd owned approximately 85% of the lots with the remainder individually owned. Cudgen Creek forms the western edge to the study area and the Pacific Ocean to the east.

The site was never serviced and accordingly development of the site was problematic, specifically given the multiple landowners. The revitalisation of the site occurred when Richtech (the primary land owner) instigated a series of DA's to enable the servicing of the site.

Accordingly, in 2005 Council received and considered three Development Applications (DA05/0775, DA05/0793 and DA05/1464) which all sought approval for the carrying out of works for the purposes of land clearing, earthworks, construction of roads and other services in preparation of the further development of the existing lots.

DA05/1464 was considered and ultimately determined by the NSW Land & Environment Court, while DA05/0775 and DA05/0793 were consequently approved by Council.

As part of the approvals a site specific Development Control Plan (Tweed DCP Section B11) and site specific S94 Plan (Tweed S94 Plan No. 28) was created in relation to the Seaside City Development. Additionally a specific Planning Agreement was created between Tweed Shire Council and Richtech Pty Ltd to allow Tweed Shire Council to collect funds on behalf of Richtech from non Richtech owned land to contribute to the cost of the bulk earthworks and servicing across the site.

Since approval of DA05/1464 the applicant has received the relevant Construction Certificates to act on the development consents issued to date. These Construction Certificates service the site with all the essential services (water, sewer, roads, telecommunications, power etc) thus enabling applications like this to be considered on its merits.

Proposal

The original subdivision pattern (as approved in 1927) catered for 16 allotments all approximately 43m long (running east to west) x 20m wide (running north to south). This created 18 allotments each approximately 1000m<sup>2</sup>.

The proposed subdivision layout caters for 23 allotments by reducing the size of each allotment and creating 6 battleaxe allotments.

The site is burdened by a partial 7(l) Environmental Protection (habitat) zoning to the rear, is bushfire prone, and falls within the riparian buffer for Cudgen Creek. However, Condition 3.130 within DA05/1464 (which was approved by the Court) stipulated that Lots 1-9 in Section 8 DP 14895 could be built upon (despite being partially affected by the riparian buffer) subject to restrictions as to user stating that no works, swimming pools or structures except fences are to be placed within this buffer area.

This application merely looks at the difference as to whether these allotments accommodate 9 houses (as per the current approvals) or 13 houses (as proposed within this application). Given the length of the subject allotments (generally 43m) a dwelling envelope measuring 10m x 15m can still be accommodated on each allotment excluding the riparian areas and accordingly the application is recommended for conditional approval.

The subject application has been accompanied by a SEPP 71 Master Plan Waiver and a SEPP Major Project Waiver. Accordingly Tweed Shire Council is the lawful consent authority in this instance.

The applicant lodged amended plans in August 2010 to better facilitate the required asset protection zones as required by RFS.

#### Land and Environment Court Decision DA08/0755 (Seaside City South West Precinct)

In regard to DA08/0755 the original subdivision pattern (as approved in 1927) catered for 18 allotments all approximately 43m long (running east to west) x 20m wide (running north to south). This created 18 allotments each approximately 1000m<sup>2</sup>. The proposed subdivision layout catered for 24 allotments by reducing the size of each allotment and creating 8 battleaxe allotments.

At the s34 Mediation Conference Council Staff and the applicant had opposing points of view in regards to the following primary issues:

1. Draft Conditions of Consent that required building envelopes for the allotments given the small size of the allotments (smallest lot 450m<sup>2</sup>), and the constrained nature of site (Asset Protection Zones);
2. A Draft Condition of Consent that outlined the applicable S94 Contributions;
3. Draft Conditions of Consent relating to contaminated land across the site; and
4. Draft Conditions of Consent relating to the required engineering specifications for the site.

Each of these matters were worked through and resolved by way of mutually agreed conditions of consent. Such conditions have been duplicated within the recommendation for the subject application.

The Council Report for DA08/0755 forms an annexure to this report which explains how exactly these matters were resolved.



**SITE DIAGRAM:**



**LOCALITY PLAN**

DA10/0283 - Lots 1-16 Section 8 DP 14895  
Casuarina Way, Kingscliff

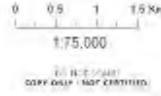
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Author: J. Anderson, Planning Services Unit

Date: 17/09/2010 10:52:53 AM

This plan is a preliminary plan and is not intended to be used as a final plan. It is subject to change without notice. The Council is not responsible for any errors or omissions in this plan. The Council is not responsible for any damage or loss of property resulting from the use of this plan. The Council is not responsible for any damage or loss of property resulting from the use of this plan.

**GDA**  
Cadastral: 01 September 2010  
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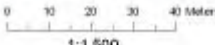



2009 AERIAL IMAGE:



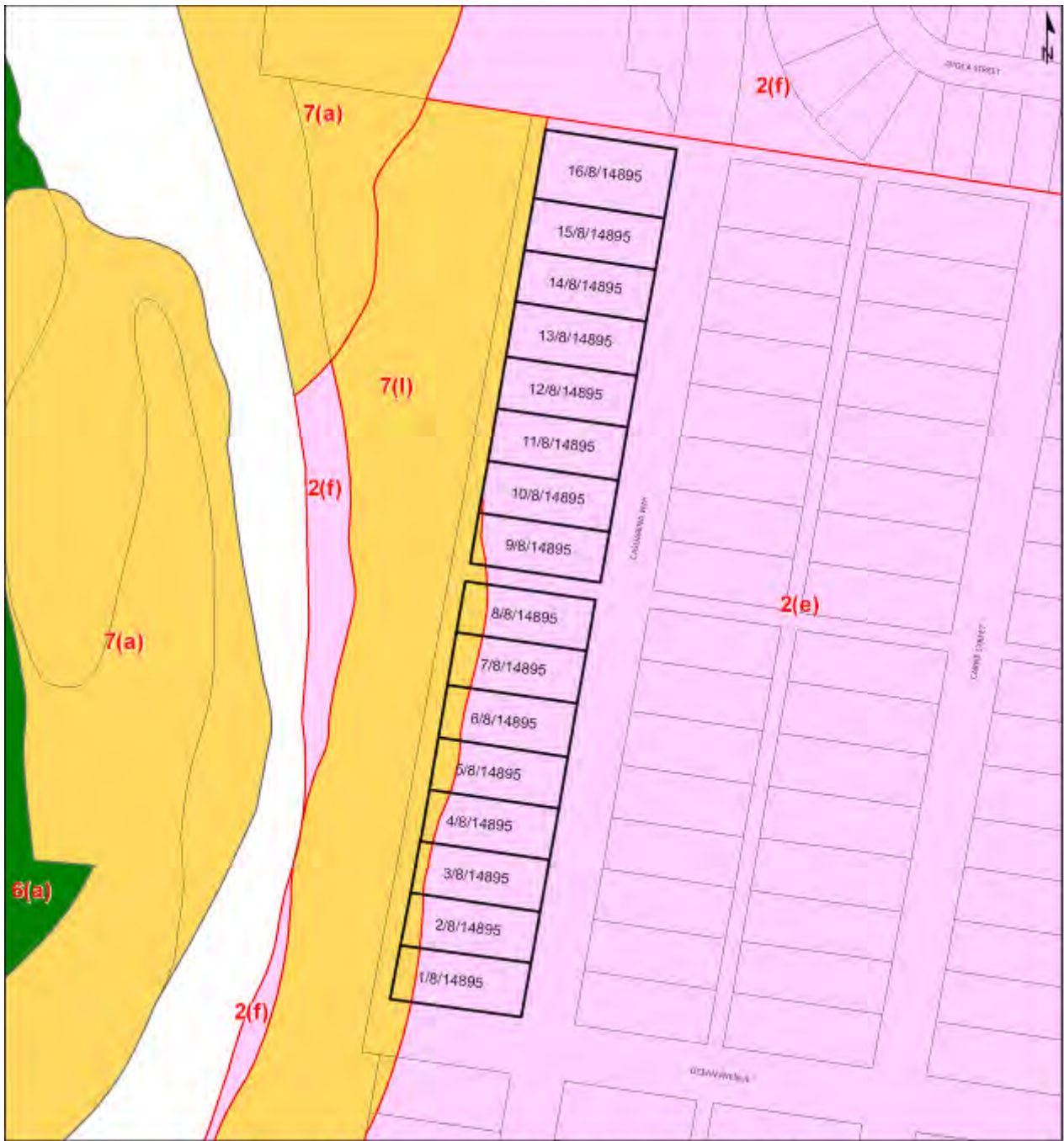
2009 aerial photography is supplied by Fugro Spatial Solutions Pty Ltd

**AERIAL PHOTO - taken October 2009**  
 DA10/0283 - Lots 1-16 Section 8 DP 14895  
 Casuarina Way, Kingscliff

<p>Filename: \\s\proj\planning\root\APP_B&amp;W_SitePlan.mxd                  Author: Slatwiner - Planning Referrals Unit                  Date Printed: 06 September, 2010</p>	<p>                      Coordinate System - MGA Zone 56                      Datum - GDA 94                      Code: 06 September, 2010                      © Dept. of Lands &amp; Tweed Shire Council                 </p>	<p>                       0 10 20 30 40 Meters                      1:1,500                      DO NOT SCALE COPY ONLY - NOT CERTIFIED                 </p>	<p>  <b>TWEED SHIRE COUNCIL</b>                      Civic and Cultural Centre                      3 Sandridge Road                      Merimbula NSW 2534                      PO Box 816                      Merimbula NSW 2484                      T: (02) 6678 2480 / 1300 292 872                      F: (02) 6678 2455                      OE: www.tweed.nsw.gov.au                      E: planning@twshire.nsw.gov.au                 </p>
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**TWEED LEP 2000 ZONE MAP**



**Tweed Local Environmental Plan 2000**

DA10/0283 - Lots 1-16 Section 8 DP 14895, Casuarina Way, Kingscliff

<p><b>ZONING</b></p> <p><b>RURAL</b></p> <ul style="list-style-type: none"> <li>1(a) Rural</li> <li>1(b) Rural Living</li> <li>1(b)(1) Agricultural Protection</li> <li>1(b)(2) Agricultural Protection</li> </ul>	<p><b>RESIDENTIAL</b></p> <ul style="list-style-type: none"> <li>2(a) Low Density Residential</li> <li>2(b) Medium Density Residential</li> <li>2(c) Tourist</li> <li>2(c) Urban Expansion</li> <li>2(d) Village</li> <li>2(e) Residential Tourist</li> </ul>	<p><b>BUSINESS</b></p> <ul style="list-style-type: none"> <li>3(a) Sub-Regional Business</li> <li>3(b) General Business</li> <li>3(c) Commerce &amp; Trade</li> <li>3(d) Watershed Enterprise</li> <li>3(e) Special Tourist (Jack Evans Boat Harbour)</li> </ul>	<p><b>INDUSTRIAL</b></p> <ul style="list-style-type: none"> <li>4(a) Industrial</li> </ul> <p><b>SPECIAL USES</b></p> <ul style="list-style-type: none"> <li>5(a) Special Uses</li> </ul> <p><b>OPEN SPACE</b></p> <ul style="list-style-type: none"> <li>6(a) Open Space</li> <li>6(b) Recreation</li> </ul>	<p><b>ENVIRONMENTAL PROTECTION</b></p> <ul style="list-style-type: none"> <li>7(a) Environmental Protection (Wetlands and Littoral Rainforest)</li> <li>7(b) Environmental Protection (Coastal Erosion)</li> <li>7(c) Environmental Protection (Coastal Landfill)</li> <li>7(d) Environmental Protection (Habitat)</li> </ul>	<p><b>NATIONAL PARKS &amp; NATURE RESERVES</b></p> <ul style="list-style-type: none"> <li>8(a) National Parks and Nature Reserves</li> </ul> <p><b>DEFER</b></p> <ul style="list-style-type: none"> <li>defer</li> </ul>
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<p><b>ADDITIONAL CONTROLS</b></p> <ul style="list-style-type: none"> <li>Clause 57 (Transmission Line Corridor)</li> <li>Clause 58 (Future Roads)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 41 (Heritage Conservation Area)</li> <li>Clause 52 (Cobaki)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 52 (Cobaki)</li> <li>Clause 52 (Existing and Future Dam Areas)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 52 (Minimum Lot Size)</li> <li>Clause 52 (Stormwater and FFI)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 53 (Schedule 3 Item)</li> <li>Clause 52 (Pottery)</li> </ul>
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Sheet 3 of 2 sheets

PLUMBING OPERATIONS OF FOUNDRY COLLEGE TO RESECTION

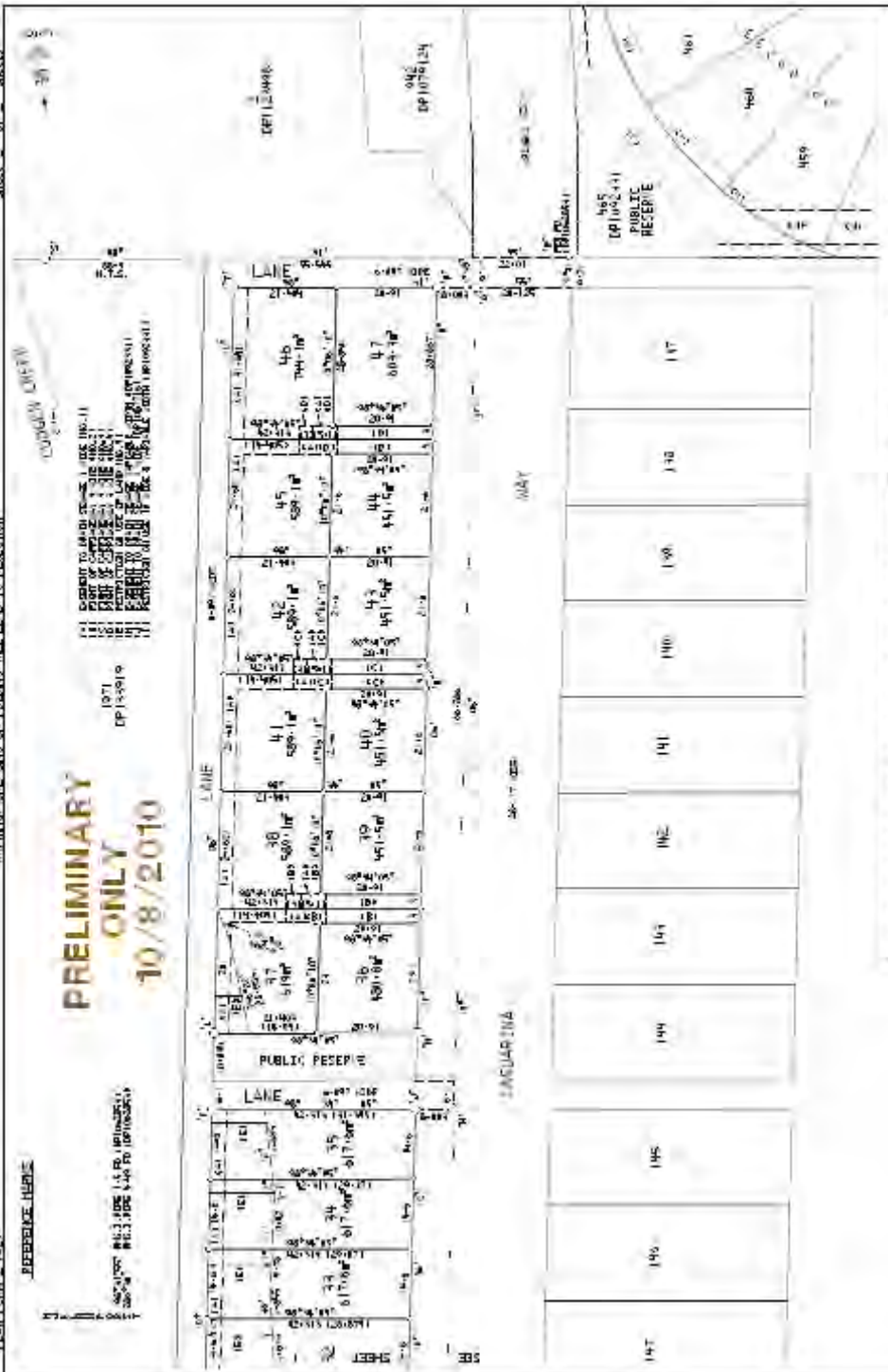
PLATE 1081 & 1082

REFERENCE HERE

**PRELIMINARY  
ONLY**  
10/8/2010

1071  
DP133910

- (1) CORRECT TO MATCH THE 1071 USE NO. 11
- (2) PART OF CORRECTION TO BE MADE
- (3) PART OF CORRECTION TO BE MADE
- (4) PART OF CORRECTION TO BE MADE
- (5) PART OF CORRECTION TO BE MADE
- (6) PART OF CORRECTION TO BE MADE
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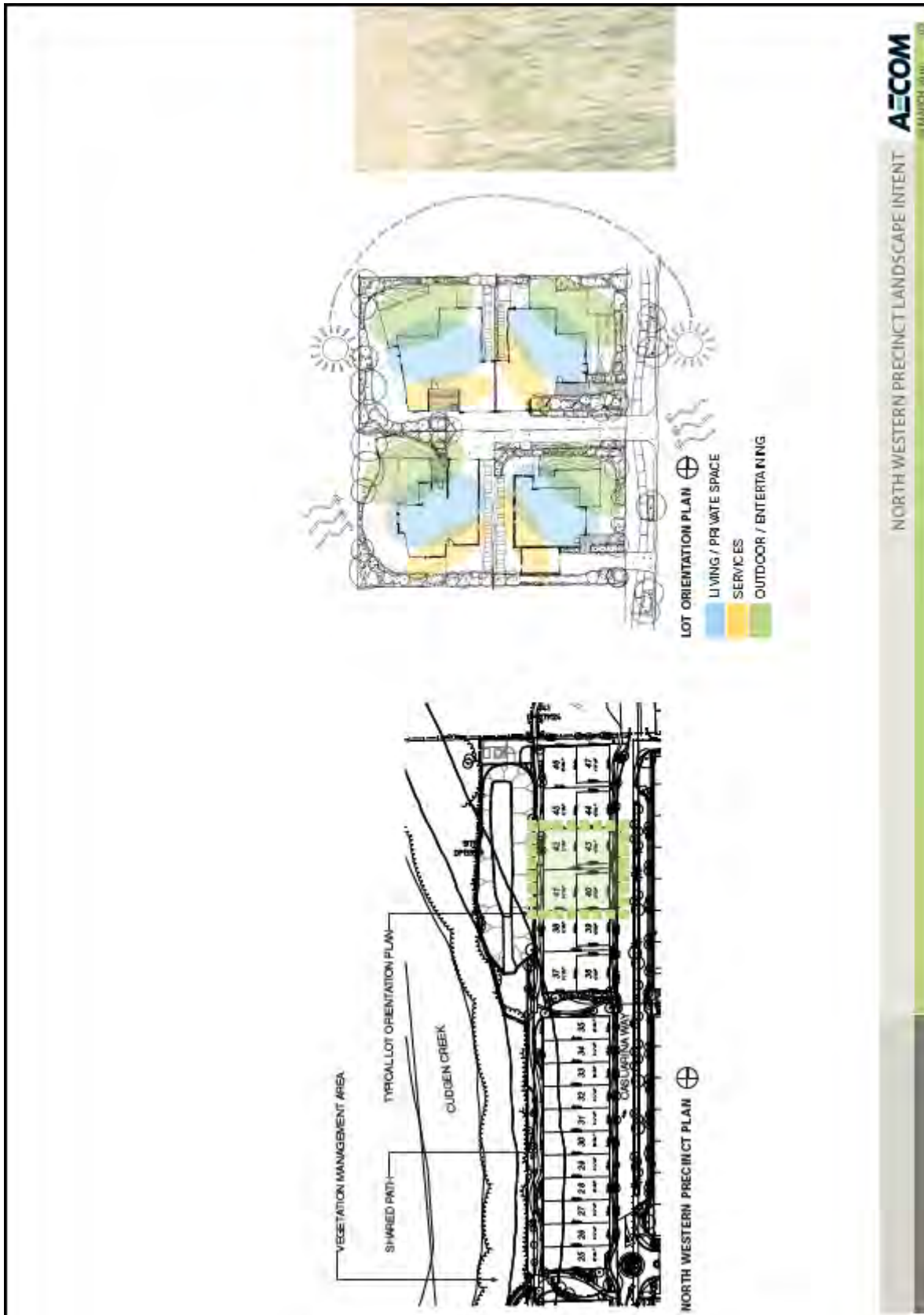


Surveyor: BRUNO D'ARAUJO P. M. S. C. Date of Survey: 05/07/2010 Surveyor's No.: 103584-2010-02	PLAN OF SUBDIVISION OF LOTS 143 - 151 (I) DP (CURRENTLY LOTS 1-16 SECTION B (II) DP-14805)	LOT: 143-151 LOCAL: PARANAGUÁ Subdivided by: Engenharia de Arquitetura e Urbanismo	Registered DP
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**INDICATIVE LOT ORIENTATION PLAN:**

(NOTE: The land areas shown on this plan do not reflect the latest plan dated 10/08/2010)



**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 aim of the Tweed Local Environmental Plan (TLEP) is to “manage 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 proposed subdivision forms part of a larger master plan (now reflected in the Seaside City DCP) which have undergone extensive assessment and provided a framework for future development of the area.

The proposal is consistent with the land uses approved in the DCP as well as the intent of the subject zoning. Given the extensive planning that has previously occurred for the site, potential impacts on the environment and residential amenity have been adequately considered and the proposal is not considered to compromise the aims of the TLEP.

Clause 5 - Ecologically Sustainable Development

The proposal is not considered to contravene the principles of ecological sustainable development, which were considered as part of the DCP. Previous approvals have required the necessary land dedications along the creek and foreshore to ensure protection of the environment.

The constraints of the site have been considered in greater detail below, and conditions of approval recommend limiting potential impacts on the environment.

Clause 8 – Consent Considerations

Clause 8 1(a) and 8 1(b) are addressed under their specific Clause headings and are deemed to be satisfied.

Clause 8 1(c) requires that the Consent authority considers any cumulative impacts the development may have on the community, locality or catchment. It is not considered that the proposal will result in significant cumulative impacts given the various management plans and conditions imposed which are designed to mitigate potential impacts.

Clause 11 – Zone Objectives

The subject site is partly zoned 2 (e) Residential Tourist, and partially 7 (l) Environmental Protection (Habitat).

Notwithstanding the proposed development is permissible by virtue of Clause 53C “Seaside City” of the Tweed LEP 2000 not Clause 11. Clause 53C is addressed later in this report.

Each zone is however addressed below.

*2 (e) Residential Tourist*

The majority of the works and subdivision is proposed in the 2 (e) zone.

The works are permissible (Item 2 - allowed only with consent) in the subject zone.

The primary objective of the zone is to provide and encourage *“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 and associated tourist facilities...”*. The secondary objective is to permit other development associated with a residential / tourist environment and not likely to affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

The proposed subdivision is consistent with this objective as it provides for low to medium residential development (all allotments greater than 450m<sup>2</sup>) and does not demand any greater level of services beyond that reasonably expected for residential use.

*7 (l) Environmental Protection (Habitat)*

Land adjacent to the site at the west is zoned 7 (l) Environmental Protection (Habitat). This zoning also affects the rear of existing Lots 1-9 by a maximum encroachment of 17m.

Each of the affected allotments are 43m in depth thus allowing for a remaining 10 x 15m building envelope outside the riparian buffer.

No works are therefore proposed as part of this application in this 7(l) portion of the site. Site levelling has already occurred under DA05/1464 and the relevant Construction Certificate.

The primary objective of the 7 (l) zone is *“to protect areas or features which have been identified as being of particular habitat significance, to preserve the diversity of habitats for flora and fauna, to protect and enhance land that acts as a wildlife corridor”*. The secondary objective is to *“protect areas of scenic value and to allow for other development that is compatible with the primary function of the zone”*.

The proposed subdivision is considered to satisfy these zone objectives as previous and proposed conditions of consent will be enforced to ensure the land zoned 7(l) remains free from structures. Planting in this area will need to be limited as this area has to act as a dual riparian and asset protection zone. However, this arrangement was all set up with the approval of DA05/1464. The current application seeks to increase the number of houses within this affected area from 9 to 13. This arrangement is still considered to satisfy the zone objectives.



Clause 15 - Essential Services

Clause 15 requires that development does not occur without a water supply, facilities for treatment of sewer and adequate drainage.

The development proposal includes provision for sewer, water and drainage. Council's Engineers have assessed the proposed infrastructure and it is deemed adequate subject to conditions.

Clause 16 - Height of Building

No buildings are proposed and this clause is not relevant.

Clause 17 - Social Impact Assessment

Clause 17 requires that Council considers a socio economic impact statement (in certain circumstances). The socio-economic impact must identify the likely future impacts of the development on the affected community and analysis the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services. The socio economic impact assessment must also determine if impacts will cause a loss of amenity within the locality due to reduction in community services and facilities, as well as assess possible measure for the management or mitigation of likely impacts.

A socio-economic impact assessment is not required (by Council's DCP) as not more than 50 residential lots are proposed.

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

The purpose of clause 20 is to prevent fragmentation and to protect ecological or scenic values of the land. The clause requires that the minimum lot size in the 7 (l) zone is 40 hectares.

A SEPP 1 Objection is required for lots 25-35, 37 and 38 as the rear portion of these lots are partially zoned 7 (l) Environmental Protection (habitat).

The applicant lodged a SEPP 1 objection which stated:

*“EXTENT OF STATUTORY VARIATION*

*Within Appendix A of this document are diagrams of the boundary layout of the proposed subdivision. The proposal is to subdivide sixteen existing residential lots into twenty three allotments. Thirteen of the allotments contain a small area of land at the rear which is within zone 7(l) Environment Protection (Habitat). Council's attention is drawn to the proposed lot layout plan and the dimensions and area of each lot.*

*The site area of the thirteen subject allotments area as follows:*

- Lot 25 594.1m<sup>2</sup>
- Lot 26 617m<sup>2</sup>
- Lot 27 617m<sup>2</sup>

- Lot 28 617m<sup>2</sup>
- Lot 29 617m<sup>2</sup>
- Lot 30 617m<sup>2</sup>
- Lot 31 617m<sup>2</sup>
- Lot 32 617m<sup>2</sup>
- Lot 33 617m<sup>2</sup>
- Lot 34 617m<sup>2</sup>
- Lot 35 617m<sup>2</sup>
- Lot 37 619m<sup>2</sup>
- Lot 38 589m<sup>2</sup>

*The variation is to the development standard within Clause 20 of the Tweed LEP 2000 that states,*

*consent may only be granted to the subdivision of land zoned 7(l) if the area of each allotment created is at least 40 hectares. The allotment size of proposed Lots does not meet this development standard.*

*Justification for the variation sought is discussed later in this submission.*

#### **ASSESSMENT OF APPLICATION FOR VARIATION**

*Assessment of the application for variation in accordance with the 5 part test outlined by Chief Justice Preston in the decision *Wehbe v Pittwater Council* (2007) NSW LEC 827 follows. Preston rephrased the assessment process as follows:*

1. *The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
2. *The consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3”.*

*The aims of the policy are as follows:*

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

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

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

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

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*Initially the relevant development standard must be identified. The relevant controls are set out in Clause 20 of the Tweed Local Environmental Plan 2000 which states, inter alia:*

*The development standard represented as 2(a) of this clause, relates to the minimum area of created allotments through subdivision and is clearly a development standard.*

#### **OBJECTIVES OF THE STANDARD**

*Secondly, it must be determined what the underlying object or purpose of the standard is.*

#### **JUSTIFICATION FOR VARIATION OF THE STANDARD AND MATTERS FOR CONSIDERATION**

*Of the five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, Point 1 and 4 are applicable in this instance and is noted as follows:*

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

*As discussed above and confirmed by judgments supported by the Land & Environment Court, the ability of a proposal to attain the objective of the standard and its intent are fundamental to the appropriateness of applying the standard in the first instance. We note therefore, that the variation requested is done so with particular reference to the content and wording of the objectives to the standard. Accordingly, we have broken down the request for variation into three (3) specific headings, each of which is identified within the objective proper. The first and third objective above concerning the fragmentation of rural land and protection of the area of Tweed's water supply are not applicable to this site as it does not fall within a rural zoning or the catchment of the Clarrie Hall Dam, which provides Tweed's water supply.*

*An analysis in this context has been carried out as follows:*

**Does the proposal protect the ecological and scenic values of the land?**

*It is submitted that the proposed subdivision design protects both the ecological and scenic values of the land. The area of land zoned 7(l) contains no vegetation and has largely been reshaped as part of bulk earthworks associated with development approval DA 05/1464. The 7(l) zoned land defines the 50m buffer boundary to Cudgen Creek. Proposed lots 25 - 38 are encroached upon by the riparian buffer zone. Only a small portion at the rear of each lot is affected. This buffer is to be restricted by a Section 88 (b) instrument to ensure that it is maintained as a buffer area by the landowner. It is anticipated that the Council will include such a condition of approval in regard to these lots similar to that imposed on DA 08/0755.*

*As outlined above it is considered unnecessary to strictly adhere to the provisions of the development standard in this instance, as the objectives to the development standard are clearly attained by this proposal. Further to this it is considered that the proposal meets the Objectives for the zone as outlined in the text of the SEE document.*

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

*The proposed subdivision involves the re-subdivision of 16 existing residential lots with 15 of the lots having an area of 1012m<sup>2</sup> and the other 1283.9m<sup>2</sup>. As a result of this historic subdivision it is submitted that the development standard of 40 hectares for 7(l) zoned land in this case has been virtually abandoned or destroyed. The existing lots are of a residential nature and in terms of size are only 0.25% of the required sizes under this standard. Therefore in this case compliance with the standard in this case is considered unnecessary and unreasonable.*

## CONSISTENCY WITH AIMS OF SEPP1

*The third question in Winten asks whether compliance with the development standard is consistent with the aims of SEPP 1. The aims state:*

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

*This question also asks does compliance with the development standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the EPA Act. These objects state:*

*The objects of this Act are:*

- to encourage - the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- the promotion and coordination of the orderly and economic use and development of land.*

*These matters have been addressed in detail above. Importantly the proposed variation sought will not seek a dangerous precedent nor compromise the intent of Council's planning controls.*

*The proposed variation clearly satisfies these requirements."*

Such application was referred to the NSW Department of Planning for concurrence which was subsequently granted. The Department of Planning stated that:

*"Following consideration of the application, concurrence has been granted to vary the subdivision development standard contained in Clause 20(2)(a) of the Council's planning instrument to permit the creation of proposed lots 25 to 35, and lots 37 and 38 partly zoned 7(l).*

*Concurrence was granted in this instance as the proposed lots will continue to allow the development of residential land to be developed for residential purposes. It is understood that no development will occur on the 7(l) land".*

Having regard to the applicant argument above, and the concurrence issued by the Department of Planning compliance with Clause 20(2)(a) in this instance is therefore considered unreasonable and unnecessary. The SEPP 1 Objection is considered suitable and reasonable in the circumstances.

Clause 28- Development in Zone 7 (I) Environmental Protection (Habitat) and on adjacent land

The purpose of this clause is to protect wildlife habitat from the adverse impacts of development. As discussed above no works are proposed in the 7 (I) zone. The recommended conditions of consent incorporate restrictions as to user to ensure no structures are erected in this area and furthermore Council's Ecologist has recommendation planting with this area to make it consistent with the adjoining riparian plantings. Council's Ecologist has reviewed the proposal and recommended conditional approval as detailed later in this report under the heading flora and fauna.

Clause 31 – Development Adjoining Waterbodies

Cudgen Creek does not immediately adjoin this property. Rather these properties are separated from the Creek by Lot 1971 which will ultimately be dedicated to Council to accommodate the required riparian buffer. This buffer does not equate to exactly 50m as the site was bound by the original 1920's subdivision. The subject application does not deplete this riparian buffer in any way but rather intensifies the number of houses permitted from 9 to 13 within the area affected by the buffer.

The proposed application is considered to satisfy the objectives of Clause 31. However, the detailed flora and fauna comments (shown further below in this report) review this matter further.

Clause 34 - Flooding

The objective of this clause is to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land and to minimise the effect of flooding on the community.

The subject site is above the Q100 flood level and is therefore not affected by flooding.

Clause 35 - Acid Sulfate Soils

The subject site is indicated as Class 4 acid sulfate potential on Council's mapping. This clause requires that an acid sulfate soil (ASS) management plan is provided for works below 2 metres below the natural ground level.

An acid sulfate soil management plan was submitted and considered satisfactory for the parent consent DA05/1464.

No further assessment in this regard is required.

Clause 39 – Remediation of Contaminated Land

This clause seeks to ensure that contaminated land is adequately remediated prior to development occurring.

As part of DA05/1464 radiation monitoring and validation requirements were addressed.

Similar conditions of consent have been recommended on this consent to ensure the final residential land parcels are free from contaminants thus satisfying this Clause.

#### Clause 39A – Bushfire Protection

The subject site is bushfire prone. The subdivision triggers referral to the Rural Fire Service (RFS) and general terms of approval have been issued by the RFS. General terms of approval include provision of an inner asset protection zone of 15m to the west adjoining Lot 1971 (along the creek) and to the north where the lots adjoin Lot 2 in DP 1123498 (where the properties adjoin SALT).

The vegetation management plan approved for Lot 1971 to west stipulated that 10m of the 15m APZ could be located within Lot 1971 leaving the need for a 5m APZ within the subject properties. This can be achieved within the proposed subdivision layout.

In regard to the allotments adjoining SALT (Lot 2 in DP1123498) the applicant amended their DA on 12 August 2010 to ensure Lots 46 and 47 can accommodate both the 5m western APZ and northern 9m APZ adjoining Lot 2 in DP1123498. The northern APZ is only 9m as the applicant is relying on the adjoining northern 6m laneway to act as the remaining APZ requirement. The 6m and 9m combined therefore reach the required 15m APZ criteria. The 6m wide laneway will comprise a bitumen seal laneway for access to the sewer pump station. This is capable of acting as the APZ as approved within the Vegetation Management Plan associated with Lot 1971.

Lot 46 is now proposed to be 744m<sup>2</sup> while Lot 47 is proposed at 603m<sup>2</sup>.

The conditioned asset protection zone is required to protect the future residents of the development and the adjoining nature reserve from major fire events. Thus satisfying the objective of this Clause.

#### Clause 53C

Clause 53 aims

- (a) to ensure that development of the land to which this clause applies is undertaken within an appropriate planning framework, and
- (b) to ensure that relevant environmental issues are considered before consent is granted to development of the land, and
- (c) to facilitate the development of the land having regard to the subdivision and ownership patterns of the land.

The Clause states that development must not be carried out on land to which this clause applies unless a development control plan has been prepared for the land.

A DCP has been created (Tweed DCP Section B11 Seaside City) and the proposed development generally conforms to the provisions contained therein.

The proposed battleaxe allotments will need to be designed in accordance with the lot orientation as determined suitable by the land and environment court decision for DA08/0755.

Appropriate conditions of consent are recommended in this regard.

The proposed subdivision has been created with all relevant environmental issues considered, including the Riparian Buffer Zone, erosion and sediment control, stormwater management and bushfire management.

The application satisfies the provisions of Clause 53C.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### **Clause 32B: Coastal Lands**

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
  - (a) *the NSW Coastal Policy 1997,*
  - (b) *the Coastline Management Manual, and*
  - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
  - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time),*  
*or*
  - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The application is considered to comply with Clause 32b. Public access through the adjoining Lot 1971 will be via a formed cycleway and will be managed in accordance with an approved management plan to ensure ecological values are protected.

The proposal will not result in any overshadowing of foreshore areas and provides a suitable buffer to the Cudgen Creek to limit impacts upon the adjoining habitat.

##### **Clause 43: Residential development**

- (1) *The council shall not grant consent to development for residential purposes unless:*
  - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*



- (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
- (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposal is considered to be an acceptable outcome with regard to this clause. It is consistent with the previously adopted DCP for the site. Density has been maximised whilst ensuring measures are in place to protect the adjoining reserve.

The proposal complies with Council's road standards as previously approved within DA05/1464.

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

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
  - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
  - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
  - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

As identified above the proposed subdivision does not further encroach on the previously established riparian corridor. It is considered that public access through Lot 1971 should be controlled, given the ecological values and zoning of this land. Such measures have been established within previous approval and do not directly relate to the subject application.

#### SEPP No. 1 - Development Standards

The application required a SEPP 1 objection in relation to the 7(l) zone to the west of the subject allotments. This SEPP 1 has been addressed above and concurrence from the Department of Planning has been granted.

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

The subject site does not comprise any vegetation on the site and therefore does not comprise potential Koala habitat.

SEPP No. 55 - Remediation of Land

As identified above previous approvals have addressed site contamination and appropriate conditions have been imposed on this consent to ensure consistency.

SEPP No 71 – Coastal Protection

Clause 18(2) requires a master plan if subdivision of land is proposed within the sensitive coastal zone. The site is partly identified as being sensitive coastal land and the applicant has provided correspondence from the Department of Planning (dated 13 May 2010) identifying that the master plan requirement can be waived.

The applicant has provided information addressing the matters in clause 8 of SEPP 71 and considers the proposal to be consistent with the aims of this policy.

The proposed subdivision will not have any impact on the coastal foreshore or scenic qualities of the NSW coast. It is consistent with the form of housing that exists in this area.

Land dedication along the Creek and foreshore have previously been provided in relation to maintaining riparian and foreshore buffers. Cultural matters have been assessed and cumulative impacts were taken into consideration in the original Court approval for Seaside City.

The application is considered suitable having regard to SEPP 71.

SEPP (Major Projects) 2005

This policy requires that subdivision in the coastal zone that could create more than 100 lots be assessed and determined by the Minister. Whilst this subdivision only seeks approval for 7 additional allotments the total re-development of Seaside City could theoretically exceed the 100 lot criteria. Accordingly the applicant has provided correspondence from the Minister declaring that the development is of local planning significance only and can be dealt with under Part 4 of the act (correspondence dated 21 November 2008).

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

Council's Draft Local Environmental Plan 2010 has recently come off public exhibition. The subject site has been identified as R2 – Low Density Residential and E2 – Environmental Conservation. The proposed development is permissible in these zones and is not inconsistent with the Draft LEP.

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

**A2-Site Access and Parking Code**

Road design and street networks are discussed in subsection A5 – Subdivision Manual below.

The proposal being for subdivision does not generate any car parking requirements at this stage.

### **A3-Development of Flood Liable Land**

As identified above, the subject land is not flood prone.

### **A5-Subdivision Manual**

The proposed subdivision has been assessed against section A5 and is generally compliant. Relevant sections of A5 are addressed in more detail below.

#### A5.4.3 Physical Constraints

The Subdivision Manual (A5) requires that master planning of the site is undertaken to identify physical constraints, including environmental constraints on the development site or adjacent land. The intent is that urban form responds to the natural landform and drainage system, topographical features and environmental constraints. The proposal is consistent with the approved DCP for the site.

#### A5.4. Environmental Constraints

A5 also requires that site constraints are identified including contaminated land, landslip, bushfire threatened species, ecological communities, coastal lands, significant vegetation, landscape character, acid sulfate soils, heritage or cultural items.

These matters have been addressed in this report and it is considered that applicable constraints can be effectively managed by way of conditions of consent.

#### A5.4.7 Storm water Runoff, Drainage, Waterways and Flooding

Council's Development Engineer has provided the following information:

*"Each allotment will be required to install a household infiltration system to capture and dispose of roof runoff. Allotment runoff will discharge to the street and then be directed to the major infiltration basin located in the north western corner on the Seaside City Development.*

*The construction of the drainage system as approved under CC08/0473 will satisfy all downstream drainage requirements for this development.*

*The applicants have provided a Erosion and Sediment Control Plan for stormwater quality management during the construction phase and this management plan is considered satisfactory.*

*Management of stormwater quality during the operation phase will be satisfied by the implementation of works required under CC08/0473."*

In addition in regards to waterways the DCP stipulates requirements for riparian buffers. In this regard the buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce

these buffers but does increase the intensity of development by 4 additional dwellings. As detailed in this report this is considered reasonable subject to the conditions of consent.

#### A5.4.8 Urban Structure

The Subdivision Manual seeks to ensure neighbourhood design is walkable, connected and includes an interconnected street network. It is also considered that a network of well distributed parks should be provided, as well as neighbourhood centres that act as a community focus and surrounded by higher density.

The urban structure has been dictated by the approved Tweed DCP Part B11. The urban structure is considered suitable.

#### A5.4.10 Movement Network

This section of the Subdivision Manual seeks to ensure adequate street network and intersection design.

Council's Engineer has provided the following comments in this regard:

*"The longitudinal and horizontal alignment of Casuarina Way has been approved under CC08/0473. Casuarina Way will be reconstructed to include an 11.0 wide pavement and a 6.0m wide service lane. Generally the finished surface will be slightly lower than the existing pavement. The reconstruction of Casuarina Way will provide safe access to the proposed 24 allotments.*

*A roundabout will be constructed at the intersection of Casuarina Way and Ocean Avenue. The approved Construction Certificate provides details for the construction of this roundabout.*

*Casuarina Way is a designated bus route and when constructed will be 11.0m in width with nominated bus stops as shown on CC08/0473.*

*Vehicular access to the allotments will be via Casuarina Way. Construction of Casuarina Way in accordance with the approved construction certificate will ensure that safe access is provided to the new allotments.*

*The applicant has indicated that vehicular access to proposed lots 37, 38, 39, 41, 42, 43, 45, 46 and 47 will be via a 6.0m wide right of carriageway with a 4.5m wide pavement. This standard is consistent with A5 – Subdivision Manual, section A5.4.12 and is therefore supported.*

*A 1.2m wide concrete footpath will be constructed along the frontage of the proposed subdivision and a 2.0m wide cycleway will be constructed at the rear of the allotments within the open space area. These works are approved under CC08/0473.*

*The proposed subdivision will create an additional seven (7) allotments which will increase traffic volumes on the road network by approximately*

*45.5 vehicles per day. This traffic increase can be easily accommodated within Casuarina Way when upgraded to its ultimate formation.”*

#### A5.4.11 Open Space Network

All park requirements for Seaside City have been approved as part of DA05/1464. The proposed additional allotments do not generate the need for additional parks as the approved parks were based on an ultimate population which this development contributes to.

#### Table A5-9.4 – Land in Zone 2 (e) Residential Tourist

The proposal complies with the minimum lot size for dwelling houses of 450m<sup>2</sup>. Lot sizes are in the order of 450 – 744m<sup>2</sup>.

The subdivision (excluding battle axe allotments) complies with the 14m minimum as the smallest block width equals 17m.

The battle axe allotments do not meet the 9m minimum street frontage and therefore each battle axe block must provide one additional onsite parking space (for visitors) to make up for the lost on street parking space (this has been enforced by way of conditions limiting the design options for these sites).

Whilst battle axe allotments are not favoured the DCP does allow them where there are “*outlooks over parks*” and “*in very limited circumstances, larger lots adequate for self-containment of a dwelling and its outlook.*”

The proposed battle axe allotments all back on to the riparian buffer to Cudgen Creek and offer an additional outlook for allotments fronting the Creek.

As the allotments are capable of accommodating a single dwelling house in accordance with Tweed DCP Section A1 (Part A) and B11, their application appears to be capable of compliance with DCP Section A5 Subdivision Manual.

The access handles for the battle axe blocks are 3m wide within each allotment. Due to the subdivision design each battle axe handle adjoins another battle axe block resulting in a 6m wide access handle for the two adjoining blocks. This complies with Council’s standards. Conditions have been incorporated to ensure some landscaping and curvature occurs within the battle axe handle to improve the visual amenity from the street).

Each battle axe handle equates to approximately 60m<sup>2</sup> this ensures each battleaxe allotment equates to a minimum allotment size of at least 450m<sup>2</sup> excluding the battle axe handle (this has been reinforced with a condition of consent).

All lots have a long axis which runs east west providing adequate solar access opportunities.

The application is considered to achieve compliance with DCP Section A5.

### **A6-Biting Midge and Mosquito Control**

The application is not considered to create any new mosquito breeding areas.

### **A13-Socio-Economic Impact Assessment**

It is considered that the proposal does not require a socio economic assessment as the proposal will not result in any unreasonable social or economic impact.

### **B9-Tweed Coast Strategy**

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast generally.

The proposal is generally consistent with B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the Tweed Coast.

Section B9 includes specific provisions relating to riparian buffers in TSC.7.9. It states that riparian buffers should be 50 metres wide, however where the buffer adjoins an environmental protection zone, the buffer need only have a minimum width of 20 metres (from the edge of the environmental protection zone).

Control TSC.7.10 states that the riparian buffer zone should incorporate two components, being a 20 metre core buffer (adjoining the mean high water mark) and a 30 metre outer buffer, adjacent to any section of the core buffer that adjoins Cudgen Creek. It is not required where the core buffer adjoins an environmental protection zone. The outer buffer does not need to be dedicated to Council.

As detailed above, the buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by 4 additional dwellings. As detailed in this report this is considered reasonable subject to the conditions of consent.

Council's Ecologist has reviewed this application specifically in relation to riparian buffers and recommended conditional approval. The full flora and fauna report is duplicated below.

### **B11- Seaside City**

The DCP contains the broad strategic framework for Seaside City as a whole in addition to specific precinct controls.

Specifically the following controls apply to this section of the development site:

*Land Use Map shows subject site as Coastal Dwelling Area:*

Table 1 - Built Form Controls

Type	Height		Max. Building Site Coverage (based on land title area)	Density		Min. Landscape Area of Site (Incl. Deep Soil Zone)
	Metres Ridge & Ceiling	Storeys		FSR (floor space to site area)	Min. N <sup>o</sup> . Units / m <sup>2</sup> Full Site Area	
Coastal Dwellings (2 Storey Low Density)	9m & 7m	2 storeys	50%		NA	30%

***“Seaside Housing is to be predominantly single two (2) storey housing and where appropriate Dual Occupancies that are designed to give the street appearance of a single dwelling.”***

**Height**

*Building Height Maximum height of 9m to the ridgeline. Maximum height of 7m to the ceiling. Storeys 2 storeys.*

**Density**

*Building Site Coverage The maximum building site coverage is to be 50% of the site area.*

*FSR Maximum of 0.5: 1 (building floor space to site area including the whole lot for the properties east of Lorna Street).*

**Open Areas**

*Landscape Area 30%*

**Setbacks**

Front 6m  
 Rear 6m (5m based on A1)  
 Side 0.9m

**Deep Soil Zone**

*3m off each street frontage*

**Driveways**

*4m per property max and 0.75m screen plantings along boundary*

**Garages**

*No greater than 25% of frontage”*

Assessment against Section B11 Seaside City & DCP Section A1 (Part A):

- **Lot 25 Variable depth 39.3 - 42.3m x 14.7m - 594m<sup>2</sup>**

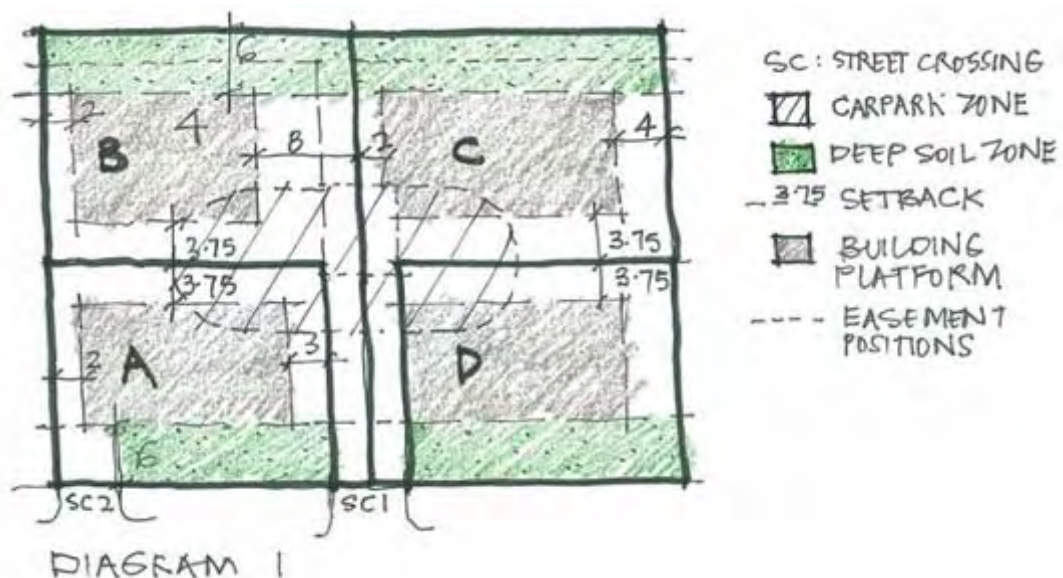
This allotment is capable of accommodating a single dwelling house with a building footprint of 10m x 15m based on the above criteria (Note 10m APZ on Council land and 5m APZ on subject property).

- **Lots 26 – 35 Depth 42.3m x 14.7m - 617m<sup>2</sup>**

These allotments are capable of accommodating a single dwelling house with a building footprint of 10m x 15m based on the above criteria (Note 10m APZ on Council land and 5m APZ on subject property).

- **Lots 36, 39, 40, 43, 44 and 47  
Depth 20.91m x Variable 21 – 28m - 451m<sup>2</sup> - 603m<sup>2</sup>**

These front allotments of the battle axe clusters are capable of accommodating a single dwelling house with a building footprint of approximately 10m x 15m based on the above criteria. As negotiated within DA08/0755 these allotments should be designed based on the following parameters:



- **Lots 37, 38, 41, 42, 45 and 46  
Depth 21m (excluding battle axe handle) x Variable 24 – 31m - 589m<sup>2</sup> - 744m<sup>2</sup>**

These rear allotments of the battle axe clusters are capable of accommodating a single dwelling house with a building footprint of approximately 10m x 15m based on the above criteria. As negotiated within DA08/0755 these allotments should be designed based on the above diagram:

Appropriate conditions of consent have been recommended to ensure compliance with the above diagram and DCP Section A1 and B11 accordingly.



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

Clause 92(a) Government Coastal Policy

As identified above, the proposal is not considered to be inconsistent with the Coastal Policy. It will not result in overshadowing or impacts on the coastal foreshore.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

No buildings are proposed.

Clause 94 Buildings to be upgraded

No buildings are proposed.

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

Context and Setting

The proposal is considered compatible with the existing density and character of surrounding development and coastal communities.

Ecological Impacts/ Flora & Fauna

Council's Ecologist has reviewed the application and made the following comments:

*"The main issue of ecological interest is the riparian buffer to Cudgen Creek. A 50m riparian zone from Mean High Water Mark is zoned 7(l) Environment Protection (Habitat).*

*Relevant controls and issues are discussed below.*

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
SEPP 71 Clause 8  Matters for consideration	Matters for consideration include: <ul style="list-style-type: none"> <li>measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u>) and plants (within the meaning of that Act), and their habitats,</li> <li>existing wildlife corridors and the impact of development on</li> </ul>	This SEPP aims to protect coastal vegetation and wildlife corridors amongst other things.  In this case, vegetation on the lots has already been removed thus protection per se is not applicable. It is considered that replacement of native vegetation, however, is an appropriate response to the aims and matters for

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
	<p>these corridors,</p> <ul style="list-style-type: none"> <li>the cumulative impacts of the proposed development on the environment,</li> </ul>	<p>consideration. This has been conditioned.</p>
<p>LEP 2000 Clause 11</p> <p>Zone objectives for 7(l) Environmental Protection (Habitat) zone</p>	<p>Zone objectives are:</p> <p><b>Primary objectives</b></p> <ul style="list-style-type: none"> <li>to protect areas or features which have been identified as being of particular habitat significance.</li> <li>to preserve the diversity of habitats for flora and fauna.</li> <li>to protect and enhance land that acts as a wildlife corridor.</li> </ul> <p><b>Secondary objectives</b></p> <ul style="list-style-type: none"> <li>to protect areas of scenic value.</li> <li>to allow for other development that is compatible with the primary function of the zone.</li> </ul>	<p>Part of the 7(l) zone is under active rehabilitation in accordance with the Vegetation Management Plan for Lot 1971 adjacent to the subject lots (Lot 1971 was set aside for environmental purposes). The density of planting in Lot 1971 has been significantly reduced in a zone 10m adjacent the subject lots for bushfire asset protection purposes and a cycleway permitted in this area. Further reductions in available space for replanting have arisen due to provision of a stormwater detention basin and sewer pump station. In addition, maximum tree height has been limited under existing powerlines.</p> <p>It is considered that habitat enhancement of those parts of the subject lots zoned 7(l) is a reasonable response to the 7(l) zone where it exists on the lots in order to comply with zone objectives. This has been conditioned.</p>
<p>LEP 2000 Clause 20</p> <p>Subdivision in Zone 7(l)</p>	<p>Consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted.</p>	<p>Although the land zoned 7(l) within the subject allotments will have a restriction on use such that buildings or other structures will not be permitted, the land will be part of privately owned residential land parcels. This does not appear to strictly accord with the intent of this clause. It gives support to the need to revegetate these portions of applicable lots as conditioned.</p>
<p>LEP 2000 Clause 28</p> <p>Development in Zone 7 (l) Environmental Protection (Habitat) and on adjacent land</p>	<p>(1) Objective</p> <ul style="list-style-type: none"> <li>to protect wildlife habitat from the adverse impacts of development.</li> </ul> <p>(3) The consent authority must not grant consent to development on or adjacent to land within Zone 7 (l) unless it has taken into consideration:</p>	<p>The application states that these matters have been addressed for lots to the south similarly encumbered via provision of Restrictions on Use of the land, registered on title. Further, that it is expected that similar conditions would be applied to the subject lots. The restrictions referred to provide only that no building or</p>

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
	<p>(a) <i>the likely effects of the development on the flora and fauna found in the locality, and</i></p> <p>(b) <i>the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and</i></p> <p>(c) <i>a plan of management showing how any adverse effects arising from the development are to be mitigated.</i></p>	<p><i>swimming pool be constructed and pet ownership is restricted to one dog in a fenced yard and one de-sexed cat kept inside at night. Only two lots in the southern block are affected, each to a lesser degree than any of the eleven blocks proposed to result from resubdivision of Lots 1 to 8.</i></p> <p><i>Whilst the restrictions on title are supported, it is considered that development in the private 7(l) area is likely to increase risk to flora and fauna by way of the matters listed. Although a Vegetation Management Plan has been approved over the adjoining Lot 1971, no management plan has been provided for these areas of private land. It is considered that these matters are required to be addressed but can be addressed within the Restriction on Use to be registered on each lot title.</i></p>
<p><i>LEP 2000 Clause 31</i></p> <p><i>Development adjoining Waterbodies</i></p>	<p><i>Objectives</i></p> <ul style="list-style-type: none"> <li><i>• to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.</i></li> </ul> <p><i>This clause applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody.</i></p> <p><i>Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent authority of the mean high-water mark or,</i></p> <p><i>where there is no mean high-water mark, the top of the bank or shore of a stream, creek,</i></p> <p><i>river, lagoon or lake unless it is satisfied that:</i></p> <ul style="list-style-type: none"> <li><i>• the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the Local Government Act 1993 that applies to the land or to land that may be affected</i></li> </ul>	<p><i>Whilst the lots do not strictly adjoin Cudgen Creek, they are the closest development to the creek and within the area zoned for protection of riparian buffer, thus the intent is met.</i></p> <p><i>The relevant Estuary Management Plan is discussed below and requires a 50m riparian buffer for all new development.</i></p>

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
<p>DCP A5 Subdivision A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding</p>	<p style="text-align: center;">by the development,</p> <ul style="list-style-type: none"> <li>• Development in or adjacent to waterways, water bodies, wetlands or within their catchments must: <ul style="list-style-type: none"> <li>• Provide a riparian buffer of 50m along major streams (Tweed River, Rous River, Oxley River, Cudgen Ck, Cudgera Ck, Mooball Ck and major tributaries)</li> <li>• Conserve native vegetation surrounding waterways, water bodies, wetlands by the retention of riparian buffers.</li> </ul> </li> <li>• Riparian buffers along major streams shall be dedicated to Council and placed under active management in accordance with a plan of management submitted by the applicant and approved by Council.</li> <li>• Riparian buffer zones shall be revegetated and fences or other appropriate barriers provided to prevent transverse crossing of the riparian buffer (except in designated areas).</li> </ul>	<p>A riparian buffer of 50m has been delineated along this section of Cudgen Creek via the 7(l) Environment Protection zone.</p> <p>Native vegetation was originally removed for sand-mining purposes and subsequent regrowth of native and weed species was removed during construction of Casuarina Way in 2000, thus the conservation of native vegetation is not applicable to the riparian buffer section of the private lots.</p> <p>The buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by 4 additional dwellings.</p> <p>A benefit to the riparian will be gained through planting and plan of management conditioned for the riparian zone within the private allotments.</p>
<p>DCP B11 Seaside City B11.2.4 Environmental and Hazard Management – Cudgen Creek</p>	<p>Cudgen Creek</p> <p>A 50m riparian buffer zone is to be provided, measured from Cudgen Creek, and adjacent to the adjoining 7(a) and 7(l) environmental protection zones.</p> <ul style="list-style-type: none"> <li>• A minimum 20m core buffer. This will include the area that immediately adjoins the MHWL and any area that adjoins an environmental protection zone. The core buffer shall be dedicated to Council in a rehabilitated form to the satisfaction of Council to manage and maintain. This component should retain all native vegetation and be weeded and replanted where required.</li> <li>• A 30m outer buffer. This area</li> </ul>	<p>The buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by 4 additional dwellings.</p> <p>The total riparian buffers along Cudgen Creek adjoining the subject sites (measured from the mapped waterway) comprise a minimum of 50m and a maximum of 100m. However if this is measured from the current top of bank (the narrowest section) a minimum of 38m exists.</p> <p>This comprises on average;</p> <ul style="list-style-type: none"> <li>• a core buffer of at least 20m which will be densely</li> </ul>

Legislative or policy control	Detail of relevant provision	Comment with regard to proposal
	<p>is to be provided adjacent to any section of the core buffer that adjoins Cudgen Creek. It is not required where the core buffer adjoins an environmental protection zone. • The 30m outer buffer does not need to be densely revegetated, however it shall not contain buildings except those ancillary to its environmental or recreational uses where appropriate (e.g. park shelters etc).</p> <ul style="list-style-type: none"> <li>• Infiltration basin and cycling/walking paths may be located will be provided within the outer 30m buffer of this dedicated land.</li> <li>• Any required outer buffer on private land is to have suitable restrictions on the title to ensure that it is maintained as a buffer area by the landowner.</li> <li>• Prior to issue of a construction certificate for a building, or subdivision certificate for any land within Seaside City, Lot 1971 shall be dedicated to Council at no cost due to it's riparian and environmental qualities. Prior to this dedication, approved embellishment of the area (such as recreation facilities) must be completed, and an approved vegetation management plan prepared. The developer must commit to completing works associated with the approved plan within a minimum of 5 years.</li> <li>• A Riparian Management Plan shall be provided to the satisfaction of Council in respect of all areas described above.</li> </ul>	<p>re-vegetated as part of DA05/0793;</p> <ul style="list-style-type: none"> <li>• a dual cycleway/asset protection zone measuring approximately 10m managed as an inner protection area;</li> <li>• a maximum 17m riparian zone within the private allotments the subject of this application</li> </ul> <p>This application presents Council with an opportunity to ensure the 17m within the private allotments will be managed as riparian buffer with some native plantings.</p> <p>This has been conditioned within the application and is considered to be the best possible outcome given the existing subdivision layout as created by the 1920's subdivision.</p>
<p>Tweed Coast Estuary Management Plan – Cudgen, Cudgera and Mooball Creeks</p> <p>21 Strategies and actions</p>	<p>Development - Actions required</p> <ul style="list-style-type: none"> <li>• Adhere to a minimum of 50m buffer zone of riparian vegetation on any new development site</li> <li>• Wherever possible, encourage dedication and</li> </ul>	<p>A 50m buffer has been identified via Environmental Protection Zoning. As the development is a 1923 approved subdivision, it is not "new development", despite the current proposal for re-subdivision. Thus dedication</p>

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
Costs 21.1 Cudgen creek	rehabilitation of riparian zones with development applications	would be unreasonable at this stage.  Lot 1971 is under current rehabilitation and is intended to be dedicated to Council.  The bank at this site has not been identified as of particular concern in relation to bank erosion.

### **Ecologist Conclusion**

*The re- subdivision of existing Lots 9 to 16 Section 8 DP 14895 in the north-west corner can be supported because they are (apart from a very small corner) entirely outside of the 50m riparian buffer represented by the 7(l) zone. A previous issue raised with regard to the ability to provide adequate asset protection zones to protect the development from bushfire hazard to the north (Salt riparian buffer) has been addressed through amendment of lot layout and is now satisfactory.*

*The re-subdivision of existing Lots 1 to 8 Section 8 DP 14895 is justified because a benefit will be gained through planting of native vegetation within the private 7(l) zoned land. Appropriate conditions have been recommended.*

*All lots will be conditioned to require a minimum of 30% landscaped area in accordance with DCP B11 for Coastal Housing.”*

The application has been conditioned in accordance with the advice of Council's Ecologist.

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

#### Surrounding Landuses/Development

The subject site is compatible with surrounding residential development to the north and south. Conditions are recommended to ensure that the edge effects upon the adjoining reserve are limited.

#### Topography

All required bulk earthworks will occur as part of DA05/1464. The previously approved earthworks are compliant with Council's policies.

#### Site Orientation

The configuration of the site allows for the long axis of the proposed lots to be provided on a east /west orientation to allow for increased solar access.

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

The application was notified and advertised from Wednesday 26 May 2010 to Wednesday 9 June 2010.

During this time, no submissions were received.

**(e) Public interest**

The application is not considered to be contrary to the general public interest.

**OPTIONS:**

1. Approve the application as recommended
2. Refuse the application with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant may appeal the decision in the NSW Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil

**CONCLUSION:**

Council is in receipt of a subdivision application for the north-west precinct of Seaside City. The proposed subdivision is generally consistent with the site specific DCP and the intent of the primary 2 (e) zone and Clause 53C of the Tweed LEP 2000.

The proposal is recommended for approval, subject to conditions to limit and manage potential impacts arising from 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Council Report DA08/0755 18 May 2010 (ECM 21250371)
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**13 [PR-CM] Development Application DA10/0066 for a Two (2) Lot Subdivision at Lot 10 DP 1034435 No. 285 Clothiers Creek Road, Nunderi**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0066 Pt1**

**SUMMARY OF REPORT:**

This matter was referred to the Council meeting of 20 July 2010.

Concerns were raised in relation to the location of secondary koala habitat on the subject site and the impact that the proposed development may have on that habitat.

As such, Council resolved as follows:-

*'that this item be deferred to allow for a workshop.'*

This addendum report now aims to summarise the outcome of the workshop and provide an update to recommended conditions in order for it to be reconsidered by Council.

**RECOMMENDATION:**

**That Development Application DA10/0066 for a two (2) lot subdivision at Lot 10 DP 1034435 No. 285 Clothiers Creek Road, Nunderi 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 17891D Sheet 1 Revision A Ref. No. M30974, prepared by B&P Surveys Consulting Surveyors and dated 6 May 2010  
Plan No 17891D Sheet 2 Revision A Ref. No. M30974, prepared by B & P Surveys Consulting Surveyors and dated 6 May 2010,  
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. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of proposed Lot 11 or part thereof may own or allow to remain on the site or any part thereof any dog (excluding any "assistance animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).

Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the Disability Discrimination Act 1992 of the Commonwealth, but does not include a working dog. Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.

5. No approval is granted for the removal of any Koala food or Koala use trees being Blackbutt (*Eucalyptus pilularis*), Brush Box (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Grey Ironbark (*Eucalyptus siderophloia*). These trees must be protected throughout the development site during construction works and operational phases of the development.

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. 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]

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

#### **RURAL ACCESS**

- (a) The existing gravel track providing access to the dwelling site on proposed lot 11 shall be upgraded to a 3.0m wide, 150mm compacted gravel pavement with a two(2) coat bitumen seal from the junction with the existing bitumen driveway to the dwelling site on proposed lot 11.

[PCC0875]

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

[PCC0935]

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

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

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

[PCC0985]

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

[PCC1155]

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

11. 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]

#### **DURING CONSTRUCTION**

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

[DUR0005]

13. 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]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

15. 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]

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

[DUR0815]

17. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

23. 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) Final inspections - on maintenance
- (b) 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]

24. 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]

25. 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]

26. 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]

27. Erosion and sediment control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.

[DURNS01]

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

[POC1025]

29. 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]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

30. 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]

31. 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 DSP6: 1.2 ET @ \$10709 per ET \$12,850.80

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]

32. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$1601 per Trips \$10407

(\$1455 base rate + \$146 indexation)

S94 Plan No. 4

Sector10\_4

(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)
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- (e) **Eviron Cemetery:**
  - 1 ET @ \$120 per ET \$120
  - (\$101 base rate + \$19 indexation)
  - S94 Plan No. 13
- (f) **Extensions to Council Administration Offices  
& Technical Support Facilities**
  - 1 ET @ \$1759.9 per ET \$1759.90
  - (\$1759.9 base rate + \$0 indexation)
  - S94 Plan No. 18
- (g) **Regional Open Space (Casual)**
  - 1 ET @ \$1031 per ET \$1031
  - (\$1031 base rate + \$0 indexation)
  - S94 Plan No. 26
- (h) **Regional Open Space (Structured):**
  - 1 ET @ \$3619 per ET \$3619
  - (\$3619 base rate + \$0 indexation)
  - S94 Plan No. 26

[PSC0175]

33. 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]

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

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



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

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

[PSC0785]

- 35. 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]

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

[PSC0845]

- 37. 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]

- 38. 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 - Water Reticulation

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]

39. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0945]

40. 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]

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

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

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

[PSC1175]

42. Prior to the issue of the subdivision certificate the applicant shall obtain from Council approval to operate the existing on-site sewage management system servicing the dwelling on proposed lot 12 under Section 68 of the Local Government Act 1993.

[PSCNS01]

43. 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) Restriction as to user regarding no dogs or cats. Burden: Proposed Lot 11 (new lot created on the subject site). Benefit: Tweed Shire Council.

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

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

**Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.**

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

- 1. Landscaping surrounding the existing dwelling is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.**

**REPORT:**

**SUMMARY OF ADDITIONAL ASSESSMENT:**

Council officers undertook a site inspection on 3 August 2010 to determine koala habitat and usage of Lot 10 DP 1034435. The owner of the subject site, Mr Parsons, accompanied Council officers and was able to offer valuable information in relation to the current and proposed future use of the site.

The site contains Blackbutt (*Eucalyptus pilularis*) Open Forest with associated species including Pink Bloodwood (*Corymbia intermedia*), Brushbox (*Lophostemon confertus*) and Grey Ironbark (*Eucalyptus siderophloia*). None of the preferred Koala food trees as listed by Phillips (Forest Red Gum, Tallowwood, Small-fruited Grey Gum or Forest Red Gum) are present on the site or immediate surrounds. The ground layer is managed as exotic grassland used for cattle grazing. Occasional rainforest species as well as Camphor Laurel occur in lower, ungrazed parts of the site.

Consideration of Koala usage of the site involved undertaking the Spot Assessment Technique over the treed areas of the site. Bark damage on the trunk consistent with use of the tree and scats beneath the tree were recorded from four out of some roughly twenty-five trees on the site. Three of the four trees indicating use are Blackbutts with one being a Pink Bloodwood, all of which are located some 100m from the existing house and on the opposite side to the proposed new allotment to be created.

Usage of the site by Koalas on the evidence obtained is not unequivocal due to an usual clumping of scats not usually seen from Koalas, however, it would appear that the site is likely to exhibit value as secondary habitat which may form one extent or part of a large home range and it is useful as part of a wildlife corridor. No clearing or other direct impact is expected on this part of the site; however, it would be prudent to prevent any more dogs being allowed in the vicinity.

**OUTCOME OF WORKSHOP:**

Results from the site visit to determine koala habitat and usage were presented and discussed. Clarification was provided in relation to koala habitat mapping, threatened species and wildlife corridors.

Council officers suggested that additional conditions be imposed upon the development consent to manage:

- Restriction on the keeping of dogs within the vicinity, and
- Retention of Koala food and/or Koala use trees located on the site.

These additional conditions read as follows:

**General**

1. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of proposed Lot 11 or part thereof may own or allow to remain on the site or any part thereof any dog (excluding any "assistance

animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).

Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the *Disability Discrimination Act 1992* of the Commonwealth, but does not include a *working dog*. Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a *disability*.

2. No approval is granted for the removal of any Koala food or Koala use trees being Blackbutt (*Eucalyptus pilularis*), Brush Box (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Grey Ironbark (*Eucalyptus siderophloia*). These trees must be protected throughout the development site during construction works and operational phases of the development.

### **Prior to Subdivision Certificate**

3. 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) Restriction as to user regarding no dogs or cats. **Burden:** Proposed Lot 11 (new lot created on the subject site). **Benefit:** Tweed Shire Council.

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

### **OPTION 1**

To adopt the original recommendation from the officer's report of Item P19 of 20 July 2010 Council meeting without the additional conditions:

*That:* -

- A. *Development Application DA10/0066 for a two (2) lot subdivision at Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi 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 17891D Sheet 1 Revision A Ref. No. M30974, prepared by B&P Surveys Consulting Surveyors and dated 6 May 2010*

*Plan No 17891D Sheet 2 Revision A Ref. No. M30974, prepared by B & P Surveys Consulting Surveyors and dated 6 May 2010,*

*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]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. *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]

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

RURAL ACCESS

- (a) *The existing gravel track providing access to the dwelling site on proposed lot 11 shall be upgraded to a 3.0m wide, 150mm compacted gravel pavement with a two(2) coat bitumen seal from the junction with the existing bitumen driveway to the dwelling site on proposed lot 11.*

[PCC0875]

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

[PCC0935]

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

- (a) *copies of compliance certificates relied upon*

(b) *four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:*

- *earthworks*
- *stormwater drainage*
- *water supply works*
- *Accessway*
- *sedimentation and erosion management plans*
- *location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)*

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

[PCC0985]

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

[PCC1155]

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

9. *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]

#### **DURING CONSTRUCTION**

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

[DUR0005]

11. *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]

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

A. *Short Term Period - 4 weeks.*

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

B. *Long term period - the duration.*

*L<sub>Aeq, 15 min</sub> 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]

13. *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]

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

[DUR0815]

15. *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]

16. *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]

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

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

[DUR1005]

18. *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]

19. *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]

20. *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]

21. *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) *Final inspections - on maintenance*
- (b) *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]

22. *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]

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23. *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]

24. *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]

25. *Erosion and sediment control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.*

[DURNS01]

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

[POC1025]

27. *The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.*

[USE0125]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

28. *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]

29. *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 DSP6: 1.2 ET @ \$10709 per ET \$12,850.80*

*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]

30. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$1601 per Trips \$10407

(\$1455 base rate + \$146 indexation)

S94 Plan No. 4

Sector10\_4

(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

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(d) Shirewide Library Facilities:

1 ET @ \$792 per ET \$792

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- (e) *Eviron Cemetery:*  
1 ET @ \$120 per ET \$120  
(*\$101 base rate + \$19 indexation*)  
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- (f) *Extensions to Council Administration Offices  
& Technical Support Facilities*  
1 ET @ \$1759.9 per ET \$1759.90  
(*\$1759.9 base rate + \$0 indexation*)  
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- (g) *Regional Open Space (Casual)*  
1 ET @ \$1031 per ET \$1031  
(*\$1031 base rate + \$0 indexation*)  
S94 Plan No. 26
- (h) *Regional Open Space (Structured):*  
1 ET @ \$3619 per ET \$3619  
(*\$3619 base rate + \$0 indexation*)  
S94 Plan No. 26

[PSC0175]

31. *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]

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

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

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

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

[PSC0785]

33. *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]

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

[PSC0845]

35. *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]

36. *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 - Water Reticulation*

*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]

37. *Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.*

[PSC0945]

38. *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]

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

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

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

[PSC1175]

40. *Prior to the issue of the subdivision certificate the applicant shall obtain from Council approval to operate the existing on-site sewage management system servicing the dwelling on proposed lot 12 under Section 68 of the Local Government Act 1993.*

[PSCNS01]

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

1. *Landscaping surrounding the existing dwelling is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.*

**OPTION 2**

To approve the development application with the original recommended conditions inclusive of the three (3) additional conditions (Conditions 4, 5 and 43) recommended by Council Officers at the Council Workshop:

*That: -*

- A. *Development Application DA10/0066 for a two (2) lot subdivision at Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi 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 17891D Sheet 1 Revision A Ref. No. M30974, prepared by B&P Surveys Consulting Surveyors and dated 6 May 2010*

Plan No 17891D Sheet 2 Revision A Ref. No. M30974, prepared by B & P Surveys Consulting Surveyors and dated 6 May 2010, 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. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of proposed Lot 11 or part thereof may own or allow to remain on the site or any part thereof any dog (excluding any "assistance animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).

Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the Disability Discrimination Act 1992 of the Commonwealth, but does not include a working dog. Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.

5. No approval is granted for the removal of any Koala food or Koala use trees being Blackbutt (*Eucalyptus pilularis*), Brush Box (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Grey Ironbark (*Eucalyptus siderophloia*). These trees must be protected throughout the development site during construction works and operational phases of the development.

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. 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]

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

#### RURAL ACCESS

- (a) The existing gravel track providing access to the dwelling site on proposed lot 11 shall be upgraded to a 3.0m wide, 150mm compacted gravel pavement with a two(2) coat bitumen seal from the junction with the existing bitumen driveway to the dwelling site on proposed lot 11.

[PCC0875]

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

[PCC0935]

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

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

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

[PCC0985]

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

[PCC1155]

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

11. *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]



*DURING CONSTRUCTION*

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

[DUR0005]

13. *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]

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

- A. *Short Term Period - 4 weeks.*

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

- B. *Long term period - the duration.*

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

[DUR0215]

15. *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]

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

[DUR0815]

17. *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]

18. *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]

19. *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]

20. *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]

21. *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]

22. *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]

23. *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) *Final inspections - on maintenance*
- (b) *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]*

24. *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]*

25. *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]*

26. *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]*

27. *Erosion and sediment control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.*

*[DURNS01]*

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

*[POC1025]*

29. *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]*

*PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE*

30. *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]

31. *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 DSP6: 1.2 ET @ \$10709 per ET \$12,850.80*

*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]

32. *Section 94 Contributions*

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

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

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

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

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

- 
- (a) *Tweed Road Contribution Plan:*  
 6.5 Trips @ \$1601 per Trips \$10407  
 (\$1455 base rate + \$146 indexation)  
 S94 Plan No. 4  
 Sector10\_4
- (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) *Eviron Cemetery:*  
 1 ET @ \$120 per ET \$120  
 (\$101 base rate + \$19 indexation)  
 S94 Plan No. 13
- (f) *Extensions to Council Administration Offices  
 & Technical Support Facilities*  
 1 ET @ \$1759.9 per ET \$1759.90  
 (\$1759.9 base rate + \$0 indexation)  
 S94 Plan No. 18
- (g) *Regional Open Space (Casual)*  
 1 ET @ \$1031 per ET \$1031  
 (\$1031 base rate + \$0 indexation)  
 S94 Plan No. 26
- (h) *Regional Open Space (Structured):*  
 1 ET @ \$3619 per ET \$3619  
 (\$3619 base rate + \$0 indexation)  
 S94 Plan No. 26

[PSC0175]

33. 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]

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

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

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

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

[PSC0785]

35. 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]

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

[PSC0845]

37. 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]

38. *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 - Water Reticulation*

*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]*

39. *Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.*

*[PSC0945]*

40. *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]*

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

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

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

*[PSC1175]*

42. *Prior to the issue of the subdivision certificate the applicant shall obtain from Council approval to operate the existing on-site sewage management system servicing the dwelling on proposed lot 12 under Section 68 of the Local Government Act 1993.*

*[PSCNS01]*

43. *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) Restriction as to user regarding no dogs or cats. **Burden:** Proposed Lot 11 (new lot created on the subject site). **Benefit:** Tweed Shire Council.

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

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

1. *Landscaping surrounding the existing dwelling is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.*

**OPTION 3**

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 two (2) lot 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Report to Council at its meeting of 20 July 2010 on Development Application DA10/0066 (ECM 20870034)
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**14 [PR-CM] Development Application DA10/0439 for a Boundary Adjustment at Lot 514, 515 DP 1132400, No. 40-44 and 46-48 Honeyeater Circuit, South Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0439 Pt1**

**SUMMARY OF REPORT:**

The proposed development involves two (2) parcels of land with part 4(a) Industrial and part 1(a) Rural Zone. The applicant is seeking approval for a boundary alteration between two (2) parcels of land which will create no additional lots.

The proposal incorporates a SEPP 1 Objection in relation to the 1(a) portion of the site being less than the minimum lot size (40ha). The proposal is being reported to Council for determination as a result of the variation being greater than 10% of the development standard.

The following report addresses the issues and reasons for recommending approval of the proposed development.

**RECOMMENDATION:**

**That Development Application DA10/0439 for a boundary adjustment at Lot 514, 515 DP 1132400, No. 40-48 Honeyeater Circuit, South 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 Nos 21020PROP Sheet 1 of 1 prepared by N.C. White & Associates and dated 22/06/2010, 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]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

- 3. 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]

4. 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.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a right of carriageway or easement shall make provision for maintenance of the right of carriageway or 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 (as applicable).

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]

5. 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]

**REPORT:**

**Applicant:** Tweed Central Pty Ltd  
**Owner:** Tweed Central Pty Ltd  
**Location:** Lot 514 and 515 DP 1132400 No. 40-44 and 46-48 Honeyeater Circuit, South Murwillumbah  
**Zoning:** Part 4(a) Industrial and Part 1(a) Rural  
**Cost:** N/A

**BACKGROUND:**

Council is in receipt of a development application for a boundary alteration.

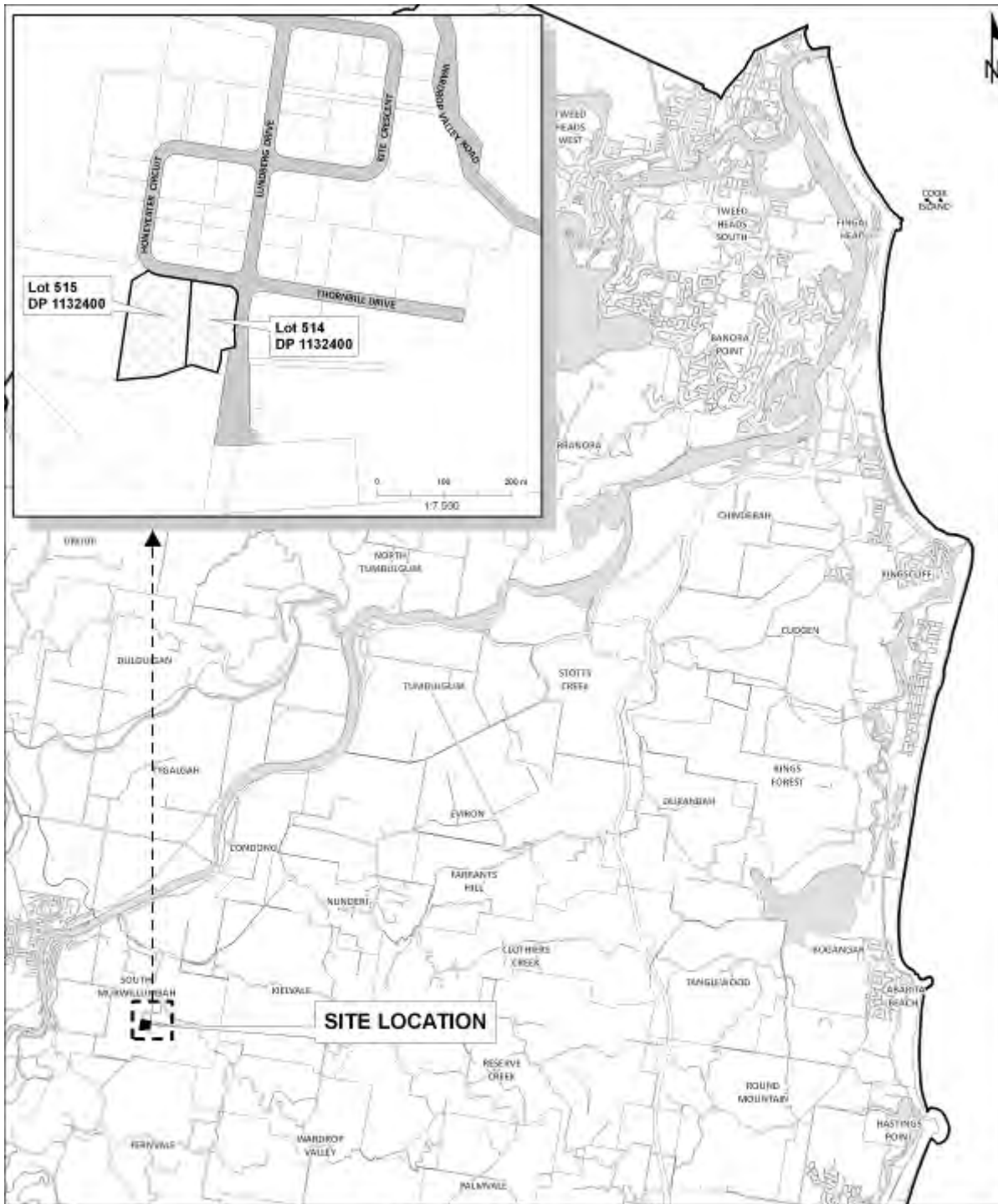
On 11 March 2004 it was resolved to grant consent for a 56 lot industrial subdivision (DA02/1685) which formed the Tweed Valley Industrial Park. On 31 May 2010 it was resolved to grant consent for a Public Building for the Australian Federal Police K9 Facility at 40-44 and 46-48 Honeyeater Circuit, South Murwillumbah. The majority of the Public Building is located on Lot 514 with a small amount of the building located on Lot 515.

Current Lot	Size	Proposed Lot	Size
514	8,101m <sup>2</sup>	11	9,474m <sup>2</sup>
515	1.396ha	10	1.266ha

The subject site is legally described as Lot 514 and Lot 515 DP1132400 and is located at 40-48 Honeyeater Circuit, South Murwillumbah. The allotments are of an irregular shape and Lot 514 has an overall area of 8,101m<sup>2</sup> whilst Lot 515 has an overall area of 1.396 hectares. The boundary adjustment involves the transfer of 1,373m<sup>2</sup> from Lot 515 to Lot 514. The boundary adjustment will allow for the development of the industrial land in accordance with the development consent DA10/0183 for a K9 facility for the Australian Federal Police to be wholly located on Lot 514. The section of 1(a) zoned land consists of approximately 700m<sup>2</sup> and will remain on Lot 515.

A SEPP 1 Objection has been lodged in relation to the 1(a) portion of the site being less than the minimum lot size (40ha). As the proposal incorporates a variation greater than 10% of the development standard, the application is being reported to Council for determination. The Director-General's concurrence has been granted for the proposed development.

**SITE DIAGRAM:**



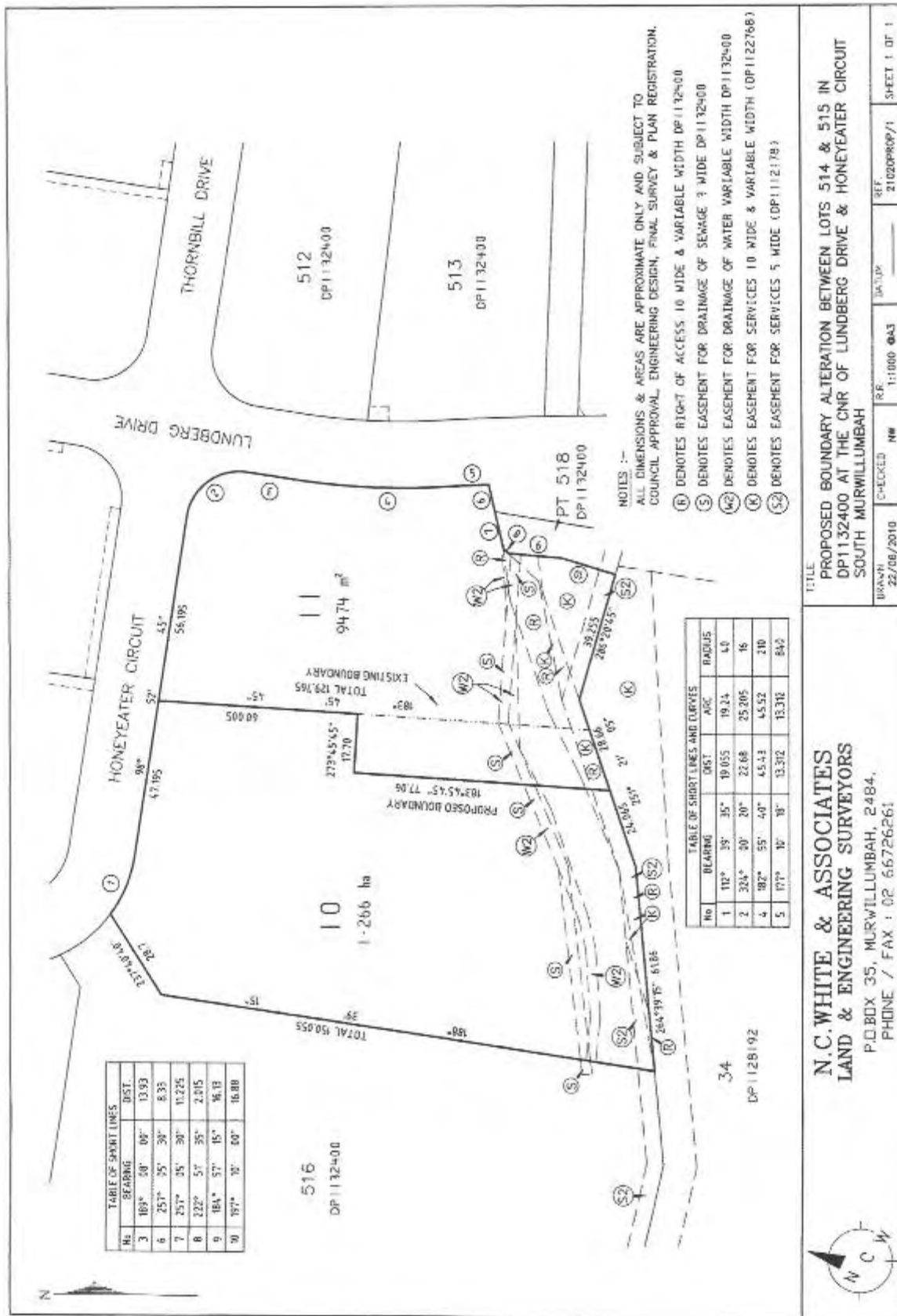
**LOCALITY PLAN**

Lot 514 & 515 DP 1132400  
No.40-44 & 46-48 Honeyeater Circuit, South Murwillumbah

<p>Disclaimer: This document is to be used for the purposes of this document. Tweed Shire Council does not accept any liability for any errors or omissions or for any consequences arising from its use. It is provided for the general public and is not to be used for any other purpose. It is not to be used for survey or construction purposes, and prior to any construction work, a professional survey must be made by a registered surveyor. The information contained in this document should also be used for 21 days, only from the date of issue.</p>	<p>Author: Districts - Planning Services Unit</p> <p>Date Printed: 06 September 2010</p> <p>© Dept. of Lands &amp; Tweed Shire Council</p>	<p>City and Cultural Centre 1 Tomkins Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T: (02) 6676 2400 / 1300 282 872 F: (02) 6678 2485 W: www.tweedshire.gov.au E: planning@tweedshire.gov.au</p>	<p><b>TWEED</b> SHIRE COUNCIL</p>
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**PROPOSED PLAN:**





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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The subject boundary adjustment is considered to be suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

**Clause 5 - Ecologically Sustainable Development**

The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Broadly, the subject proposal is considered consistent with the above criteria, as the proposed boundary adjustment of part 4(a) and part 1(a) zoned land is not likely to have significant ramifications for ecologically sustainable development.

**Clause 8 - Zone objectives**

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

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

In this instance, Lot 514 is located entirely within the 4(a) Industrial zone whilst Lot 515 is located within the 4(a) Industrial zone and it has a small section of the

southern end of the site located within the 1(a) Rural zone pursuant to the provisions of TLEP 2000. The primary objective of the 4(a) zone is as follows:

- “- to provide land primarily for industrial development.*
- to facilitate economic activity and employment generation.”*

The proposed boundary adjustment is considered consistent with the primary objective of the zone, in that it is located within the industrial zone and will be utilised for purposes which will facilitate economic activity and employment generation for the purposes of the Australian Federal Police. This will not change as a result of the proposal.

The primary objective of the 1(a) zone is as follows:

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

The boundary adjustment will not be located within the 1(a) zoning. However, as a result of the 1(a) zoned land being below the 40ha minimum the proposal was sent to the Department of Planning for Concurrence. The Department of Planning responded on 29 July 2010 granting concurrence.

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

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

#### Clause 14 - Development near zone boundaries

The proposal is permissible in this zone therefore Clause 14 is not applicable.

#### Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services available.

#### Clause 16 - Height of Building

Not applicable. There is no new building proposed.

#### Clause 17 - Social Impact Assessment

Not applicable. The proposal is for a boundary adjustment.

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

Clause 20 of the TLEP relates to minimum lot size requirements in order to prevent the potential for fragmentation of rural land. Clause 20(2) requires the following minimum lot sizes:

- (2) Consent may only be granted to the subdivision of land:*
-

- (a) *within Zone 1 (a), 1 (b2), 7 (a), 7 (d) or 7 (l) if the area of each allotment created is at least 40 hectares, or*
- (b) *within Zone 1 (b1) if the area of each allotment created is at least 10 hectares.*

As noted above, the subject site incorporates 1(a) zoned land which relates to Clause 20. The existing allotments 514 and 515 are both currently below the 40 hectare minimum.

The proposed allotments 514 and 515 do not meet the minimum 40ha requirement. A SEPP 1 Objection has been submitted and the application was referred to the Department of Planning for the Director-General's concurrence. The Department's comments and the SEPP 1 Objection are detailed later in this report.

#### Clause 34 - Flooding

The proposed boundary adjustment will not increase the severity of flooding on the community.

#### Clause 35 - Acid Sulfate Soils

Class 3 and Class 5 Acid Sulfate Soils are present on the site. The proposed boundary adjustment is located within the Class 5 area and there will be no excavation as a result of this application and as such, a management plan is not required.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 12: Impact on agricultural activities

This clause requires Council consider the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. The proposed boundary adjustment is unlikely to have any impact upon the surrounding agricultural land, given that the proposed allotments will continue to be utilised for industrial purposes. The proposal will only reconfigure the boundary.

It is also noted that in granting concurrence for the proposed subdivision, the Department of Planning were satisfied that the proposal is consistent with the objectives of the zone. As such, the application is considered to meet the provisions of Clause 12.

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

The proposed development incorporates a SEPP 1 Objection which relates to the proposal not meeting the minimum 40 hectare allotment size requirement, pursuant to Clause 20(2) of the Tweed Local Environmental Plan 2000.

The parcel of land involved with the proposed boundary alteration is located within the 4(a) Industrial Zone however there is a small portion of 1(a) Rural Zone.

The applicant has submitted the following in support of the SEPP 1 objection:

*“As advised by Council officer a small portion of Lot 515 is included within the Rural 1A Zone and therefore the proposed Subdivision (boundary adjustment) does not comply with Part 4 Subdivision Section 20 (Subdivision in Zones 1A, etc) 2(a), which states as follows:*

*“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, or”*

*It appears that the partial rural zoning of Lot 515 is an anomaly as the site is part of an existing approved industrial subdivision. It is noted that Draft Tweed LEP 2010 corrects the current error within the Tweed LEP 2000 and zones all the land within the Tweed Central Industrial estate within the General Industry Zone.*

*The Lots are mostly within the Zone 4(a) Industrial which has the following primary objectives:*

- *To provide land primarily for industrial development.*
- *To facilitate economic activity and employment generation.*

*Lot 514 currently has a Development Consent for a Public Building (K9 Kennel Facility) and the proposed boundary adjustment will not negatively affect the future industrial development of Lot 515 as envisaged.*

*A very small portion of Lot 515 (rear batter slope) is included within the Rural Zone 1(a) which has the following primary objectives:*

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

*As advised the area of Lot 515 included within the Rural Zone are within a batter slope that holds no agricultural or natural resource utilisation purposes. The site has been approved by Council via DA02/1685 for industrial subdivision and the proposed boundary adjustment will not negatively impact on the rural character or amenity.*

*The objective of Part 4 Subdivision is as follows:*

- *To provide a comprehensive system of planning controls for the subdivision of land in the Tweed Local government area.*

*Section 19 (General) part 3 states that, “a person may, with consent carry out a minor boundary adjustment, notwithstanding that the new lots may not*

*comply with any relevant development standards applicable to the zone in which the land is situated.”*

*The proposed boundary adjustment is minor and has been brought about by a Development Consent approval issued by Council. The boundary adjustment complies with the Zone 4(a) Industrial subdivision requirements. The portion of Lot 515 within the Rural Zone is not developable as it is within a batter slope. The new Tweed LEP 2010 has corrected the error (part rural zone of Lot 515) within the current Tweed LEP which requires the concurrence of the Department for Planning for this Subdivision (boundary adjustment) application.*

*Section 20 part 3 states that despite clause 2 (allotments to be at least 40 hectares within rural zone) of Part 4 Subdivision:*

*“consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, or 10 hectares in that case of Zone 1(b1), if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purposes, for which consent could be granted”.*

*As previously advised the sites have already been approved for industrial purposes and will not be development for agricultural or residential purposes. Lot 514 and a small portion of Lot 515 have approval for Public Building and the balance area of Lot 515 will be developed for industrial purposes in the future.*

*The proposal does not result in any additional residential development rights within the Rural Zone. The area of Lot 515 within the Rural zone is located within a batter slope and has no development potential. Lot 514 will be developed as per current Council approval and Lot 515 will be developed inline with the Industrial Zone or subject to Development Application.*

*In accordance with State Environmental Planning Policy 1 – Development Standards, the Rural standard (of a minimum allotment size of 40 hectare) due to the small portion of Lot 515 being included within the Rural zone is considered unreasonable. In this case it appears to be an error within the current Tweed LEP 2000 that has been correct in the current draft LEP that includes the entire approved industrial subdivision within the Industrial Zone.*

*The proposed non compliance with Rural Zone allotment area which should not even be relevant does not give rise to any matters of state or regional planning significance.*

*The applicant sees no reason why Council or the Department of Planning should refuse this boundary adjustment subdivision application.”*

**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. Is the planning control a development standard?**

The subject planning control is contained within the Tweed LEP 2000. Clause 20 of the LEP provides inter alia, as follows:

*“(2) Consent may only be granted to the subdivision of land:*

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

As the planning control is a provision of an LEP it is regarded as a development standard and it could only be varied through the provisions of SEPP No. 1.

**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**

The existing lot configuration was registered by the Crown Lands Office in 2004. The subdivision created 56 lots with the subject allotments being:

Lot 514 – 8,101m<sup>2</sup>

Lot 515 – 1.4ha

In approving the 2004 subdivision Council has virtually abandoned any prospect of complying with the required 40 ha minimum lot size. There is only a small section of approximately 700m<sup>2</sup> of 1(a) zoned land on Lot 515 which is why the proposal needed concurrence from the Department of Planning.

Compliance with the development standard is unnecessary in the circumstances of the case because:

- The development would not be in 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 existing and proposed lots do not currently achieve the minimum standard.
- The development would not cause the agricultural use of the land to be unsustainable as it does not reduce the area available for production.
- The proposal would not cause a change that would lead to pressure to further subdivide the property. The proposal would not lead to additional dwelling entitlements.

**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 and Assessment Act 1979*; and**

Clause 3 of SEPP 1 states:

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

The objectives of section 5(a)(i) and (ii) of the EP&A Act 1979 are:

- *To encourage – the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- *The promotion and coordination of the orderly and economic use and development of land.*

In the circumstances the proposed boundary adjustment:

- Would not be in conflict with the proper management of the agricultural resource as neither the existing or proposed lot configuration will achieve lot sizes considered sufficient by the applicant for sustainable agriculture.
- Approval of the application may promote more efficient and economic use of the land. Proposed Lot 11 will be utilised for the K9 Facility as approved via DA10/0183 and Proposed Lot 10 will be able to be developed for an industrial purpose in the future.
- The proposal would not lead to further development of the property that might give rise to adverse environmental impacts. No additional dwelling entitlements would arise from the proposal.

**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 proposal does not raise any matters of significance for State or regional planning. The proposal is not in conflict with any objectives or provisions of the SEPP's or REP's.

In terms of the aims of the SEPP (Rural Lands) 2008, the proposal would:

- Not cause a loss in available land for agricultural purposes.
- Not involve subdivision of rural lands for the purposes of creating additional lots or give rise to pressure for future subdivision.
- Not give rise to any land use conflict.

The proposal is not in conflict with the Rural Planning Principles included in Cluse 7 of the SEPP (Rural Lands) 2008 because:

- It would not lead to an imbalance of the social, economic and environmental interests of the community. On the contrary, it will provide social and economic benefits through further industrial use on the land that will generate employment.
- It would have no affect on biodiversity, native vegetation or natural waterways because no additional buildings or development is proposed by the application. There would be no change to the manner in which waste water is treated on the site.
- Existing services and infrastructure would not be impacted by the proposal as no additional buildings or other development is proposed.

Clause 8 of the North Coast Regional Environmental Plan includes provisions applicable to the preparation of the Local Environmental Plan provisions for lot sizes on rural land. Specifically it states:

*“In relation to rural land which is not prime crop or pasture land, a draft local environmental plan should set a sufficient minimum allotment size for the conduct of commercial farming.”*

The small section of 1(a) zoned land located on Lot 515 is not sufficient to carry out commercial farming. The proposed boundary adjustment would not therefore be in conflict with the intent of this clause and would have no detrimental impact on the long term viability of the property for industrial development.

#### **5. The objectives are achieved notwithstanding non-compliance.**

The minimum lot size for a subdivision in the Rural 1(a) Zone is 40ha and that minimum is underpinned by the objective stated in clause 20 of the TLEP as:

- *to prevent the potential for fragmentation of ownership of rural land that would*
  - i) *adversely affect the continuance or aggregation of sustainable agricultural units; or*
  - ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed’s water supply quality.”*

The proposed boundary adjustment would not be in conflict with these objectives for the following reasons:

- The subject site is only part 1(a) zoned with the majority of the site being 4(a). The boundary adjustment will not alter the amount of 1(a) zoned land located on the allotment.
- In this case, the allotments as they exist and as proposed, would be less than the 40ha in area. In the circumstances there would be no further fragmentation and no “adverse” affect on the continuation or potential future aggregation of sustainable agricultural units.
- The boundary adjustment will amend the current situation where the approved Public Building is located on both allotments. The boundary adjustment will create an amendment so the Public Building will be located entirely within Proposed Lot 11 and both lots will be maintained



as industrial blocks. The proposal would therefore not generate any pressure for further subdivision or residential development.

- The proposal involves a boundary adjustment that would not require works or development that would affect the ecological or scenic values of the land.
- The proposal would not impact on the Tweeds water supply catchment.

**6. The underlying objective is not relevant and compliance is unnecessary.**

As discussed above, the underlying purpose of the standard is based on an assumption that 40ha is the minimum allotment size required for sustainable and economic agricultural production. This assumption supports the applicant's contention that the boundary adjustment would not be in conflict with the purpose of the standard as both the existing and proposed lot configurations are not sufficient for sustainable agricultural production. We conclude therefore that the standard is not reasonable in the existing context and therefore compliance is not necessary.

Conclusion

Given that six principles set by Chief Justice Preston have been met, strict compliance with the development standard under clause 20(2) is considered unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support.

SEPP (Rural Lands) 2008

The proposed development is considered to be consistent with the provisions of the Rural Lands SEPP in that there is no fragmentation of the agricultural land and no dwelling entitlement will be created on the land zoned 1(a).

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

The Draft Tweed Local Environmental Plan is currently on exhibition until 31 March 2010 which was extended until 30 April 2010. The site is within the IN1 – General Industrial zone of the Draft LEP. There would be no SEPP No 1 objection required under the new Tweed LEP as the whole site is located within the IN1 zone. This type of development is subject to the same level of assessment and therefore it is considered that the Draft LEP is not applicable to the proposed development.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

It is considered that the Site Access and Parking Code are not applicable as access to the sites will not change as a result of this boundary adjustment. Additionally, there will be no increase in the need for car parking spaces as a result of the boundary adjustment.

### A3-Development of Flood Liable Land

The proposal involves a boundary adjustment which will not increase the severity of flooding on the community. It is therefore considered that the proposal is consistent with the relevant sections of this Development Control Plan.

### A5-Subdivision Manual

This DCP contains Council's guidelines for the preparation of applications for subdivision and aims to facilitate Council's assessment and consideration of such applications. A number of factors are required to be assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). Where applicable, these matters have been discussed below.

*Physical Constraints* – The proposal is only constrained by the shape of the subject site and location of the existing roadway (Honeyeater Circuit and Lunberg Drive).

*Environmental Constraints* – this section of the DCP relates to issues such as contamination etc, which are discussed in detail later in this report.

*Landforming* – The land is relatively flat. There are no earthworks proposed as a result of this application and therefore no geotechnical issues have been raised.

*Stormwater Runoff, Drainage, Waterways & Flooding* – The Stormwater Management Plan was addressed as a part of DA10/0183. As the proposal is for a boundary adjustment there are no additional stormwater issues.

*Lot Layout* – As the proposed allotments are both below the minimum lot size for rural land it is considered that there will be no fragmentation of prime agricultural land. The boundary adjustment would not be in conflict with the purpose of the 40ha standard as both the existing and proposed lot configurations are not sufficient for sustainable agricultural production. The majority of the sites are located within the 4(a) Industrial Zone which is not affected by the 40ha standard. It is therefore considered that the standard is not reasonable in the existing context and therefore compliance is not necessary.

*Infrastructure* – Council's Development Engineer has assessed the proposed development against the relevant standards pertaining to road ways, reticulated water, reticulated sewer, electricity and telecommunications. Appropriate conditions of consent were issued with the approval for DA10/0183.

In light of the above assessment, the proposed boundary alteration to create proposed Lot 11 (9,474m<sup>2</sup>) and Proposed Lot 10 (1.266ha) is considered to meet the provisions of Section A5 of Council's Consolidated DCP.

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

Clause 92(a) Government Coastal Policy

The proposed dual occupancy development is not considered to compromise the objectives of the Coastal Policy.

Clause 92(b) Applications for demolition

Not applicable. There is no demolition proposed.

Clause 93 Fire Safety Considerations

Not applicable. There are no buildings proposed for this application.

Clause 94 Buildings to be upgraded

Not applicable. There are no buildings proposed for 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**

Context and Setting

The proposed boundary adjustment is not considered to have any significant impact upon the future adjoining properties. The proposal is considered reasonable and appropriate, given the site has adequate area for the approved Public Building via DA10/0183. The proposal will realign the boundary so the k9 Facility is located entirely within one allotment. The subject site is located within a newly created Industrial estate and it is considered to be the most appropriate location for a K9 training facility.

Access, Transport and Traffic

As outlined, there will be no changes to the access or car parking arrangements for the site. It is therefore considered that the proposal will not affect access, transport or traffic in the area.

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

Surrounding Landuses/Development

The proposed boundary adjustment is not considered to have any significant impact upon the future adjoining properties. The proposal is considered reasonable and appropriate, given the site has adequate area for a Public Building on Proposed Lot 11 and adequate area for an industrial development on Proposed Lot 10.

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

Notification

As the application is for a minor boundary adjustment it was considered that the application was not required to be notified.

Department of Planning

After reviewing the SEPP1 Objection to Clause 20(2) of the LEP, the Department provided the following comments:

*“Following consideration of the application, concurrence has been granted to vary the subdivision development standard contained in Clause 20(2) of the Council’s planning instrument to permit the creation of proposed Lot 10 with a small area of 1(a) Rural land.*

*Concurrence was granted in this instance for the following reasons:*

- *The boundary adjustment will allow for the development of the industrial land in accordance with the development consent granted by Council;*
- *All the 1(a) land will remain in a single lot (proposed Lot 10) as is the existing situation with no change in the status of that land.”*

The proposal is compliant with the conditions set out by the Department of Planning. It is therefore considered that the proposal has satisfied the requirements.

**(e) Public interest**

The proposed development is generally considered to reflect the provisions of all applicable development control plans. Appropriate conditions of consent have been applied in an effort to limit any impact upon the surrounding residences and agricultural landowners.

**OPTIONS:**

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application, with reasoning.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be unsatisfied with Council’s determination an appeal may be lodged with the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

The proposed development has been assessed on its merits and having regard to the applicable legislation and for that reason the development does not generate a policy implication for Council.

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**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation to Clause 20 of the Tweed LEP 2000. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**15 [PR-CM] Development Application DA06/1275.01 for an Amendment to Development Consent DA06/1275 for Manufacturing Sheds, Depot, Office and Storage at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/1275 Pt2**

**SUMMARY OF REPORT:**

On 30 April 2008 Council received a S96 Application to amend DA06/1275.

The original Development Application DA06/1275 sought approval for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage. The applicant then stated that the business specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment.

The matter was originally reported to the then Council Administrators on 17 April 2007. The Council Report recommended that the application be refused. However, the Council resolved as follows:

1. *Council notes there is an existing approval for a truck depot and truck maintenance area on the site with minimal conditions to address noise attenuation and hours of operation, which can be recommenced without any further approval from Council.*
2. *Council delegates authority to the General Manager to determine this application subject to conditions to address noise, traffic, site contamination, etc; including a condition which restricts the approval for a maximum of twelve (12) months from the date of issue of approval, if appropriate.*

Subsequently, an approval was issued under Delegated Authority on 1 May 2007. The full Determination Notice is **attached** to this agenda. Of significance is Condition 7 which stated that:

7. *This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

The current S96 now seeks to make the following changes to the consent:

- Deletion of condition 7 with no time limitation imposed on the Development Consent.
- It is proposed to amend the approved plans as follows:
  - The new amenity building is removed.
  - The new besser block office building and hallway is removed.
  - The new strong room is removed.

- The ceiling height of the old building is no longer proposed to be raised and the floor space will not be extended.
- The car parking arrangement and numbers have been refined with car parking number matching that required by the Tweed DCP 2007.
- Site drainage has been altered to reflect observed site conditions.
- As a consequence of the proposed changes detailed above, the applicant claims that a Construction Certificate would no longer be required and as such the applicant suggests that conditions 8, 14, 18, 21, 24, 25, 26, 27, 28, 35-49, 65, 66 & 77 to 83 be deleted from the Development Approval.
- Review the reasonableness of the following conditions having regard to the 12 month limited consent. Conditions 10 and 50 (relating to engineering plans), Conditions 11 and 17 (relating to a S138 Application), Condition 23 (relating to S94 Contributions), Conditions 19 and 69 (relating to the disposal of roof waters) and Condition 89 (relating to the surrender of T4/1762).

The proposed amendment raises issues regarding the status of the existing consent, the permissibility of the proposed amendments and the overall site suitability of the proposed development as proposed.

Both the original application and the S96 Application have generated community opposition (including a letter of opposition from the Environmental Defender's Office and an enquiry from the NSW Ombudsman's Office) and the issues raised in the various submissions need to be considered as part of this application.

Having reviewed the file history and considered all submissions the application is recommended for conditional approval.

#### **RECOMMENDATION:**

**That Development Application DA06/1275.01 for an amendment to Development Consent DA06/1275 for manufacturing sheds, depot, office and storage at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow be approved and the following changes be made to the consent:**

- 1. Delete Condition 1 and replace with new Condition 1A that reads as follows:  
1A. The development shall be completed in accordance with the S96 DA06/1275.01 and Drawing No 1.3 prepared by Darren Gibson Planning and dated April 2008, except where varied by the conditions of this consent.**
- 2. Delete Condition 7.**
- 3. Delete the heading PRIOR TO CONSTRUCTION CERTIFICATE.**
- 4. Delete Condition 8.**
- 5. Delete Condition 9 and replace with a new condition under the USE heading which reads as follows:  
# Any carparking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards.**
- 6. Delete Condition 10.**



7. Delete Condition 11 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # Any works to be carried out within the adjoining road reserve is subject to a Section 138 application and approval being issued by Tweed Shire Council as the road authority.

Application for these works and receipt of approval is to be within 3 months of DA06/1275.01 approval notice.
8. Delete Condition 12 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # All imported material shall be from an approved source and free of any contamination. Documentary evidence of the fill source and that the material is free of any contamination shall be maintained on site and provided to Council upon request.
9. Delete Conditions 10 – 16.
10. Delete Condition 17 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

The applicant shall provide a Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, intersection at Grade.

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

    - Road works/furnishings
    - Stormwater drainage
    - Water and sewerage works
    - Sediment and erosion control plans
    - Location of all services/conduits
    - Traffic control plan
    - The applicant to prepare engineering plans and lodge the plans with Tweed Shire Council within 3 months of receiving development approval.
    - The applicant to complete the works within six (6) months of receiving the S138 approval.
11. Delete Conditions 18 – 22.
12. Delete Condition 23 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # Section 94 Contributions

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

Within 3 months of approval of DA06/1275.01 all Section 94 Contributions must be paid.

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

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

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

(a) Tweed Road Contribution Plan: \$13,500  
S94 Plan No. 4 (Version 4.0)  
Sector8a\_4

13. Delete Conditions 24 – 28.
14. Delete Conditions 35 – 41.
15. Delete Conditions 43 – 50.
16. Delete Conditions 65 -66.
17. Delete Condition 69.
18. Delete Heading PRIOR TO OCCUPATION CERTIFICATE.
19. Delete Conditions 77 – 78.
20. Delete Condition 79 and replace with a new condition under the GENERAL heading which reads as follows:
  - # Within 3 months of approval of DA06/1275.01 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.
21. Delete Condition 80 and replace with a new condition under the GENERAL heading which reads as follows:
  - # Within 3 months of approval of DA06/1275.01 a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.
22. Delete Conditions 81 – 83.
23. Delete Condition 89 and replace with a new condition under the GENERAL heading which reads as follows:
  - # Within 3 months of approval of DA06/1275.01 Development Consent No.T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.

24. Delete Condition 90.
25. Delete Condition 99.
26. Add new Condition under the USE heading which reads as follows:
  - # Sand blasting shall not be conducted at the premise.
27. Add new Condition under the USE heading which reads as follows:
  - # Windows, doors and any other opening in the north, east or south walls of the manufacturing buildings are not permitted to be open at any time whilst manufacturing processes are being conducted.
28. Add new Condition under the USE heading which reads as follows:
  - # 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.
29. Add new Condition under the GENERAL heading which reads as follows:
  - # All activities at the property shall comply with the Site Management Plan for Industrial Site at Lot 201 DP 1002166 Pottsville Road Sleepy Hollow, Southern Cross University, August 2008 to the satisfaction of the Tweed Shire Council General Manager or his delegate. All necessary statutory approvals and associated investigations shall be obtained prior to any disturbances of the potentially contaminated portions of the site.
30. Add new Condition under the GENERAL heading which reads as follows:
  - # The existing spoon drain on the northern side of the northern building shall be converted to piped stormwater drainage to the satisfaction of the General Manager or his delegate within 30 days of the date of this amended consent. The piped stormwater drain shall be covered with imported material from an approved source that is free of any contamination. Existing materials at the base or sides of the spoon drain shall not be disturbed or excavated. Sediment and erosion controls shall be placed during these works which is effective in preventing the transport of any sediment material outside the property boundary.
31. Add new Condition under the USE heading which reads as follows:
  - # The premise is not to be used or adapted for separate residential habitation or occupation.
32. Add new Condition under the GENERAL heading which reads as follows:
  - # No exposure or use of groundwater on the site is permitted.
33. Add new Condition under the GENERAL heading which reads as follows:
  - # *Not more than 60 days from the date of this consent the applicant is required to lodge an application to install an onsite sewerage management system under section 68 of the Local Government Act, 1993 pay the appropriate fee and be issued with an approval.*

**34. Add new Condition under the GENERAL heading which reads as follows:**

**# *Not more than 120 days from the date of this consent the existing on site sewage management system shall be upgraded in accordance with any Section 68 approval issued by Council. The on site sewage treatment and disposal system installed shall comply with the recommended on site sewage treatment and disposal methods outlined in the amended On-site Sewage Management Design Report, HMC August 2009 including all recommendations of that report or to the satisfaction of the General Manager or his delegate.***

**35. Add new Condition under the GENERAL heading which reads as follows:**

**# *The treated effluent disposal area shall be identified by way of signs and vehicle access to the disposal area shall be prevented at all times.***

**REPORT:**

**Applicant:** Mr J McLean and Ms A McLean  
**Owner:** Mr J McLean and Ms A McLean  
**Location:** Lot 201 DP 1002166, Pottsville Road Sleepy Hollow  
**Zoning:** 1(a) Rural  
**Cost:** N/A

**BACKGROUND:**

The Subject Site

As detailed within the original report the subject land is described as Lot 201 DP 1002166 Pottsville–Mooball Road, Sleepy Hollow and has a total area of 2.821 hectares.

The land “straddles” Pottsville–Mooball Road, with a large triangular shaped parcel of land of approximately 2.811 hectares occurring on the western side of Pottsville-Mooball Road and a small irregular shaped parcel of approximately 100m<sup>2</sup> located on the eastern side of Pottsville-Mooball Road

The development was approved wholly on the larger parcel of land on the western side of Pottsville-Mooball Road.

The land has frontage to Pottsville-Mooball Road of approximately 390m and the Pacific Highway of approximately 362m with vehicular access from Pottsville Mooball Road only.

Current improvements include two (2) galvanized iron sheds an attached cavity brick office building and associated amenities, located on a large fill pad area. Such facilities are used by the “McLean Agquip Pty Ltd – Manufacturers of AustQuip agricultural equipment, cane transport equipment, cattle feed mixers and cotton and broadacre Equipment”. Vehicular access to the site exists from Pottsville-Mooball Road. A car parking area exists to the east of the existing sheds. The site is fenced. Power and reticulated water are available to the site.

The site is located in an area generally characterised as rural, although it is immediately adjoined by the Pacific Highway to the west and Pottsville-Mooball Road to the east.

Adjoining land to the south is vacant rural land currently utilised for grazing.

There are eight dwelling houses (and/or rural workers dwellings) within a 300m radius of the subject site.

Site History

The site is zoned rural 1(a) and has a known development history as follows:

On 31 May 1982 Council approved T4/1762 (over then Lot 1 in DP608495 – 8.691ha) to enable use of the then site for the establishment of a truck depot and vehicle maintenance area. Since this time the allotment has been split to cater for the Pacific Highway. Lot 1 DP 608495 is now the Pacific Highway and a residue land parcel being Lot 201 in DP 1002166 with a land area of 2.821ha. The applicant has always suggested that T4/1762 still applies to the subject site being Lot 201 DP 1002166. Determination of DA06/1275 was heavily reliant on T4/1762 as a pre existing consent, despite the legality of this being questioned by objectors to this development. It should be noted that such a use (depot) is a permissible land use in the 1(a) zone;

In 1999 the ABI Group leased the land from the RTA for the purpose of a roadwork’s construction depot to facilitate construction of the Pacific Highway;

In 2006 the applicant was conducting the Agricultural Equipment Business from Byron Bay. DA06/1275 sought approval to enable the applicant to relocate his business from Byron Bay to the subject site.

The applicant moved into the subject site prior to determination of DA06/1275 and following noise complaints Council Officers inspected the premises and discovered that manufacturing works on a cane bin had commenced prior to the determination of this Development Application. Subsequently a \$600 Penalty Infringement Notice (PIN) was issued on 26 March 2007, with the applicant advised that work is to cease immediately.

DA06/1275 sought approval for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage.

The development had two main components:

1. The manufacturing of agricultural equipment business specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment (defined as "light industry" and is a Clause 8(2) matter under Tweed LEP 2000);
2. The depot component would provide secure storage of plant and machinery, including earthmoving, construction and agricultural equipment. Maintenance of this equipment would also be carried out (defined as "depot" and is permissible in the rural zone).

The development was staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.

It was acknowledged that such use would involve electrical machinery that can constitute a noise source for adjoining residences.

The matter was originally reported to the then Council Administrators on 17 April 2007.

The original development attracted thirteen individual objections. The objections were focused on the suitability of the site given its rural character and its proximity to other dwellings.

The Council Report recommended that the application be refused. However, the Council resolved as follows:

1. *Council notes there is an existing approval for a truck depot and truck maintenance area on the site with minimal conditions to address noise attenuation and hours of operation, which can be recommenced without any further approval from Council.*
2. *Council delegates authority to the General Manager to determine this application subject to conditions to address noise, traffic, site contamination, etc; including a condition which restricts the approval for a maximum of twelve (12) months from the date of issue of approval, if appropriate.*

Subsequently, an approval was issued under Delegated Authority on 1 May 2007. The full Determination Notice is **attached** to this agenda. Of significance is Condition 7 which stated that:

7. *This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

Post determination Council received numerous letters of objection to the approval. Copies of these further objections are attached to this agenda.

### The Proposed Application

The current S96 DA06/1275.01 was lodged on 30 April 2008 and now seeks to make the following changes to the consent:

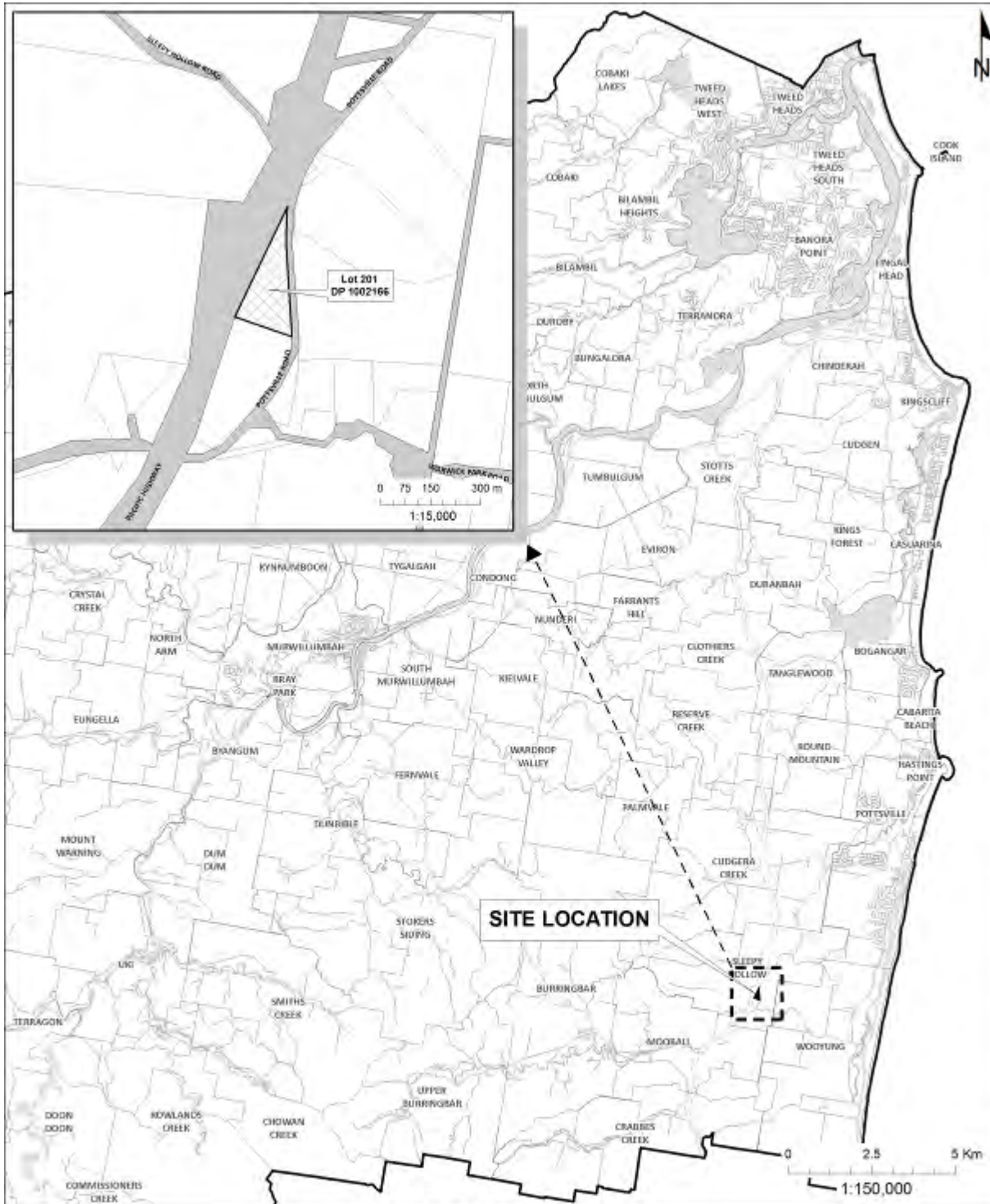
- Deletion of condition 7 with no time limitation imposed on the Development Consent.
- It is proposed to amend the approved plans as follows:
  - The new amenity building is removed.
  - The new besser block office building and hallway is removed.
  - The new strong room is removed.
  - The ceiling height of the old building is no longer proposed to be raised and the floor space will not be extended.
  - The car parking arrangement and numbers have been refined with car parking number matching that required by the Tweed DCP 2007.
  - Site drainage has been altered to reflect observed site conditions.
- As a consequence of the proposed changes, a Construction Certificate would no longer be required and as such the applicant suggests that conditions 8, 14, 18, 21, 24, 25, 26, 27, 28, 35-49, 65, 66 & 77 to 83 be deleted from the Development Approval.
- Review the reasonableness of the following conditions having regard to the 12 month limited consent. Conditions 10 and 50 (relating to engineering plans), Conditions 11 and 17 (relating to a S138 Application), Condition 23 (relating to S94 Contributions), Conditions 19 and 69 (relating to the disposal of roof waters) and Condition 89 (relating to the surrender of T4/1762).

The application as lodged was deficient in pertinent information that would have enabled a determination of the subject S96.

Following numerous additional information requests the applicant has now provided sufficient information to enable a determination of the application (including a site management plan, onsite sewerage management design reports and a response to the objections that were received following the exhibition period).

The current S96 has attracted submissions from four individuals (however some individuals have submitted multiple objections). In addition Council has received enquiries from the Environmental Defenders Office and the NSW Ombudsman's Office. The issues raised in these letters are detailed in this report and generally pertain to site suitability and legality of the consent.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
 Lot 201 DP 1002166  
 Pottsville Road, Sleepy Hollow

Filename: c:\vesr\planning\mwd\A&P\_B&W SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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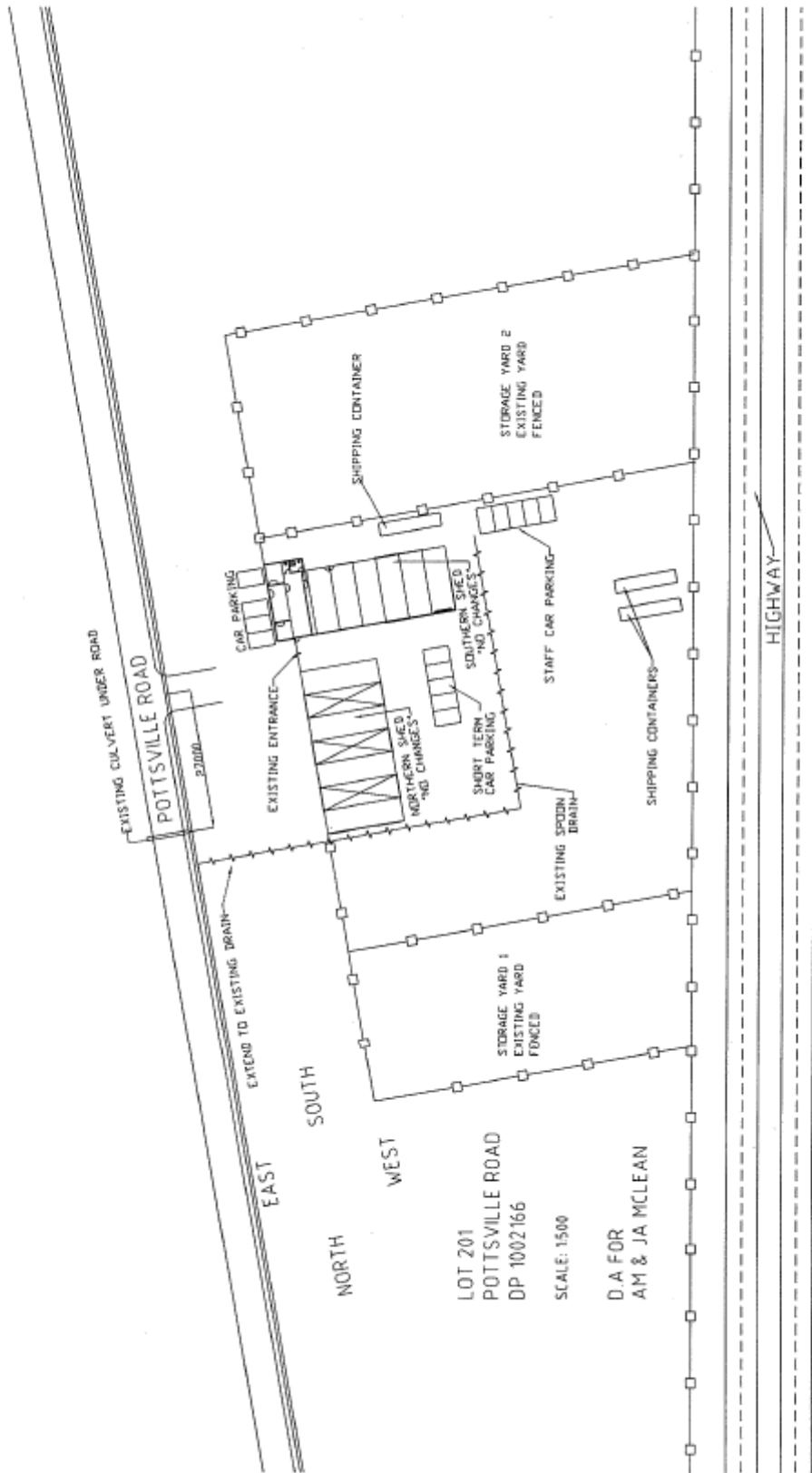


**TWEED**  
 SHIRE COUNCIL



**PROPOSED DEVELOPMENT PLAN:**

(NOTE: The originally approved 29 plans are **attached** to this agenda for comparison, however the S96 if approved would make the approved plans redundant in their entirety and be replaced with the single plan shown below)



DWG No. 1.3. Apr 2008

**CONSIDERATIONS UNDER SECTION 79C & 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

S96(1A) of the Act specifies that a consent authority can modify the development consent only if it is satisfied that the proposed modified development is of minimal environmental impact and is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

**Minimal Environmental Impact & Substantially the Same Development**

The applicant has provided the following justification for why the proposed amendments constitute a S96(1A):

- *“Approval has been issued for Manufacturing Sheds, Depot, Office and Storage. Nothing in the proposed amendments to the conditions or plans constitute a change in the activities on the site or their operational characteristics.*
- *The decision not to carry out the building works originally proposed has resulted from a review of the operational needs of the business. For example the increase in height of the northern building was originally required to accommodate a monorail hoist system. An alternate hoist system has been implemented that does not require the additional height. Further a review of the administrative and labour needs of the business has suggested that the new amenities building and office space are not warranted.*
- *The decision not to proceed with the building work will result in a reduction in environmental impacts as those impacts typically associated with construction (noise, traffic, etc) are not longer relevant.*
- *Other changes relating to the storm water drainage and car parking on site are not considered significant and do not change the nature of the use.”*

To establish whether the proposed amendments constitute minimal environmental impact and substantially the same development each proposed amendment needs to be assessed against the relevant provisions of the Environmental Planning and Assessment Act (namely 79C of the Act). The following is a review of each proposed amendment on its individual merits:

**Modification 1 - Proposed deletion of Condition 7 with no time limitation imposed on the Development Consent**

To determine whether Condition 7 should be deleted Council first needs to establish whether DA06/1275 is still a valid consent in which Condition 7 can be modified or deleted by way of the subject S96.

Condition 7 states:

7. *This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

In addition to this condition the back of the consent states:

*The application was determined on: 1 May 2007*

*The consent to operate from: 1 May 2007*

*The consent to lapse on 1 May 2008 unless commenced prior to that date.*

It appears this condition was imposed as a result of the resolution from Council which stated that:

*Council delegates authority to the General Manager to determine this application subject to conditions to address noise, traffic, site contamination, etc; including a condition which restricts the approval for a maximum of twelve (12) months from the date of issue of approval, if appropriate.*

Such a resolution is still quite ambiguous as it could be meant to achieve a number of things;

1. Is the condition simply reducing the 5 years standard life of the consent within which commencement has to take place or the consent lapses?

OR

2. Is the condition meant to imply that the development has one year to operate then lapses and has to be surrendered?

OR

3. Was the condition meant to read that the development was to be subject to a 12 month trial period to ensure the resulting impact was reasonable for the locality?

Objectors and the Environmental Defenders Office have commented on this technicality and specifically the Environmental Defenders Office have stated that:

***“Lapsing of Consent***

3. *The Applicants are seeking to delete condition 7 of the consent which is a lapsing condition. The application seeks to have no time limitation whatsoever imposed on the Development Consent. Condition 7 states:*

*This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with section 80A(5) of the Environmental Planning and Assessment Act 1979 and clause 97 of the Environmental Planning and Assessment Regulation 2000.*

4. *It is our view that Council does not have the requisite power to grant such an application. Section 95(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act) states:*

*(1) A development consent lapses 5 years after the date from which it operates.*

5. *Clearly all development consents at law have a life span within which they are to be commenced or else they will lapse.*

6. *The consent, at condition 7, has specified a lesser period within which the consent will lapse to that provided in section 95(1) of the EP&A Act. In accordance with the EP&A Act if the applicants wish an extension of time within which to commence the consent then they must make an application for an extension of lapsing period for 1 year in accordance with s95A of the EP&A Act which states:*

*(1) If, in granting a development consent, the consent authority reduced the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.*

- (2) *The consent authority may grant the extension if satisfied that the applicant has shown good cause.*
7. *It would seem that the applicants have not make a correct application to Council before 1 May 2008 and have arguably lost any right to apply for the benefit of an extension of 1 year to the lapsing period. If Council is minded to consider the s96 application an application for an extension of the lapsing period of 1 year, it has legal obligation to be satisfied that the applicants have shown good cause.*
8. *Taking the above matters into account, before purporting to grant any modification in accordance with the applicant's request, Council may wish to obtain its own legal advice as to whether it has the power to do so. In our view, any such consent would be invalid and works carried out in reliance on such consent would be illegal."*

In response to this submission the applicant sought their own legal advice from W J Grace & Co Solicitors which stated:

*'We act for Mr J McLean and Ms. A McLean and are instructed as follows:*

1. *On 1 May 2007 Tweed Shire Council ('the Council') determined Development Application no. DA06/1275 relating to Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow by granting consent for the land to be developed in accordance with plans and details submitted for the purpose of manufacturing sheds, depot, office and storage, subject to certain conditions ("the Consent").*
2. *Condition No. 7 provided "This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80(5) of the Environmental Planning and Assessment Act 1979 ("the Act") and clause 97 of the Environmental Planning and Assessment Regulations 2000 ("the Regulations").*
3. *Pursuant to the Consent and between 1 May 2007 and 1 May 2008 the Applicants carried out certain works including but not limited to the following:*
  - (a) *Construction of a septic tank and septic trenches;*
  - (b) *Undertaking earth works comprising the levelling of ground for car parking purposes comprising an area of approximately 30 x 30 metres;*
  - (c) *Undertaking drainage work involving the construction of a spoon drain around two existing buildings such drain measuring approximately 2 metres wide by 1 metre deep by 130 metres in length;*
  - (d) *Construction of doors along the side of the buildings;*
  - (e) *Undertaking building work including the construction of baffles to the shed roof and the installation of carpet for the purposes of sound proofing."*
4. *On 28 April 2008 Mr and Mrs McLean lodged a Section 96(1)(a) Application to modify the Consent.*
5. *By way of letter dated 12 June 2008 and the Environmental Defender's Office Ltd forwarded to you a submission regarding the S.96 modification application."*

*"We have been engaged to respond to the submission of the Environmental Defender's Office Ltd and do so as follows:*

**1. CONDITION NO. 7 OF DEVELOPMENT APPLICATION NO. DA06/1275 IS ULTRA VIRES OF THE POWER OF THE COUNCIL AND INVALID**

*In this regard Section 95(20) of the Environmental Planning and Assessment Act 1979 (the "Act") provides that a consent authority may reduce the usual period whereby a consent lapses from 5 years to a lesser period. Condition No. 7 purports to provide that the subject development consent lapses following the expiry of 1 year that is by 1 May 2008.*

*Section 95(3) of the Act provides however any such reduction of the 5 year period may not be made so as to cause:*

- (a) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates.*

*Section 4 of the Act defines "building" to include inter alia "part of a building and any structure or part of a structure (including a temporary structure or part of a structure)....."*

*Clearly the Consent in part provided for the erection of a building and or parts thereof and in this regard a septic tank was built and building works were undertaken. See in conditions Nos. 8,9,14,18,19,20,25,26,32,35 for example relating to building activity such list being by no means all inclusive.*

*Accordingly condition No. 7 contravenes section 95(3) of the Act, it ultra vires the power of the Council to impose and is invalid.*

*In Hilltop Planners Pty Ltd v Great Lakes Council (2003) 127LGERA333) His Honour J Talbot considered conditions providing for lapse of a development consent. Whilst he said he was unaware of any decision of the Land and Environment Court which deal precisely with the issue he said that the grant of a development consent was the exercise of a statutory power. It was not a power at large. The Act was circumspect about the extent to which conditions might be imposed. There was no direct reference to a power to impose a condition whereby consent could lapse as a consequence or failure to comply with the condition of the consent. Whilst in that case His Honour referred to Section 99 of the then EP&A Act the relevant condition today is Section 95 of the Act and accordingly, the whole of the powers and conditions for the lapsing of consent or the completion of development are to be found within the framework of this Section.*

*Further, there is no doubt that the works physically commenced on the land relate to the subject of the consent. See Smith v Wyong Shire Council (1984) 53LGRA 176) where his Honour Justice Cripps said "in my opinion, provided that what has been carried on is relevantly building, engineering or construction work and provided it relevantly relates to the development the subject of the consent, the only requirement is that it must be physically commenced.*

**2. THE CONSENT IS IN FULL FORCE AND EFFECT**

*In addition and or the alternative Section 95(4) of the Act provides that development consent for the erection of a building or the carrying out of a work does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the*

*consent applies before the date on which the consent would otherwise lapse under this Section. There is no suggestion that the work that has physically commenced upon this land is not related to the subject of the consent. See (Iron Gates Development Ltd v Richmond-Evans Environmental Society Inc. (1992) 81LGERA132(C/A).*

*Section 95(5) provides that development consent for development other than that referred to in subsection (4) does lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.*

*You would be well aware that not only have works physically commenced including but not limited to those noted in paragraphs 3(a)-(c) inclusive above in the period 1 May 2007 – 1 May 2008, but also the land has been used in accordance with and pursuant to the Consent in the same period and beyond.*

*In light of the above one is inevitably led to the conclusion that the consent has not lapsed and is indeed in full force and effect.*

### **3. THE MODIFICATION APPLICATION PRECEDED 1 MAY 2008**

*Further and in the alternative the Section 96(1)(a) Application to Modify the Consent was lodged on 28 April 2008 prior to 1 May 2008 in any event.*

### **4. CONCLUSION**

*In our respectful view the Council did not have the power to impose Condition 7 in the first instance, and in any event even if it did the consent has been acted upon and is valid and the Applicants are completely within their legal rights in submitting a Section 96 Application to Modify the Consent.*

*On any proper analysis the submission lodged by the Environmental Defender's Office Ltd is misguided and wrong in law and in fact."*

The applicant's legal advice appears to be consistent with legal advice Council has previously obtained in regard to another similar matter.

TF Robertson SC of Frederick Jordon Chambers considered the lawfulness of a condition of consent on Tweed Shire Council determination D96/0435 which granted approval for a road side stall on Kyogle Road Dum Dum.

The condition in questions stated:

*"This approval is limited to a period of five years from the date of consent"*

The full advice is attached to this agenda however in summary it reiterates the applicant's legal advice as follows:

*"...It is clear that there is no power to impose a condition which provides for a consent to lapse or cease to exist once it has been commenced in accordance with s.95..."*

*"...A consent may be modified even after the expiry of the time within which development authorised by it may be carried out unless it has earlier lapsed..."*

It is considered that the intent of Condition 7 was to act as a trial period however the actual wording of the condition does not reflect this.

If it is accepted that the intent of Condition 7 was to act as a trial period and possibly to reduce the 5 year standard life of the consent (albeit unlawfully) then Council needs to decide whether lawful commencement occurred between 1 May 2007 and 1 May 2008.

Having reviewed the file it is obvious that the applicant has occupied the site (within the confines of the pre-existing buildings), commenced business operations and undertaken certain site activities which would constitute lawful commencement in accordance with the provisions of the Act. These include:

- (a) Construction of a septic tank and septic trenches;
- (b) Undertaking earth works comprising the levelling of ground for car parking purposes comprising an area of approximately 30 x 30 metres;
- (c) Undertaking drainage work involving the construction of a spoon drain around two existing buildings such drain measuring approximately 2 metres wide by 1 metre deep by 130 metres in length;
- (d) Construction of doors along the side of the buildings;
- (e) Undertaking building work including the construction of baffles to the shed roof and the installation of carpet for the purposes of sound proofing.

It is therefore considered that the consent has been lawfully commenced and that Condition 7 can be lawfully deleted to allow the ongoing use of the site for "McLean Agquip Pty Ltd – Manufacturers of AustQuip agricultural equipment, cane transport equipment, cattle feed mixers and cotton and broadacre equipment".

Accordingly, the recommendation includes the provision to delete Condition 7.

**Modification 2 – Amend the approved plans as follows:**

- **The new amenity building is removed.**
- **The new besser block office building and hallway is removed.**
- **The new strong room is removed.**
- **The ceiling height of the old building is no longer proposed to be raised and the floor space will not be extended.**
- **The car parking arrangement and numbers have been refined with car parking number matching that required by the Tweed DCP 2007.**
- **Site drainage has been altered to reflect observed site conditions.**

**As a consequence of the proposed changes, a Construction Certificate would no longer be required and as such the applicant suggests that conditions 8, 14, 18, 21, 24, 25, 26, 27, 28, 35-49, 65, 66 & 77 to 83 be deleted from the Development Approval.**

This modification seeks to change part of the nature of the original approval by deleting any proposed building works. The applicant seeks approval to operate the originally approved business from within the confines of the existing site buildings as per site operations since 2007 rather than undertake construction of new structures.

The applicant proposes to provide four (4) car parking spaces for visitors/customers between the southern building and Pottsville Mooball Road with an additional 9 staff and overflow visitor spaces within the storage compound.

The proposed modification was reviewed by Council's Development Engineer and Traffic Engineer who has provided the following comments:

*No objections to the deletion of Conditions 8-24, 25-28, 35-49, 65, 66, 77-79, and 81-83 as no building works are now proposed and therefore no construction is required. As a consequence no Construction Certificate will be applicable.*

These comments have been reflected in the recommended changes to the consent.

The proposed modification was reviewed by Council's Building Surveyor who has provided the following comments:

*"Following a recent inspection of the above mentioned property for the S96 Amendment please note I have no objection to the applicants S96 requesting deletion of conditions from a building control point of view EXCEPT conditions 42 and 79 which still apply to the consent."*

These comments have been reflected in the recommended changes to the consent.

The proposed modification (as amended with revised details received 11/05/2009) was also reviewed by Council's Environmental Health Officer who has provided the following comments:

Noise Assessment

*A Noise Level Impact Assessment, Craig Hill, July 2008 has been received. Noise levels were monitored at the most exposed dwelling houses whilst the business was operational. The report states that 'noise from the above activities were not audible at nearby residential properties ..... managed activities would be within the required criteria'.*

*Further to the report, Craig Hill has verbally advised that monitoring at the three dwellings was undertaken whilst various machinery was operational and noise levels were not audible above background at the receiving dwelling houses.*

*The original noise assessment made various recommendations, including:*

- *Installing hanging carpet baffles from the ceiling of the manufacturing shed.*
- *Lining walls of manufacturing shed with carpet insulation.*

*During an inspection on 15 July 2009 it was observed that these works have been completed in the north building.*

*Having regard for the information contained in the original 2006 noise assessment, file history and Noise Level Impact Assessment, Craig Hill, July 2008, the following notes are made about existing and proposed conditions:*

*New Condition - Sand blasting shall not be conducted at the premise.*

*New Condition – windows, doors and any other opening in the north, east or south walls of the manufacturing buildings are not permitted to be open at any time whilst manufacturing processes are being conducted.*

*New Condition - 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.*

*Delete Condition 99*

*Retain conditions – 98, 97, 96, 92, 88, 87, 85, 84, 56 & 6.*



Contaminated Land Assessment

Previous Environmental Health Comments of 30 May 2008 stated:

*It is considered necessary that the applicant submit the site management plan now for consideration. Existing condition 90 required the submission of such a plan prior to commencement of use – it appears that this condition has not been complied with. The applicant is requested to submit the site management plan now for consideration, as per the requirements of condition 90.....'*

*A Site Management Plan for Industrial Site at Lot 201 DP 1002166 Pottsville Road Sleepy Hollow, Southern Cross University, August 2008 has been provided for consideration. The document is quite detailed and provides quite onerous requirements prior to any disturbances or the like on site.*

*Note that Part 2.2 of the Management Plan states that 'After the completion of remediation ....it was considered that the site could be classified as uncontaminated for the proposed land usage as an industrial site'.*

*Having regard for the information contained on file, CL assessments and the Site Management Plan the following notes are made about existing and proposed conditions:*

*New Condition – All activities at the property shall comply with the Site Management Plan for Industrial Site at Lot 201 DP 1002166 Pottsville Road Sleepy Hollow, Southern Cross University, August 2008 to the satisfaction of the Tweed Shire Council General Manager or his delegate. All necessary statutory approvals and associated investigations shall be obtained prior to any disturbances of the potentially contaminated portions of the site.*

*New Condition – The existing spoon drain on the northern side of the northern building shall be converted to piped stormwater drainage to the satisfaction of the General Manager or his delegate within 30 days of the date of this amended consent. The piped stormwater drain shall be covered with imported material from an approved source that is free of any contamination. Existing materials at the base or sides of the spoon drain shall not be disturbed or excavated. Sediment and erosion controls shall be placed during these works which is effective in preventing the transport of any sediment material outside the property boundary.*

*New Condition – The premise is not to be used or adapted for separate residential habitation or occupation.*

*New Condition – No exposure or use of groundwater on the site is permitted.*

*Delete Condition 90.*

*Retain conditions – 54, 71, 72 & 73.*

*Delete Condition 12 and replace with an amended condition 12A which reads as follows:*

*12A. All imported material shall be from an approved source and free of any contamination. Documentary evidence of the fill source and that the material is free of any contamination shall be maintained on site and provided to Council upon request.*

On Site Sewerage Management Assessment

As part of the revised submission an On-site Sewerage Management Design Report, HMC February 2009 was submitted (refer attached OSSMF memo dated 21 July 2009). The disposal method proposed was not deemed suitable and a site meeting was conducted with HMC.

A revised report, On-site Sewerage Management Design Report, HMC August 2009 has been provided. Council's OSSMF Officer reviewed the proposal and indicated that, subject to conditions, the treatment and disposal method is deemed sufficient to attain an acceptable level of environmental impact. This assessment is supported.

Having regard for the information contained on file and the OSSMF report the following notes are made about existing and proposed conditions:

Delete condition 22.

New Condition – Not more than 60 days from the date of this consent the applicant is required to lodge an application to install an onsite sewerage management system under section 68 of the Local Government Act, 1993 pay the appropriate fee and be issued with an approval.

New Condition – Not more than 120 days from the date of this consent the existing on site sewerage management system shall be upgraded in accordance with any Section 68 approval issued by Council. The on site sewerage treatment and disposal system installed shall comply with the recommended on site sewerage treatment and disposal methods outlined in the amended On-site Sewerage Management Design Report, HMC August 2009 including all recommendations of that report or to the satisfaction of the General Manager or his delegate.

New Condition – The treated effluent disposal area shall be identified by way of signs and vehicle access to the disposal area shall be prevented at all times.

These comments have been reflected in the recommended changes to the consent.

**Modification 3: Review the reasonableness of the following conditions having regard to the 12 month limited consent:**

**Conditions 10 and 50 (relating to engineering plans):**

The applicant has stated that the revised parking layout as shown on the proposed plan be of gravel construction (as existing). Therefore the applicant suggests that engineering plans are not required and accordingly conditions 10 and 50 should be deleted.

Condition 10 currently states:

10. The developer shall submit detailed engineering plans to the PCA for the parking spaces as shown on Drawing No. 001 dated 10/10/05 including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.

Full design detail of the proposed parking and articulated vehicle manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

Condition 50 currently states:

50. *The provision of off street car parking generally in accordance with drawing No.001 dated 10/10/06 including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.*

[DUR0085]

Council's Development Engineer raised no objection to the deletion of conditions 10 and 50 as no building works are now proposed and therefore no construction is required.

Accordingly Conditions 10 and 50 are recommended for deletion.

**Conditions 11 and 17 (relating to a S138 Application):**

The applicant has stated that Conditions 11 and 17 require an application under Section 138 for the construction of a right turn BAR treatment for a right turn movement from Pottsville- Mooball Road into the development and a traffic control plan prior to the issue of Construction Certificate.

The applicant argues that as there is no longer a requirement for the issue of Construction Certificate a timeframe for compliance would be required.

The applicant recommends the following timeframes for compliance:

- The applicant to prepare engineering plans and lodge the plans with the relevant authority within 3 months of receiving development approval for DA06/1275.01;
- The applicant to complete the works within six (6) months of receiving the authority approval.

The applicant also requests a shortened length of pavement widening so as to avoid the need to extend the large culvert to the east of the site access.

Council's Traffic Engineer reviewed this proposal and stated:

*"It is noted that the complex is and has been operating for some time and that the scale of the proposal has decreased.*

*This decrease has reduced the traffic impact with only one (1) truck movement per week.*

*With 9 staff the peak hour turning movements would only be 9vpd maximum with about 87vph on Pottsville Road (Feb 2008).*

*These volumes are relatively low and accordingly a reduced length of road widening can be considered base don't he existing major culvert constraint, and also noting site distance at the intersection is good.*

*No objection to altering conditions 11 and 17 to require a "modified BAR" intersection treatment however detailed design plans are to be submitted with a S138 Application within 3 months of approval and constructed within 6 months of the s138 Approval"*

Accordingly Condition 11 remains as a S138 is still required. Condition 17 is to be deleted and replaced with an amended Condition 17A as follows:

*17A Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -*

*The applicant shall provide a Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, intersection at Grade.*

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

- Road works/furnishings*
- Stormwater drainage*
- Water and sewerage works*
- Sediment and erosion control plans*
- Location of all services/conduits*
- Traffic control plan*
- The applicant to prepare engineering plans and lodge the plans with Tweed Shire Council within 3 months of receiving development approval.*
- The applicant to complete the works within six (6) months of receiving the S138 approval.*

**Condition 23 (relating to S94 Contributions):**

The applicant is requesting that S94 Contributions be payable within 3 months of the date of determination of DA06/1275.01 as there is no longer any Construction Certificate required which would trigger the payment.

The original application triggered the following S94 Plan No. 4 Tweed Road Contribution:

(a) *Tweed Road Contribution Plan:* \$7,777  
*S94 Plan No. 4 (Version 4.0)*

**Sector8a\_4**

This was based on 12 trips for the existing proposed building (as the building was previously only classed as general heavy industrial as opposed to the proposed factories covered by light industries) plus 3 trips for the additional floor area.

As there is no longer any additional floor area it is proposed to vary the applicable TRCP to 12 trips only which will now equate to:

(a) *Tweed Road Contribution Plan:* \$13,500  
*S94 Plan No. 4 (Version 4.0)*

**Sector8a\_4**

Therefore Condition 23 is to be deleted and replaced with an amended Condition 23A as follows:

**23A Section 94 Contributions**

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

Within 3 months of approval of DA06/1275.01 all Section 94 Contributions must be paid.

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

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

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

(a) *Tweed Road Contribution Plan:* \$13,500

*S94 Plan No. 4 (Version 4.0)*

**Sector8a\_4**

[PCC0215]

It is further noted that Condition 24 relates to the applicable Water headwork's charges which the applicant has requested be deleted.

Condition 24 stated:

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

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

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

**Stage 1**

Water DSP6: 0.05781 ET @ \$4598 \$266

**Stage 2**

Water DSP6: 0.00948 ET @ \$4598 \$44

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

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

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

[PCC0265]

This was based on the additional floor area within the proposed new buildings as the site had credit for the previous dry industrial rate.

Accordingly Condition 24 is recommended for deletion as no additional floor area is proposed.

**Conditions 19 and 69 (relating to the disposal of roof waters):**

Condition 19 and 69 require all roof waters to be disposed of through properly joined pipes to the spoon drain located to the west of the existing buildings.

The applicant has requested the amendment to these conditions for the following reasons:

- *The disposal of roof water “through properly jointed roof pipes” is relevant to the previously proposed new building work. As no new building work is proposed the roof water drainage for the existing buildings will not be altered from current arrangements.*
- *It should reflect the current drainage characteristics of the site which sees stormwater drain to the west and north of the buildings. The applicant proposes to construct a spoon drain on the northern side of the buildings which in addition to the existing spoon drain on the western side, would allow water to flow to the existing drain adjacent to Pottsville-Mooball Road.*

In regards to Conditions 19 and 69 considering the scope of the development, there are no objections to the applicants proposal to direct all stormwater to the existing drain adjacent to Pottsville Road via an existing spoon drain to the west and via a proposed spoon drain to the north. Approval for this work can be considered under a Section 68 application.

Accordingly Conditions 19 and 69 are recommended for deletion.

**Condition 89 (relating to the surrender of T4/1762):**

Condition 89 states:

89. *Prior to the commencement of use, Development Consent No.T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

[USENS06]

The applicant is requesting that this condition be modified to reflect a revised timing schedule due to the confusion with the time limited consent (Condition 7). The applicant suggests that such surrender can occur within one month of approval of the current S96 DA06/1275.01.

Accordingly Condition 89 is recommended for deletion and its replacement with Condition 89A which reads as follows:

- 89A. *Within one (1) month of this approval, Development Consent No.T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

## Summary

Having reviewed each proposed amendment on its merits and having regard to the applicable planning instruments (including the Act, Tweed LEP 2000, and the Tweed Development Control Plan) the proposed amendments are considered to be of minimal environmental impact and substantially the same development as originally approved albeit within the existing building rather than any new structure.

This S96 Application is not an opportunity to revisit the assessment of the original application but rather only an opportunity to review the amendments being sought in relation to the associated legality of each amendment.

As detailed in the above report the amendments are considered lawful and capable of approval by Tweed Shire Council. It is considered that the amended consent will result in a clearer outcome which will provide the applicant with a definitive lawful way forward.

## Notification & Consideration of Submissions

The original development attracted thirteen individual objections. The objections were focused on the suitability of the site given its rural character and its proximity to other dwellings.

Post determination of DA06/1275 Council received nine letters of objection to the approval (however these nine letters of objection only came from 4 different people). Copies of these letters are available as an annexure to this agenda. The letters of objection challenged the validity of the consent based on process. Council responded to these letters and insisted that all due process had been followed.

The subject S96 Application was advertised and notified to adjoining property owners and the original objectors between Wednesday 28 May 2008 to Thursday 12 June 2008. During this period Council received eleven (11) objections (however seven of these came from the same person).

One of these objections was from the Environmental Defenders Office as detailed within the above report.

In addition Council received a verbal enquiry about the DA and S96 from the NSW Ombudsman's Office (Ms Jo Flanagan). Council provided the Ombudsman's Office with a copy of the original Council Report and advised that Council will be determining the S96 in due course. To date no further enquiries have been made by the Ombudsman's Office.

The remaining objections raised the following issues:

<u>Issue</u>	<u>Council Assessment</u>
<p><i>Why did Council impose a time limit on this project in the first place? Presumably</i></p> <p><i>i) to give the applicant a reasonable period to set up the business as proposed, including its important upgrading ;</i></p> <p><i>ii) to test the constancy of community opposition, in the operational circumstances.</i></p>	<p>The issue of the time limited consent has been detailed in consideration of Condition 7. As concluded in the above report the amendment to the consent is considered lawful and appropriate.</p> <p>This S96 Application is not an opportunity to revisit the original assessment on the community opposition. It is merely an opportunity to review the lawfulness of the proposed amendments having regard to their individual merits.</p> <p>This objection does not warrant refusal or further</p>

<u>Issue</u>	<u>Council Assessment</u>
<p><i>The facility has not been upgraded.</i></p> <p><i>The proposed noise management measures are inadequate and the application makes no attempt to address the nature and strength of the principals underlying community opposition.</i></p>	<p>amendment to the consent.</p>
<p><i>The S96 reveals that the applicant ignored virtually all of the significant conditions of consent including the need to obtain a Construction Certificate and an Occupation Certificate.</i></p>	<p>The development was staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.</p> <p>The upgraded works to the existing buildings (which included doorways etc constitute exempt development and do not trigger the need for a Construction Certificate.</p> <p>Furthermore, an Occupation Certificate is only required for new work or where the Building Classification has changed for the purposes of the Building Code of Australia.</p> <p>In this case an Occupation Certificate is not required for the existing buildings.</p>
<p><i>As the consent lapsed on 1 May 2008 all construction work on the site as well as manufacturing work should have ceased.</i></p>	<p>The issue of the consents validity has been detailed in the above report in regard to Condition 7. As concluded in the above report the amendment to the consent is considered lawful and appropriate.</p> <p>DA06/1275 is considered to have lawfully commenced and thus it remains a valid consent.</p>
<p><i>The original determination was grossly flawed</i></p>	<p>This S96 Application is not an opportunity to revisit the original assessment. It is merely an opportunity to review the lawfulness of the proposed amendments having regard to their individual merits.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>There are multiple breeches of the 2007 consent. These breeches are outlined in a separate table (which is within the objections annexed to this agenda).</i></p>	<p>The development was staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.</p> <p>The applicant has acknowledged that the following works have taken place:</p> <ul style="list-style-type: none"> <li>(a) Construction of a septic tank and septic trenches;</li> <li>(b) Undertaking earth works comprising the levelling of ground for car parking purposes comprising an area of approximately 30 x 30 metres;</li> <li>(c) Undertaking drainage work involving the construction of a spoon drain around two existing buildings such drain measuring approximately 2 metres wide by 1 metre deep by 130 metres in length;</li> </ul>



<u>Issue</u>	<u>Council Assessment</u>
	<p>(d) Construction of doors along the side of the buildings;</p> <p>(e) Undertaking building work including the construction of baffles to the shed roof and the installation of carpet for the purposes of sound proofing.</p> <p>The minor earthworks and upgraded works to the existing buildings (which included doorways and baffles) constitute exempt development and do not trigger the need for a Construction Certificate.</p> <p>The work on the septic tanks should have been undertaken with an approved on site sewerage management approval. Appropriate conditions are recommended in this regard to enable a lawful way forward.</p> <p>The applicant's occupation of the premises is consistent with the previously approved Stage 1. The applicants choice not to proceed with Stage 2 is entirely at their discretion as the consent remains valid forever once lawfully commenced (despite condition 7) as detailed within the above report.</p> <p>The objector's interpretation of the other conditions of consent is contrary to Council's staff as detailed within the above report.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>The site is being used for retail purposes with a yellow pages advertisement stating "New &amp; Second Hand Parts and a New Range of Agricultural Equipment"</i></p>	<p>Site inspections and site advertising does not indicate that any retail or commercial operations are taking place from the property. Notwithstanding minor ancillary products may be available from the site within the scope of the original consent.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>The subject site is unsightly and creates a visual pollution to the existing rural area.</i></p>	<p>The subject site has been used for storage of agricultural machinery, steel and general farm like equipment. This could occur on any rural property without development approval.</p> <p>Whilst the storage is not entirely desirable – it is stacked and contained in a generally tidy manner and does not appear like a junkyard.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>We are very concerned about the drainage which has now been dug and water runs into the main road drain which in turn runs through our cattle property. As we are Cattle Care and MSA accredited by Australia meat Authority, it concerns us as this site</i></p>	<p>Council sought additional information in regards to contamination and accordingly a detailed site management plan has been received which declares the site after the completion of remediation works as not being contaminated.</p>

<u>Issue</u>	<u>Council Assessment</u>
<i>was known to have contaminated soil and now water runs off this site into the drain along the road.</i>	Additional conditions of consent have been recommended by Council's Environmental Health Officer to ensure the ongoing operations at the site meet Council's standards which ensure no off site impacts.  This objection does not warrant refusal or further amendment to the consent.
<i>This business should be relocated 5km to the proposed industrial estate at Cudgera.</i>	Council has an obligation to assess every application on its merits as lodged. Relocation is not for Council's consideration.
<i>This site will most likely turn into a sale shed for unwanted machinery. It is unsightly dumping ground for rusty machinery in an area with enough traffic to be called the gateway to Mooball and Burringbar.</i>	Whilst the storage is not entirely desirable – it is stacked and contained in a generally tidy manner and does not appear like a junkyard.  The applicant will be required to comply with the amended conditions of consent which will better reflect the nature of the business being undertaken.  This objection does not warrant refusal or further amendment to the consent.
<i>Approval of this non rural business will set a precedent.</i>	This S96 Application is not an opportunity to revisit the original assessment. It is merely an opportunity to review the lawfulness of the proposed amendments having regard to their individual merits.  This objection does not warrant refusal or further amendment to the consent.

Council requested additional information of the application and that additional information was sent to the objectors for their information and comment as deemed necessary. In response to this information Council received a further four (4) submissions (however two of these were from the same person). The issues raised in these submissions were:

<u>Issue</u>	<u>Council Assessment</u>
<p><i>The amended material seems to imply that the applicant has evaded compliance but has failed to present positive and well founded reasons to justify his request.</i></p> <p><i>The current situation is inadequate because:</i></p> <ul style="list-style-type: none"> <li>• <i>The applicant has ignored the conditions of Council making only cosmetic improvements.</i></li> <li>• <i>The specific time limit has been used as an excuse for inaction. The current application should be a new DA requiring Council's reappraisal of the enterprise and relevant conditions.</i></li> <li>• <i>The business is not light but a medium sized industrial development</i></li> </ul> <p><i>Questions remain about the status and surrender of the consents of 1982 and 2007</i></p>	<p>As detailed in the above report the consent has been lawfully commenced (despite the imposition of Condition 7) and accordingly the applicant has a legal right to apply to vary the S96 as proposed.</p> <p>The above report details why on merit each of the proposed amendments are considered reasonable. As this is not an opportunity to revisit the original application.</p> <p>Accordingly the application is recommended for conditional approval and this objection does not warrant further amendment to the consent.</p>

<b><u>Issue</u></b>	<b><u>Council Assessment</u></b>
<p><i>now that the factory is in use and time has expired.</i></p> <p><i>Why should Council change its time limitations on this factory's manufacturing of bulky steel products simply because the owners had abandoned the plans to upgrade the business which were part of his original application.</i></p>	
<p><i>Nothing has happened to allay the concerns of the local community regarding location and precedent.</i></p> <p><i>This is an inappropriate land use and it should be refused.</i></p>	<p>The S96 can not revisit the original merits of the proposal but only comment on the reasonableness of the proposed variations.</p>
<p><i>The scaled down version is not more acceptable to the neighbours.</i></p> <p><i>A slimmer factory is still the same enterprise, and downgrading it weakens rather than supports the case for retention.</i></p>	<p>It is considered that the recommended conditions of consent will assist the applicant move forward with the development of the site in a more lawful and transparent manner.</p>
<p><i>The applicant should be made to produce work as executed plans as required by Condition 83 as the sheds have had structural work undertaken on them which has enclosed the sheds for security purposes.</i></p> <p><i>Do the McLean's lawfully act as owner builders? This is an Occupational Health and Safety Issue.</i></p>	<p>The upgraded works to the existing buildings (which included doorways and baffles) constitute exempt development and do not trigger the need for a Construction Certificate or work as executed plans and can be undertaken by individuals.</p> <p>The applicant's occupation of the premises is consistent with the previously approved Stage 1. The applicants choice not to proceed with Stage 2 is entirely at their discretion as the consent remains valid forever once lawfully commenced (despite condition 7) as detailed within the above report.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>Of the 99 conditions it is difficult to identify any which have been complied with or properly addressed by the applicant.</i></p> <p><i>The applicant tries to state that many conditions only relate to the need for a CC when clearly they relate to the site as a whole.</i></p> <p><i>Condition 10 – Parking and Manoeuvrability works were done without detailed design.</i></p> <p><i>Condition 12 applies to all site works and any fill whether associated with building works or not need to be detailed prior to issue of a CC.</i></p> <p><i>Condition 19, 20 and 21 - drainage works were done without approval causing erosion and sediment issues.</i></p> <p><i>Condition 24 does not exempt the applicant from obtaining a CC or paying S64</i></p>	<p>The objector's interpretation of the other conditions of consent is contrary to Council's staff as detailed within the above report.</p> <p>Each of the mentioned conditions have been addressed in the above report.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>

<u>Issue</u>	<u>Council Assessment</u>
<p><i>Contributions.</i></p> <p><i>Condition 30 applies to all works on site not just building works.</i></p> <p><i>Condition 90 required a Site Management Plan prior to use which never occurred.</i></p>	
<p><i>The area should be restored to its natural rural character.</i></p>	<p>This is not an option as DA06/1275 has been lawfully commenced.</p>
<p><i>The Noise Attenuation Report is flawed as testing's was done on a Saturday outside manufacturing season.</i></p>	<p>The report has been reviewed by Council's Environmental Health Officer as satisfactory.</p> <p>Additional conditions of consent should assist the ongoing site management.</p>
<p><i>The reasonableness of the conditions should have been argued originally not so long after the consent.</i></p>	<p>The applicant is legally entitled to lodge a S96 Modification on this consent as the consent is deemed to have been commenced in Accordance with the Act.</p>

The Environmental Defenders Office again wrote to Council regarding this application (post the receipt of additional information) questioning Council's legal ability to handle this application. Council did not respond to this letter as such assessment was most appropriately reported to Council in this first instance.

Having reviewed each proposed amendment on its merits and having regard to the above submissions the proposed amendments are considered to be lawful and capable of approval.

This S96 Application is not an opportunity to revisit the assessment of the original application but rather only an opportunity to review the amendments being sought in relation to the associated merits and legality of each amendment.

As detailed in the above report the amendments are considered suitable, lawful and capable of approval by Tweed Shire Council.

**OPTIONS:**

1. Approve the S96 as per the recommendation
2. Refuse the S96 with reasons

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be unsatisfied with the determination by Council they have a right of Appeal to the NSW Land & Environment Court.

Should an objector be unsatisfied with the determination by Council they have a right of Appeal to the NSW Land & Environment Court based on procedure and process only not merit (judicial review).

**POLICY IMPLICATIONS:**

This S96(1A) raises issues regarding the interpretation of the Act in regards to what constitutes a lawful development. However, based on the applicant's legal advice which is consistent with previous Council advice the proposed amendments are considered lawful.

**CONCLUSION:**

This application has an extensive development history. The S96 has been assessed on its merits based on the information available to Council. Having considered all the issues raised including those raised by the objectors it is recommended to conditionally approve the S96 Application.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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. DA06/1275 Council Report 17 April 2007 (ECM 21105969)
  2. DA06/1275 Determination Notice (ECM 21106985)
  3. DA06/1275 Approved Plans x 29 (ECM 21251402)
  4. Submissions post DA06/1275 determination (ECM 21109186)
  5. Legal Advice TF Robertson SC of Frederick Jordon Chambers (ECM 21105962)
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**16 [PR-CM] Development Application DA09/0722.01 - Amendment to Development Consent 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:**

Council at its meeting held 16 March 2010 resolved to approve a dwelling to be erected at Lot 31 DP 1030322 Collins Lane, Casuarina subject to conditions including a condition (No. 7) to require amended plans be submitted to show the position of the external wall of the garage to stand not less than 450mm from the southern side boundary.

An application has now been made to modify the original development consent under Section 96 1(a) of the Environmental Planning & Assessment Act.

The Section 96 1(a) application requests that condition number 7 be deleted from the original consent. Condition Number 7 states:

*“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.”*

The original development application was to construct a new two storey dwelling, a swimming pool and a spa at the subject property.

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 subject dwelling.

It is recommended that the current Section 96(1)(a) application be refused due to concerns in relation to the proposed impact of the development on the amenity of the adjacent property.

**RECOMMENDATION:**

**That Development Application DA09/0722.01 for amendment to Development Consent DA09/0722 for a dwelling, swimming pool and spa at Lot 31 DP 1030322 Collins Lane, Casuarina be refused for the following reasons:**

- 1. Pursuant to Section 79C(1)(a)(iii) the proposed amendment does not comply with the side boundary setback required by Section B5 Casuarina Beach) of the Tweed Development Control Plan.**
- 2. Pursuant to Section 79C(1)(b) the proposal will have an adverse impact on the amenity of the adjacent property at Lot 30 Collins Lane, Casuarina.**



**REPORT:**

**Applicant:** Croft Developments

**Owner:** Mr Graeme Croft and Mrs Sandra Croft

**Location:** Lot 31 DP 1030322 Collins Lane, Casuarina

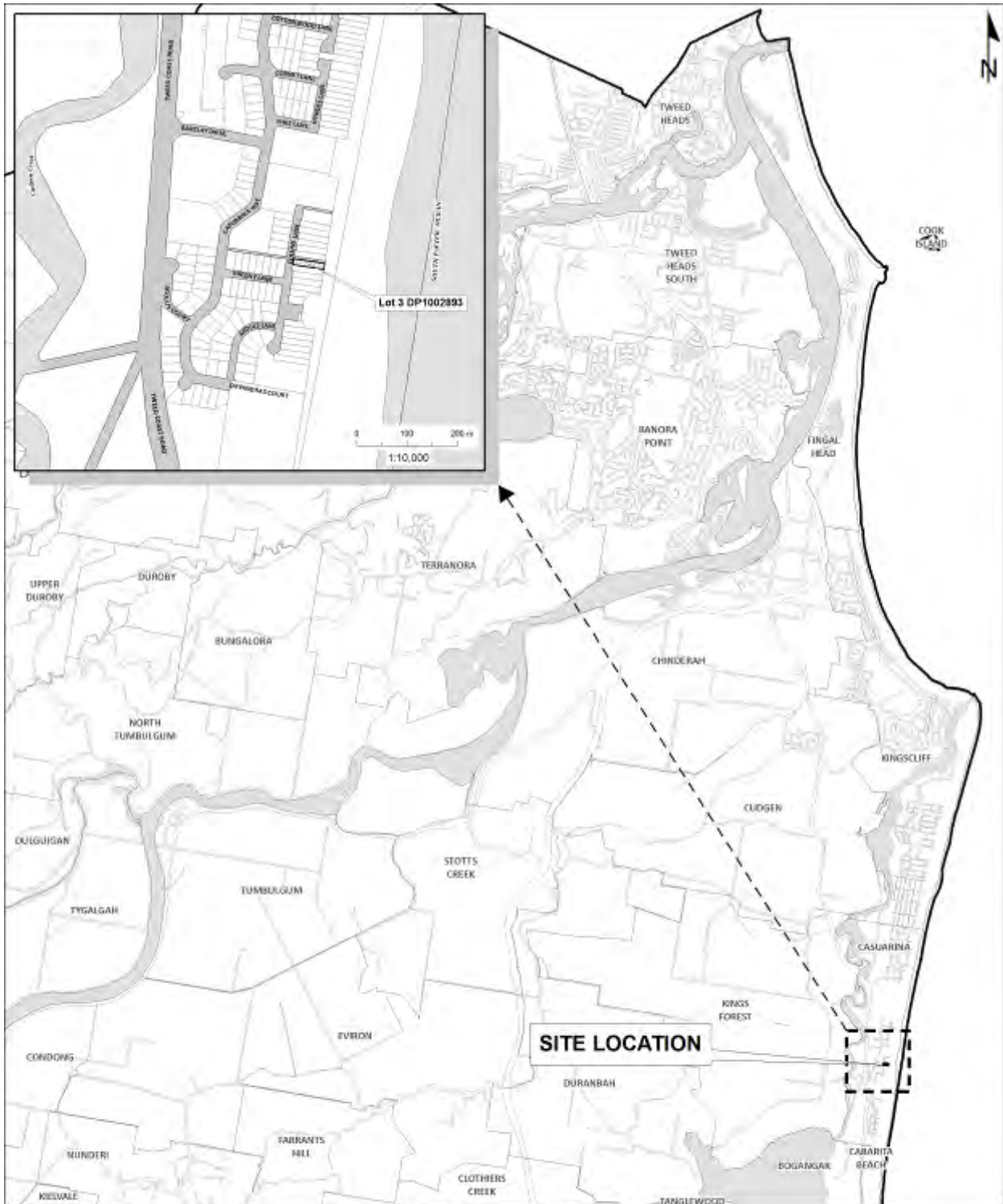
**Zoning:** 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)

**Cost:** N/A

**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.

**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 94

Cadastral: 02 March, 2010  
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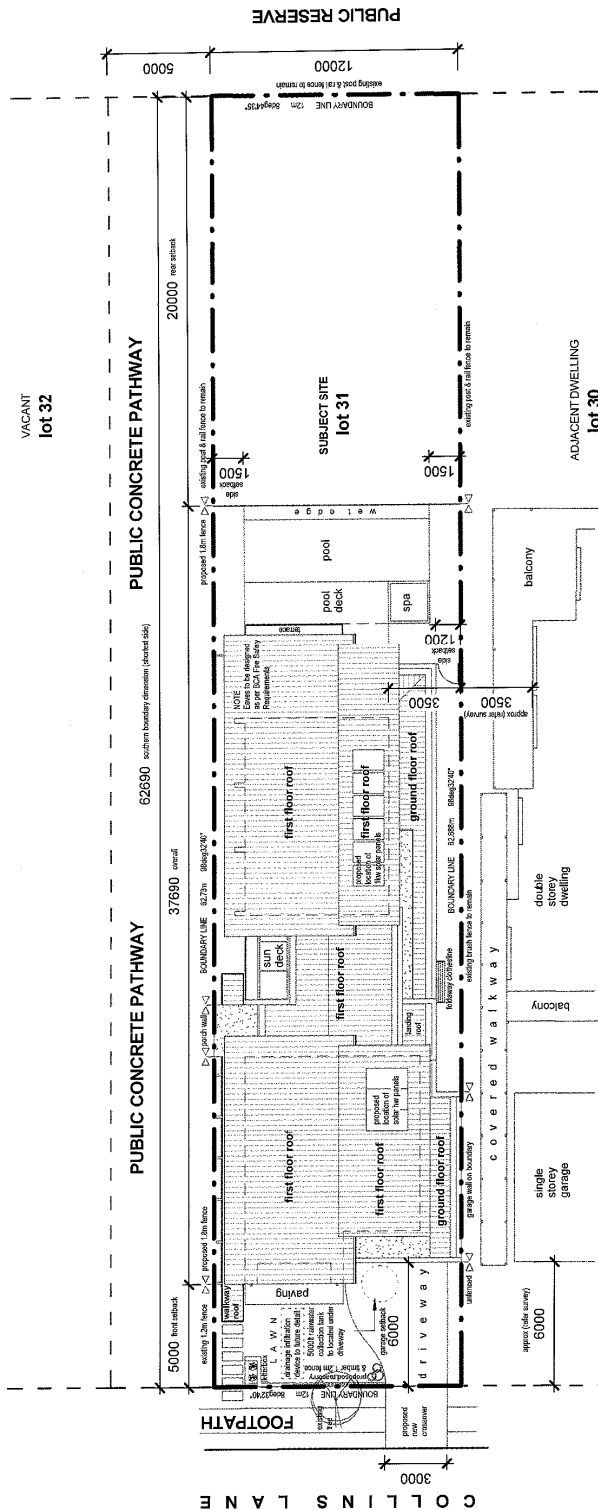
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 Murwillumbah NSW 2484  
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 E: planningreforms@tweed.nsw.gov.au



**TWEED**  
 SHIRE COUNCIL

DEVELOPMENT PLANS:



<b>SITE AREA</b>	792.5m2
<b>lot 31</b>	
<b>BUILDING AREAS</b>	
ground floor	230m2
garage	50m2
porch	5m2
pool deck	315m2
<b>SUB TOTAL</b>	<b>315m2</b>
<b>IMPERVIOUS AREAS</b>	
first floor	190m2
balcony	3m2
pool deck	32m2
terrace	32m2
<b>SUB TOTAL</b>	<b>235m2</b>
<b>TOTAL</b>	<b>550m2</b>
<b>FSR AREAS</b>	
ground floor	216m2
first floor	162m2
<b>TOTAL</b>	<b>378m2 (50%)</b>
<b>IMPERVIOUS AREAS</b>	
roof	322m2
deck non porous	10m2
paving non porous	10m2
pool	37m2
pool splo	57m2
<b>TOTAL</b>	<b>422m2 (53%)</b>

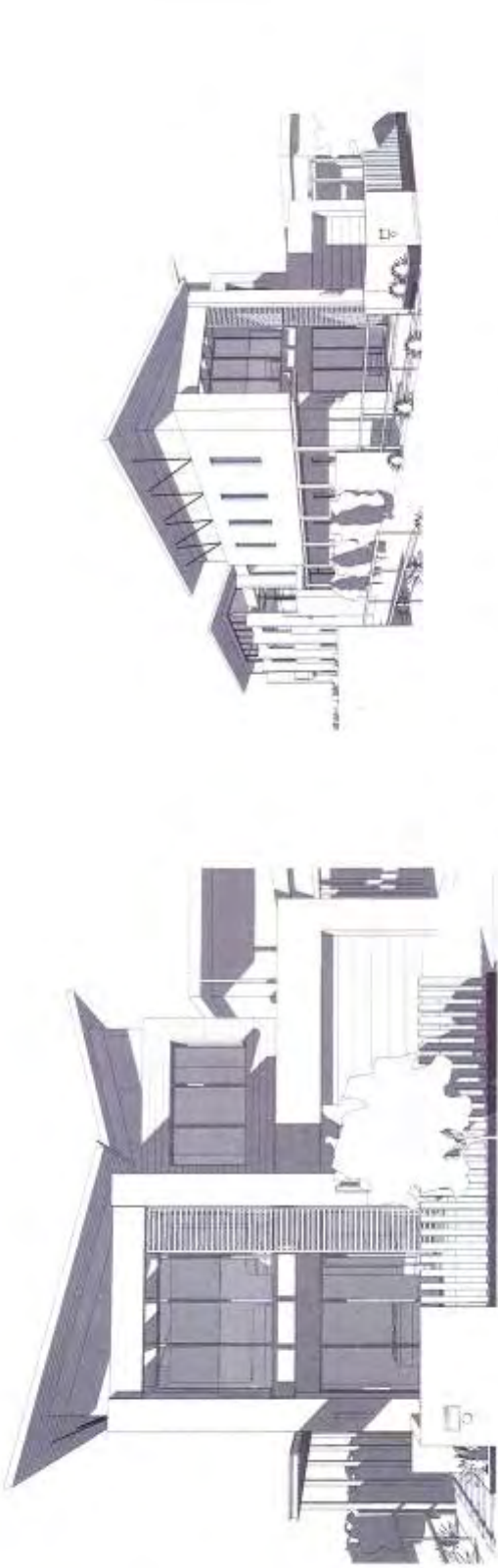
**design response**

1:200



Rev A  
**TP04**  
Drawn by: AM

**PROJECT** proposed new dwelling  
**ADDRESS** lot 31 collins lane casuarina new  
**CLIENT** graeme croft  
**DRAWING** design response  
**SCALE** 1:200 @ A3  
**DATE** 05/11/2009  
**DATE** 05/11/2009



**l o t 3 1 c o l l i n s l a n e c a s u a r i n a**

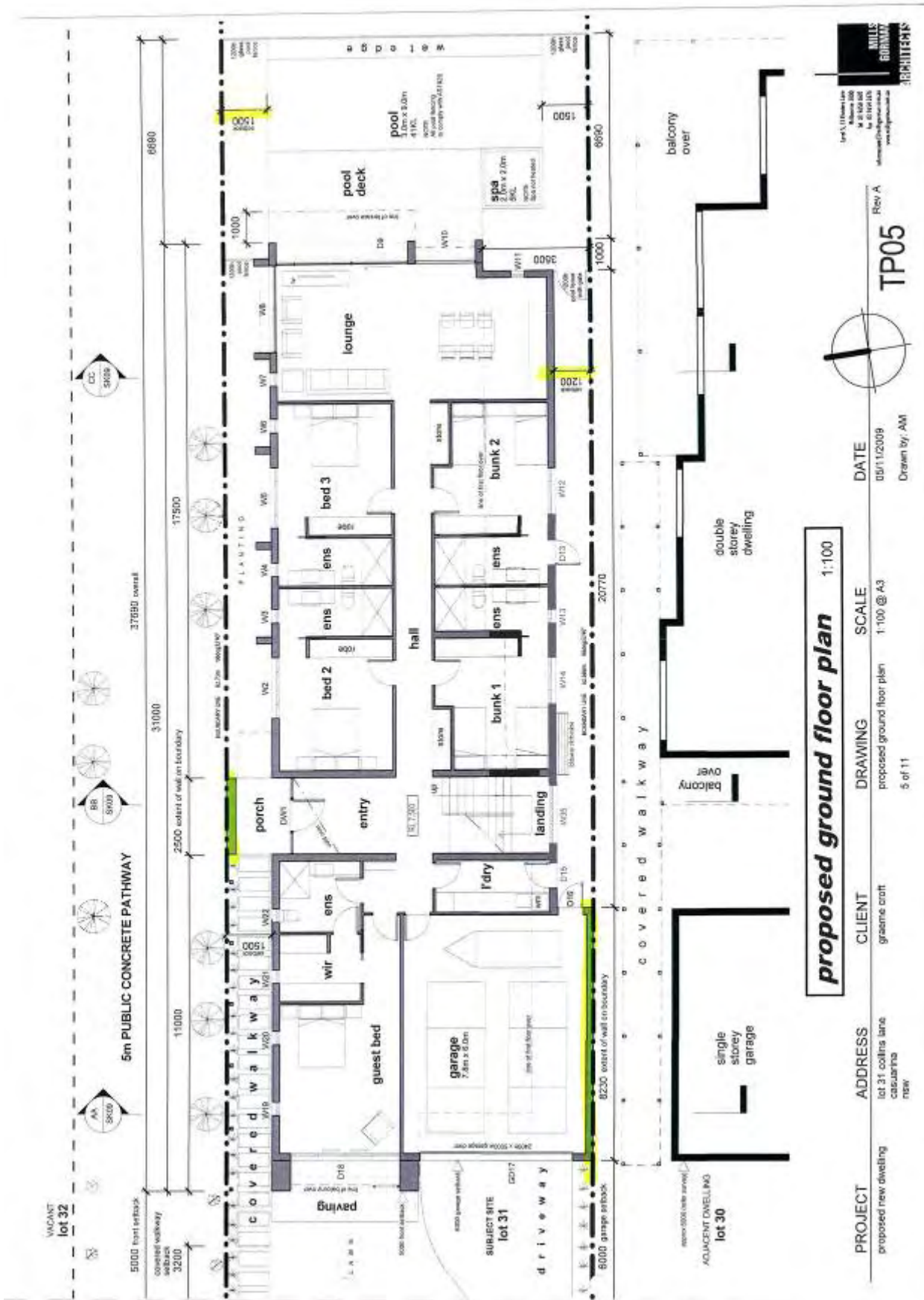
- CONTENTS**
- TP01 contents & perspectives
  - TP02 site survey
  - TP03 site photos
  - TP04 design response & areas
  - TP05 proposed ground floor plan
  - TP06 proposed first floor plan
  - TP07 front & rear elevations
  - TP08 side elevations
  - TP09 sections
  - TP10 shadow diagrams
  - TP11 window & door schedule

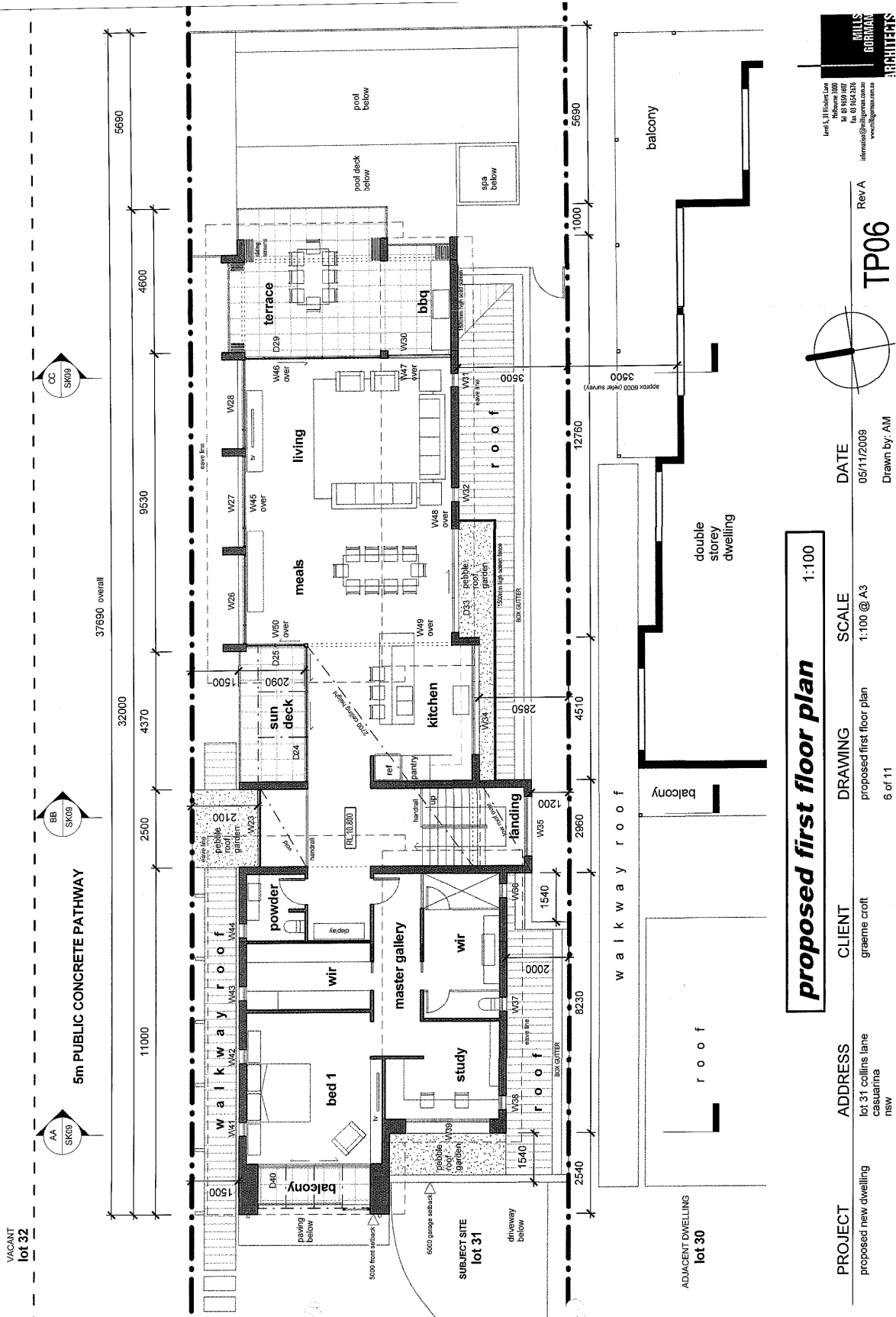


**PROJECT** proposed new dwelling  
**ADDRESS** lot 31 collins lane  
 casuarina  
 NSW  
**CLIENT** graeme croft  
**SCALE** nls @ A3  
**DRAWING** contents & perspectives  
 1 of 11  
**DATE** 05/11/2009  
 Drawn by: AM  
**TP01**  
 Rev A









**proposed first floor plan** 1:100

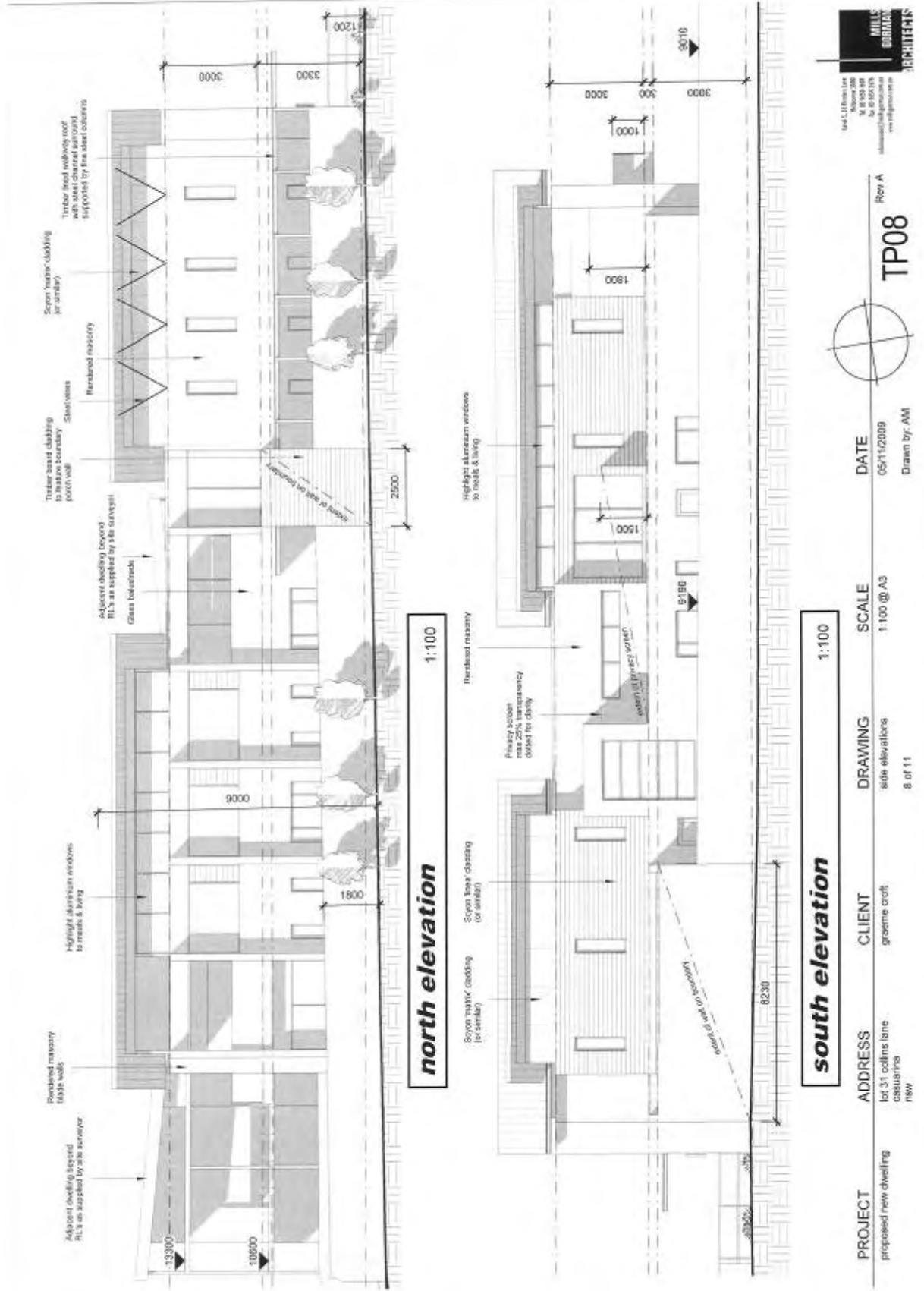
PROJECT	ADDRESS	CLIENT	DRAWING	SCALE	DATE
proposed new dwelling	lot 31 collins lane casuarina NSW	grame croft	proposed first floor plan	1:100 @ A3	05/11/2009

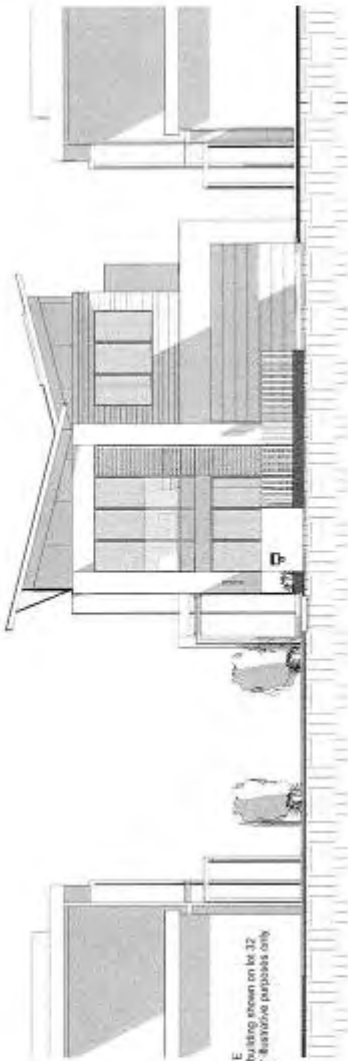
RevA  
 TP06  
 Drawn by: AM



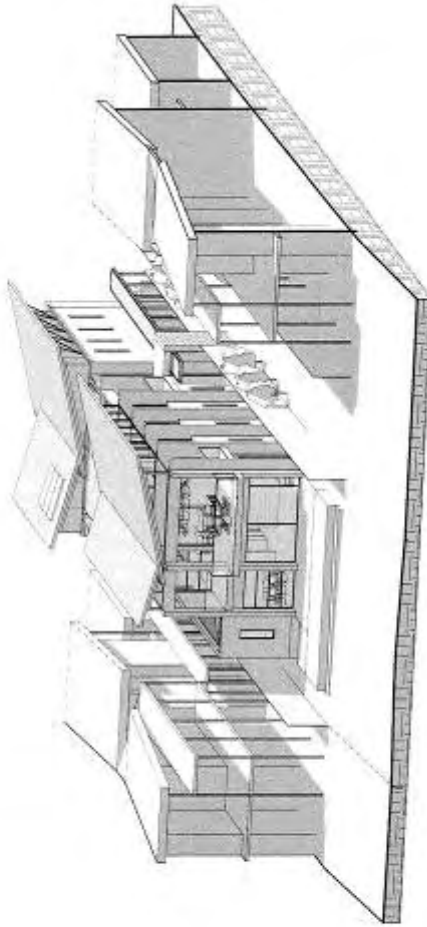
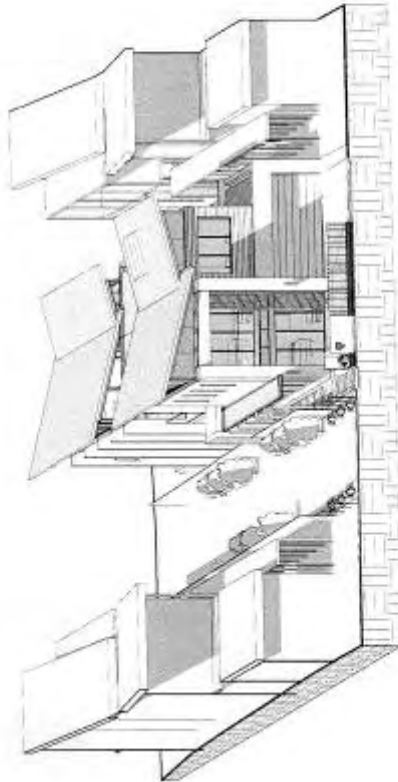








NOTE  
 All shading shown on lot 32  
 is for illustrative purposes only.



**shadow model (12pm spring)** nts

NOTE  
 Shadows as per  
 Spring Equinox  
 21.09 Brisbane

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



PROJECT	proposed new dwelling	CLIENT	greame croft	DRAWING	sections 10 of 11	SCALE	nts @ A3	DATE	05/11/2009	Rev A
ADDRESS	lot 31 collins lane casuarina new									
										<b>TP10</b>

**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. This comment is made on the basis that the external southern wall of the garage which will have an overall height of 3300mm is to be setback not less than 450mm from the boundary.

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 Sulphate Soils, which exist at a depth of greater than 2 metres below surface level. The deletion of condition 7 from the consent will not have any bearing on Acid Sulphate Soils.

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

The deletion of Condition number 7 from the consent will not affect this requirement.

Clause 39A – Bushfire Protection

Council's records indicate that a small portion of the rear of the 7 (f) zone is bushfire prone. The deletion of Condition number 7 from the consent will not affect this requirement.

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 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 publicly exhibited by Council between 27 January 2010 and 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.

## Public Domain Amenity

### **Streetscape**

The Casuarina area is characterised by sites with front and side yards that are significantly landscaped and allow a transition to be achieved between the built and natural form. The construction of a rendered masonry wall in close proximity to the boundary will prevent this transition from occurring between the boundaries and will result in unsympathetic development.

The positioning of the external garage wall in close proximity to the southern boundary is not consistent with the existing character of the adjacent development. The adjacent development at 30 Collins Lane Casuarina has existing landscape planting and a brushwood fence positioned in close proximity to the common boundary and these features provide a visual break between the boundary and the built form. The construction of a 3.3 metre high rendered masonry wall on the boundary will require the removal of the existing brushwood boundary fence and will adversely impact on the adjacent development in an unsympathetic manner.

Conversely, maintaining the required 450mm boundary setback will allow the existing brushwood fence to be maintained which will not adversely impact on the appearance and the amenity of the adjacent dwelling. The 450mm setback will also allow access along the southern side of the garage to allow for future external maintenance of the structure.

It is considered that opportunity exists to slightly alter the internal floor plan of the proposal to accommodate a 450mm boundary setback without impinging upon existing adjacent development. That is, the guest bedroom/Walk-in robe room as shown on the submitted floor plan currently has a floor area of approximately 24 square metres. A reduction in the floor area of this room by approximately 3.5 square metres would allow the 450mm required side boundary setback to be achieved. This would result in a total floor area for the room of greater than 21 square metres. This minor reduction in the floor area of one room is not considered to be an unreasonable request given that the dwelling contains 6 bedrooms and 6 ensuites.

### **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 and the garage will have an overall height of 3300mm. 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 zones are not affected by this proposal.

### **Impermeable Site Area**

The current provisions of A1 limit the maximum allowable impervious surface area of the site to 60% for allotments over 750m<sup>2</sup>. The area of the subject site is 752m<sup>2</sup> and therefore the maximum impermeable area permitted at the completion of the development would be 451m<sup>2</sup>.

The proposal has a calculated impermeable area of 56% or 422m<sup>2</sup>. This being less than the maximum 60% permitted.

The requirement to achieve a 450mm side boundary setback will marginally reduce the footprint of the building and result in a marginal improvement in the area of the site that will allow for storm water infiltration.

### **Setbacks**

The front boundary setback will not be altered by this proposal.

Section B5 of the TDCP is a specific locality development control and this development control permits external walls to be constructed up to 900mm from side boundaries.

As previously noted it is 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 originally notified prior to the development being approved subject to conditions, and was again notified as a result of the submission of the current proposal. Each notification resulted in the submission of an objection in relation to the proposed position of the external garage wall.

Section A1 of the TDCP permits garages to be positioned up to 450mm from side boundaries.

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 up 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 the applicant's submission their Consultant has detailed several examples of garages in the Casuarina area that have external walls positioned in close proximity to the boundary.

In a submission made by the applicants planning consultant, Planit Consulting, the Consultant has advised the following:

*The proposal to delete Condition number 7 of the consent is justified in the following way:*

*Demonstration of compliance with relevant planning provisions and the provision of examples whereby Council has previously approved a zero side boundary setback for a garage within the Casuarina locality.*

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 again recommend that a compromise in the controls be achieved by requiring a 450mm side boundary setback. 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 external wall of the garage and the fence.

### **Visual Privacy**

Visual privacy will not be affected by the proposal, however the visual amenity could be depending on the side boundary setback required by Council.

### Floor Space Ratio (FSR)

Section A1 of the TDCP controls 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 752.5m<sup>2</sup> and the total floor area of the proposed dwelling is 378m<sup>2</sup> which represents an FSR of 0.5:1 This complies with the requirements of Section A1 of the TDCP. A marginal reduction in the overall width of the dwelling will be achieved if Council upholds its previous decision in relation to the side boundary setback of the garage. This marginal decrease in the width of the dwelling will marginally reduce the floor space ratio if the setback is achieved by reducing the width of the guest bedroom.

### A2-Site Access and Parking Code

The current application will not effect the development 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.

It is again proposed to address the concerns of the adjacent property owners by recommending that Condition Number 7 not be deleted from the consent.

B5-Casuarina Beach

This is the locality specific development control plan for the Casuarina area. This control requires that the side boundary setback from any dwelling should be not less than 900mm when measured to the wall and 675mm when measured to the outer most projection of the eave.

The controls relating to setbacks have been addressed previously in 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.

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

The site is suitable for sympathetic residential development.

**(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**

On the basis that Council requires that a 450mm side boundary setback be achieved, the proposal will not prejudice the public interest .



**OPTIONS:**

1. Council resolve to uphold its previous decision in relation to the 450mm side boundary setback and refuse this application that requests that condition number 7 be deleted from the development consent dated 19 March 2010.
2. Council approve to allow the deletion of condition number 7 from the development consent dated 19 March 2010.

**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 refusal of this proposal will not result in a precedent being set in relation to policy.

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

Nil.

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17 [PR-CM] Urliup Road Compliance Matter

**ORIGIN:**

**Development Assessment**

**FILE NO: PF5720/1930**

**SUMMARY OF REPORT:**

Council has received a complaint regarding unauthorised earthworks at Lot 12 in DP 810164 (48 Urliup Road, Urliup).

The owner of the site has acknowledged that such works occurred in September 2009 in association with the production of sugar cane.

It appears that part of a natural rise in the land has been reduced in size with the excess fill being used to fill adjoining sugar cane paddocks.

Aerial photography shows that similar work occurred on the site after 2000 but before 2004.

Agriculture is permissible without consent, while earthworks require development approval. This report seeks Council determination on whether the works undertaken constitute agriculture or earthworks and thus whether the works require any compliance action from Council.

It should be noted that this compliance matter adjoins a site to which another recent compliance matter was reported to Council (that matter was for an equestrian pad in Tomewin Road, Dungay). In the equestrian pad compliance matter Council resolved to request a DA from the applicant to legalise the works undertaken.

**RECOMMENDATION:**

**That:**

1. ***ATTACHMENT 1 and 2 is CONFIDENTIAL in accordance with Section 104(2)(a) of the Local Government Act 1993, because it contains personnel matters concerning particular individuals (other than councillors).***
2. **Council adopts one of the following options or form an alternative view:**
  - A. **Council determines that the works undertaken constitute “agriculture” thus representing development permitted without consent.**

**OR**

- B. **Council investigates the extent of earthworks further.**

**OR**

- C. Council advises the owners of Lot 12 in DP810164 that a development application for earthworks must be lodged with Tweed Shire Council to reflect the current level of the land as modified in September 2009 (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development).**

**Failure to lodge the required application (within 60 days from the date of notification) will result in Council pursuing this matter legally.**

**REPORT:**

**Owner:** Mr Thomas W Gresham Mrs Colleen Mary Gresham  
**Location:** 48 Urliup Road, Urliup  
**Zoning:** 1(a) Rural and 1(b2) Agricultural Protection  
**Cost:** N/A

**BACKGROUND/REPORT:**

In November 2009 Council received information that works were being undertaken at Lot 12 in DP 810164 in Urliup Road, Urliup.

The letter specifically stated

*“Our clients do not complain about the activity, rather, they are desirous of directing Council’s attention to the earthworks on the neighbouring property in the event of future flooding”.*

The letter was received and noted.

On 21 July 2010 Council received a second letter of complaint regarding the lawfulness of works that had been undertaken at Lot 12 DP810164 in September 2009.

The second letter specifically states:

*“GPS survey data obtained by Tweed Shire Council during the course of Council’s inspection of our clients and neighbouring properties on 27 May 2010...clearly discloses significant fill activities by the owners in what appears to be the absence of Council’s consent.*

*In light of the above, and the potential increased risk of our clients being adversely affected by the above activities during a flood event, we are instructed our clients now wish to formalise their complaint to Council in relation to the filling activities on the adjoining property”.*

The GPS data referred to above was in regard to a related compliance matter in association with an equestrian pad at Tomewin Road, Dungay (Council File PF5510/1295).

In May 2010 a site visit of the equestrian pad was conducted by Council’s Coordinator Development Assessment, Council’s Planning & Infrastructure Engineer, and Council’s Surveyor. Photos and GPS data of the equestrian pad were taken.

Following this Council staff then met on site with the complainants (one of which is the landowner of the subject Lot 12 in DP 810/164) and took further GPS data of adjoining property levels and photos of any adjoining matter pointed out by the then complainants.

In that associated compliance matter Council resolved on 20 July 2010 that:

1. *Council advises the owners of the subject site that a review of the completed equestrian pad has revealed a fill height of greater than that previously considered by Council and that accordingly the owners are requested to lodge a*

*development application for the current configuration of the fill pad (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development)*

*Failure to undertake Option 2 as detailed above (within 60 days from the date of notification) will result in council pursuing this matter legally.*

The owner of Lot 12 in DP 810164 was asked to respond to the complaint and advise Council of:

- The extent of works which were undertaken;
- When the works were undertaken;
- Who the works were done by; and
- Why or under what authority the works were undertaken.

On 3 September 2010 the owner of Lot 12 in DP810164 responded to Council's please explain letter as follows:

*"In reply to your letter dated 17 August 2010 re works on Lot 12 in DP810164 Uriup Road.*

*The works done adjacent to Dungay Creek were done over a period from 20 August 2009 till when the cane paddocks were finished being replanted on 20 September 2009 and were done to recontour and level cane paddock and headland to make drainage and harvesting of cane paddocks better.*

*The photos of excavator parked next to hill were where we battered the bank on the topline of the headland which was cut around the foot of the hill to allow for cane harvester to safely turn on levelled cane paddock headlands when cane was first planted in September 2001.*

*The topsoil heaps in photos were when we stripped the topsoil back to the subsoil to recontour low section of paddock then relax topsoil prior to planting cane.*

*All the works were done by myself and my two sons with our machines to improve water flow across centre of cane paddock to allow better drainage."*

This letter does not provide Council with the original levels of the hill or the volume of material involved in the works undertaken. Furthermore, it is unclear how much of the hill was removed in between 2000 and 2004 and what was removed in the more recent site activities in September 2009.

From a planning perspective the subject site is zoned part 1(a) Rural and part 1(b2) Agricultural Protection.

Agriculture is defined as *"includes horticulture and the use of land for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, and the growing of fruit, vegetables and the like. It does not include forestry, or the use of an animal establishment or a retail plant nursery"*

Earthworks are defined as *“the addition or removal of any solid material on, to or from land, or any other work which will substantially alter the existing ground level or character of the surface of the land”*

Agriculture is permitted without development consent while earthworks require development consent in these zones.

To assist in determining the most suitable definition Council normally uses the Planning & Infrastructure Engineer’s comments to establish whether any impact has been associated with the works.

In this instance Council’s Planning & Infrastructure Engineer has stated that:

*“The potential impact of the fill cannot be determined based on the information provided to date. Ideally in situations such as this pre and post development levels are needed, and then if the landforming changes within the floodplain are significant, a flood impact modelling exercise should be undertaken and the results provided with a DA. These requirements are very costly however, and are generally unreasonable to apply to minor agricultural works that are located clear of obvious flow paths.”*

Based on this information Council needs to determine whether Council should:

- A. Determines that the works undertaken constitute “agriculture” thus representing development permitted without consent.

OR

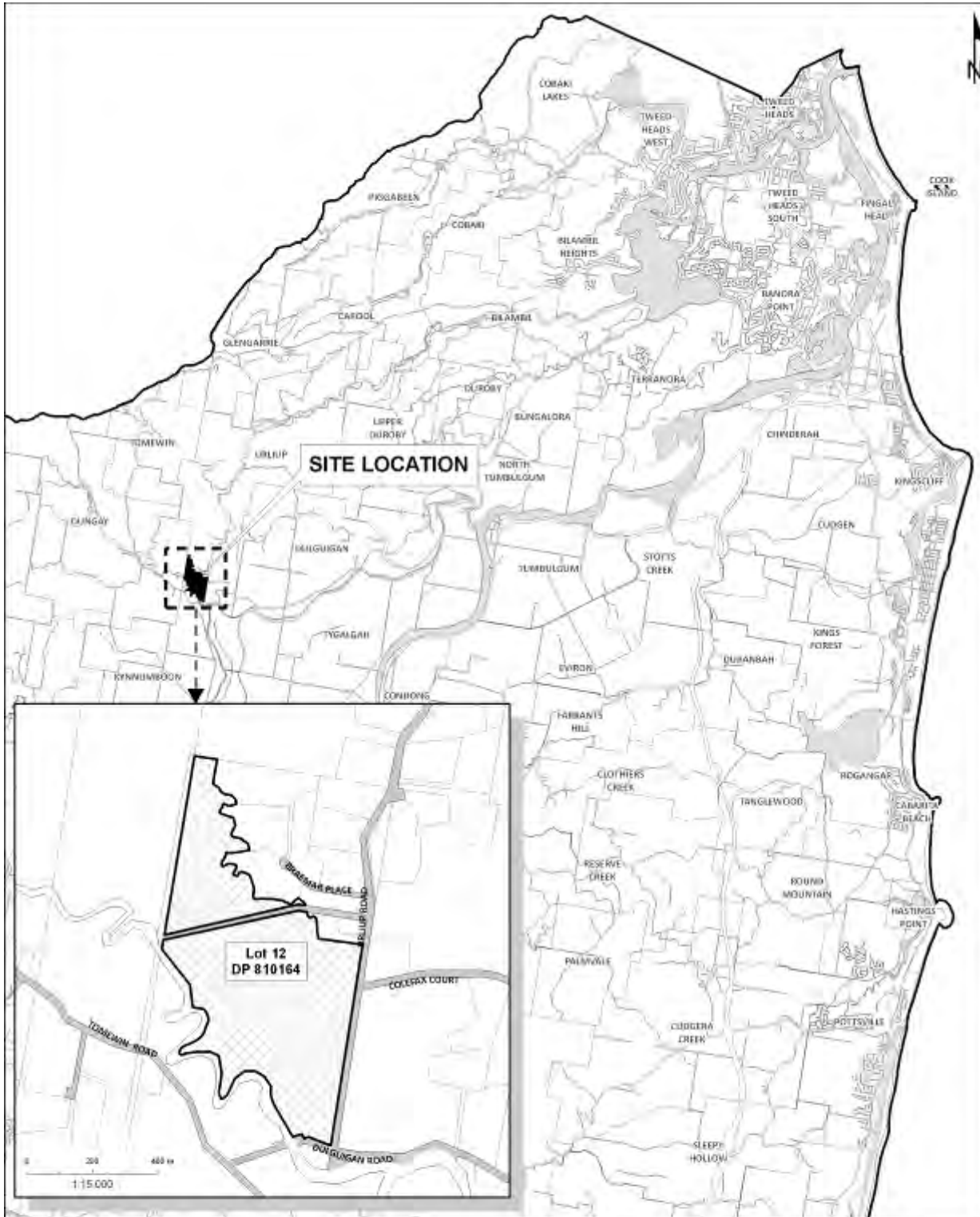
- B. Council investigates the extent of earthworks further.

OR

- C. Council advises the owners of Lot 12 in DP810164 that a development application for earthworks must be lodged with Tweed Shire Council to reflect the current level of the land as modified in September 2009 (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development).

Failure to lodge the required application (within 60 days from the date of notification) will result in Council pursuing this matter legally.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
 Lot 12 DP 810164  
 No.48 Urliup Road, Bilambil

<p><b>GDA</b></p> <p>Coordinate System: MGA Zone 55          101961 - 60434</p>	<p>Created: 26 September, 2010          © Dept. of Lands &amp;          Tweed Shire Council</p>	<p>0 1 2 3 Km</p> <p>1:125,000</p> <p>DO NOT SCALE          COPY ONLY - NOT FOR REUSE</p>	<p>Civic and Cultural Centre          5 Tweedgate Road          Murwillumbah NSW 2464          PO Box 818          Murwillumbah NSW 2464          T: (07) 6610 2400 / 1300 010 972          F: (07) 6678 2403          W: www.tweedshire.gov.au          E: planning@tweedshire.gov.au</p>	<p><b>TWEED</b> SHIRE COUNCIL</p>
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**AERIAL IMAGES SHOWING SITE OVER TIME WITH CONTOURS:**



**AERIAL PHOTO - taken September 2000**  
 Lot 12 DP 810164  
 No.48 Uriup Road, Bilambil

Filename: c:\urlup\p1000\img\img0440_0809_0.tif\as.twd Author: J.Borchert - Planning Returns Unit Date Printed: 06 September, 2010		GDA Coordinate System - MGA Zone 56 Datum - GDA 94		0 50 100 Meters 1:5,000 COPY ONLY - NOT FOR REPRODUCTION		Civic and Cultural Centre 5 Tumbalong Road Murrumbidgee NSW 2484 PO Box 810 Murrumbidgee NSW 2484 T: (02) 6678 2400 / 1388 232 372 F: (02) 6678 2403 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au	
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**AERIAL PHOTO - taken June 2004**

Lot 12 DP 810164  
No.48 Urlup Road, Bilambil

Filename: c:\pwr\planning\mso\BAP\_8&W\_SitePlan.mxd

Author: J.Borchers - Planning Reference Unit

Date Printed: 08 September, 2010

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**GDA**  Cadastre: 06 September, 2010  
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Coordinate System - WGA Zone 56  
Datum - GDA 94

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**AERIAL PHOTO - taken October 2009**

Lot 12 DP 810164  
No.48 Uriup Road, Bilambil

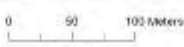
Filename: c:\aerial\planning\map\AAP\_810164\plan.mxd

Author: J. Boothman - Planning Database Unit

Date Printed: 06 September, 2010

Disclaimer: Aerial photo interpretation is never the primary of this data. Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all or any part of the data. All users of this data are advised to verify the accuracy of the data for their own purposes. This information is supplied for the purpose of public information and is not intended to be used for any other purpose. It should not be used for any other purpose, and users are encouraged to verify the accuracy of the data for their own purposes. The information contained in this document is not intended to be used for any other purpose.

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E: planning@tweed.shire.nsw.gov.au

 **TWEED**  
SHIRE COUNCIL

**GPS DATA SHOWN ON AERIAL - EARTHWORKS IN QUESTION & FILL PAD:**



**PHOTOGRAPHS:**



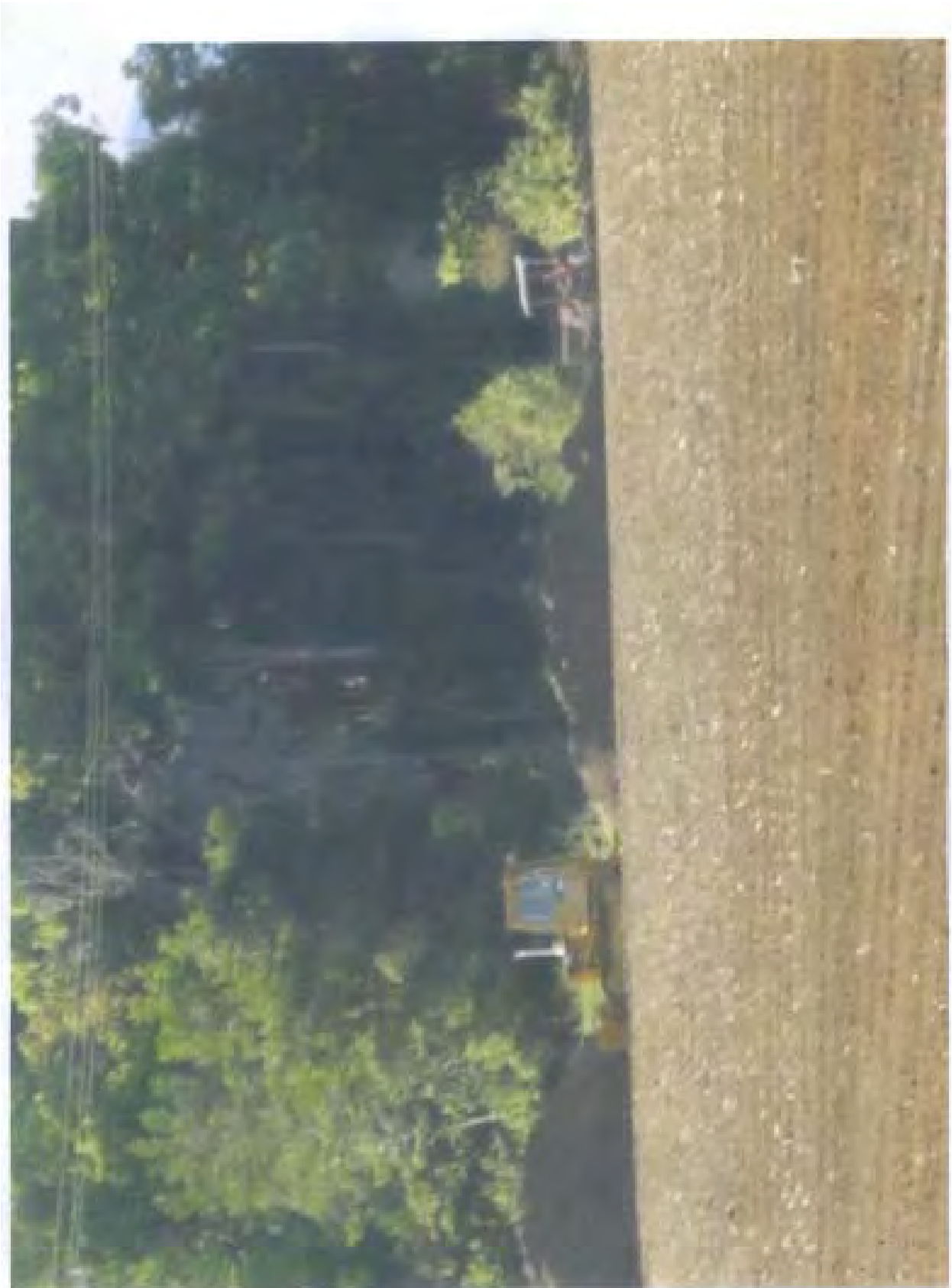




















**OPTIONS:**

- A. Council determines that the works undertaken constitute “agriculture” thus representing development permitted without consent.

OR

- B. Council investigates the extent of earthworks further.

OR

- C. Council advises the owners of Lot 12 in DP810164 that a development application for earthworks must be lodged with Tweed Shire Council to reflect the current level of the land as modified in September 2009 (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development).

Failure to lodge the required application (within 60 days from the date of notification) will result in Council pursuing this matter legally.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The owners may challenge any request for the lodgement of a Development Application and any subsequent legal action. Council would incur legal costs if this were to happen.

**POLICY IMPLICATIONS:**

Council’s position in regard to this matter could set a precedent in terms of establishing suitable levels of fill as exempt development when in association with agriculture. However, it should be noted that each case still needs to be looked at on its merits to interpret the applicable legislation for each site.

**CONCLUSION:**

Council needs to determine whether the subject complaint requires greater investigation or whether based on the information at hand Council can determine whether the works constitute agriculture or earthworks.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. **Confidential Attachment** Letter of complaint dated 11 November 2009 (ECM 21164799)
  2. **Confidential Attachment** Letter of complaint dated 21 July 2010 (ECM 21164806)
  3. Council Report on Equestrian Pad (a related compliance matter) from 20 July 2010 (ECM 21165855)
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**18 [PR-CM] Planning Reform Unit Project Update on Draft Tweed Local Environmental Plans, Review of Development Control Plan Section A1 (Residential and Tourist Development Code) and Hastings Point Locality Based Development Control Plan**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2000 Pt10**

**SUMMARY OF REPORT:**

This report provides a further update on the progress of the Draft Tweed Local Environmental Plan 2010 and Draft Tweed City Centres Local Environmental Plan 2009, following the earlier report to the Council Meeting of 20 July 2010. In addition, a progress report of the review of the Tweed Development Control Plan, Section A1 – Residential and Tourist Code, and the Draft Hastings Point Locality Based DCP is also provided.

The officers' report to the July Council Meeting on the Draft LEPs anticipated that further advice would be received from the Department of Planning (DOP) which would inform this report in providing Council with a broader context of the comprehensive review, particularly relating to the DOP's response to issues raised about the 'standard instrument' and the difficulties relating to its implementation.

The DOP is still working through the many technical issues in adapting the LEP template to local areas, particularly those raised by regional councils, and as such, has yet to provide a comprehensive response to Tweed Council. Consequently, there remains a degree of uncertainty about the resolution of key policy conflicts such as those relating to environmental protection and rural lands, as well as the more specific LEP drafting anomalies identified by Tweed Council. Preliminary indications are that the DOP will be making significant amendments to the standard-instrument in early 2011 following the public exhibition and apparent high level of acceptance of their recently exhibited *potential amendments*, consultation draft – March 2010.

The adoption of the potential amendments and recent release of additional 'local' clauses will have a substantial bearing on the drafting of the Shire-wide DLEP in particular.

In the interim, Council officers will continue to seek formal feedback from the DOP on the issues raised by Council and the community, and Council will be kept informed of any emerging progress.

The Draft Tweed City Centres LEP 2009 poses significantly less technical challenges relating to the standard-instrument and consequently steady progress is being made with the redrafting amendments following its public exhibition. It is expected that a further report on the LEP will be prepared for the Council Meeting of 16 November 2010 for the endorsement of a further public exhibition.

The report concludes that the Planning Reform projects are progressing relatively well, with the primary goal of securing positive community outcomes.

**RECOMMENDATION:**

**That the report on Planning Reform Unit Project Update on Draft Tweed Local Environmental Plans, Review of Development Control Plan Section A1 (Residential and Tourist Development Code) and Hastings Point Locality Based Development Control Plan be received and noted.**



**REPORT:**

**DRAFT TWEED LOCAL ENVIRONMENTAL PLAN 2010**

The submission review for the draft Shire-wide Plan comprises about 450 public submissions of varying technicality and issues. The assessment is being undertaken in parallel with the management of the Unit's other priority projects and is progressing steadily. Based on the breadth of issues and the need for staff within other Divisions of the Council to also undertake assessment on specific issues or groups of issues, it is expected that the review of submissions, sufficient to distil all issues requiring further investigation or amendment to the Plan, will not be finalised prior to November.

Following the completion of the review and subject to a response from the Department of Planning (DOP) on the issues raised, relating to the standard-instrument template, an amended draft LEP will be drafted and reported to Council for endorsement to re-exhibit.

The DOP's target deadline for the gazettal of the Shire-wide Plan is June 2011. It is expected that an amended draft Plan will be reported to the Council Meeting in early 2011 however, this is subject to the DOP either making or permitting necessary amendments to the standard-instrument either by amending legislation or through the inclusion of additional local clauses.

**DRAFT TWEED CITY CENTRES PLAN 2009**

The boundary area defining the extent of application of this Plan is quite limited and fundamentally comprises the more heavily urbanised and least environmentally constrained areas of the Tweed. Consequently the challenges presented with the implementation of the standard-instrument on a Shire-wide basis have not by comparison dominated the issues or presented any insurmountable technical challenges with the drafting of the City Centres LEP.

Council officers are working collaboratively with the DOP to progress the LEP ahead of the Shire-wide LEP, with the view to a potential gazettal by early 2011.

About 55 submissions were received against the City Centres LEP, with the preliminary review of submissions having been completed, what remains is a final drafting of the issues responses and the redrafting of the LEP and DCP to reflect the necessary amendments.

Subject to the DOP finalising a satisfactory resolution in the amendment of the airport/aircraft operational clauses it is expected that the draft LEP will be reported to the Council Meeting of November for Council's endorsement to re-exhibit the draft LEP and DCP.

**TWEED DEVELOPMENT CONTROL PLAN – SECTION A1 - RESIDENTIAL AND TOURIST DEVELOPMENT CODE**

A review of Section A1 (Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools, Tennis Courts)) of the Tweed Development Control Plan 2008 was commenced in May 2010 to coincide with the two year period of its operation. This was seen to be an appropriate time-frame within which to review the effectiveness of the Plan because of the significant and rigorous 'testing' resulting

from the significant number of development applications lodged in particular between June 2008-2009, resulting from Tweed sustained high level of growth.

The implementation and application of the Plan to date has generally delivered much improved urban design, environmental and site planning outcomes in the relevant Part A developments, notwithstanding some early transitional hurdles that arose in-part because of the fundamental and significant change in the DCP format and coverage comparative to its predecessor. As was expected, there were teething issues that would prove to be manageable as well as other issues that would require a reactive and adaptive management response because of their sustained character. It is this latter class of issues that have necessitated a review, and includes:

- cut & fill
- deep soil zones
- development within the building line
- FSR and site cover

Although staff have applied adaptive and pragmatic measures in dealing with the early implementation issues, general feedback from the development industry and other users of the DCP have highlighted some key areas for improvement and clarification, for which the review should ultimately increase the effectiveness of the DCP, and provide greater certainty, consistency and confidence for Council's decision making..

The Planning Reform Unit established an internal working group comprising of staff from Council's engineering, building and planning Unit's, which have been successful in the identification of the issues from an operational perspective.

The next stage of the review process is the engagement of the community and key stakeholders, which has commenced with the first of several meetings having been held with the Housing Industry Association (HIA). A discussion paper highlighting the main areas for improved controls is being finalised with the view to future public release and promotion through the Tweed Link. An initial breakfast forum is also being planned for late September, for which key development, business and community group representatives will be invited. The Forum will provide an opportunity for Council staff to provide an overview of the Review process, and to seek feedback from external users of the DCP document on the key concerns and areas for improvement. Further consultation events will take place throughout the Review process.

The process of issues identification and workshopping of options and solutions is expected to take several months, with an expected completion and, subject to Council endorsement, general public exhibition of a draft Plan in early 2011.

It is also intended to seek the input and feedback of Councillors at key points of the Review process.

## **TWEED DEVELOPMENT CONTROL PLAN – SECTION B23 -HASTINGS POINT LOCALITY BASED DEVELOPMENT CODE**

The draft Hastings Point locality based planning project was commenced with Council's consultant, Ruker and Associates, in May 2009, with a draft Plan having been publicly exhibited between 28 April and 2 July 2009. There were about 112 submissions received and which are currently being reviewed by Council's project officer and the consultant.

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The level of community engagement in the project has been high, with several workshops run from inception through to public exhibition covering all stages of the project development and drafting, and the community participation per capita for the areas has been extraordinary. It has highlighted the significance and importance of the 'place' characterisation of Hastings Point to the local community and their strong desire to retain its unique small coastal settlement composition and character. As expected there are a divergence of views and issues that raise tensions between "the right to develop" and "the right to preserve" the existing environment. Consequently the level of input and assessment by Council officers and the consultant in developing a balanced outcome has resulted in the project running beyond the allocated schedule.

It is expected that the consultant will finalise a draft Plan, with amendments, to allow for the Plan to be reported to the October Council Meeting.

### **CONCLUSION:**

An important part of the Planning Reform Work Program is to ensure that each new policy project is accompanied by effective and meaningful community engagement. Whilst adding to some of the projected timelines, this approach adds to the integrity and outcomes of each project.

As highlighted in this report, each of the major policy projects are progressing relatively well, albeit with certain external constraints.

Council officers will continue to liaise closely with the DOP and keep Council informed on the progress of its major Draft LEPs. Further, significant advances on the local planning projects for the review of Section A1 (Part A) of the Tweed DCP 2008, and the Draft Hastings Point Locality Based DCP are expected in the later part of 2010, and early part of 2011.

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

Nil.

### **POLICY IMPLICATIONS:**

Nil.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**19 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning and 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 August 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, no Development Applications have been supported where a variation in standards under SEPP1 has occurred.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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## REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

### 20 [CNR-CM] Update of Coastal Hazard Lines

#### ORIGIN:

Natural Resource Management

#### SUMMARY OF REPORT:

This report provides an up-date on the status of the revised coastal hazard definition lines and the facilitating Development Control Plan ("the DCP"), which is being prepared by Council consultant (GHD Pty Ltd).

In accordance with the NSW Government's Coastline Management Manual, Council adopted the Tweed Coastal Hazard Study, developed by WBM Oceanics in 2001. Hazard lines were defined for present day (2000) and 2050 and 2100 scenarios. This 2001 study used sea level rise (SLR) projections (relative to 1990) of 0.2m for 2050 and 0.5m for 2100, based on mid-range Intergovernmental Panel on Climate Change (IPCC) estimates from the 1996 working group report.

The NSW Government released the Sea Level Rise Policy Statement in 2009 which specifies SLR planning benchmarks of an increase above 1990 mean sea levels of 0.4m by 2050 and 0.9m by 2100, and in accordance with that statement Council commissioned the Water Research Laboratory (WRL) to update the 2001 Tweed hazard lines.

The updated Tweed coastal erosion hazard definition lines have been finalised and are recommended for adoption. However, the update necessitates the completion of the DCP as the policy mechanism for the full 'implementation' of the revised lines.

The NSW Department of Planning also released the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise* in August 2010. This Guideline adopts the above benchmarks and specifies how these are to be used to develop coastal erosion risk areas for strategic and statutory land-use planning.

WRL have provided a technical report on the methodology used in preparing the updated hazard lines, which will be used to guide the drafting of the DCP as well as, other Council's land-use and asset planning policies into the future

The report concludes that it is necessary to adopt the updated hazard lines but to defer the full implementation to the new DCP, which will provide a new suit of development controls and guidelines for managing the development of affected lands.

As an interim measure it is recommended that any new development received after the adoption date of the WRL Study which is affected by the updated hazard lines be assessed generally in accordance with the provisions of the current *Tweed Shire Coastline Management Plan* (June 2005).

It is also considered important that members of the public and property owners be made aware of these latest hazard line updates through notice in the Tweed Link, information made available on Council's web site, and through updated Section 149 Certificates.

**RECOMMENDATION:**

**That Council endorses the following:**

- 1. Adoption of the updated Tweed Coastal Hazard Lines for 2050 and 2100 finalised by the Water Research Laboratory in August 2010 for the purposes of coastal risk management within its strategic and statutory land-use planning, in areas susceptible to coastal erosion.**
- 2. The updated Tweed Coastline Hazard Lines for 2050 and 2100 take full operational effect by way of implementation in a new Section of the Tweed Development Control Plan.**
- 3. In the interim period between the adoption of the Tweed Coastline Hazard Lines for 2050 and 2100 and the adoption of the Tweed Development Control Plan - Tweed Coastline Hazard DCP, a development application lodged after 21 September 2010 shall be subject to the assessment of the provisions of Council's currently adopted *Tweed Shire Coastline Management Plan* (June 2005).**
- 4. Members of the public and property owners be made aware of these latest hazard line updates through notice in the Tweed Link, information made available on Council's web site, and through updated Section 149 Certificates.**



## REPORT:

### BACKGROUND – COASTAL EROSION HAZARD LINES

The Tweed Shire Coastline Hazard lines were developed by WBM in 2001 based on contemporary coastal engineering techniques. The WBM Study was based on photogrammetry gathered between 1945 and 1999. Hazard lines were defined for present day (2000) and 2050 and 2100 scenarios. This 2001 Study used sea level rise (SLR) projections (relative to 1990) of 0.2m for 2050 and 0.5m for 2100, based on mid-range Intergovernmental Panel on Climate Change (IPCC) estimates from the 1996 working group report.

In October 2009, the NSW Government released the Sea Level Rise Policy Statement. Based on the IPCC 2007 report this policy statement recommends the following allowances for coastal planning:

- 2050 up to 0.4m
- 2100 up to 0.9m

This policy necessitated the update of the WBM hazard lines, which was undertaken by The University of New South Wales Water Research Laboratory (WRL).

With the exception of the revised SLR values, all other assumptions used previously by WBM were adopted in this review of the hazard lines.

There are five key components of coastal setback defined by WRL in studies of this type, namely:

- S1: Allowance for short term storm erosion - erosion due to an oceanic storm or series of storms.
- S2: Allowance for ongoing underlying recession - long term trend in the beach planform, which may be receding or accreting, generally expressed in terms of m/year.
- S3: Allowance for recession due to future SLR - projection of future shoreline recession due to a rise in mean sea level, usually calculated with the Bruun Rule.
- S4: Allowance for dune stability (*zone of reduced foundation capacity - ZRFC*) - encompasses an additional setback component relating to the geotechnical stability of dunes.
- S5: Allowance for beach rotation - involves either a cyclic or one way change in the alignment of a beach's planform due to changes in the wave direction over medium (weeks to months) to long (decades) term time scales.

For the purposes of this study only components S1 to S3 were incorporated into the hazard line, with S4 presented separately, and S5 not considered as beach rotation is not quantifiable with the data presently available.

The total design setback (S) for three planning horizons comprises:

Present day S = S1

2050 S = S1 + S2 + S3

2100 S = S1 + S2 + S3

The S4 component needs to be added to the above for unpiled buildings.

The new hazard lines are to be used to determine the coastal erosion risk in accordance with the *NSW Coastal Planning Guideline; Adapting to Sea Level Rise*, released by the NSW Department of Planning in August, 2010.

A Coastal Hazard Development Control Plan is currently being developed by GHD for Council to address the impact of coastal erosion risk on coastal properties and ways to mitigate and minimise this risk.

The following figures demonstrate the changes to the long-term coastal erosion hazard lines due to coastal recession and SLR in sections of the Tweed coastline where private property is adjacent to the coastline. These lines are indicative only - further detail will be required to determine the location of each line upon individual properties.

- **Figures**

- **2001 Hazard Line Legend**

- Coastal Erosion Hazard
- — 100 Best
- - - 100 Max
- ···· 100 Min
- — 50 Best
- - - 50 Max
- ···· 50 Min
- — Imhazard
- — Scarp

- **Figures**

- **2010 Hazard Line Legend**
- **Green Line** Immediate Hazard
- **Blue Line** 2050 Hazard Line
- **Red Line** 2100 Hazard Line
- 



- Figure 1: Fingal Head 2001 Hazard Lines

- Figure 2: Fingal Head 2010 Hazard Lines





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- Figure 3: Murphys Rd Kingscliff 2001 Hazard Lines



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- Figure 4: Murphys Rd Kingscliff 2010 Hazard Lines



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- Figure 5: Cabarita 2001 Hazard Lines
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- Figure 6: Cabarita 2010 Hazard Lines
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- Figure 7: Casuarina 2001 Hazard Lines
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- Figure 8: Casuarina 2010 Hazard Lines





• Figure 9: Hastings Point 2001 Hazard Lines



• Figure 10: Hastings Point 2010 Hazard Lines

### DRAFT DEVELOPMENT CONTROL PLAN - TWEED COASTLINE HAZARD DCP

Tweed Council resolved as part of the implementation of the *Tweed Shire Coastline Management Plan* (June 2005) to prepare a DCP to address development within erosion hazard zones as delineated by the Tweed coastal hazard definition lines. The review of the hazard lines to update these for NSW Government benchmarks for SLR was completed in August 2010 by The University of New South Wales Water Research Laboratory (WRL) and updated hazard lines finalised for adoption.

GHD (Ballina Office) was appointed as Council's consultant for preparing the draft DCP in August 2010, and preliminary meetings and site inspections have commenced with the council officers.

The DCP is particularly important as it provides the development controls and guidelines for the development and risk management of land susceptible to coastal erosion. Without a clear set of new provisions the implementation of the updated hazard lines will be difficult to manage and will provide little certainty for landowners and asset managers on the long-term use and risk associated of affected land.

The drafting of the DCP will require extensive consultation both with the Councillors, the general public but, in particular the affected landowners. It is expected that workshops will be organised with the respective interest groups during various stages of the DCP drafting, which is scheduled to be finalised in November 2010.

Council officers will continue to liaise closely with the community and keep Council informed on the progress of the Draft DCP.

### CONCLUSION:

The review of the Tweed's hazard definition lines are based on the most current and widely accepted climate forecast data available and as endorsed by the NSW State Government.

The remodelling provides greater certainty to private property owners and other land and asset managers along the Tweed coast upon which decisions about the future use of the land can be made.

The Tweed's hazard lines are an invaluable risk management tool and will provide direction in future land-use planning policy decisions, with the long-term aim of reducing loss of property and or life owing to predicted coastal erosion processes.

It is recommended that the updated Tweed hazard lines be adopted and that it is the broader community's and other land-managers interest to do so. However, the implementation needs to be underpinned with a comprehensive suit of new development controls and guidelines, which will be provided through the new DCP.

To achieve the above aims it will be necessary to adopt the updated hazard lines and defer their implementation to the new DCP. In the meantime, Council has a duty of care to ensure that the new information (updated Tweed hazard lines) is taken into account in the assessment of any development application on affected land. This duty will arise irrespective of whether Council adopts the updated lines or otherwise.

To ensure that that duty is fulfilled it is recommended that any development application **lodged after the proposed adoption of the updated hazard lines(21 September 2010) shall be subject to the assessment of the provisions of Council's currently adopted Tweed Shire Coastline Management Plan (June 2005).**

It is also considered important that members of the public and property owners be made aware of these latest hazard line updates through notice in the Tweed Link, information made available on Council's web site, and through updated Section 149 Certificates.

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

Legal implications may ensue from any future development affected by coastal erosion where assessment of the adequacy of the structural engineering suitability of the development relative to the predicted impact of coastal erosion has not been taken into account. The financial implication of any successful litigation would be significant.

#### **POLICY IMPLICATIONS:**

Council needs to develop a policy and Development Control Plan to address the management of coastal erosion risks to private and public property in accordance with NSW Government Policy and Guidelines.

#### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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. *Update of Tweed Shire Coastal Hazard Lines, Technical Report 2010/11, August 2010. The University Water Research (ECM 20370767)*
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**21 [CNR-CM] Tender Report -Panel of Providers for Bush Regeneration and Ecological Planning**

**ORIGIN:**

**Natural Resource Management**

**SUMMARY OF REPORT:**

This report outlines the 2010 tender for the panel of providers for Regeneration / Restoration of Natural Areas and Ecological Planning and Assessment with a two year validity to Council. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation, Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the recommended tenders, including twelve applicants under the regeneration category and eight under ecological planning categories.

**ATTACHMENTS A and B** are **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

During its debate on this item at the Meeting, the Council/Committee may decide, by resolution to discuss the confidential information in closed confidential committee. Before doing so, the committee will determine if members of the public will be allowed to make verbal representations as to whether that part of the meeting should be closed.

**RECOMMENDATION:**

**That:**

**1. The following tenders for EQ2010-047 - Panel of Providers for Bush regeneration and Ecological Planning be accepted for inclusion in Council's Panel of Providers for:**

- (i) Regeneration/Restoration of Council Managed Natural Areas; and**
- (ii) Ecological Planning and Assessment.**

<b>Regeneration of Natural Areas</b>	<b>Ecological Planning</b>
Environmental Training & Employment Inc.	Environmental Training & Employment Inc.
Bushland Restoration Services	Bushland Restoration Services
Ecosure	Landmark
Gecko Regen	Ecosure
Technigro	GHD
Eddie Roberts	Australian Wetlands

Forest Restorations  
Madhima Gulgan  
Austspray  
Virida Sylvis  
Activeco  
Bowerbird

Parsons Brinkerhoff  
Biolink

2. The ATTACHMENTS A & B be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.



**REPORT:****Background**

Council Tender EQ 2010 - 047 invited responses for the provision of:-

Registration of Interest - Panel of Providers for (i) Regeneration / Restoration of Council Managed Natural Areas and, (ii) Ecological Planning and Assessment

The following selection criteria and weightings were determined prior to the issuing of the Tender:

No	Criteria	Weighting
1	Tendered rates	30%
2	Capability	20%
3	Quality and Safety Systems	10%
4	Experience of Contractor	20%
5	Skills of contractors staff	20%

**Tenders Received**

A total of 35 responses were received and evaluated for tender EQ 2010 -047

1	Environmental Training and Employment
2	Bushland Restoration Services
3	Landmark
4	Landpartners
5	Ecosure
6	Australian Wetlands
7	Activeco
8	Gecko Regen
9	Austspray Environmental Weed Control
10	Boyds Bay Environmental Services
11	Blackwood Ecological Services
12	BioLink Ecological Consultants
13	Eddie Roberts
14	Bowerbird
15	Bushcare Services
16	Cardno SPLAT
17	Forest Restorations
18	Chenowith EPLA
19	Frequency of the Forest
20	Greenloading Biostudies
21	Technigro
22	Habitat Environment management
23	Heggies Bush Regen Service
24	Geolink
25	Logic Environmental
26	GHD
27	Parsons Brinkeroff Australia Pty Ltd

28	Madhima Gulgan Community Association
29	Melaleuca Group Pty Ltd
30	Natura Consulting
31	Pitta Ecological Services
32	Planit Consulting
33	SMEC Australia
34	Virida Sylvis
35	Lantana Man

### Tender Evaluation

The Tender Evaluation was conducted by Council's Tender Panel, consisting of the Biodiversity Program Leader, Waterways Program Leader, Bush Futures Project Coordinator and Sustainable Agriculture Project Officer. A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

The following table shows the preferred Tenderers in each of the categories. The assessment process was undertaken separately for each category. Some firms only expressed an interest in providing one category of service, while others expressed an interest in providing both.

Regeneration of Natural Areas	Ecological Planning
Environmental Training & Employment Inc.	Environmental Training & Employment Inc.
Bushland Restoration Services	Bushland Restoration Services
Ecosure	Landmark
Gecko Regen	Ecosure
Technigro	GHD
Eddie Roberts	Australian Wetlands
Forest Restorations	Parsons Brinkerhoff
Madhima Gulgan	Biolink
Austspray	
Virida Sylvis	
Activeco	
Bowerbird	

Based on a combination of price, capability, experience, skills and a demonstrated level of quality and safety compliance, it is recommended that firms listed above be appointed to a panel of providers for the provision of services for (i) Regeneration / Restoration of Council Managed Natural Areas and, (ii) Ecological Planning and Assessment.

The accepted firms on the Panel of Providers will be selected for projects/contracts based on the specific skills and expertise of that contractor, including consideration of current staffing levels, previous site experience, track record, specialist skills and work rates.

As much as practicable, service engagements will be distributed across the firms listed on the Panel of Providers following consideration of the above.

Details of each firm's relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT B** which was endorsed by the Evaluation Committee.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Funding is allocated for individual projects as required.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. **Confidential Attachment A** - Panel Assessments (ECM 20863338)
  2. **Confidential Attachment B** - Combined Final Assessment (ECM 20863392)
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**22 [CNR-CM] Kingscliff Community Playgroup**

**ORIGIN:**

**Community and Cultural Services**

**SUMMARY OF REPORT:**

Council at its meeting held 18 May 2010 considered a request from the Kingscliff Community Playgroup for a reduction in the scheduled fee and the construction of a fence to act as a barrier and resolved to defer the item to the next meeting of Council to allow a meeting with the Playgroup.

**RECOMMENDATION:**

**That Council notes that the Kingscliff Community Playgroup withdraws its request for usage of the Kingscliff Amenities Hall.**

**REPORT:**

Council at its meeting held 18 May 2010 considered a request from the Kingscliff Community Playgroup for a reduction in the scheduled fee and the construction of a fence to act as a barrier and resolved to defer the item to the next meeting of Council to allow a meeting with the Playgroup. Council is in receipt of correspondence from Ms Bradshaw informing Council that the "Executive Committee of the Kingscliff Community Playgroup has decided to suspend the pursuit of the hire of the Kingscliff Amenities Hall until the completion the pending refurbishments". Ms Bradshaw further notes that the timing of the refurbishments is 18 months and that they will be in contact shortly thereafter.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**23 [CNR-CM] The Men's Shed - Bray Park Water Treatment Plant**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

Council has received a request to lease a shed at the Bray Park Water Treatment Plant that is no longer used by Council to a group called the "Men's Shed".

The Men's Shed is a group of local men who intend to create a meeting place and workshop for men in the local community to pass on skills, information relating to health and well being.

**RECOMMENDATION:**

**That:**

- 1. Council approves entering into a lease with the Murwillumbah Men's Shed group for the decommissioned fluoride shed at the Bray Park Water Treatment Plant at Durroon Avenue, Bray Park being part of Lot 1 in DP 445752 for four terms of five years at a "peppercorn rent" (\$1.00) subject to the Men's Shed group:
  - (a) obtaining appropriate funding.**
  - (b) obtaining development consent for the proposed activities of the Men's Shed at the premises.****
- 2. All documentation be executed under the Common Seal of Council.**

**REPORT:**

Council has received a request to lease a shed at the Bray Park Water Treatment Plant that is no longer used by Council to a group called the "Men's Shed".

The Men's Shed is a group of local men who intend to create a meeting place and workshop for men in the local community to pass on skills, information relating to health and well being.

The Men's Shed comes within the auspices of Men's Sheds Australia, an incorporated not for profit Australian Public Company established to assist in the creation of and support for Men's Shed groups in local communities.

Men's Sheds Australia's purpose is *"to create an innovative approach to men's sheds development and help build sustainable men's shed that are valuable assets for the communities they serve...Men's Sheds Australia role is to support the people who make things happen and to encourage broad-thinking and innovation."*

The Men's Sheds Australia information web site notes that Men's Shed groups provide a *"unique and practical way of addressing men's health issues and it is a way of capturing existing skills in a community; a way of supporting projects that might be marginal, or outside the normal scope of other community groups, or businesses, or that lack practical skills"*

A local group of men approached Council seeking appropriate premises to create a workshop and meeting place, and the old fluoride shed, which Council will decommission, will satisfactorily meet the Men's Shed requirements.

Council has undertaken to meet the costs of decommissioning the shed and to remove such infrastructure to meet occupational health and safety requirements to enable the Men's Group to utilise the building.

All costs to obtain development consent and to fit out the building for the approved use will be borne by the Men's Shed group.

The local group is currently seeking funding to establish the local Men's Shed in Murwillumbah, and need to secure premises as part of the funding application process. The proposed activity will provide a benefit to the Murwillumbah community and Council can support the proposal by providing premises at a peppercorn rent.

It is recommended that Council approve the leasing of the decommissioned shed at the Bray Park Water Treatment Plant for four terms of five years, making a total of twenty years at a peppercorn rent, subject to the Murwillumbah Men's Shed group obtaining:

1. Appropriate funding.
2. Development consent for the proposed activities of the Men's Shed group at the premises.

The area to be leased is a part of Lot 1 in DP 445752, which is operational land, so there are no statutory constraints in leasing the area.

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The plan below shows the area to be leased outlined, it will be fenced off from the treatment plant and will not interfere with the operation of the plant:



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Legal and financial implications are contained in the body of the report.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**24 [CNR-CM] 2010/2011 Fees & Charges - Stotts Creek Resource Recovery Centre (Clean Fill)**

**ORIGIN:**

**Waste Management**

**SUMMARY OF REPORT:**

At its meeting of 20 July 2010, Council resolved to public exhibit the reduction to the disposal fee for clean fill for a period of 28 days. No objections or comments were received on the reduction to the fee during the exhibition period. The reduction in the disposal fee is to encourage clean fill to be disposed of at Stotts Creek Resource Recovery Centre to assist with operational needs.

Clean fill (Stotts Creek Resource Recovery Centre) \$21.

**RECOMMENDATION:**

**That the disposal fee for clean fill be adopted at \$21.00 per tonne and included in Council's Fees and Charges Register.**

**REPORT:**

At its meeting of 20 July 2010, Council resolved to public exhibit the reduction to the disposal fee for clean fill for a period of 28 days. No objections or comments were received on the reduction to the fee during the exhibition period. The reduction in the disposal fee is to encourage clean fill to be disposed of at Stotts Creek Resource Recovery Centre to assist with operational needs.

Clean fill (Stotts Creek Resource Recovery Centre) \$21.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Reduced income from Stotts Creek Resource Recovery Centre.  
Reduced operational costs from having to cart clean fill material into Stotts Creek Resource Recovery Centre.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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 THE DIRECTOR ENGINEERING AND OPERATIONS

### 25 [EO-CM] Lot 23 DP 1058759 Parish of Cudgen - Road Closure Application

#### ORIGIN:

Design

FILE NO: GR3/12/6

#### SUMMARY OF REPORT:

Council has received a notice of application from Land and Property Management Authority to close separate sections of Crown Road reserve within, south and east of Lot 23 DP 1058759 at Round Mountain. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

The road running west off Round Mountain Road has been constructed however it is utilised purely for the purposes of accessing Lot 23 DP 1058759 only, (shown as label B on the attached plan). There is no available access from this road to any other properties.

The road fully within Lot 23 DP 1058759 labelled "A" on the plan in the body of the report has no constructed formation and inaccessible to the public. It has been completely severed from any other road network and provides no usable purpose. (labelled "A" on the plan).

Council's policy on road closures notes that applications will be considered for closure where the roads are demonstrably redundant in terms of access as applies to the two sections of road noted above.

The section of road running east to west along the southern boundary of Lot 23 DP 1058759, (shown labelled as "C" on the attached plan) does not comply with Council's Policy.

It is recommended that Council does not object to the closure of the sections of Crown Road Reserve within Lot 23 DP 1058759 labelled A and B on the attached plan however does object to the closure of the section of Crown Road reserve running east to west along the southern boundary of Lot 23 DP 1058759, labelled "C" on the attached plan, at Round Mountain.

#### RECOMMENDATION:

##### That Council:

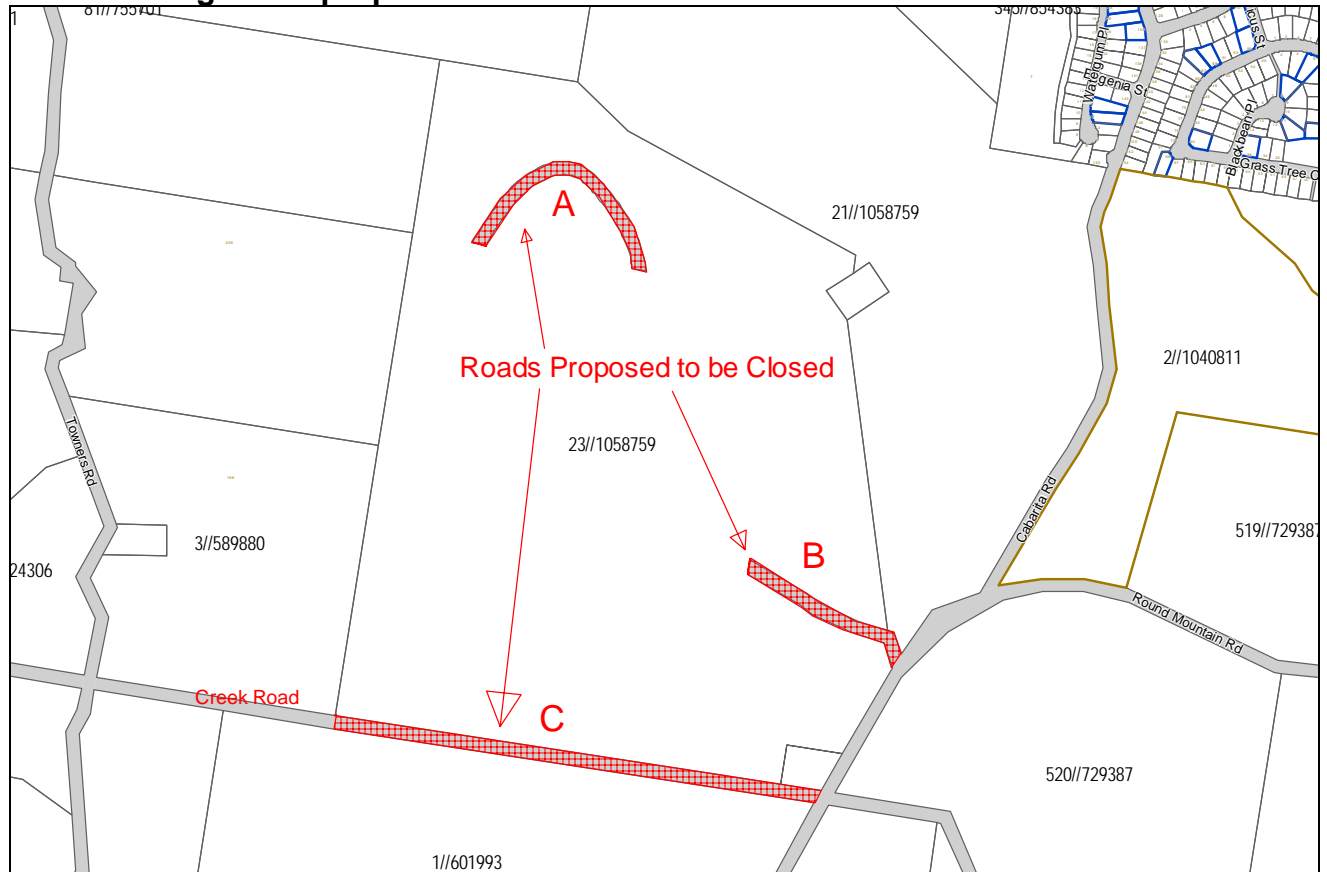
1. **Does not object to the closure of the section of Crown Road reserve running east to west along the southern boundary of Lot 23 DP 1058759 at Round Mountain.**

2. **Does object to the closure of the section of Crown Road reserve running east to west along the southern boundary of Lot 23 DP 1958759.**

**REPORT:**

Council has received a notice of application to close sections of Crown Road reserve within, south and east of Lot 23 DP 1058759 at Round Mountain from Land and Property Management Authority. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

**Plan showing roads proposed to be closed**



The road running west off Round Mountain Road (labelled "A" on the above plan) has been constructed however it is utilised purely for the purposes of accessing Lot 23 DP 1058759 only. There is no available access from this road to any other properties. This road has been noted to contain disturbed old forest, key habitat state forest and secondary habitat (Class A) Koala Habitat however the road has been cleared of vegetation for formation. It is also part of a regional fauna corridor with high ecological status and low to moderate ecological sensitivity.

The road fully within Lot 23 DP 1058759 (labelled "A" on the above plan) has no constructed formation and is inaccessible to the public. It has been completely severed from any other road network and provides no usable purpose. This road has been identified as containing protected fauna and disturbed old forest as well as key habitat state forest. The road also exists within a secondary habitat (Class A) Koala Habitat and contains a regional fauna corridor. This area has high ecological status and low ecological sensitivity. As it is only a small 'land locked' area within the larger Lot 23, closing it is not expected to adversely impact on its ecological status.

Councils policy on Road Closures notes that applications will be considered for closure where the roads are demonstrably redundant in terms of access as applies to the two sections of road noted above which is the case with the sections of road labelled "A" and "B".

The road running east to west along the southern boundary of Lot 23 is referred to as Creek Road. There is no current formation of this road reserve however it does provide a potential connection between Round Mountain Road and Towners Road should it be required. This road has been identified as containing disturbed old forest as well as key habitat state forest. The road also exists within a secondary habitat (Class A) Koala Habitat and contains a regional fauna corridor. This area has high ecological status and low ecological sensitivity.

Council's policy on Road Closures notes that roads not eligible for closure include at;

- Point 2 Roads capable of providing physical access to other roads...
- Point 3 Roads containing wildlife corridors...
- Point 5 Roads whose future highest and best use for Council is judged to be of more economic worth than the current land value.
- Point 6 Roads that could potentially be developed for vehicle, cycle, pedestrian or equestrian use...

These points relate directly to the section of road running east to west along the southern boundary of Lot 23 DP 1058759.

It is recommended that Council does not object to the closure of the sections of Crown Road Reserve within Lot 23 DP 1058759 labelled "A" and "B" on the attached plan however does object to the closure of the section of Crown Road reserve running east to west along the southern boundary of Lot 23 DP 1058759, (labelled "C" on the attached plan), at Round Mountain.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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 [EO-CM] Naming of Public Road - Chinderah

**ORIGIN:**

Design

**FILE NO:** GS5/1 Pt6

**SUMMARY OF REPORT:**

Council at its meeting of 20 July 2010 resolved to publicise its intention to name the road that runs off Wommin Bay Road to the Cudgen Leagues Club at Chinderah as "**Bradshaw Place**" and allowed one month for objections to the proposal.

No Objections were received.

It is recommended that the name "**Bradshaw Place**" be adopted for the naming purposes of the road.

**RECOMMENDATION:**

**That:**

1. Council adopts the name "*Bradshaw Place*" for naming purposes of the road that runs off Wommin Bay Road to the Cudgen Leagues Club at Chinderah; and
2. The naming of the public roads be gazetted under the provisions of the Roads (General) Regulation, 2000 and the Roads Act, 1993.

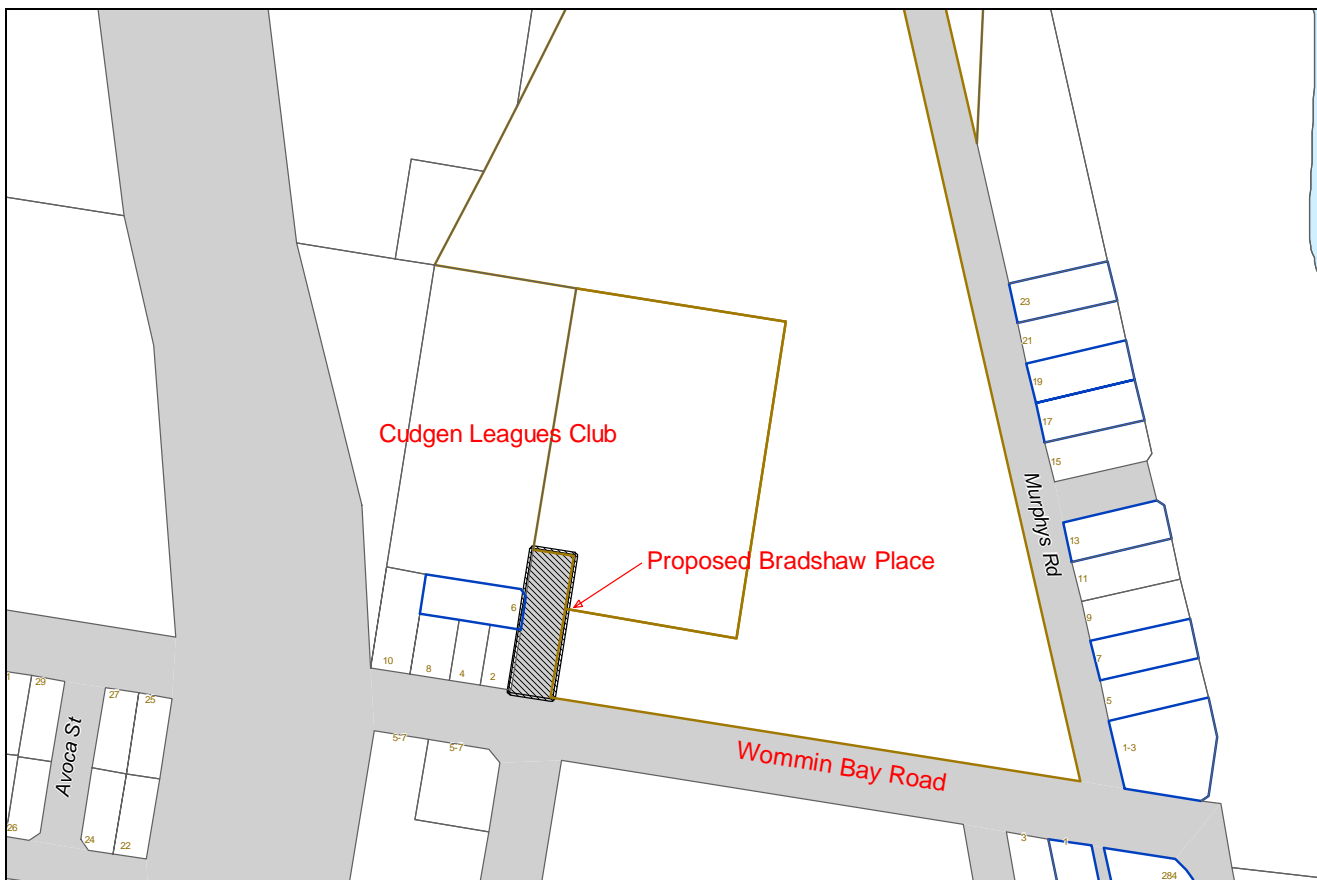
**REPORT:**

Council at its meeting of 20 July 2010 resolved to publicise its intention to name the road that runs off Wommin Bay Road to the Cudgen Leagues Club at Chinderah as “**Bradshaw Place**” and allowed one month for objections to the proposal.

No Objections were received.

It is recommended that the name “**Bradshaw Place**” be adopted for the naming purposes of the road.

The location plan is shown below for ease of reference:



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**27 [EO-CM] Lot 2 DP 1007610 Parish of Mooball - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/9**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close sections of a Crown Road reserve within Lot 2 DP 1007610 and within Lot 17 DP 811942 at Stokers Siding. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

An investigation of this section of Crown road reserve has been conducted and no Council or other infrastructure appears to exist within it.

The section of road proposed to be closed has been identified in Councils GIS system as steep and highly erodible, it contains both young forest and old disturbed forest and is fully contained within a regional fauna corridor. This area has a high to very high ecological status and low to moderate ecological sensitivity.

Topographical maps show the contours of the range through which this road passes as varying from 160m to 240m AHD, based on this and the heavily vegetated terrain it would be unlikely that Council would allow any construction over this road. Further due to the steepness and erodible nature of the immediate area it may prove unusable as a walking trail or equestrian trail regardless of the scenic escarpment available.

Council's policy on Road Closures notes that roads not eligible for closure include at;

Point 3 Roads containing wildlife corridors...

It is recommended based on Councils Policy for Road Closures and purchase that Council objects to the closure of the sections of Crown Road Reserve within Lot 2 DP 1007610 and within and south of Lot 17 DP 811942 at Stokers Siding.

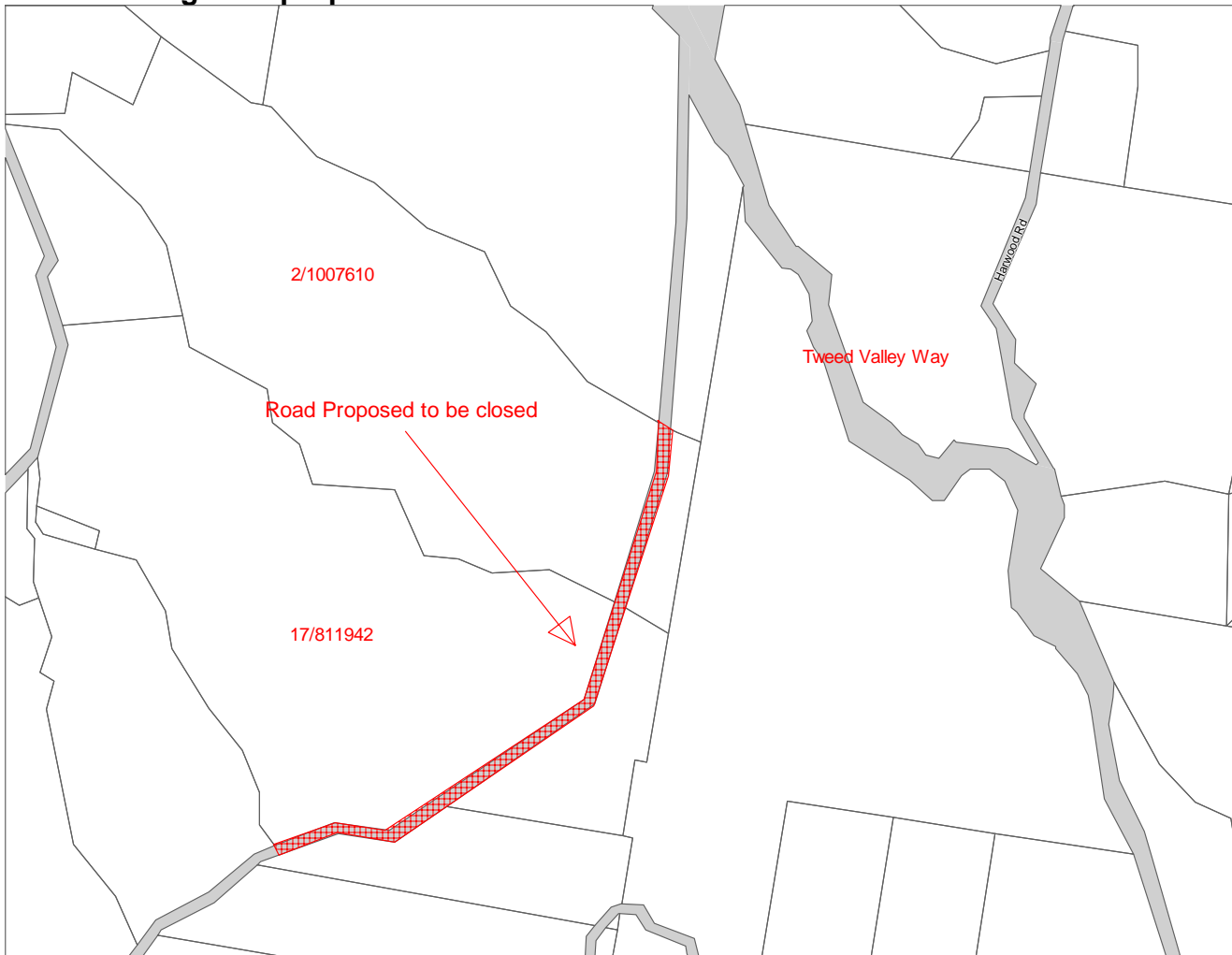
**RECOMMENDATION:**

**That Council objects to the closure of the sections of Crown Road Reserve within Lot 2 DP 1007610 and within and south of Lot 17 DP 811942 at Stokers Siding.**

**REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close sections of a Crown Road reserve within Lot 2 DP 1007610 and within Lot 17 DP 811942 at Stokers Siding. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

**Plan showing road proposed to be closed**

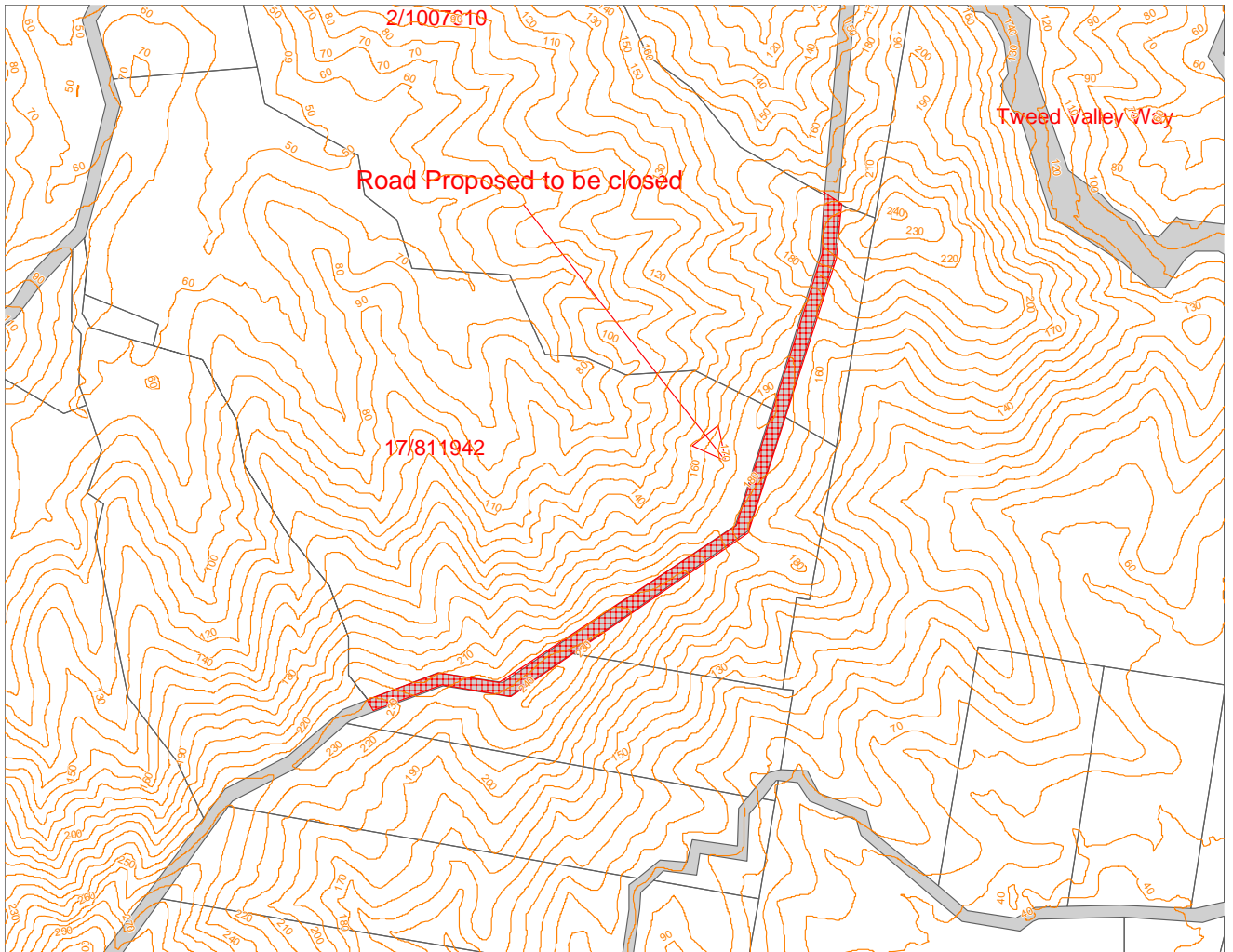


An investigation of this section of Crown road reserve has been conducted and no Council or other infrastructure appears to exist within it.

The section of road proposed to be closed has been identified in Councils GIS system as steep and highly erodible, it contains both young forest and old disturbed forest and is fully contained within a regional fauna corridor. This area has a high to very high ecological status and low to moderate ecological sensitivity.

Topographical maps show the contours of the range through which this road passes as varying from 160m to 240m AHD, based on this and the heavily vegetated terrain it would be unlikely that Council would allow any construction over this road. Further due to the steepness and erodible nature of the immediate area it may prove unusable as a walking trail or equestrian trail regardless of the scenic escarpment available.

Plan showing Topographical constraints of the area



Council's policy on Road Closures notes that roads not eligible for closure include at;

Point 3 Roads containing wildlife corridors...

It is recommended based on Councils Policy for Road Closures and purchase that Council objects to the closure of the sections of Crown Road Reserve within Lot 2 DP 1007610 and within and south of Lot 17 DP 811942 at Stokers Siding.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**28 [EO-CM] Lot 8 DP 818543 Parish of Murwillumbah - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/13**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve within Lots 7 and 8 DP 818543 at Zara. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and it appears that no Council or other infrastructure exists within it. There also seems to be no identifiable formation within the road reserve and the road does not provide access to any surrounding properties thus closure would not sever the road network.

The road is densely vegetated and contains a significant amount of disturbed mature forest as well as some disturbed old growth forest. Approximately 60% of the road reserve at the southern end of Lot 8 DP 818543 has been identified as Key Habitat State Forest and the full road reserve and surrounding area is within a regional fauna corridor.

Topographical maps show the contours of the range through which this road passes as varying from 110m to 170m AHD, based on this and the heavily vegetated terrain it would be unlikely that Council would allow any construction over this road however it may potentially be utilised as a walking trail or equestrian trail taking advantage of the scenic escarpment available.

The road and surrounds have a high ecological status and low to medium ecological sensitivity.

Council's road closure policy provides that roads containing wildlife corridors and significant flora, marketable timber and scenic escarpments are not eligible for closure.

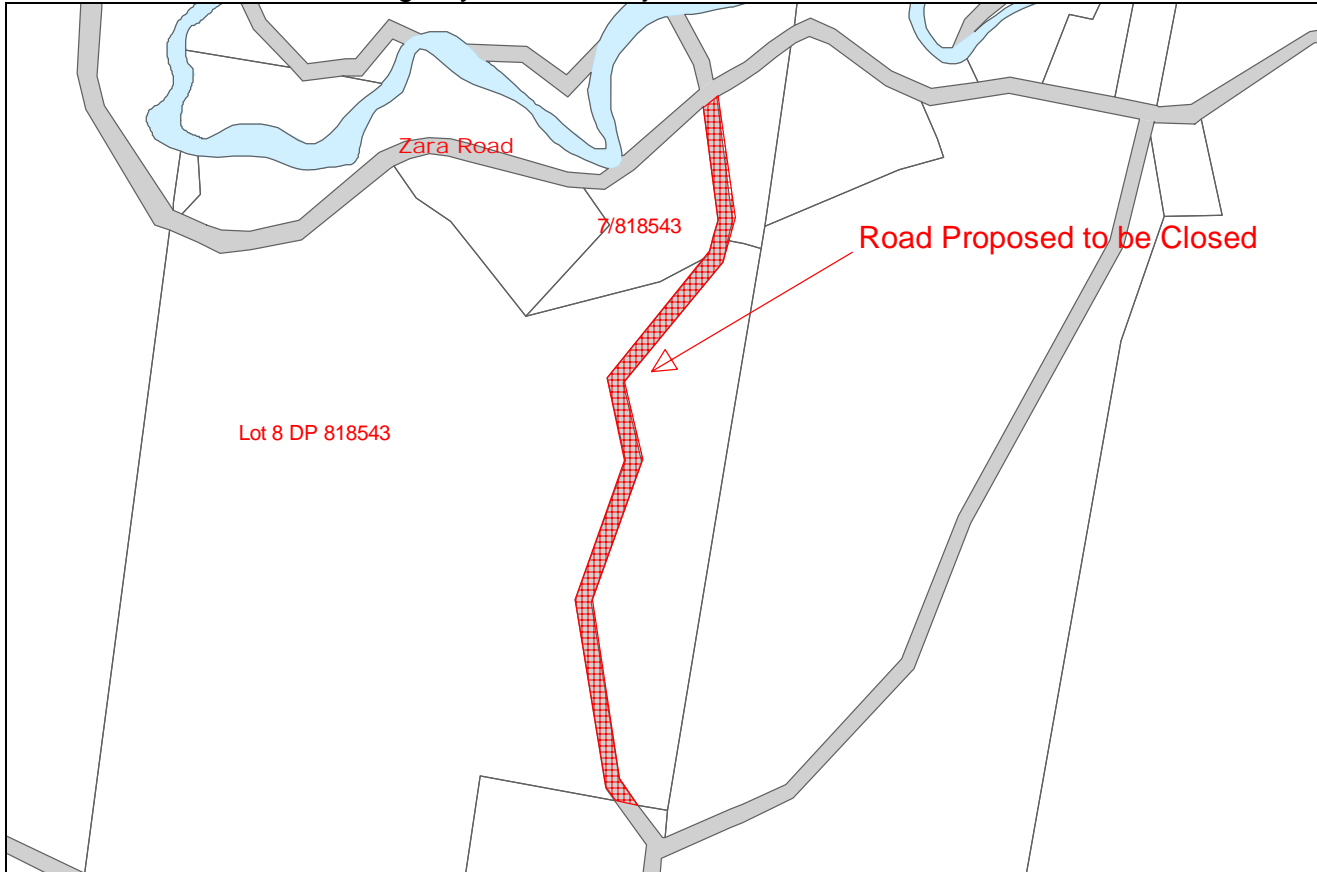
It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road within Lots 7 and 8 DP 818543 at Zara.

**RECOMMENDATION:**

**That Council objects to the closure of the Crown Road within Lots 7 and 8 DP 818543 at Zara.**

**REPORT:**

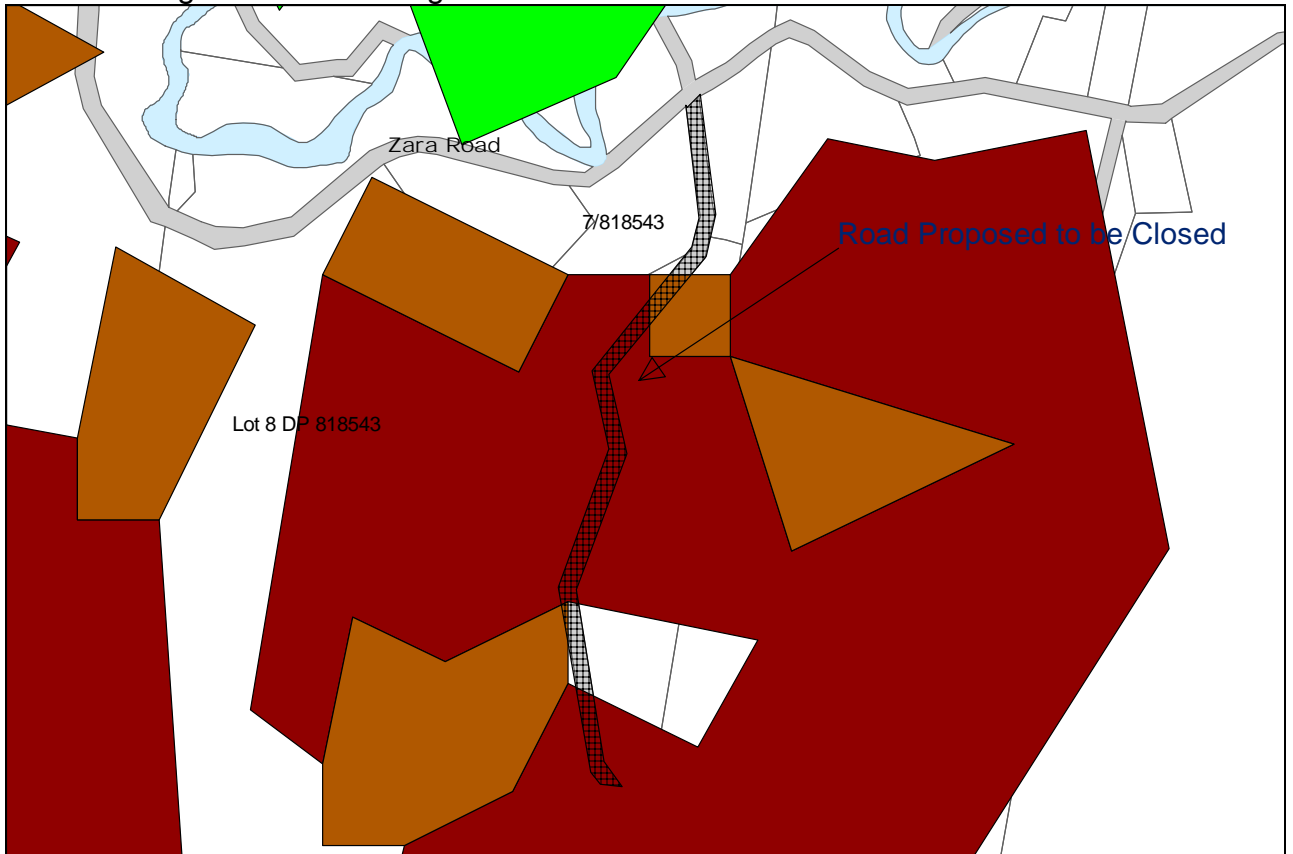
Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve within Lots 7 and 8 DP 818543 at Zara. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.



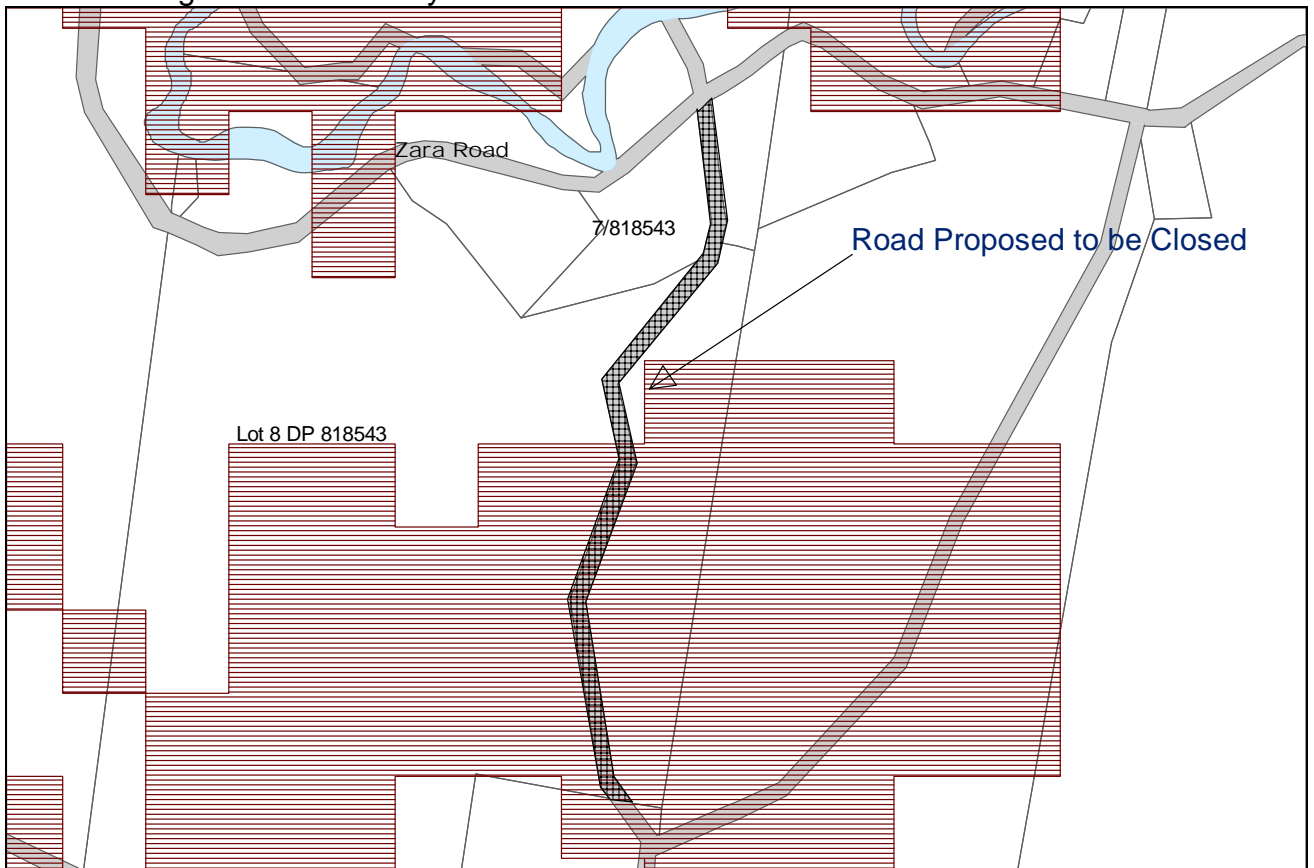
An investigation of the Crown Road reserves has been conducted and it appears that no Council or other infrastructure exists within it. There also seems to be no identifiable formation within the road reserve and the road does not provide access to any surrounding properties thus closure would not sever the road network.

The road is densely vegetated and contains a significant amount of disturbed mature forest as well as some disturbed old growth forest. Approximately 60% of the road reserve at the southern end of Lot 8 DP 818543 has been identified as Key Habitat State Forest and the full road reserve and surrounding area is within a regional fauna corridor.

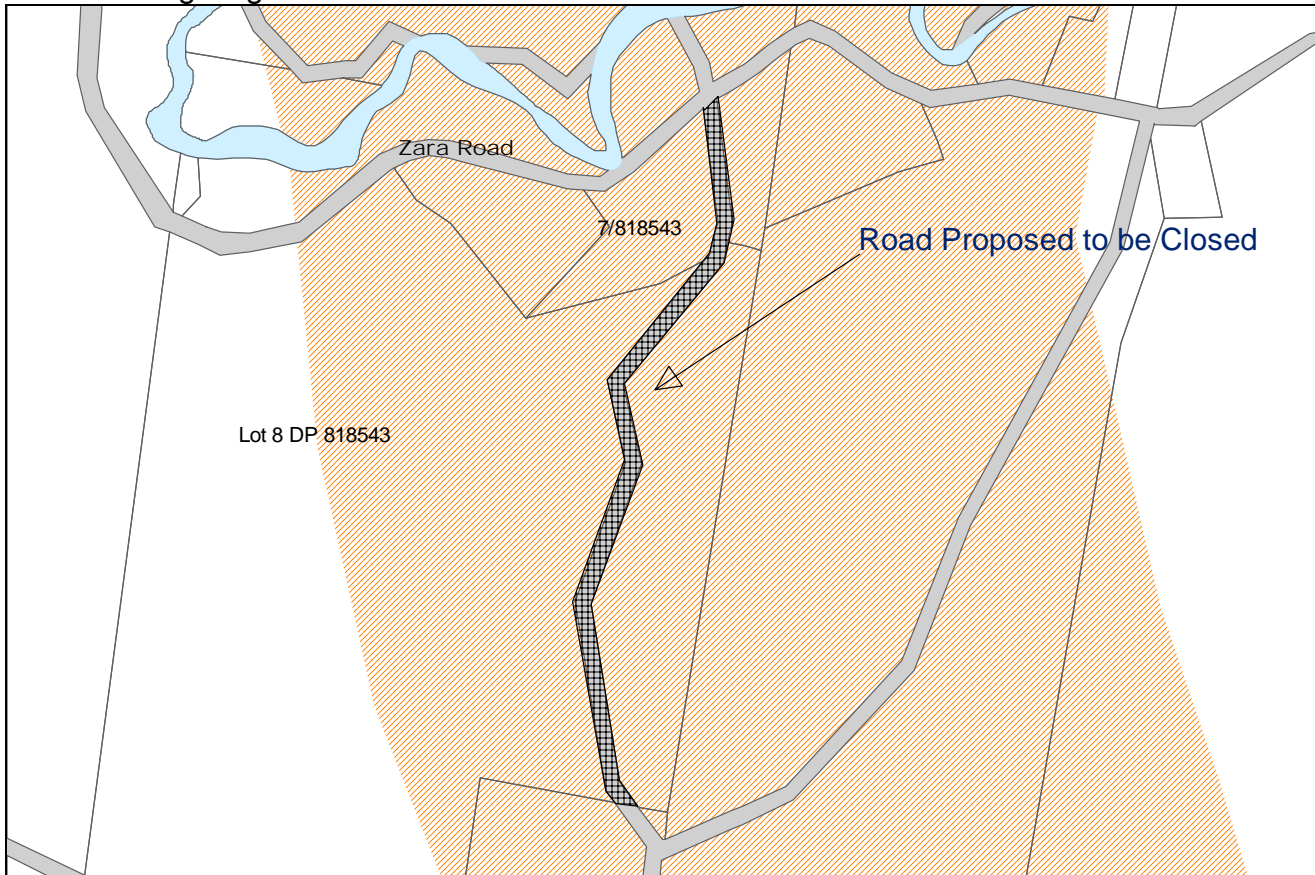
Plan showing mature and old growth forest



Plan showing State Forest Key Habitat area



Plan showing Regional fauna corridor



Topographical maps show the contours of the range through which this road passes as varying from 110m to 170m AHD, based on this and the heavily vegetated terrain it would be unlikely that Council would allow any construction over this road however it may potentially be utilised as a walking trail or equestrian trail taking advantage of the scenic escarpment available.

The road and surrounds have a high ecological status and low to medium ecological sensitivity.

Council's road closure policy provides that roads containing wildlife corridors and significant flora, marketable timber and scenic escarpments are not eligible for closure.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road within Lots 7 and 8 DP 818543 at Zara.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**29 [EO-CM] Lot 5 DP 833683 Parish of Murwillumbah - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/13**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve within Lot 5 DP 833683 at Zara. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and it appears that no Council or other infrastructure exists within it. There seems to be no identifiable formation within the road reserve however it does provide direct access to Jacksons Creek from Zara Road.

Council is currently implementing foreshore regeneration within the Tweed Shire Local Government area and is 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 is 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.

This section of Jacksons Creek is listed as being a protected Riparian area pursuant to Section 26D of the Water Act containing key fish habitats.

The road is minimally vegetated however is shown to exist within an area noted to contain protected fauna and is also within a regional fauna corridor. Small areas of land immediately adjacent to the road reserve show a high ecological status and high ecological sensitivity.

Council's road closure policy provides that roads providing or capable of providing physical access to rivers, creeks and lakes as well as roads containing wildlife corridors are not eligible for closure.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road within Lot 5 DP 833683 at Zara.

**RECOMMENDATION:**

**That Council objects to the closure of the Crown Road within Lot 5 DP 833683 at Zara.**

**REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve within Lot 5 DP 833683 at Zara. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

Plan showing road proposed to be closed



An investigation of the Crown Road reserves has been conducted and it appears that no Council or other infrastructure exists within it. There seems to be no identifiable formation within the road reserve however it does provide direct access to Jacksons Creek from Zara Road.

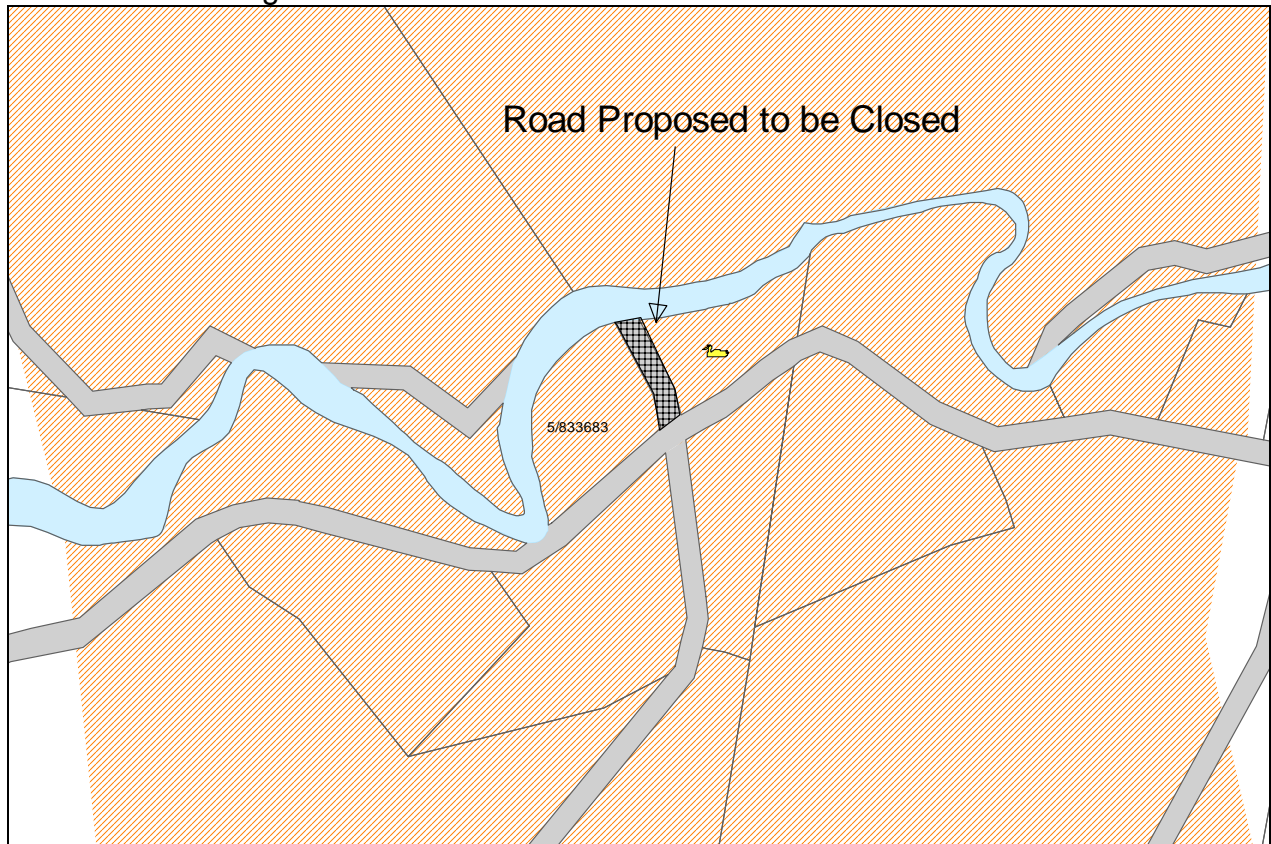
Council are implementing foreshore regeneration within the region of the Tweed Shire and are utilising road reserves which adjoin the creeks and rivers to allow access to these areas. Council has encountered problems with land owners where access to the foreshore area is only available through private 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.

This section of Jacksons Creek is listed as being a protected Riparian area pursuant to Section 26D of the Water Act containing key fish habitats.

The road is minimally vegetated however is shown to exist within an area noted to contain protected fauna and is also within a regional fauna corridor. Small areas of land immediately adjacent to the road reserve show a high ecological status and high ecological sensitivity.



Plan below shows the hatched area as Regional Fauna Corridor and the duck represents the area containing threatened fauna.



Council's road closure policy provides that roads providing or capable of providing physical access to rivers, creeks and lakes as well as roads containing wildlife corridors are not eligible for closure.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road within Lot 5 DP 833683 at Zara.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**30 [EO-CM] Lot 1 DP 873009, Parish of Tyagalgh - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO:**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close two sections of Crown Road reserve at Tyagalgh from LPMA the first one is north of Lots 10, 11 and 14 DP 755749 and Lot 1 DP 873009, labelled A on the attached plan, the second is and east and south of Lot 2 DP 873009, labelled B on the attached plan. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and the section of road north of Lots 10, 11 and 14 DP 755749 and Lot 1 DP 873009 has been identified as providing access to the Rous River. Access is obtainable from Browns Lane, south of Lots 14 and 15 DP 755749 and there is formation within the area of road reserve proposed to be closed.

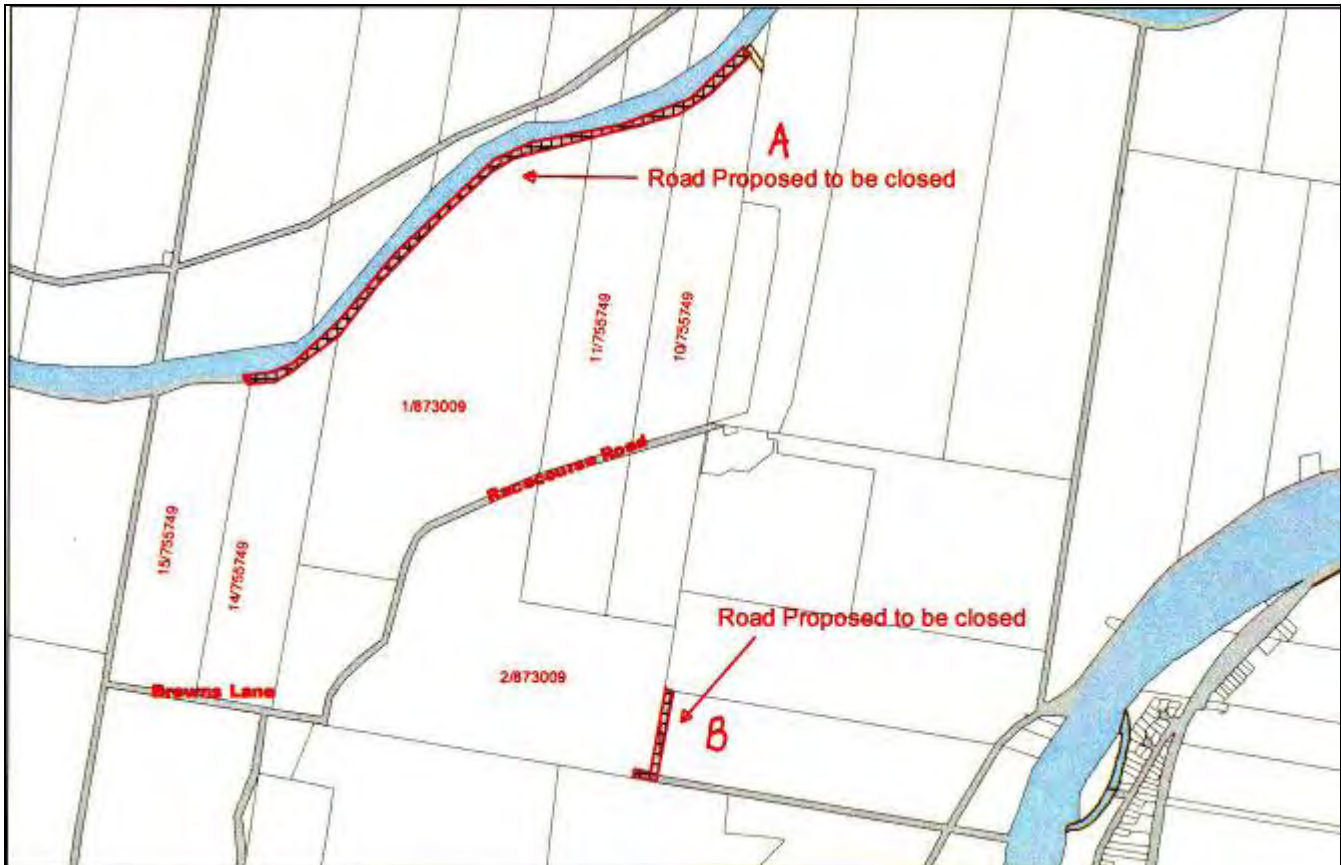
**RECOMMENDATION:**

**That Council:-**

- 1. Objects to the closure of the Crown Road north of Lots 10, 11 and 14 DP 755749 and Lot 1 DP 873009 at Tyagalgh.**
- 2. Does not object to the closure of the section of Crown road reserve east and south of Lot 2 DP 873009 at Tyagalgh.**

**REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close two sections of Crown Road reserve at Tyagalgh from LPMA the first one is north of Lots 10, 11 and 14 DP 755749 and Lot 1 DP 873009, labelled A on the attached plan, the second is and east and south of Lot 2 DP 873009, labelled B on the attached plan. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.



An investigation of the Crown Road reserves has been conducted and the section of road north of Lots 10, 11 and 14 DP 755749 and Lot 1 DP 873009 has been identified as providing access to the Rous River. Access is obtainable from Browns Lane, south of Lots 14 and 15 DP 755749 and there is formation within the area of road reserve proposed to be closed.

Council is currently implementing foreshore regeneration within the Tweed Shire Local Government area and utilises 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 is 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.

This section of the Rous River is listed as being a protected riparian area pursuant to Section 26D of the Water Act containing key fish habitats. This area also contains estuary threatened species.

Councils Policy on Road closures notes that roads providing or capable of providing physical access to rivers or creeks are not eligible for closure.

The other section of road reserve proposed to be closed east and south of Lot 2 DP 873009 (labelled B) contains no Council or other infrastructure and has not been formed. There are no environmental impacts within this section of road reserve.

This section of road does not provide access to any surrounding properties and appears to be redundant in terms of access which complies with the Councils Policy on Road Closures.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of Crown road reserve north of Lots 10, 11 and 14 DP 755749 and Lot 1 DP 873009 at Tygalgah. It is also recommended that Council does not object to the closure of the section of Crown road reserve east and south of Lot 2 DP 873009 at Tygalgah.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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31 [EO-CM] Lot 1 DP 565592 Parish of Burrell - Road Closure Application

**ORIGIN:**

Design

**FILE NO:**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve north of Lot 1 DP 565592 at Brays Creek (see Figure 1). Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and it appears to have no Council or other infrastructure within it.

Whilst there is currently no access gained from this section of road reserve to any adjoining property it does provide the only connection to the Crown road reserve running south to north through Lot 10 in DP 1132023 (see Figure 2). Closing the section of road north of Lot 1 DP 565592 would render the adjoining road reserve inaccessible to the public.

In order to alleviate this problem Council may advise the Land and Property Management Authority that it would not object to the partial closure of the north western section of the road reserve on the basis that the north eastern section remains open to continue the availability of access to the adjoining road reserve (see Figure 3).

Councils Policy on road closures notes that roads providing or capable of providing physical access to other roads and public or private properties are not eligible for closure. The road reserve is cleared and has no environmental constraints.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the Crown Road Reserve north of Lot 1 in DP 565592 however does not object to the closure of the north western section of the road reserve adjoining Lot 1 in DP 565592 subject to the north eastern section of the road remaining open as public road as shown in figure 3 of the report.

**RECOMMENDATION:**

**That Council objects to the closure of the Crown Road Reserve north of Lot 1 in DP 565592 however does not object to the closure of the north western section of the road reserve adjoining Lot 1 in DP 565592 subject to the north eastern section of the road remaining open as public road as shown in figure 3 of the report.**

**REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve north of Lot 1 DP 565592 at Brays Creek (see Figure 1). Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.

**Figure 1**

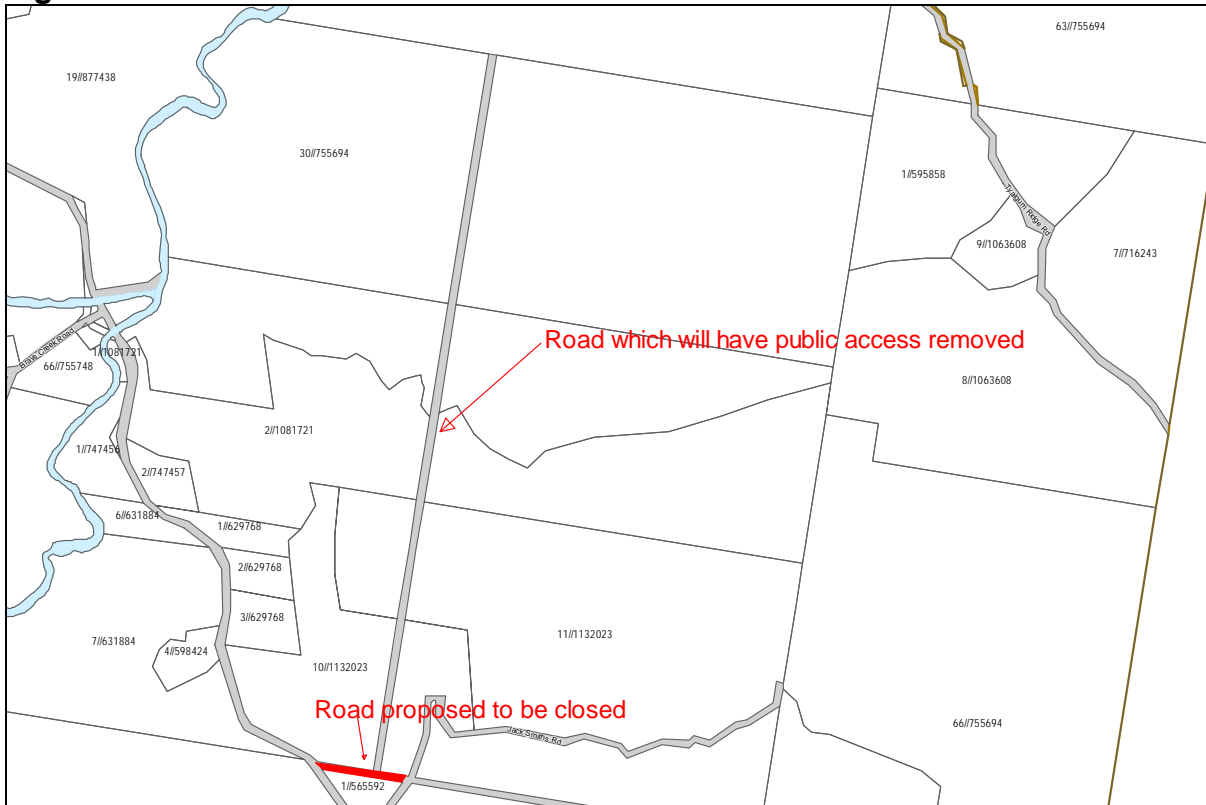


An investigation of the Crown Road reserves has been conducted and it appears to have no Council or other infrastructure within it.

Whilst there is currently no access gained from this section of road reserve to any adjoining property it does provide the only connection to the Crown road reserve running south to north through Lot 10 in DP 1132023 (see Figure 2). Closing the section of road north of Lot 1 DP 565592 would render the adjoining road reserve inaccessible to the public.

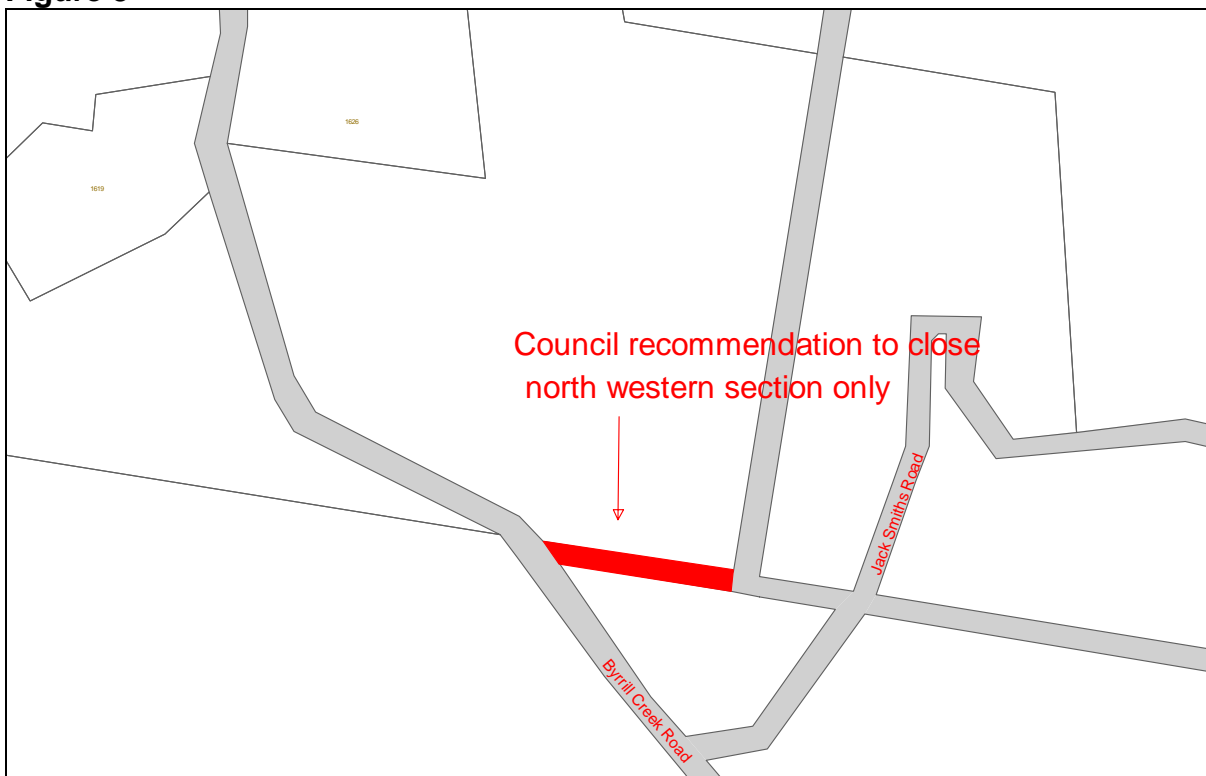


**Figure 2**



In order to alleviate this problem Council may advise the Land and Property Management Authority that Council would not object to the partial closure of the north western section of the road reserve on the basis that the north eastern section remains open to continue the availability of access to the adjoining road reserve.

**Figure 3**



Council's Policy on Road Closures notes that roads providing or capable of providing physical access to other roads and public or private properties are not eligible for closure. The road reserve is cleared and has no environmental constraints.

It is recommended pursuant to the provisions within Council's Road Closure Policy that Council objects to the closure of the Crown Road Reserve north of Lot 1 in DP 565592 however does not object to the closure of the north western section of the road reserve adjoining Lot 1 in DP 565592 subject to the north eastern section of the road remaining open as public road as shown in Figure 3 of the 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](http://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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**32 [EO-CM] Lot 152 DP 755698 Parish of Condong - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/1**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve east of Lots 152 and 155 DP 755698 and west of Lot 1 DP 781660 at Tumbulgum. Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.

The road on the eastern boundary of Lots 152 DP 755698 and west of Lot 1 DP 781660 has some constructed formation however it is not used for the purposes of accessing property rather it appears to be utilised for accessing cane plantations within the applicants land. The road east of Lot 155 DP 755698 has no constructed formation and is not essential for access to any other surrounding properties.

There appears to be no environmental factors impacting upon these road reserves.

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.

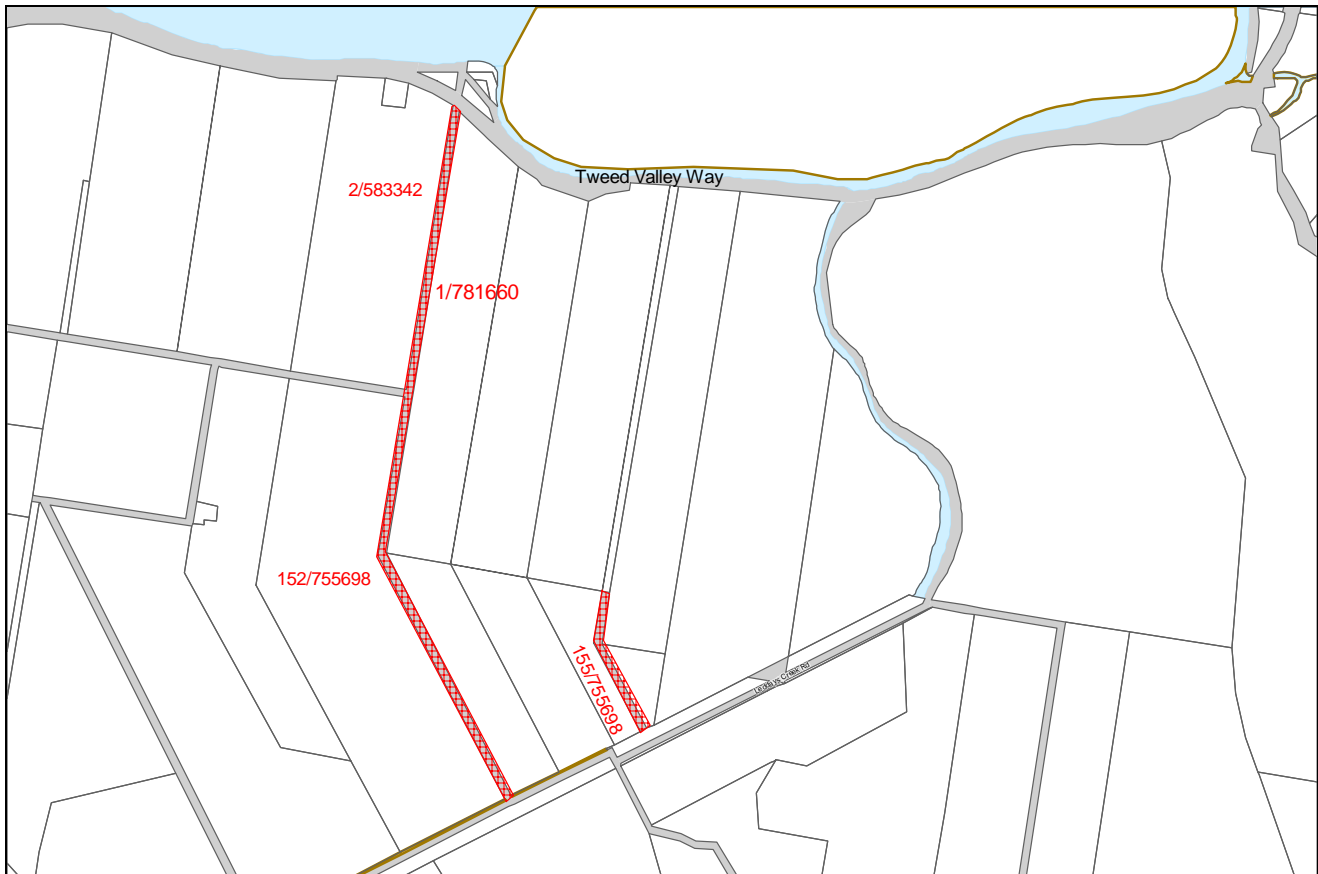
It is recommended that Council does not object to the closure of the section of Crown Road Reserve east of Lots 152 and 155 DP 755698 and west of Lot 1 DP 781660 at Tumbulgum as shown on the attached plan.

**RECOMMENDATION:**

**That Council does not object to the closure of part of the road reserve east of Lots 152 and 155 DP 755698 and west of Lot 1 DP 781660 at Tumbulgum.**

**REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve east of Lots 152 and 155 DP 755698 and west of Lot 1 DP 781660 at Tumbulgum. Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.



The road on the eastern boundary of Lots 152 DP 755698 and west of Lot 1 DP 781660 has some constructed formation however it is not used for the purposes of accessing property rather it appears to be utilised for accessing cane plantations within the applicants land. The road east of Lot 155 DP 755698 has no constructed formation and is not essential for access to any other surrounding properties.

There appears to be no environmental factors impacting upon these road reserves.

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.

It is recommended that Council does not object to the closure of the section of Crown Road Reserve east of Lots 152 and 155 DP 755698 and west of Lot 1 DP 781660 at Tumbulgum.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**33 [EO-CM] Lot 1 DP 612791, Parish of Murwillumbah - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/13**

**SUMMARY OF REPORT:**

Council has received a notice of application to close a section of Crown Road reserve within Lot 1 DP 612791 at Chillingham from Land and Property Management Authority. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and it appears that no Council or other infrastructure exists within it. There also seems to be no identifiable formation within the road reserve and the road does not provide access to any surrounding properties. All surrounding properties utilise a right of carriageway for access purposes.

The road is densely vegetated and is located within a subregional fauna corridor.

Some of the road has a very high ecological status and medium ecological sensitivity, the remainder of the road is not classified.

Council's road closure policy provides that roads containing wildlife corridors and significant flora, marketable timber and scenic escarpments are not eligible for closure.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road within Lot 1 DP 612791 at Chillingham.

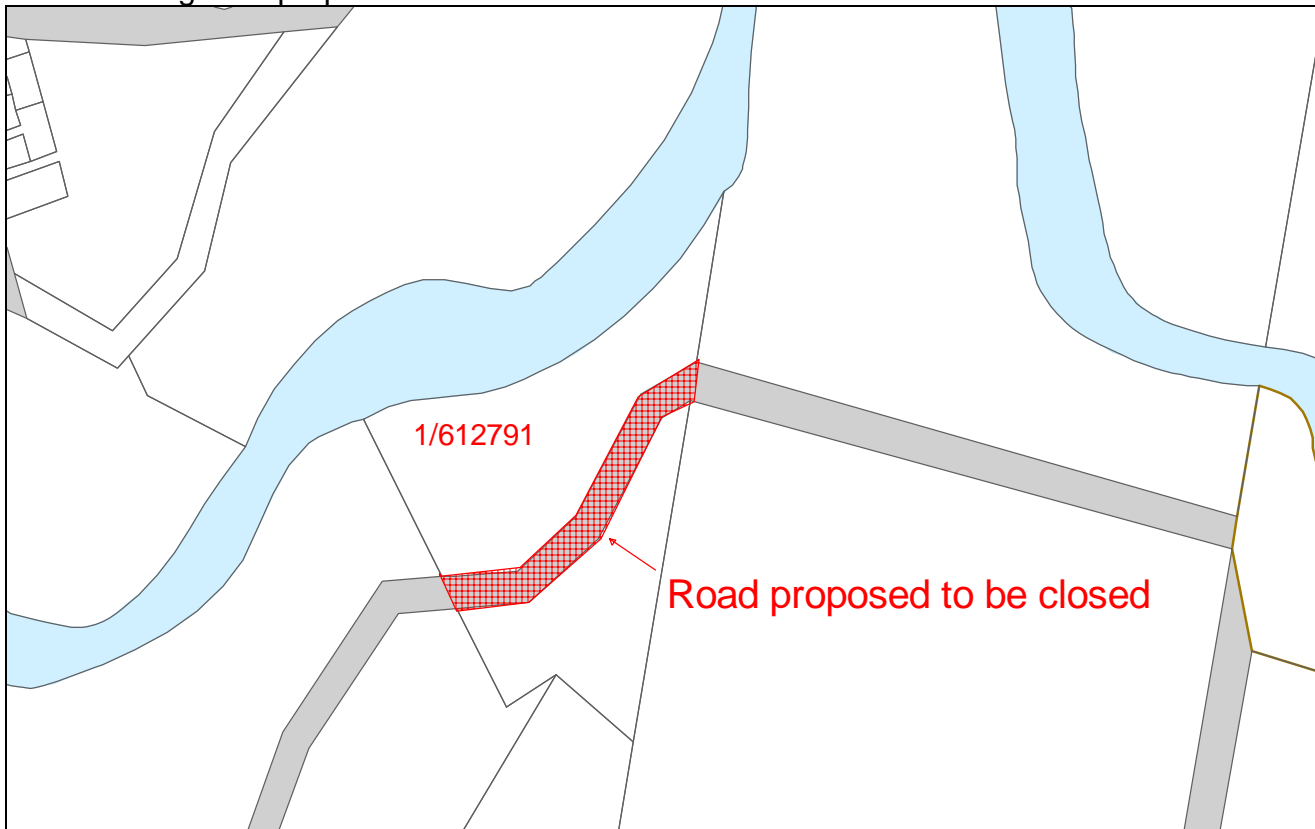
**RECOMMENDATION:**

**That Council objects to the closure of the Crown Road within Lot 1 DP 612791 at Chillingham.**

**REPORT:**

Council has received a notice of application to close a section of Crown Road reserve within Lot 1 DP 612791 at Chillingham from Land and Property Management Authority. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

Plan showing road proposed to be closed



An investigation of the Crown Road reserves has been conducted and it appears that no Council or other infrastructure exists within it. There also seems to be no identifiable formation within the road reserve and the road does not provide access to any surrounding properties. All surrounding properties utilise a right of carriageway for access purposes.

Some of the road has a very high ecological status and medium ecological sensitivity, the remainder of the road is not classified or has not been determined. The road is densely vegetated and is located within a subregional fauna corridor.

Council's road closure policy provides that roads containing wildlife corridors are not eligible for closure.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road within Lot 1 DP 612791 at Chillingham.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.



**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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34 [EO-CM] Lot 1 DP774820, Parish of Cudgen - Road Closure Application

**ORIGIN:**

Design

**FILE NO:** GR3/12/6

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve north, east and within Lot 1 DP 774820, marked A on the plan in the body of the report, north and within Lot 28 DP 615931, north and within Lot 11 DP 1014723 and north of Lot 2 DP 590220 at Stotts Creek. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and it would appear that these sections of road are not impacted by any environmental or ecological factors. The initial section of the road reserve running from Leddays Creek Road east has been formed and can be utilised for access purposes.

Council is currently in the process of purchasing an area of land from the southern section of Lot 1 in DP 774820 from the land owner. The section of Crown Road which runs from Leddays Creek Road east through Lot 2 DP 590220 and then south through Lot 1 DP 774820 has been identified as being able to provide access to both this parcel, which will be created in a plan of boundary adjustment and the adjoining Council owned parcel, Lot 26 in DP 615931. Council is relying on this road reserve to provide access and removal would be highly detrimental to Councils future plans for both the road and the recently purchased land.

A report regarding the Development Application was submitted to Councils meeting dated 17 August 2010 relating to this matter. A copy is attached for further information.

Council's road closure policy provides under roads not eligible for closure :-

- "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."

The road reserve running west to east from Lot 1 DP 774820 is currently unformed and leads directly to the Pacific Highway. The Roads and Traffic Authority will not allow access from Highways to local roads such as this. This section of road reserve does not fall within Councils Policy on Road Closures as a road not eligible for closure, however it would be regarded as an exception in that it may be considered as demonstrably redundant in terms of access as access to the highway would not be approved.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road which runs along the eastern boundary and within Lot 1 DP 774820 and the section along the northern boundary of Lot 2 DP 590220, labelled 'A' on the attached plan, but provides no objection to the closure of the section of road reserve which runs through the southern part of Lot 28 DP 615931, and through Lot 11 DP 1014723, marked 'B' on the attached plan, at Stotts Creek.

**RECOMMENDATION:**

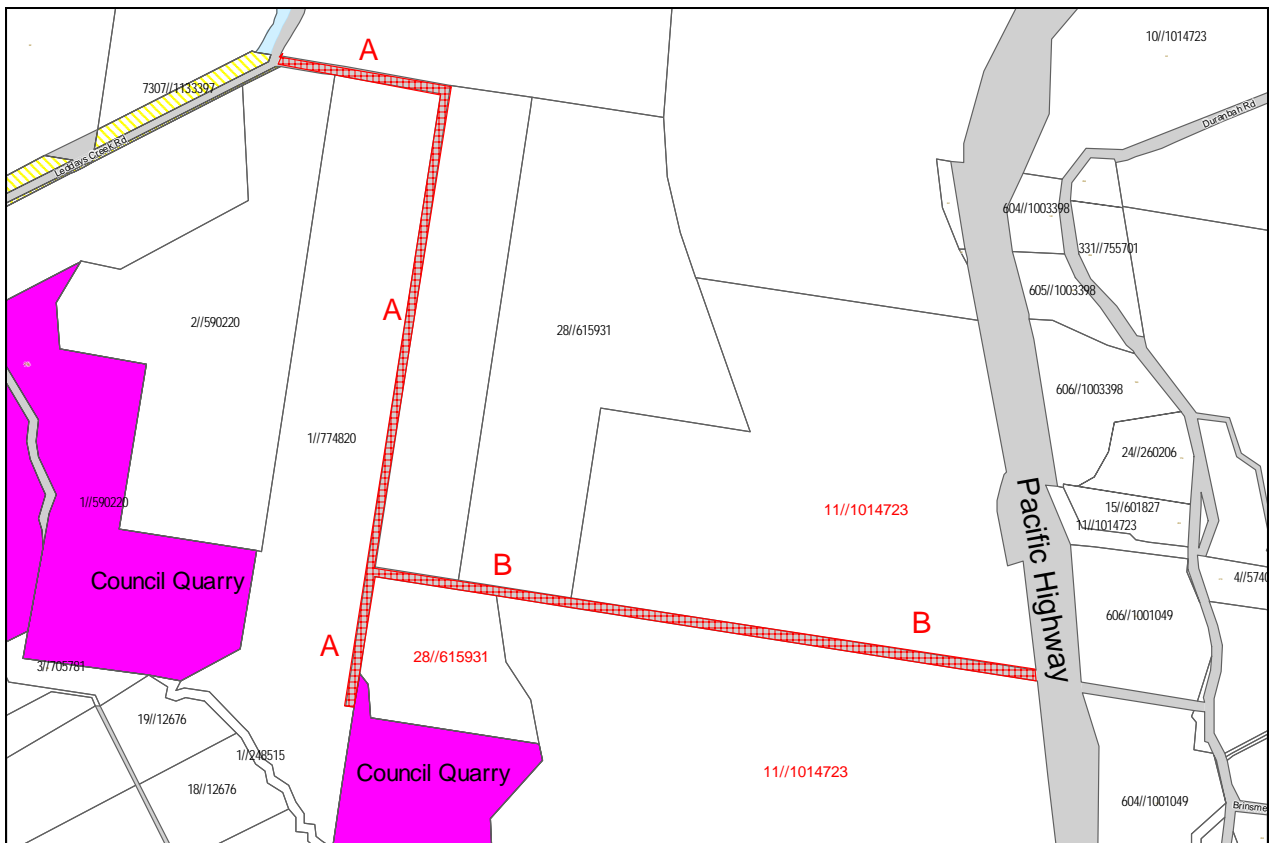
**That Council:**

- 1. Objects to the closure of the Crown Road reserve which runs along the eastern boundary and within Lot 1 DP 774820 and the section along the northern boundary of Lot 2 DP 590220 at Stotts Creek.**
- 2. Does not object to the closure of the Crown Road reserve which runs through the southern part of Lot 28 DP 615931, and through Lot 11 DP 1014723 at Stotts Creek.**

**REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve north, east and within Lot 1 DP 774820, marked A on the plan in the body of the report, north and within Lot 28 DP 615931, north and within Lot 11 DP 1014723 and north of Lot 2 DP 590220 at Stotts Creek. Council has been requested to provide its comments on the closure of these sections of Crown Public Road including any relevant objections.

**Plan below shows the proposed road closure as hatched.**

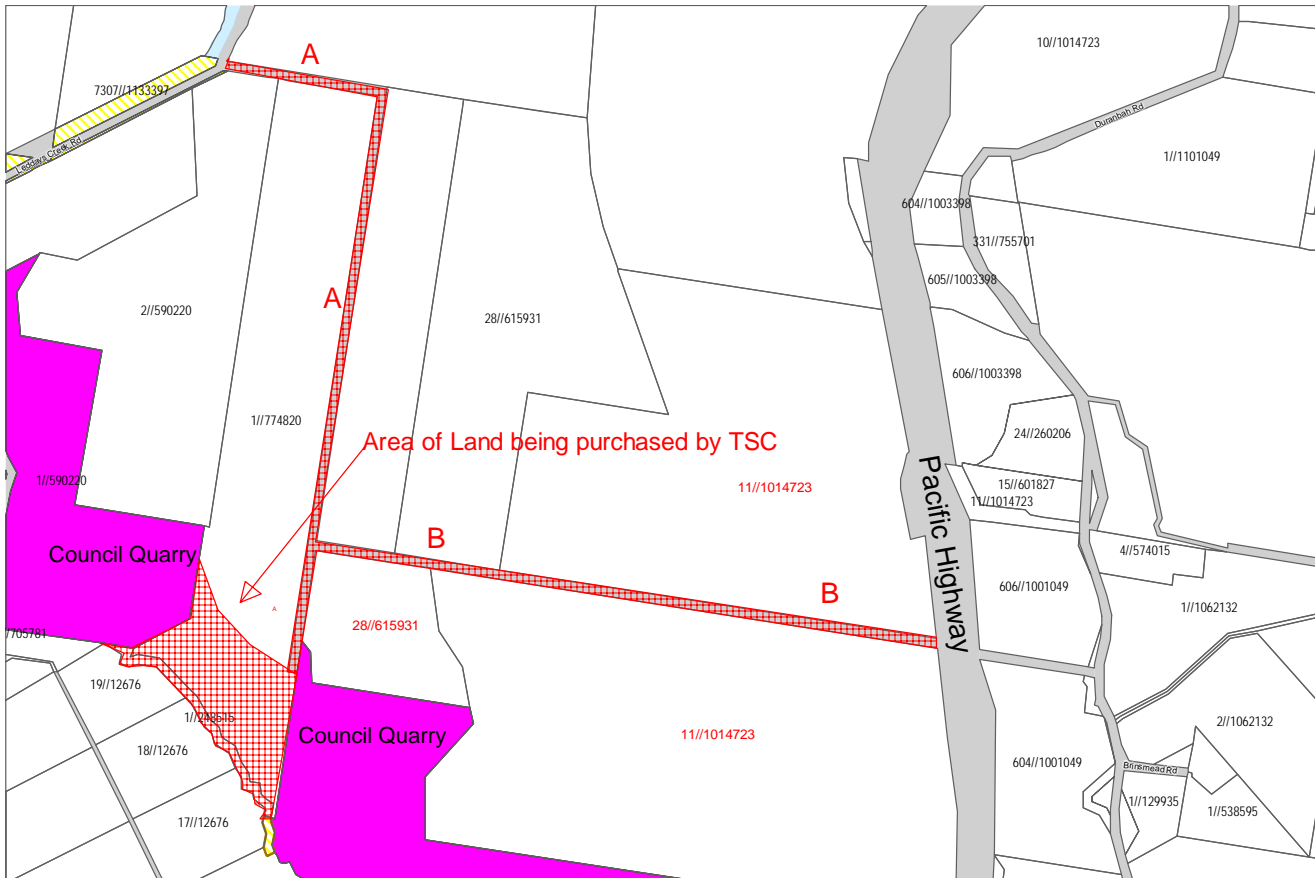


An investigation of the Crown Road reserves has been conducted and it would appear that these sections of road are not impacted by any environmental or ecological factors. The initial section of the road reserve running from Leddays Creek Road east has been formed and can be utilised for access purposes.

Council is currently in the process of purchasing an area of land from the southern section of Lot 1 in DP 774820 from the land owner. The section of Crown Road which runs from Leddays Creek Road east through Lot 2 DP 590220 and then south through Lot 1 DP 774820 has been identified as being able to provide access to both this parcel, which will be created in a plan of boundary adjustment and the adjoining Council owned parcel, Lot 26 in DP 615931. Council is relying on this road reserve to provide access and removal would be highly detrimental to Councils future plans for both the road and the recently purchased land.

A report regarding the Development Application was submitted to Councils meeting dated 17 August 2010 relating to this matter. A copy is attached for further information.

Plan showing area of land being purchased by TSC

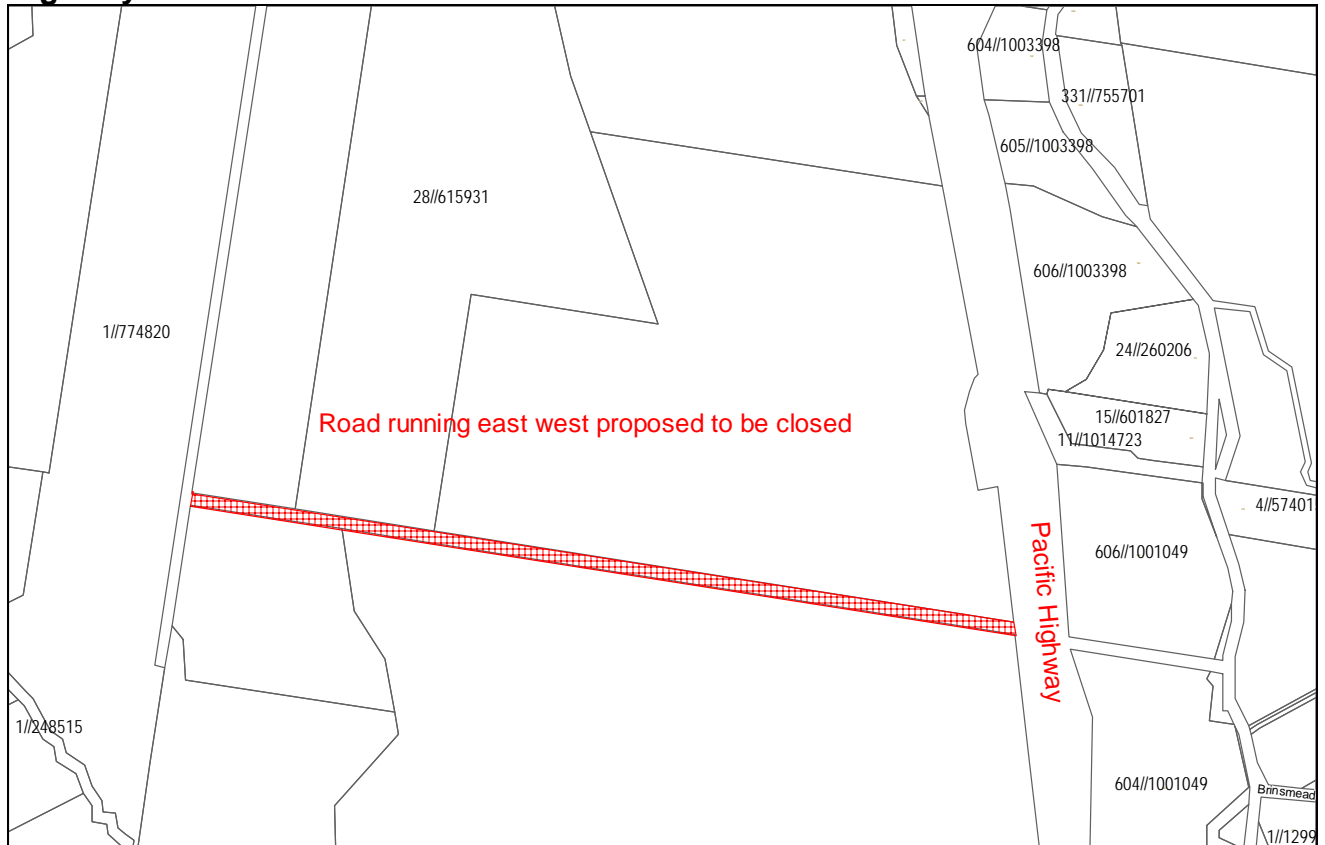


Council's road closure policy provides under roads not eligible for closure :-

- "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."

The road reserve running west to east from Lot 1 DP 774820 is currently unformed and leads directly to the Pacific Highway. The Roads and Traffic Authority will not allow access from Highways to local roads such as this. This section of road reserve does not fall within Councils Policy on Road Closures as a road not eligible for closure, however it would be regarded as an exception in that it may be considered as demonstrably redundant in terms of access as access to the highway would not be approved.

**Plan below showing road reserve which is redundant in terms of access from Pacific Highway**



It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road which runs along the eastern boundary and within Lot 1 DP 774820 and the section along the northern boundary of Lot 2 DP 590220, labelled 'A' on the attached plan, but provides no objection to the closure of the section of road reserve which runs through the southern part of Lot 28 DP 615931, and through Lot 11 DP 1014723, marked 'B' on the attached plan, at Stotts Creek.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**35 [EO-CM] Creation of Easement to Drain Water within Lot 400 DP 776483, 165 Darlington Drive Banora Point**

**ORIGIN:**

**Design**

**FILE NO:**

**SUMMARY OF REPORT:**

Council at its meeting of 25 July 2006 resolved to enter into an agreement to purchase 165 Darlington Drive Banora Point due to issues relating to significant stormwater flooding affecting the property.

The contract of sale for the property was finalised in September 2006 which has been leased as a residential property from that time excluding the period during the construction of the stormwater drainage system.

The stormwater drainage works were completed around January 2010 and at the Executive Management Team meeting of 10 March 2010 it was recommended that the property continued to be leased for a period of 24 months allowing Council to derive the benefit of weekly income whilst maintaining control of the property until the completed stormwater project was adequately tested by a major storm event.

Originally it was intended that the property be subdivided and a drainage reserve created over the site of the stormwater pipes however this would diminish the property area significantly and thus reduce the resale value of the residue land containing the dwelling. It was instead decided to create an easement to drain water over the parcel thus maintaining the land area of the allotment.

A plan of Easement to Drain Water variable width within Lot 400 DP 776483 and Section 88B instrument has now been drawn and require signing under the Common Seal of Council.

**RECOMMENDATION:**

**That all documents relating to the creation of the Easement to Drain Water variable width within Lot 400 DP 776483 be signed under the Common Seal of 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](http://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 report dated 25 July 2006 (DW 1428723).
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**36 [EO-CM] Lot 9 DP 803964 Parish of Chillingham - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/2**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management (LPMA) as shown marked in the plan below to close a section of Crown Road reserve north east and east of Lot 9 DP 803964 and east of Lot 10 DP 803964 at Hopkins Creek. Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and the road has been identified as providing access to the Rous River. The area is densely vegetated and no formation of the road is apparent.

Council is implementing foreshore regeneration within the Tweed Shire Local Government area and is 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.

This section of the Rous River is listed as being a protected Riparian area pursuant to Section 26D of the Water Act containing key fish habitats. The road reserve itself and surrounding river has a water conservation value of 200-300.

A section of the road east of Lot 9 DP 803964 has been identified in Councils GIS system as containing threatened fauna as well as both disturbed mature and disturbed old forest growth. The road reserve falls fully within Key Habitat State Forest region and contains a regional fauna corridor. The Ecological status of the area is high to very high while the Ecological sensitivity ranges from low to high.

Council's Policy on Road Closures notes that roads not eligible for closure include:

- Point 1. Roads providing or capable of providing physical access to rivers...
- Point 3 Road reserves containing wildlife corridors, significant flora, marketable timber and scenic escarpments....
- Point 6 Roads that could potentially be developed for vehicle, cycle, pedestrian or equestrian use...

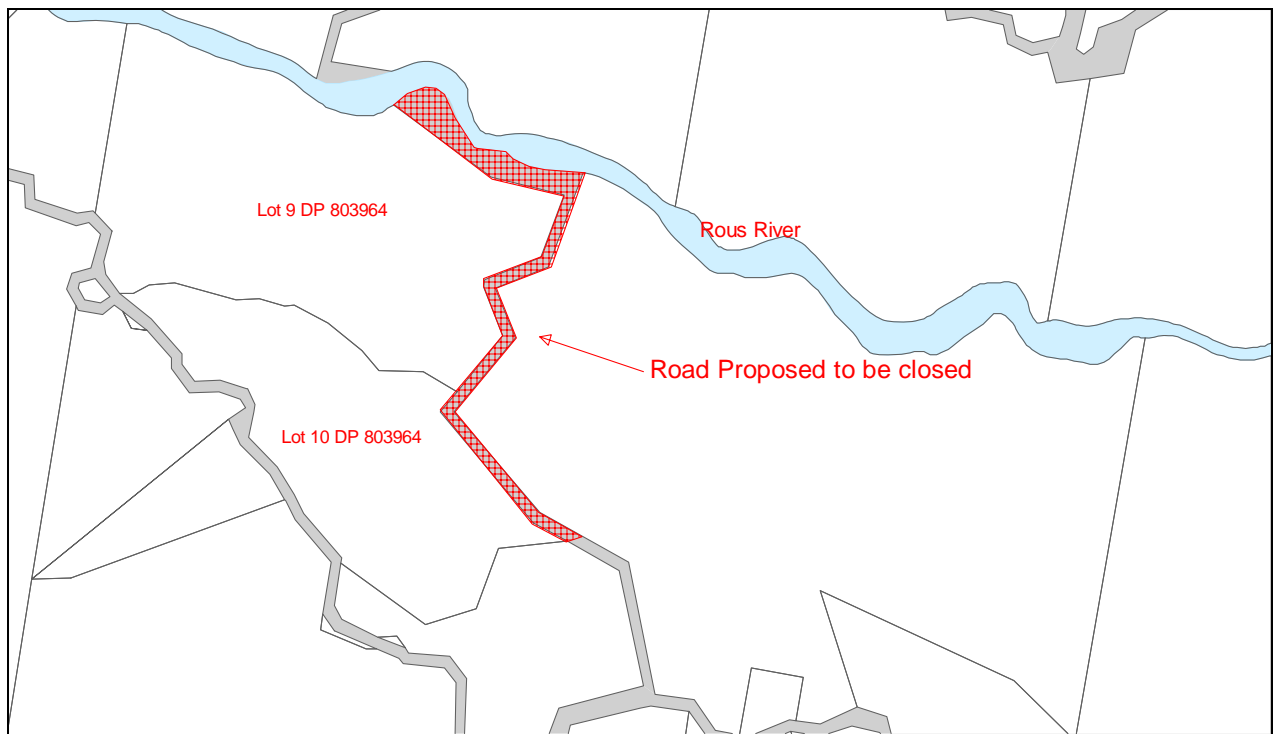
It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road north east and east of Lot 9 DP 803964 and east of Lot 10 DP 803964 at Hopkins Creek.

**RECOMMENDATION:**

**That Council objects to the closure of the Crown Road north east and east of Lot 9 DP 803964 and east of Lot 10 DP 803964 at Hopkins Creek.**

**REPORT:**

Council has received a notice of application from Land and Property Management (LPMA) as shown marked in the plan below to close a section of Crown Road reserve north east and east of Lot 9 DP 803964 and east of Lot 10 DP 803964 at Hopkins Creek. Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.



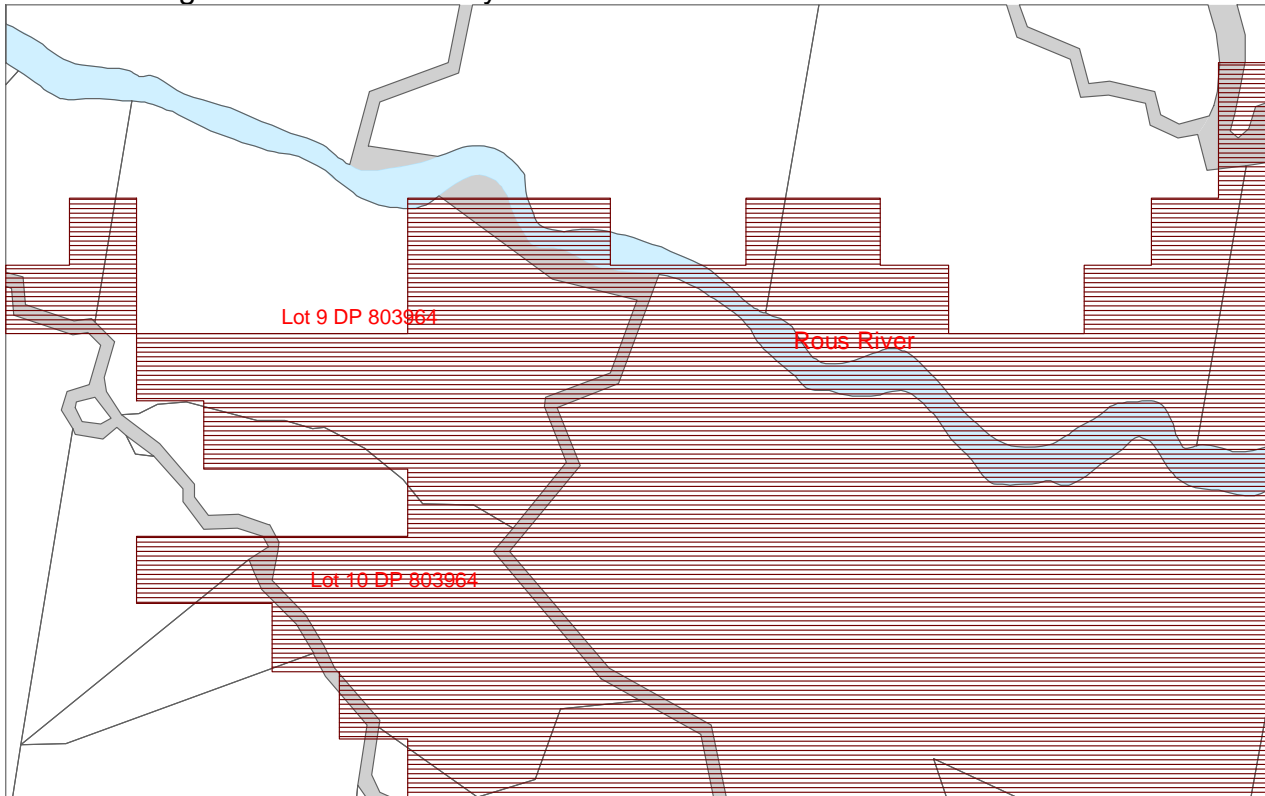
An investigation of the Crown Road reserves has been conducted and the road has been identified as providing access to the Rous River. The area is densely vegetated and no formation of the road is apparent.

Council is implementing foreshore regeneration within the Tweed Shire Local Government area and is 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.

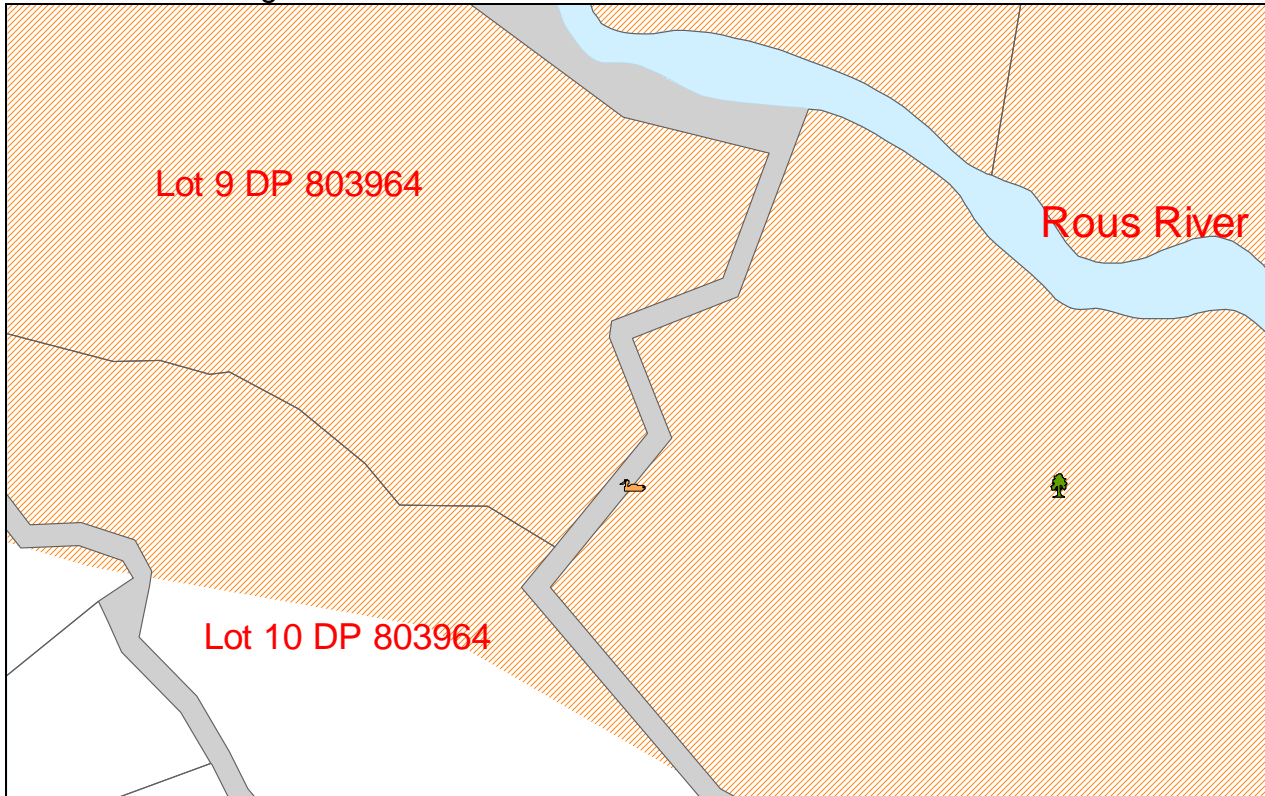
This section of the Rous River is listed as being a protected Riparian area pursuant to Section 26D of the Water Act containing key fish habitats. The road reserve itself and surrounding river has a water conservation value.

A section of the road east of Lot 9 DP 803964 has been identified in Councils GIS system as containing threatened fauna as well as both disturbed mature and disturbed old forest growth. The road reserve falls fully within Key Habitat State Forest region and contains a regional fauna corridor. The Ecological status of the area is high to very high while the Ecological sensitivity ranges from low to high.

Plan showing hatched area as Key Habitat State forest

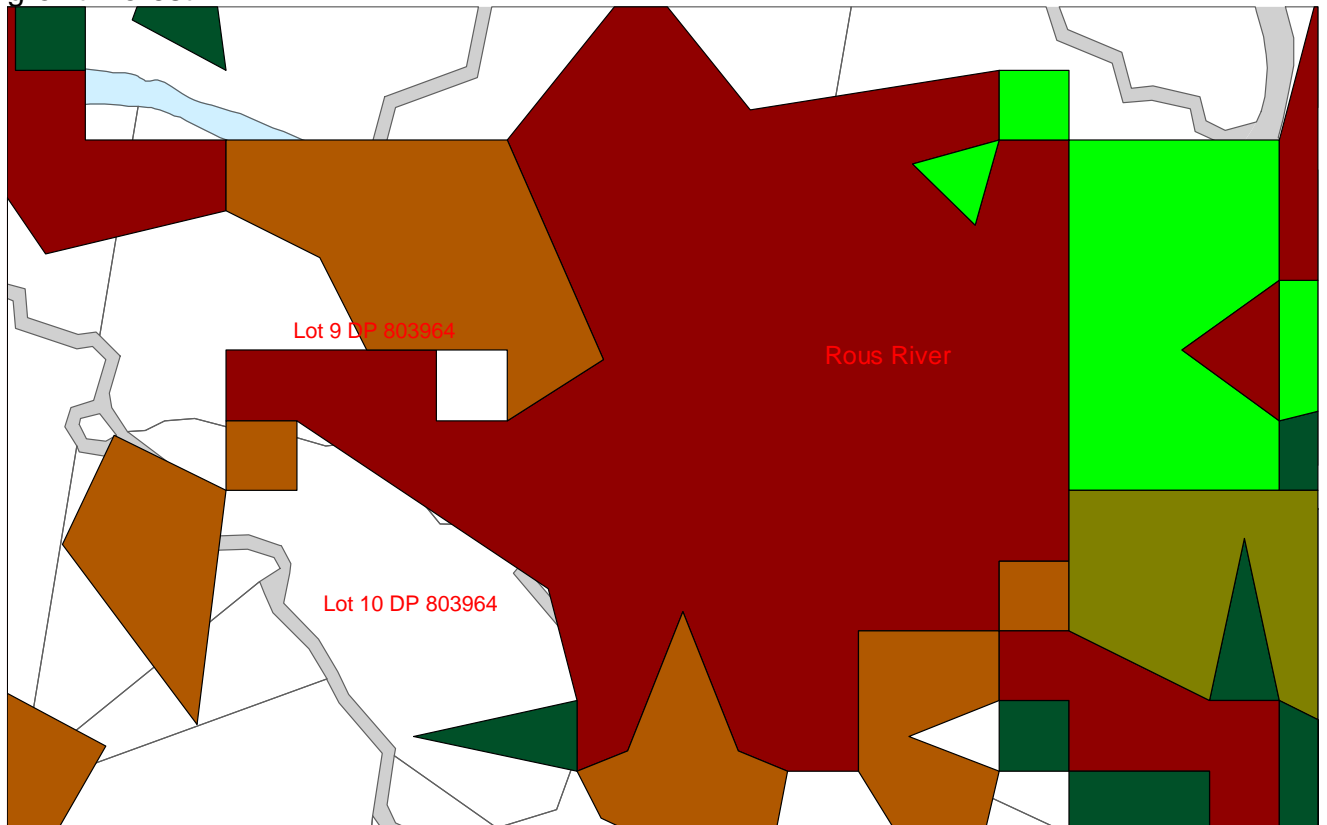


Plan below shows the hatched area as Regional Fauna Corridor and the duck represents the area containing threatened fauna.





Plan below showing darkened areas containing disturbed mature forest and disturbed old growth forest.



Council's Policy on Road Closures notes that roads not eligible for closure include;

- Point 1. Roads providing or capable of providing physical access to rivers...
- Point 3. Road reserves containing wildlife corridors, significant flora, marketable timber and scenic escarpments....
- Point 6. Roads that could potentially be developed for vehicle, cycle, pedestrian or equestrian use...

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road north east and east of Lot 9 DP 803964 and east of Lot 10 DP 803964 at Hopkins Creek.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**37 [EO-CM] Lot 1 DP 134303 Parish of Tyngah - Road Closure Application**

**ORIGIN:**

**Design**

**FILE NO:**

**SUMMARY OF REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve south of Lot 1 DP 134303 at Tyngah. Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.

An investigation of the Crown Road reserves has been conducted and the road has been identified as providing direct access from Tumbulgum Road to the Tweed River.

Council is currently implementing foreshore regeneration within the Tweed Shire Local Government area and is 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.

This section of Tweed River is listed as being a protected riparian area pursuant to Section 26D of the Water Act containing key fish habitats. It has also been identified as containing estuary threatened species.

The road reserve has not been noted as having any identifiable ecological sensitivity or status. There is no vegetation over the area and appears to provide easy public access to the river.

Councils Policy on road closures notes that roads providing or capable of providing physical access to rivers or creeks are not eligible for closure.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road south of Lot 1 DP 134303 at Tyngah.

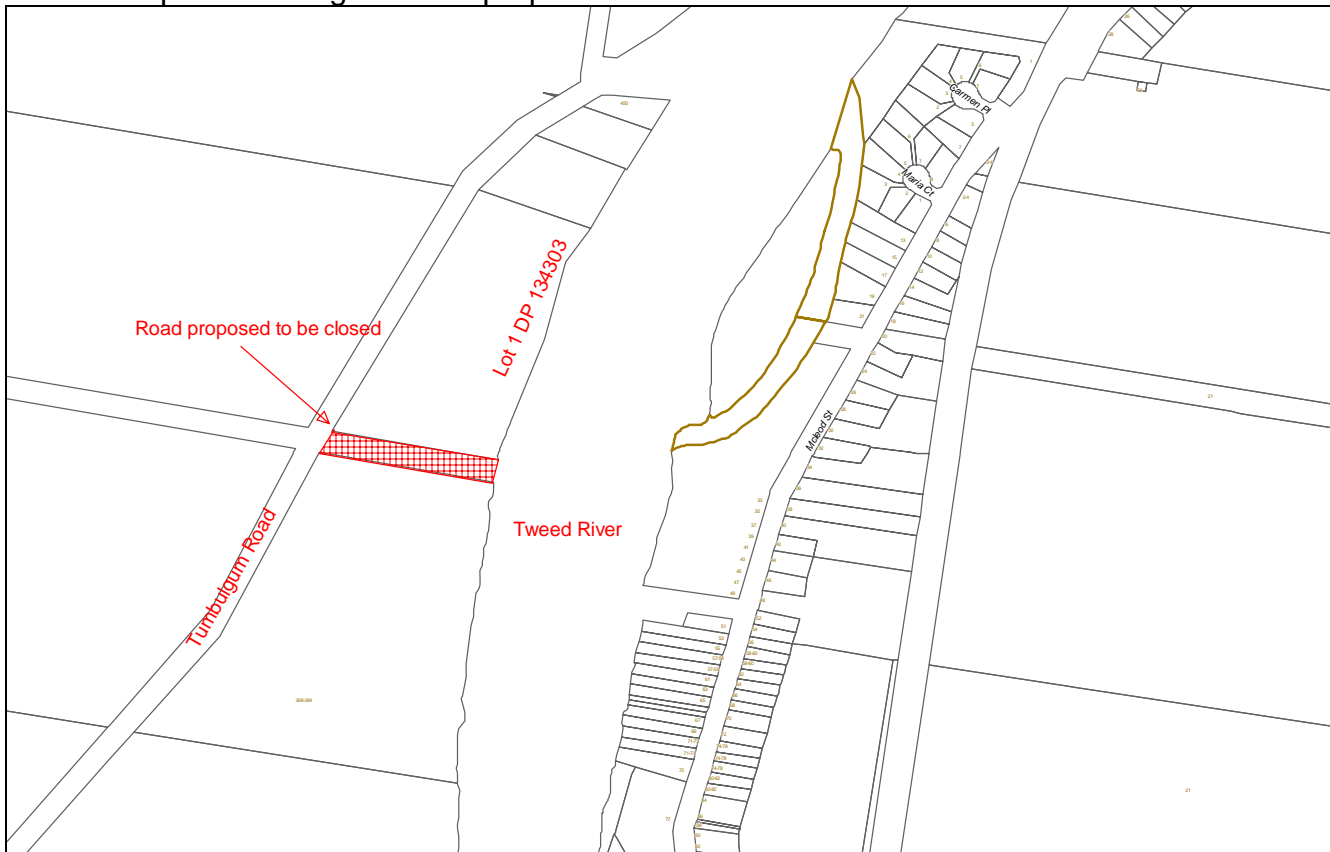
**RECOMMENDATION:**

**That Council objects to the closure of the Crown Road south of Lot 1 DP 134303 at Tyngah.**

**REPORT:**

Council has received a notice of application from Land and Property Management Authority (LPMA) to close a section of Crown Road reserve south of Lot 1 DP 134303 at Tyngalah. Council has been requested to provide its comments on the closure of this section of Crown Public Road including any relevant objections.

Below is a plan showing the road proposed to be closed



An investigation of the Crown Road reserve has been conducted and the road has been identified as providing direct access from Tumbulgum Road to the Tweed River.

Council is currently implementing foreshore regeneration within the Tweed Shire Local Government area and is 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.

This section of Tweed River is listed as being a protected Riparian area pursuant to Section 26D of the Water Act containing key fish habitats. It has also been identified as containing estuary threatened species.

The road reserve has not been noted as having any identifiable ecological sensitivity or status. There is no vegetation or road formation over the area however it appears to provide easy public access to the river.

Councils Policy on road closures notes that roads providing or capable of providing physical access to rivers or creeks are not eligible for closure.

It is recommended pursuant to the provisions within Councils Road Closure Policy that Council objects to the closure of the section of road south of Lot 1 DP 134303 at Tyngah.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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38 [EO-CM] Tweed Regional Aquatic Centre Lease

**ORIGIN:**

Recreation Services

**FILE NO:** EC2010-104

**SUMMARY OF REPORT:**

This report outlines the tender for the leased management of the Tweed Regional Aquatic Centre. Recommendations have been formulated based on evaluation which is included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council retain the management of the Tweed Regional Aquatic Centre.

Attachment A is **CONFIDENTIAL** in accordance with section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenders if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of products offered by each tender. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

**RECOMMENDATION:**

**That:**

1. **Council declines to accept any tender in relation to EC2010-104 Tender for the Leased Management Rights of the Tweed Regional Aquatic Centre.**
2. **The Tweed Regional Aquatic Centre and aquatic programs be managed by Council through a mixture of permanent and casual labour and licence and contract agreements.**
3. **ATTACHMENT A be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.**

## REPORT:

At its meeting held 20 April 2010, Council resolved to invite Abermain Holdings, Belgravia Leisure, Blue Fit and DUSwimming to submit a tender for the Leased Management Rights of the Tweed Regional Aquatic Centre. These tenderers were short listed after evaluation of an Expression of Interest.

Council Tender EC2010-104 invited tenders for the Leased management Rights of the Tweed Regional Aquatic Centre.

## Tenders Received

A total of three responses were received for Tender EC2010-104:-

Belgravia Leisure  
Blue Fit  
DUSwimming

## Tender Evaluation

The Tender Evaluation was conducted by Council's Tender Panel, consisting of Patrick Knight, Stewart Brawley and Mark Upson. A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on evaluation of the expressions against the selection criteria, it is recommended that Council does not enter into an agreement for the Leased Management Rights of the Tweed Regional, Aquatic Centre

Details of Belgravia Leisure, Blue Fit and DUSwimming's relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by the Tender Evaluation Panel.

## Discussion

When the TRAC was opened in December 2008, Council engaged an experienced aquatic facility manager to oversee the implementation of business systems, the development of aquatic programs and the training of Council staff to ensure the facility optimised the expected community outcomes and financial performance of the facility. The contact was for an initial 12 month period (later extended for another 5 months) during which time operational data could be attained to inform Council on the preferred management model for the future operations of the facility.



During this time, consultants were engaged to review the operation of Councils three aquatic facilities and provide recommendations on preferred management models and future capital works. Based on the available financial data from TRAC at the time the strategy was completed, it was recommended that Council consider a lease agreement for TRAC as the preferred management model. The rationale behind the recommendation being that a professional facilities management organisation should be able to run the facility at a reduced cost to Council whilst still providing a comprehensive range of services and programs to the community.

However, as noted above, when the market was tested through a tender process the management fees tendered do not realise any cost savings over Council management of the facility. The research undertaken during the development of the Aquatic Facilities Strategy highlighted the fact that the community and facility users were largely satisfied with the level and quality of service provided with the facility under Council management. The main driver for Council considering a lease agreement is costs savings.

During the 21 months of operation since the facility's opening, Council staff has gained a significant amount of knowledge and experience in how to manage this type of facility and to run programs to optimise the value of the facility to the community whilst minimising the annual costs to run.

Previously, as is common with many local facilities, Councils management of the aquatic facilities was focused on operation issues of staffing, water quality, safety etc. With the knowledge and experience gained through the contract management and strategy development process, the aquatic facilities management will be restructured to provide a greater focus on the development and management of the aquatic programs including market research marketing, monitoring and evaluation etc.

The main income producing activity for TRAC will be the Learn to Swim. In the previous years operation Council was engaged in a licence agreement for the Learn to Swim and coaching which provided minimal income to Council. The development of a comprehensive learn to swim and coaching program in the facility will provide both a comprehensive service to the community and a significant and sustainable income stream to reduce annual running costs. It is proposed to enter into a licence to operate the Café.

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

Anticipated savings through a lease arrangement will not be realised. No adjustment to budget allocation required.

#### **POLICY IMPLICATIONS:**

Previous resolution of Council to enter a lease arrangement for the TRAC facility will not be progressed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. **Confidential Attachment A** - Supplementary Information EC2010-104 Tender for the Leased Management Rights of the Tweed Regional Aquatic Centre (ECM 21201214).
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**39 [EO-CM] Floodplain Management Program Grant Funding**

**ORIGIN:**

**Planning & Infrastructure**

**SUMMARY OF REPORT:**

Council has received an offer for grant funding of \$70,000 from the State Assisted Floodplain Risk management Program (\$2 State:\$1 Council) for floodplain management projects in the 2010/11 financial year.

This grant can be applied to the following projects:-

1. South Tweed Heads Flood Levee – Investigation and Design Stage 2
2. Tweed Flood Warning Improvements

This grant is a “lump sum” which can be applied to either or both of the two projects within the limit of the overall total.

The local matching component, on the basis of 2:1 funding, is \$35,000 resulting in an overall total of \$105,000 and Council’s 2010/11 budget will need to be adjusted if the grant is to be accepted.

**RECOMMENDATION:**

**That Council formally accepts the grant offer of \$70,000 for floodplain management projects from the Minister for Climate Change and Environment under the State Floodplain Management Program 2010/11.**

**REPORT:**

Council is in receipt of a letter of offer for a floodplain management program grant for 2010-2011. The offer is detailed as follows:

<b>Grant Program</b>	<b>Project</b>	<b>Funding Ratio</b>	<b>Total Grant Funding</b>	<b>Required Council Funding</b>
NSW Floodplain Management Program (State Only)	South Tweed Heads Flood Levee – I&D Stage 2  Tweed Shire Flood Warning Improvements	2:1	\$70,000	\$35,000

The grant is a 2:1 “lump sum” to be applied over either of the above projects (rather than two separate grants).

Council funding is required to match 50% of the grant as a local component (i.e. \$35,000) and the total available funds is therefore \$105,000.

**Project Description**

South Tweed heads Flood Levee – Investigation and Design Stage 2

This project follows on from the South Tweed Heads Levee Study which was previously funded under the Commonwealth’s Natural Disaster Mitigation Program.

The South Tweed Heads Levee Study will recommend rehabilitation measures and this additional funding will provide the resources for engineering investigation and design of suitable remedial measures.

Tweed Flood Warning

This project seeks to improve flood warning by installing additional rainfall and stream gauges where presently there is limited data available.

Flood warning for the Bilambil area and parts of the Coastal Creeks system can be improved by additional gauges and the Bureau of Meteorology will be consulted to determine the most appropriate installations for the available budget

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

LEGAL:

Council is following the floodplain management process in accordance with the NSW floodplain Development Manual. The Local Government Act 1993 provides indemnity for Councils acting in “good faith” and in accordance with that manual.

**RESOURCE:**

Council may engage consultants to assist in these specialised projects but the possibility of completing the work in-house will also be considered.

**FINANCIAL:**

Council's 2010/11 budget will require adjustment at the September Quarterly Budget Review to provide the necessary local funding component of \$35,000.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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## 40 [EO-CM] Natural Disaster Resilience Grant Scheme funding 2010/2011

**ORIGIN:**

Planning & Infrastructure

**SUMMARY OF REPORT:**

Council has received advice from Emergency Management NSW that its application for grant funding under the Natural Disaster Resilience Grant Scheme (NDRGS) for 2010/2011, has been successful.

This report recommends acceptance of the grant offer.

**RECOMMENDATION:**

**That Council formally accepts the following grant funding in accordance with the Natural Disaster Resilience Grant Scheme funding agreement and provides the necessary amount to match the Government grant from unexpended loan funds of \$40,000 and a further allocation of \$30,000 at the September Quarterly Budget Review:**

Grant Program	Project	Funding Ratio	Total Grant Funding	Required Council Funding
Natural Disaster Resilience Grant Scheme (Commonwealth and State funding)	Tweed Shire Flood Risk Floor Level Survey	1:1:1	\$140,000	\$70,000

## REPORT:

Council is in receipt of advice from Emergency Management NSW that its application for funding under the Natural Disaster Resilience Grant Scheme has been successful.

The project is summarised as follows:

Grant Program	Project	Funding Ratio	Total Grant Funding	Required Council Funding
Natural Disaster Resilience Grant Scheme (Commonwealth and State funding)	Tweed Shire Flood Risk Floor Level Survey	1:1:1	\$140,000	\$70,000

### Project Details

#### Tweed Shire Flood Risk Floor Level Survey

Since completion of the Tweed Valley Flood Study Update in 2009, Council has continued undertaking the Tweed Valley Floodplain Risk Management Study (TVFRMS).

Part of the study involves the estimation of flood damage costs for a range of flood sizes.

Once flood water exceeds floor heights, considerable damage is done to dwellings and commercial premises.

Council needs to undertake a floor level survey of dwellings and buildings in floodprone areas to accurately determine how many houses and buildings are inundated in various size floods. (eg. from a 1 in 5 year Average Recurrence Interval (ARI) flood up to the Probable Maximum Flood or PMF).

Information from the survey can then be used to calculate the likely damage cost for each flood event.

This is then useful for determining the "benefit cost ratio" of flood mitigation works which prevent flood damage (eg House raising or levee upgrading etc). Such information lends weight to Council's future grant applications for carrying out such mitigation works.

The survey also provides important data for determining evacuation priorities so that a suitable evacuation plan and sequence can be developed for the SES.

### Funding Agreement

If council resolves to accept the NDRGS funding, the process then requires Emergency Management NSW to prepare a formal funding agreement for the project.

The funding agreement is then to be signed by Council's General Manager for the project.



It is not necessary to attach Council's seal to the documents and hence no Council resolution to that effect is necessary.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

An amount of \$70,000 is required for Council's matching 1/3<sup>rd</sup> component.

At present, \$40,000 of unexpended loan funds are available from savings in floodplain management projects which were previously completed below budget estimates.

These funds could be utilised for this project together with \$30,000 to be allocated with the September quarterly budget review (ie. \$40,000 unexpended loan funds + \$30,000 allocation at September QBR = \$70,000)

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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] Adoption of Section 94 Plan No. 15 - Developer Contributions for Community Facilities Version 6

### ORIGIN:

Planning and Infrastructure

### SUMMARY OF REPORT:

Council at its meeting held 20 July 2010 resolved to exhibit Draft Section 94 Plan No. 15 – Developer Contributions for Community Facilities (Version 6). The Draft Plan was exhibited for 28 days from 28 July 2010 to 25 August 2010 in accordance with Regulation 28 of the Environmental Planning and Assessment Regulations 2000 via Council’s Tweed Link and website exhibition page. An information session was delivered to coincide with the exhibition of the plan in accordance with Council’s resolution.

One public submission was received from the Chairperson of Murwillumbah Ratepayers and Residents Association expressing support for the adoption of this plan.

The amended Plan:

- Incorporates SGS Facilities Plan 2007 report findings;
- Extends area covered to whole of Shire (excluding Cobaki Lakes, Kings Forest and Casuarina);
- Updates the construction cost per square metre to \$3,453 per square metre;
- Revises the works program, resulting in a contribution rate of \$544 per person.

This results in the following amendment to contributions rates:

	Persons	Version 5		Version 6
		Tweed Coast North	Tweed Coast South	Shirewide
Per person	1	\$242	\$274	<b>\$544</b>
Detached dwelling/Lot/1 ET	2.4	\$581	\$658	<b>\$1,305.60</b>
1 bedroom unit	1.3	\$315	\$356	<b>\$707.20</b>
2 bedroom unit	1.7	\$411	\$466	<b>\$924.80</b>
3 bedroom unit	2.1	\$508	\$575	<b>\$1,142.40</b>
4+ bedroom unit	2.4	\$581	\$658	<b>\$1,305.60</b>

The rate for tourist development that provides accommodation to be applied per bedroom as above.

**RECOMMENDATION:**

**That Council**

- 1. Approves Draft Section 94 Plan No. 15 – Developer Contributions for Community Facilities (Version 6) to repeal and replace the existing version in accordance with Clause 31 of the Environmental Planning & Assessment Regulations 2000;**
- 2. Gives Public Notice in the Tweed Link of Council's decision specifying that the amended Version 6 of the Plan (CP 15) comes into effect on the date of the notice.**

## REPORT:

### 1. Background

S94 Plan No 15 Community Facilities has been in existence since October 1996 for the purpose of collecting S94 contributions for the provision of community facilities in Tweed Shire. The current version of the plan (Version 5) was adopted in December 2009.

Council at its meeting held 3 June 2008 resolved as follows:

*"That Council:-*

1. *Notes the SGS Economics & Planning Report as background for Future Community Facilities planning.*
2. *Endorses the principles outlined in the report entitled "Shire Wide Community Plan and Shire Wide Cultural and Community Facilities Plan" by SGS Economics & Planning (SGS Report) while recognising that there are budgetary constraints which will prevent Council from providing facilities at the level expressed, and in particular to support in principle, subject to available funds:*
  - (a) *Commencement of community facility building works when 60% occupancy of greenfield development has occurred;*
  - (b) *The provision of facilities for isolated areas with small populations;*
  - (c) *Flexible multi-purpose facilities and programs in co-location partnerships with private and public sector providers.*
3. *Reviews its community facilities and library requirements in light of the recommendations of the SGS Economics & Planning Report, taking into consideration budgetary constraints.*
4. *Identifies publicly owned and managed land in the Shire suitable for the provision of identified community facilities.*
5. *Subject to State Government approval, amends S94 Plan No 10 (Cobaki Lakes) and S94 Plan No. 19 (Casuarina Beach/Kings Forest) to retain the current community facility size and utilise the new rates contained within the SGS Report.*
6. *Recognises that S94 funding is no longer likely to be available for the desired Regional Performing Arts Centre and alternative funding sources need to be explored if this facility is to be provided."*

## 2. Amendment

This amendment updates S94 Plan No 15 in line with the above resolution and incorporates the following changes to the plan:

- Incorporates SGS Facilities Plan 2007 report findings;
- Extends area covered to whole of Shire (excluding Cobaki Lakes, Kings Forest and Casuarina);
- Updates the construction cost per square metre to \$3,453 per square metre;
- Revises works program resulting in a contribution rate of \$544 per person.

### Population:

**Facilities:** The “Shire Wide Community Plan and Shire Wide Cultural and Community Facilities Plan” by SGS Economics & Planning October 2007 (SGS Report) nominates more and larger facilities than the original S94 Plan provided for. This amendment does not propose to increase the overall provision of facilities’ floor space above the historical rate of provision, however. The timeframe for provision of the facilities has been amended to align more with the timing outlined in the SGS Report, based on the expected order of development of release areas in the Shire.

**Floor space:** The historical rate of provision of community facilities floor space over the whole Shire has been estimated as 150m<sup>2</sup>/1,000 population, and this rate is used as the basis for future provision in this Plan.

## 3. Part 116D of the Environmental Planning and Assessment Act

Part 116D of the (as yet unproclaimed amendments to the) Environmental Planning and Assessment Act requires that Council take account of 5 key considerations for development contributions:

**(a) *Can the public infrastructure that is proposed to be funded by a development contribution be provided within a reasonable time?***

Because the SGS Report nominates dates by which a certain facility should be provided, based on the expected order of development of release areas, this S94 plan has been amended to refer to the expected order of priority, rather than relying on lot threshold. This generally enables the facilities to be provided at an earlier date, provided that sufficient S94 funds have been collected to commence the works.

**(b) *What will be the impact of the proposed development contribution on the affordability of the proposed development?***

Following recent State Government intervention into S94 contribution plans and the maximum contribution levy allowable, Council can now levy contributions of up to \$20,000. It is estimated that the maximum level of \$20,000 levy per lot would represent around 7.5% of the cost of a modest house, or around 5% including land. This is not considered excessive and it should be noted that actual contributions are likely to result in a lower amount in many cases.

- (c) ***Is the proposed development contribution based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed development to which the contribution relates?***

Apportionment would mean that the Plan would only provide a proportion of the cost of new facilities according to the ratio of the future population to the existing population, or approximately 27%. It is argued that apportionment is not necessary because the existing community facilities throughout the Shire can provide for the existing population, and the future facilities will provide for the future population at the same rate of provision in the new release areas.

- (d) ***Is the proposed development contribution based on a reasonable estimate of the cost of proposed public infrastructure?***

The contribution is based on an assessment of the current building cost of expanding Council's Murwillumbah Community Centre, at \$3,453 per m<sup>2</sup>. This is almost twice the cost rate used in the previous Plan (in 2005), which is likely to have been an underestimate, and reflects general trends for cost increases for this kind of construction.

- (e) ***Are the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable?***

The SGS Report included a detailed demand study and found that these facilities were the absolute minimum required by this proposed development. As noted above, the rate of floor space provision has not been increased above historic rates.

### 3. Calculation

Summary of works program:

Population Catchments 2010-31	Growth in	Remainder Area persons/area after adjustments			
		Adjusted Persons	Floor requirements	Area 50% coverage)	Land Area (m2 at site Building cost (at 3,453/m2)
Urban North total: 19,950 <i>exclude Cobaki Lakes (12,000)</i>		7,950	1,192m <sup>2</sup>	2,384	\$4,115,976
Coastal Towns total: 19,950 <i>Exclude CP 19 area (10,000)</i>		9,950	1,492m <sup>2</sup>	2,984	\$5,151,876
Rural West 2,940		2,940	441m <sup>2</sup>	882	\$1,522,773
<b>Shire expected population to 2031 is 42,840</b>	<b>growth is 20,840</b>	<b>20,840</b>	<b>3,125m<sup>2</sup></b>	<b>6,250</b>	<b>\$10,790,625</b>
<b>Remainder Area persons</b>					

Applying the estimated Remainder Area population of 20,840 to the total works program to be funded by this plan of \$10,790,625 results in the following rates for Version 6:

		<i>Version 5</i>		<b>Version 6</b>
	<b>Persons</b>	<i>Tweed Coast North</i>	<i>Tweed Coast South</i>	<b>Shirewide</b>
<b>Per person</b>	<b>1</b>	\$242	\$274	<b>\$544</b>
<b>Detached dwelling/Lot/1 ET</b>	<b>2.4</b>	\$581	\$658	<b>\$1,305.60</b>
<b>1 bedroom unit</b>	<b>1.3</b>	\$315	\$356	<b>\$707.20</b>
<b>2 bedroom unit</b>	<b>1.7</b>	\$411	\$466	<b>\$924.80</b>
<b>3 bedroom unit</b>	<b>2.1</b>	\$508	\$575	<b>\$1,142.40</b>
<b>4+ bedroom unit</b>	<b>2.4</b>	\$581	\$658	<b>\$1,305.60</b>

The rate for tourist development that provides accommodation to be applied per bedroom as above.

### **Exhibition and Submissions**

Council at its meeting held 20 July 2010 resolved to exhibit Draft S94 Plan No 15 – Developer Contributions for Community Facilities (Version 6). The Draft Plan was exhibited for 28 days from 28 July 2010 to 25 August 2010 in accordance with Regulation 28 of the Environmental Planning and Assessment Regulations 2000 via Council's Tweed Link and website exhibition page.

Council also resolved that a public meeting be held in conjunction with the exhibition of the plan. A session was scheduled for 6pm Wednesday 11 August and was advertised in the Tweed Link. In attendance were Council's Manager Community Facilities Gary Corbett, and Council's S94 Contribution Admin Officer, Linda Krausz. It was attended by the Chairperson of the Murwillumbah Ratepayers and Residents Association, Robyn Lemaire. The Manager Community Facilities presented background to the works program in the draft Plan and an overview of what is required by S94, and questions were answered as they arose.

#### **Murwillumbah Ratepayers and Residents Association**

One public submission was received on 20 August 2010 from the Chairperson of the Murwillumbah Ratepayers and Residents Association expressing dismay that Murwillumbah had not been previously included in the plan collection area and urging Council to adopt the amended plan as soon as practicable.

No other submissions were received.

The Draft Plan as exhibited (copy attached) is now recommended for adoption.



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The adoption of Draft *Section 94 Plan No 15 – Developer Contributions for Community Facilities* will enable Council to collect developer contributions for the provision of community facilities in Tweed Shire.

If the exhibited Plan is not adopted, part of the cost of these works would require financing from the general fund and from existing ratepayers who are not contributing to the demand for these facilities in the designated area.

**POLICY IMPLICATIONS:**

Contributions are required so that Council is able to provide the community facilities identified as required as a result of 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](http://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. Section 94 Plan No 15 - Developer Contributions for Community Facilities (Version 6) (ECM 20562245).
  2. Submission from the Chairperson of the Murwillumbah Ratepayers and Residents Association (ECM 20470023).
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**42 [EO-CM] Amendments to Development Control Plan Section A3 -  
Development of Flood Liable Land**

**ORIGIN:**

**Planning & Infrastructure**

**FILE NO: GT1/DCP/A3**

**SUMMARY OF REPORT:**

At the Council meeting held 18 May 2010, Version 1.3 of Development Control Plan Section A3 - Development of Flood Liable Land (DCP-A3) was adopted. This was a major amendment, which included adoption of new flood maps derived from the 2009 update of the Tweed Valley Flood Study and the new Coastal Creeks Flood Study.

Since Version 1.3 came into effect (on 9 June 2010) data anomalies in some of these maps have been found by Council staff.

It is proposed to revoke the incorrect maps and replace them with corrected versions. The amendment to DCP-A3 will need to be advertised and any submissions reported back to Council prior to adoption.

**RECOMMENDATION:**

**That Council publicly exhibits the Development Control Plan Section A3 - Development of Flood Liable Land flood map amendments for a period of 28 days.**

**REPORT:**

At the Council meeting held 18 May 2010, Version 1.3 of Development Control Plan Section A3 - Development of Flood Liable Land (DCP-A3) was adopted. This was a major amendment, which included adoption of new flood maps derived from the 2009 update of the Tweed Valley Flood Study and the new Coastal Creeks Flood Study.

Since Version 1.3 came into effect (on 9 June 2010) data anomalies in some of these maps have been found by Council staff. Proposed amendments are listed in the attachment to this report. Many of these anomalies relate to land that is shown as being affected by the probable maximum flood (PMF), which modelling shows is actually high land out of the floodplain. Other changes propose to remove localised flood gradients on the edges of the model or due to local flood catchments that are not accurately portrayed in the model. Though these mapping issues are minor in nature, they could cause confusion to applicants and assessing staff, and have the potential to be raised in legal proceedings.

It is proposed to revoke the incorrect maps and replace them with corrected versions. The amendment to DCP-A3 will need to be advertised and any submissions reported back to Council prior to adoption.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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. Flood Map Amendments (ECM 21199076).
-

**43 [EO-CM] 2010/2011 Fees and Charges - Stormwater Drainage Application Fees for Erosion and Sediment Control**

**ORIGIN:**

**Planning and Infrastructure**

**SUMMARY OF REPORT:**

At the Council meeting held 20 July 2010 it was resolved that:

*"the amended Stormwater Drainage Application fees for Erosion and Sediment Control be placed on public exhibition for 28 days."*

It should be noted that this has been on public exhibition since 27 July 2010 and no objections have been received.

**RECOMMENDATION:**

**That the amendment of \$2.67 per 1000m<sup>2</sup> of lot area (minimum \$62 Maximum \$3,100.50) be applied for Item 131 - Stormwater Drainage Application - Erosion/Sediment Control in the Fees and Charges Schedule for 2010/2011.**

**REPORT:**

As reported to the 20 July 2010 Council meeting the 2010/11 Stormwater Drainage Application fees for erosion/sediment control require amendment to correct a miscalculation and to clarify the description for future updates as follows:

**Item 131 – Stormwater Drainage Application – Erosion/Sediment Control**

<b>Title of Fee/Charge</b>	<b>Fee or Charge Levied 2010/2011 \$</b>
Application for approval of erosion and sediment control plan (Minimum fee = 3 x amount per 1000m <sup>2</sup> of lot area; Maximum fee = 150 x amount per 1000m <sup>2</sup> of lot area)	<b>\$20.67</b> per 1000m <sup>2</sup> of lot area (Minimum <b>\$62</b> ; Maximum <b>\$3,100.50</b> )

At the Council meeting held 20 July 2010 it was resolved that:

*"the amended Stormwater Drainage Application fees for Erosion and Sediment Control be placed on public exhibition for 28 days."*

It should be noted that this has been on public exhibition since 27 July 2010 and no objections have been received.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**44 [EO-CM] Minutes of the Local Traffic Committee Meeting - B-Double Route held 19 August 2010**

**ORIGIN:**

**Planning & Infrastructure**

**SUMMARY OF REPORT:**

A meeting of the Local Traffic Committee - B-Double Route was held after the Local Traffic Committee meeting on 19 August 2010. The B-Double item for discussion was Pottsville Road, West Pottsville and the Minutes form the body of this report.

**RECOMMENDATION:**

**That the application for extension of the B-Double route along Pottsville Road, West Pottsville from the intersection of Cudgera Creek Road for a further 1.4km to a private driveway located at 853 Pottsville Road be approved.**

**REPORT:**

1 of 3

**TITLE:** [EO-EMT] Minutes of the Local Traffic Committee Meeting - B-Double Route held 19 August 2010

**FILE REFERENCE:** Minutes; Local Traffic Committee; Traffic - Weight of Vehicles (B Doubles)

**SUBMITTED BY:**

Director Engineering and Operations

**RESPONSIBLE OFFICER:** John Zawadzki

**SUMMARY OF REPORT:**

That the Executive Management Team notes the minutes of the Local Traffic Committee Meeting - B Double Route held 19 August 2010 and the following be included in the minutes to be endorsed by Council:

**RECOMMENDATION:**

That the Executive Management Team notes the minutes of the Local Traffic Committee - B-Double Route Meeting held 19 August 2010 and the following be included in the minutes to be endorsed by Council:-

**Executive Management Team Comments:**

1. *Pottsville Road, West Pottsville*

Nil.

**Executive Management Team Recommendations:**

1. *Pottsville Road, West Pottsville*

That the application for extension of the B-Double route along Pottsville Road, West Pottsville from the intersection of Cudgera Creek Road for a further 1.4km to a private driveway located at 853 Pottsville Road be approved.



**SUPPORTING INFORMATION:**

**Minutes**



**Minutes of the Local Traffic Committee Meeting - B-Double Route Agenda held Thursday 19 August 2010**

**Venue:**

Mt Warning Meeting Room

**Time:**

After Local Traffic Committee - Informal Items Agenda - 11.45am.

**Present:**

**Committee Members:** Cr Barry Longland, Snr Constable Rachel Robbins, NSW Police, Mr Geoff Provest MP, (Member for Tweed), Mr Col Brooks on behalf of Mr Thomas George MP (Member for Lismore), Mr Daniel Boorman (Roads and Traffic Authority of NSW Representative).

**Informal:** Mr John Zawadzki (Chairman), Mr Ray Clark, Mr Danny Rose, Ms Judith Finch (Minutes Secretary).

**Apologies:**

Ian Shanahan (Roads and Traffic Authority of NSW), Mr Thomas George MP (Member for Lismore), Mr Paul Brouwer.

**Minutes of Previous Meeting:**

The Minutes of the meeting held 18 February 2010 were confirmed.

**Business Arising:**

N/A

**Agenda Items:**

**General Business:**

**1. Pottsville Road, West Pottsville**

An application has been received for extension of the B-double route on Pottsville Road, West Pottsville for a further 1.4km to a private driveway located at 853 Pottsville Road.

This is to increase productivity transferring the annual sugar tonnage from the sugar mills to the refinery and allowing maintenance of these vehicles to be carried out in the workshop.

Council officers audited the route on 2 August 2010 and consider the turning manoeuvres required at both the Cudgera Creek Road/Pottsville Road intersection and the driveway could be made safely. The audit was conducted in accordance with the Roads and Traffic Authority of NSW "Route Assessment Guidelines for Restricted Access Vehicles".

## Minutes



### RECOMMENDATION TO COMMITTEE;

That the application for extension of the B-Double route along Pottsville Road, West Pottsville from the intersection of Cudgera Creek Road for a further 1.4km to a private driveway located at 853 Pottsville Road be approved.

### RECOMMENDATION TO COUNCIL:

That the application for extension of the B-Double route along Pottsville Road, West Pottsville from the intersection of Cudgera Creek Road for a further 1.4km to a private driveway located at 853 Pottsville Road be approved.

### Next Meeting:

The next meeting of the B-Double Routes Advisory Committee will be held as and when necessary.

The meeting closed at 11.55am.

### EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

### EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

### LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**45 [EO-CM] Tweed Road Contribution Plan 5 Year Rolling Works Program - Addition of Kennedy Drive Four-laning**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

Version 5 of the Section 94 Tweed Road Contribution Plan (CP No. 4) was adopted by Council at its meeting on 10 July 2007. A cash flow analysis was undertaken at that time and a 5 year Rolling Works Program developed and adopted by Council which was previously updated in January 2009.

More recently, Council at its meeting on 20 July 2010 considered a report titled "Kirkwood Road Project - July 2010 Update". At that meeting Council Resolved the following:

- "1. *Work continues to complete concept design, environmental assessment and preparation of the planning application for the Kirkwood Road Project elements south of Terranora Creek estimated to cost \$32.4M.*
2. *Council continues to seek Roads and Traffic Authority of NSW agreement to construction of a temporary south bound off ramp at Kirkwood Road.*
3. *Council defers planned works on Kennedy Drive and Leisure Drive involving widening sections to 4 lanes until there is more certainty on the future of the Kirkwood Road Project.*
4. *Council seeks funding from the NSW and Federal Governments of \$21.5M for construction of the remainder of the works south of Terranora Creek to connect the Interim Early Kirkwood Road Works to Fraser Drive.*
5. *Council seeks support from any political aspirant that is standing for Federal or State election for Council's funding proposal."*

Parts 1, 2 and 3 of the above resolution impact on the TRCP 5 Year Rolling Works Program in terms of cash flow and project prioritisation.

A cash flow analysis has been undertaken and a Proposed 5 Year Rolling Works Program developed. The key amendment to the program is to include the construction of Kirkwood Road from Falcon Way to the Pacific Highway in 2011/12. It does require several projects to be deferred in the Works Program adopted by Council at its meeting on 27 January 2009. Included is the deferral of the four-laning of Leisure Drive between Winders Place and Eucalyptus Drive until 2012/13 and the upgrading of Kennedy Drive from 2009/10 to 2011/12 and 2012/13.

This report recommends an update of the 5 year Rolling Works Program and provides updates on Parts 1, 2 and 3 of the 20 July 2010 Council resolution.

**RECOMMENDATION:**

That Council adopts the Proposed 5 Year Rolling Works Program, funded from the CP No. 4 as listed below:

<b>Year</b>	<b>TRCP 5 Year Rolling Construction Program TRCP Project</b>	
<b>2010/11</b>	<b>(6&amp;8)</b>	<b>Cobaki Parkway from Boyd St overpass to town centre (by developer)</b>
	<b>(36)</b>	<b>Kirkwood Rd Construction - Highway to Falcon Way excl bridge over highway</b>
<b>2011/12</b>	<b>(36)</b>	<b>Kirkwood Rd Construction - Highway to Falcon Way excl bridge over highway</b>
	<b>(8)</b>	<b>Cobaki Parkway town centre to Sandy Lane</b>
	<b>(20a)</b>	<b>Kennedy Drive Upgrade - Rose Street to Cobaki Bridge</b>
<b>2012/13</b>	<b>(29a)</b>	<b>Kennedy Drive - Rose Street to Cobaki Bridge</b>
	<b>(59c)</b>	<b>Leisure Drive upgrade - Winders Place to Eucalyptus Drive</b>
<b>2013/14</b>	<b>(112k)</b>	<b>Old Lismore Road upgrade between new subdivisions</b>
	<b>(112b)</b>	<b>West End Street extension</b>
	<b>(11)</b>	<b>Cobaki Parkway Sandy Lane Southern intersection to Piggabeen Creek</b>
<b>2014/15</b>	<b>(112k)</b>	<b>Old Lismore Road at North Arm Road</b>
	<b>(13)</b>	<b>Cobaki Parkway Bridge over Piggabeen Creek</b>

## REPORT:

Version 5 of the Tweed Road Contribution Plan (TRCP) was adopted by Council on the 10 July 2007, and became effective on 20 July 2007. On 23 October 2007 Council adopted a 5 Year Rolling Construction Program for implementation of the Works Schedule contained in the Plan. In January 2009 a revised 5 Year Rolling Works Program was adopted.

Further developments have occurred that result in significant changes to the TRCP 5 Year Rolling Works Program. These changes are the result of a report to Council's meeting on 20 July 2010 titled "Kirkwood Road Project - July 2010 Update". At that meeting Council Resolved the following:

- "1. *Work continues to complete concept design, environmental assessment and preparation of the planning application for the Kirkwood Road Project elements south of Terranora Creek estimated to cost \$32.4M.*
2. *Council continues to seek Roads and Traffic Authority of NSW agreement to construction of a temporary south bound off ramp at Kirkwood Road.*
3. *Council defers planned works on Kennedy Drive and Leisure Drive involving widening sections to 4 lanes until there is more certainty on the future of the Kirkwood Road Project.*
4. *Council seeks funding from the NSW and Federal Governments of \$21.5M for construction of the remainder of the works south of Terranora Creek to connect the Interim Early Kirkwood Road Works to Fraser Drive.*
5. *Council seeks support from any political aspirant that is standing for Federal or State election for Council's funding proposal."*

Parts 1, 2 and 3 of the above resolution impact on the TRCP 5 Year Rolling Works Program in terms of cash flow and project prioritisation.

A cash flow analysis has been undertaken and a Proposed 5 Year Rolling Works Program developed. The key amendment to the program is to include the construction of Kirkwood Road from Falcon Way to the Pacific Highway in 2011/12. It does require several projects to be deferred in the Works Program adopted by Council at its meeting on 27 January 2009. Included is the deferral of the four-laning of Leisure Drive between Winders Place and Eucalyptus Drive until 2012/13 and the upgrading of Kennedy Drive from 2009/10 to 2012/13.

This report recommends an update of the 5 year Rolling Works Program and provides updates on Parts 1, 2 and 3 of the 20 July 2010 Council resolution.

Following on from Parts (1) and (3) of Council's Resolution dated 20 July 2010, an update of the 5 year Rolling Works Program becomes necessary and is discussed as follows.

## PROPOSED TRCP 5 YEAR ROLLING WORKS PROGRAM

### Projected Income

To enable an orderly construction program to be developed a financial analysis was undertaken to develop a predicted cash flow based on known major release areas, their expected commencement dates and rate of development. This input data has been sourced from developers and advice provided by Council's Planning & Regulation Division, but, has been adjusted to ensure a maximum annual lot yield is no greater than 775 lots per annum. This information is the best available based on historical lot yields, forward projections and expected start dates of developments. This will mean that income will vary over time due to the above and economic conditions. It is highlighted that the cash flow used for this report will need amending periodically to reflect changes in conditions identified above.

The cash flow analysis also includes amounts for redevelopment, unit, commercial and industrial development based on past trends. The projected annual income for the TRCP is as follows:

TRCP 5 Year Cash Flow Estimate	
Year	Income
2010/2011	\$3,941,000
2011/2012	\$5,683,500
2012/2013	\$4,534,000
2013/2014	\$7,420,000
2014/2015	\$7,542,000

### Expenditure

The following proposed Works Schedule and Cash Flow (Table 1) contains details on projects and expenditure over the 5 year period from 2010 - 2011 to 2014 - 2015. Projects listed reflect TRCP projects needed to allow the anticipated rollout of developments to occur whilst minimising road network impacts and enabling Stage 1 of the Kirkwood Road Extension from Falcon Way to the Pacific Highway to be brought forward from 2015/16 to 2010/11.

Table 2 shows the current TRCP 5 Years Works Program and identifies the impacts of the proposed Program on the individual projects.

**Table 1**

Proposed TRCP 5 Year Rolling Works Program and Cash Flow					
Year	TRCP Project	Annual Income	Project Cost	Annual Balance	Comments
June 2010	-	-	\$12,216,005	\$11,656,000	Balanced
	Committed Project Costs	\$1,000,000	\$2,000,000	\$11,216,005	
2010/11	(6 & 8) Cobaki Parkway Boyd Street overpass to Town Centre		\$3,278,740	\$7,937,265	
	(36) Kirkwood Road Highway to Falcon Way incl temp off ramp and precinct on ramps		\$3,392,500	\$4,544,765	50% 2010/11 roll over into 2011/12 Total cost \$11M RTA cost \$4.2M



<b>Proposed TRCP 5 Year Rolling Works Program and Cash Flow</b>					
<b>Year</b>	<b>TRCP Project</b>	<b>Annual Income</b>	<b>Project Cost</b>	<b>Annual Balance</b>	<b>Comments</b>
	Income (TRCP)	\$3,941,000			
				\$7,485,765	
2011/12	(36) Kirkwood Road Highway to Falcon Way incl temp off ramp and precinct on ramps		\$3,392,500	\$4,093,265	50% of cost
	(8) Cobaki Parkway Town Centre to Sandy Lane		\$3,654,000	\$1,439,000	
	(29c) Kennedy Drive Rose St to Cobaki Bridge Upgrading and pavement rehabilitation		\$1,400,000	\$39,265	Total project cost estimate \$7.96M. Water/sewer share \$1.5M Rehabilitation cost \$3.25M
	Income (TRCP)	\$5,683,500		\$5,722,765	
2012/13					
	(29a) Kennedy Dr Rose St to Cobaki Bridge Upgrading and pavement rehabilitation		\$1,800,000	\$3,922,765	Remainder or project
	(59c) Leisure Drive Upgrade Winders to Eucalyptus		\$1,950,000	\$1,972,765	
	Income (TRCP)	\$4,534,000		\$6,506,765	
				\$6,506,765	
2013/14	(112k) Old Lismore Rd upgrade part only between new subdivisions		\$700,000	\$5,806,765	
	(112b) West End St Extension		\$2,075,000	\$3,731,765	
	(11) Cobaki Parkway Sandy Lane Southern Intersection to Creek		\$1,256,330	\$2,475,435	
	Income (TRCP)	\$7,420,000		\$9,895,435	
				\$9,895,435	
2014/15	(13) Cobaki Parkway Bridge over Piggabeen Creek		\$4,703,400	\$5,192,035	
	(112k) Old Lismore Road upgrade North Arm Road end		\$737,150	\$4,454,885	
	Income (TRCP)	\$7,542,000		\$11,996,885	
				\$11,996,885	

**Table 2**

**Current TRCP 5 Year Rolling Works Program**

Year	TRCP Project	Project Cost	Impact of Proposed Works Program (Table 1)
	Balance of TRCP at 6 January 2009 (includes income)		
2008/09	Committed funding for various projects	\$11,266,366	
2009/10	(29a) Kennedy Drive – Rose Street to Cobaki Creek Bridge (widening to 4 lanes)	\$1,676,563	Deferred to 2011/12 and 2012/13
	(110) Riverview Street Upgrade	\$218,000	Completed
2010/11	(29a) Kennedy Drive – Rose Street to Cobaki Creek Bridge (widening to 4 lanes) – continued from 2009/10	\$1,545,381	Deferred to 2012/13
	(6&8) Cobaki Parkway from Boyd St overpass to town centre	\$3,278,739	Unchanged
2011/12	(123) Reserve Creek Rd reconstruction/upgrade Tweed Valley Way to Quarry Rd	-	Completed
	(8) Cobaki Parkway town centre to Sandy Lane	\$3,653,631	Unchanged
	(112k) Old Lismore Road upgrade (part only) (In current subdivisions under construction)	\$700,000	Deferred to 2013/14
	(36,44,38)Kirkwood Rd Highway to Fraser Dr incl bridge over highway	\$8,181,000	Brought forward 2010/11 and 2011/12
2013/14	(11) Cobaki Parkway Sandy Lane (southern intersection) to Piggabeen Rd	\$1,256,327	Unchanged
	(13) Cobaki Parkway Bridge over Piggabeen Creek	\$4,703,400	Deferred to 2014/15
	(112k) Old Lismore Rd Upgrade (final) (North Arm Rd end)	\$737,150	Deferred to 2014/15

## **KIRKWOOD ROAD PROJECT**

### **Interim South Bound Off Ramp (Stage 1)**

This project is part of the Lower Tweed and Pacific Highway Traffic Master Plan. Whilst usage will not be optimised until the Eastern Service Road is constructed between Kennedy Drive and Kirkwood Road it will attract some traffic off Leisure Drive and provide alternative access to Tweed City and other commercial areas for residents of Banora Point West and Terranora.

Work on the Kirkwood Road project, in accordance with Parts (1) and (2) of the above Council resolution, has progressed as detailed below.

The temporary southbound highway off-ramp onto Kirkwood Road was not originally supported by the Roads and Traffic Authority (Roads and Traffic Authority of NSW). In accordance with Part 2 of the Resolution above, a Traffic Analysis was jointly commissioned by Council and the RTA to determine the 'life' of the proposed temporary off-ramp, which is the point in time where traffic volumes and 'weaving' manoeuvres make the ramp a safety hazard. The Analysis demonstrated the ramp would perform satisfactorily until 2019.

The RTA has accepted the temporary off-ramp based on the Traffic Analysis. There is an expectation that Council remains committed to providing it's share of the funding of the Eastern Service Road in 2019/2020 to replace the temporary off-ramp.

The RTA has also verbally advised they will be able to fund their share of Option 1 - Interim Early Works - Kirkwood Road East and Temporary South Bound Off-Ramp Kirkwood Road East (Eastern Works) - see Figure 1. This portion of the project is estimated to cost \$10.9M with the RTA contributing \$4.12M and Council contributing \$6.78M (see Table 3).

To facilitate construction, it is proposed to construct Stage 1 in two parts as follows (see Figure 1):

#### **(a) Interim Early Works Project (Eastern Works)**

Consisting of:

- Kirkwood Road extension, Falcon Way to Pacific Highway
- South Bound on ramp from Kirkwood Road onto highway
- Temporary South bound off ramp from highway to Kirkwood Road

Council and the RTA have agreed to fund their respective shares of the Eastern Works, being \$6.782M and \$4.13M respectively.

These works are proposed to be constructed in 2010/11 and 2011/12 as shown in the Proposed Works Program in Table 1.

#### **(b) Full Kirkwood Road Project with Temporary Southbound Off Ramp (Western Works)**

Consisting of:

- Kirkwood Road from Falcon Way to Fraser Drive, including bridge over highway
- South Bound on ramp from Kirkwood Road onto highway
- Temporary South bound off ramp from highway to Kirkwood Road
- North Bound off ramp from highway to Kirkwood Road

These works are proposed to be constructed between 2015 and 2020 as shown in the Lower Tweed and Pacific Highway Masterplan.

Unfortunately the Western Works of this Project are not included in the Proposed TRCP Rolling Works Program due to funding shortfalls. Council's share of the Western Works is \$19.41M and the RTA's share is \$2.12M. It is expected that without State or Federal government assistance the Western Works will not be feasible until well after 2015.

A detailed estimate for the Project has now been prepared based on a detailed concept plan. The project has been broken down into discreet stages as shown on the Plan below.

The cost estimate in the following table reflects these stages and shows the expected contribution based on the Master Planning cost sharing commitments:

**Table 3**

Part	Interim Early Works (\$)			Full Kirkwood Road Project with Temporary Southbound Off Ramp (\$)		
	Project	RTA	TSC	Project	RTA *	TSC
1.1.1	3,297,140	0	3,297,140			
1.1.2	1,410,196	705,098	705,098			
1.1.3	2,408,815	1,204,407	1,204,407			
1.1.4	3,151,674	1,575,837	1,575,837			
1.1.5	641,281	641,281				
1.1.6				13,952,704	0	13,952,704
1.1.7				875,437	437,718	437,718
1.1.8				3,372,517	1,686,259	1,686,259
1.1.9				2,700,889		2,700,889
1.1.10				638,722		638,722
<b>Total</b>	<b>10,909,106</b>	<b>4,126,623</b>	<b>6,782,483</b>	<b>21,540,269</b>	<b>2,123,977</b>	<b>19,416,292</b>

\* Assumed RTA contribution based on Lower Tweed Road and Pacific Highway Master Plan 2006.

Work is continuing on Noise Impact, Flora and Cultural Heritage Reports which will form part of the Development Application for the Project.



## **KENNEDY DRIVE UPGRADING BETWEEN ROSE STREET AND COBAKI CREEK BRIDGE**

This matter was the subject of a detailed report to Council 22 April 2008 and it was resolved:-

*"That*

*.....5. The next review of Section 94 Contributions Plan No. 4, Tweed Road Contribution Plan to include in the Works Program, widening of Kennedy Drive between Cobaki Creek Bridge and Gray Street to four lanes."*

In January 2009 Council included this project in the 5 Year Rolling Works Program for 2010/11.

More recently Council's resolution of 20 July 2010 (part 3) deferred the project. Based on the cash flow analysis for this report, the proposed works schedule can accommodate this project in 2011/12 and 2012/13.

Kennedy Drive is a major distributor road in Tweed Heads which requires an upgrade to cater for increased traffic volumes from future development.

Currently Kennedy Drive has three trafficable lanes only (two eastbound and one westbound) between the tick gate near the Cobaki Creek Bridge and Rose Street. It is proposed to upgrade Kennedy Drive to four lanes to provide additional capacity. The proposed works will necessitate new kerb and channelling and associated drainage works, pavement reconstruction, road reshaping, resurfacing and the undergrounding of overhead power on the southern side. The undergrounding of overhead power on the southern side of the carriageway forms a major component of the overall cost.

The total cost of these works is estimated to be \$7,960,000. The upgrading component only on the southern side, which can be attributed to future development traffic, is estimated to cost approximately \$3,200,000. A further \$3,250,000 is required to rehabilitate and upgrade the remaining part of the existing carriageway on the northern side, whilst approximately \$1,500,000 is for water and sewer infrastructure.

Funding for these works can be partly sourced from TRCP contributions funds for the upgrading component and the remaining funding obtained from the Infrastructure Program for the rehabilitation component and the water and sewer fund for the water and sewer infrastructure.

## **LEISURE DRIVE**

Part 3 of Council's resolution dated 20 July 2010 also deferred this project from 2009/10. The project includes the widening of Leisure Drive from just north of Winders Place to Eucalyptus Drive to provide 4 lanes. Detailed engineering design plans have been completed and planning approval has been issued. This work was included in the current year's Works Program.

Based on the Cash Flow Analysis used to review the 5 Year Rolling Works Program it is not possible to retain this project and in accordance with Part 3 of the Council resolution it has been deferred until 2012/13 as shown in Table 1.

### **Proposed 5 Year TRCP Rolling Works Program**

The Proposed 5 Year TRCP Rolling Works Program is based on best available information of the roll out of urban growth and subdivisions that control income funds to the TRCP as shown in Table 1. However the growth/income projection in the Proposed 5 Year TRCP Rolling Works Program will change over time and as a result, the above Program may need to be revised to defer or add projects based on actual TRCP income.

It is recommended that the Proposed 5 Year TRCP Rolling Works Program be amended as shown in Table 1.

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

Allocation of funds held in the CP No. 4 for construction of the projects listed for the future financial years.

### **POLICY IMPLICATIONS:**

Modification to the TRCP 5 Year Rolling Works Program.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**46 [EO-CM] NSW Government's Changes to Developer Contributions**

**ORIGIN:**

**Director Engineering and Operations**

**SUMMARY OF REPORT:**

The NSW Government's Developer Contributions review over the past three years has included:

- passing of the 2008 Amendment Act, containing the yet unproclaimed Part 5 of the Act that was to overhaul the contribution system,
- arbitrary introduction of \$20,000 contribution cap in 2009 which allowed for exemptions and indexation
- followed by a unindexed \$20,000 cap in June 2010.
- further followed by a "refinement" in August 2010 that allowed Greenfield areas to have a \$30,000 unindexed cap and "grandfathered" sites to have no cap.
- foreshadowed restriction of eligible contribution funded works to "Key Community Infrastructure" then
- further restriction of eligible contribution funded works to "Eligible Infrastructure".

If the Minister approves the \$30,000 cap for Tweed's 18 Greenfield sites and "grandfathering" of the contributions at Seaside City, many of Tweed's concerns will be resolved for the short term. However, the remainder of the Shires "Brownfield" sites still have the unindexed \$20,000 cap.

In the next six months Council is likely to approve amended CP15 - Community Facilities and a substantial revaluation of works costs and contribution levels for CP4 - Tweed Road Contribution Plan. These revisions will elevate contributions per residential lot in most sectors of Tweed Shire to between \$20,000 and \$30,000. Some areas such as Area E at Terranora would exceed \$30,000 (if the cap was not in place). Without price indexation, over a period of time, inflation will cause both Greenfield and Brownfield site contributions to hit their caps and Council will once again be unable to fund all the works in its contributions plans.

Enforcement of the Government's "Essential Infrastructure" policy will result in many of the works in Tweed Shire developer contribution plans being no longer eligible. The forced removal of buildings for community facilities, libraries and recreational facilities from developer contributions plans will cause a major concern in the community.

There is an argument that in some areas of NSW, developer contributions are unreasonably high. This generally occurs in Western Sydney where contributions of \$40,000 to \$50,000 per residential lot are not uncommon. However rather than properly consulting with local government and reforming the system to take into account the needs of the many varied regions of NSW, the Government has instead, reacted to a Sydney problem by imposing an unrealistic cap on all Council's in NSW. The furore that both the 2009 and 2010 cap has caused in local government has led to the Government responding partly to the concerns

raised and issuing their current revised higher caps for "Greenfield" and "Grandfathered" sites. While this has gone some way to addressing the problem for local government, it is still not price indexed and it has displeased developer interest groups.

Given the history of this issue there may still be other "reforms" the Government has in store for the developer contributions system that may yet cause further difficulties for Councils and their communities.

**RECOMMENDATION:**

**That Council:**

- 1. Writes to the Minister for Planning:-**
  - (a) Acknowledging the response the Government has taken to date to some issues previously raised regarding the Developer Contributions Cap and;**
  - (b) Outlining ongoing concerns particularly the need to cost index the cap, and redefine "Essential Infrastructure", and their potential if not further addressed, to undermine Council's comprehensive and orderly strategic and infrastructure planning and future service provision for Tweed residents and businesses.**
- 2. Seeks an urgent meeting with the Minister and senior management of the NSW Department of Planning to discuss the concerns in more detail.**

## REPORT:

### 1. Background

Where a need for additional amenities or services is generated by a development, Councils may impose conditions of consent on the development, that require contributions for these works or services. This is enabled by Section 94 of the Environmental Planning and Assessment Act 1979:

**"94 Contribution towards provision or improvement of amenities or services**

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
  - (b) *the payment of a monetary contribution, or both."*

Section 94B goes on to say that:

**"94B Section 94 or 94A conditions subject to contributions plan**

- (1) *A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division)."*

Since the early 1990s Tweed Shire Council has developed a full suite of Section 94 plans to provide a variety on amenities and services including arterial roads, stormwater drainage, parks and recreational facilities, libraries, community facilities, surf life saving facilities, cemeteries, council administrative offices and depot, parking, cycleways, bus shelters and street trees. These plans were developed in accordance with S94/94B of the Act, associated regulations and the "Section 94 Contributions Plans Manual" first issued in 1992 and revised in 1997.

In 1998 there was a substantial amendment to the EP&A Act to provide for private certification of many other aspects of development. In the following years there were attempts to establish a standing committee to produce status papers and reviews of the contributions system. These reviews were prompted by a tension between bodies representing the development industry and Councils. These industry bodies attacked the S94 system as being unduly onerous on developers and contributing to the high cost and low supply of housing land. The S94 system was vigorously defended by local government and for a number of years there were no changes.

In October 2007 the then Premier issued a press release that advised a comprehensive overhaul of developer contributions was to undertaken and that:

*"State and local infrastructure contributions will now only fund attributable infrastructure and land requirements to support developed land rather than infrastructure requirements driven by general population growth. This means that for both State government agencies and local councils, it will only be possible to levy for a range of infrastructure items where the need for that infrastructure arises from the development of land."*

The Premier's statement misrepresented the lawful application of contributions because S94 had always required the levy to only be used for infrastructure that "arises from the development of land", and this was reinforced by procedures in the S94 Manual.

The Government's statement was the prelude for wholesale changes to Section 94 through the 2008 Amendment Act.

## **2. The 2008 Amendment Act**

The Environmental Planning and Assessment Amendment Act 2008 after passing both houses of the NSW Parliament was given royal assent on 25 June 2008. The Amendment Act introduced Part 5B of the EP&A Act which is to replace Section 94 and associated existing sections of the Act relating to developer contributions.

Part 5B and associated regulations was the overhaul of developer contributions referred to in the Premier's statement of October 2007. Part 5B introduces the term "key community infrastructure" as being a new definition of the infrastructure for which Council's may impose developer contributions. Infrastructure outside this definition could only be included in developer contributions plans if agreed by the Minister.

"Key community infrastructure" was defined in the amended regulations as:

### **"31A Key community infrastructure and additional community infrastructure**

- (1) *The following community infrastructure is prescribed as key community infrastructure for the purposes of sections 116I and 116V of the Act:*
  - (a) *local roads,*
  - (b) *local bus facilities,*
  - (c) *local parks,*
  - (d) *local sporting, recreational and cultural facilities and local social facilities (being community and child care centres and volunteer rescue and volunteer emergency services facilities),*
  - (e) *local car parking facilities,*
  - (f) *drainage and stormwater management works,*
  - (g) *land for any community infrastructure (except land for riparian corridors),*
  - (h) *district infrastructure of the kind referred to in paragraphs (a)–(e) but only if there is a direct connection with the development to which a contribution relates.*
- (2) *Public infrastructure comprising land for riparian corridors cannot be approved under section 116I or 116V of the Act as additional community infrastructure or additional public infrastructure.*
- (3) *In this clause:*  
**facilities** *means buildings and works."*

The insistence that developer contributions be only be for "key community infrastructure" was seen by local government as a means of the State Government limiting the types of infrastructure that could be the subject of contributions. The existing S94 was fairly open ended on this issue.

In December 2009 the Department of Planning issued "Draft local development contributions guidelines" to assist Councils in implementation of Part 5B of the Amendment Act. Council responded to the draft "guidelines" in February 2010 and forwarded a submission to the Department. The Guidelines provided valuable assistance on interpretation of the "key community infrastructure" definition and guidance on criteria and process to seek the Minister's approval to allow other infrastructure into contributions plans.

However, more than two years since it was passed by Parliament, Part 5B of the 2008 Amendment Act has still not been proclaimed by the Government. Even though, on a number of occasions, officers of the Department have advised its proclamation was imminent. As Part 5B has not been proclaimed it is not NSW law and the current S94 remains in force. These two years have been difficult in an administrative sense as several directions and letters from the Department and Minister to Council have insisted that Council's existing S94 contributions plans be remade to be consistent with Part 5B of the Amendment Act. Council's have been expected to simultaneously obey two sets of (not always consistent) rules.

### **3. Contributions Cap 2009**

Instead of proclaiming Part 5B of the 2008 Amendment Act and using these new provisions to overhaul the contributions process, the then Minister for Planning, the Hon Kristina Keneally, surprised observers by issuing a section 94E Direction (under the old unamended Act) on 13 January 2009 directing that unless Councils applied for an exemption, Development Consents issued after 30 April 2009 could not require developer contributions that exceed \$20,000 (indexed) per dwelling.

The imposition of a contributions cap was not foreshadowed in the 2008 Amendment Act and its implications were alarming. Tweed Council, has since adoption of the 1974 Strategic Plan and subsequent strategic plans in 1984, 1996 and 2004, pursued a population growth policy involving rezoning and development of many new greenfield urban areas and funding/constructing the infrastructure required to service these areas. Since the early 1990s, Council has relied on S94 developer contributions to finance the infrastructure (except water and sewerage) required for growth. In the Water and Sewerage area (not funded by S94) Council has developed a similar contributions system under s64 of the Local Government Act which is not currently subject to a cap.

Through S94, Council has funded many vital infrastructure items that have been essential to enable development to proceed, including Tweed Coast Road (Chinderah to Cabarita/Bogangar), Elrond Drive, Leisure Drive and Boyd Street Overpass (over Tugun Bypass).

Council advised in its submission to the Department requesting exemptions from the 2009 cap of \$20,000:

*"It is understood ..... that the Government's objective in this review is to "boost housing supply and affordability as well as support business and provide a stimulus to the construction industry". It is submitted that in your review of applications to exceed the \$20,000 cap, the Panel should be mindful that if confidence in the contributions system is undermined, Councils may be unwilling to take the financial risks in providing further strategic infrastructure and development of major urban release areas may stall in the absence of this infrastructure. This would reduce housing supply and produce the opposite outcome to the Government's stated objective."*

Council formally applied for a cap exemption for Seaside City and a number of rural localities on 27 February 2009. Council was advised that the Seaside City exemption was approved, but the exemption for other localities was not approved by a Minister's Section 94E Direction dated 10 July 2009. The Direction also required that all Tweed Council's contributions be redrafted, publicly exhibited and remade in accordance with the **unproclaimed Part 5B** of the Amendment Act before 31 December 2009. The Minister's 2009 direction allowed contributions to exceed the \$20,000 cap if this was caused by price indexation after the date of the direction.

Council complied with the Direction and duly remade all its contributions plans in accordance with the unproclaimed Part 5B of the Amendment Act prior to 31 December 2009.

#### **4. Contributions Cap 2010**

On 4 June 2010, the current Minister for Planning, Tony Kelly MLC, issued a further Section 94E Direction, that repealed the 9 July 2009 direction (that exempted Seaside City from the cap) and imposed a hard unindexed cap of \$20,000 per dwelling or residential lot on all consents to be issued after 7 June 2010. The Premier advised in a press release of 4 June 2010 that developer contributions would be capped at an unindexed \$20,000 per residential lot to **deliver additional land releases, increase housing affordability and kick start housing construction.**

Council has written to the Premier requesting that all of Tweed Shire be exempted from the 2010 cap of \$20,000 (unindexed) on the basis that the cap will result in essential connecting road infrastructure being unfunded, thereby reducing the number of housing lots that can be serviced and subdivided. This reduction in supply of housing lots would result in prices rising and housing affordability being reduced.

The Government's announcement of 4 June 2010 also advised that developer contributions would be restricted to "**Essential Infrastructure**" but there was no advice at the time on what this meant. It was not known if "**Essential Infrastructure**" was a reference to "key community infrastructure" as defined in the unproclaimed Part 5B of the 2008 Amendment Act, or something else entirely. The Local Government and Shires Association were alarmed by the term as they perceived it as a means of further reducing the range of infrastructure that could be funded by developer contributions.

#### **5. August 2010, "Refinement" of the 2010 Cap**

On 31 August 2010 a Government press release announced a number of new measures "following extensive consultation with stakeholders.." They went on to say:

*"While the cap remains at \$20,000 for established areas, the Government recognises the particular issues facing growth councils and will increase the development contributions cap to \$30,000 in greenfield sites."* and

*"Other key measures approved by the Government today are:*

- *Grandfathering" of existing contribution plans so areas with more than 25% of DA"s lodged with a council will not be subject to the relevant cap - recognising existing commitments that both councils and developers have made in those areas;*

- *Establishing a \$50 million Priority Infrastructure Fund over two years to help fund infrastructure in development areas;*
- *Addressing State agency requirements for contributions plans as well as investigation other options to reduce Councils' land acquisition costs;*
- *Exempting councils with plans under the relevant cap from reviewing their contribution plans;*
- *Allowing developers to pay above the relevant cap if they agree to do so "*

This press release was followed later on the same day with an emailed letter from the Department of Planning advising Councils that:

1. Councils must by close of business the following Monday, provide the Department with a list of "Greenfield sites" and "25% grandfathering sites" including maps of each area and full titles of applicable S94 plans to each site.
2. All other areas would be automatically subject to the non indexed \$20,000 cap.

On Friday 3 September, the NSW Department of Planning issued a "Fact Sheet" providing more clarification on the provisions announced by the Government on 31 August. In addition this "Fact Sheet" advised:

1. If the aggregate of Council's S94 plans for a site exceed the cap (site dependent, \$20,000 or \$30,000 except for "grandfathered" sites) then within 18 months all plans would have to be updated to only include "**Essential Infrastructure**".
2. The term "**Essential Infrastructure**" was defined for the first time.

As required a list, maps and information were forwarded to the Department nominating 18 greenfield sites and Seaside City was nominated as a "grandfathered" (existing plans to remain even though contributions per residential lot currently above \$30,000) site.

A Departmental Officer advised that a Ministerial S94E Direction was being prepared to implement the higher cap for "Greenfield" areas and "Grandfathered" areas.

#### **6. "Essential Infrastructure"**

The NSW Department of Planning Fact Sheet issued 3 September 2010 has defined "Essential Infrastructure" as:

<b>Description</b>	<b>Component</b>	<b>Essential Works</b>
<b>Open Space</b>	Land *	Yes
	Facilities	No
<b>Community services</b>	Land	Yes
	Facilities	No
<b>Emergency Services</b>	Land	No
	Facilities	No

Description	Component	Essential Works
<b>Transport</b>	Land	Yes
E.g. Road works, traffic management, pedestrian & cycle facilities	Facilities	Yes
Car parks	Land	No
	Facilities	No
Stormwater	Land	Yes
	Facilities	Yes

\* Land for open space can include base level embellishment

The Department further advised:

*"Councils which currently have plans below the relevant infill (\$20,000 per dwelling) or greenfield (\$30,000 per dwelling) caps will not have to update their plans to cover only essential infrastructure. However, areas:*

- with a development contribution plan which exceeds the relevant infill or greenfield cap and;*
- which are not covered by the 25 per cent provisions;*

*will need to have the plan reviewed within 18 months to ensure it contains only infrastructure essential for development to proceed."*

On 4 June 2010 the Government's press release advised:

*"As well as the \$20,000 cap, councils will need to **limit contributions in their Section 94 plans to essential infrastructure** that is necessary for the development to happen, such as land for open space and community facilities, road works and stormwater management."*

The Department's Fact Sheet has now revealed how restrictive the definition of "**Essential Infrastructure**" will be. It goes far beyond the definition of "**Key Community Infrastructure**" in Part 5 of the unproclaimed 2008 Amendment Act which was defined as:

**"31A Key community infrastructure and additional community infrastructure**

(1) *The following community infrastructure is prescribed as key community infrastructure for the purposes of sections 116I and 116V of the Act:*

- (a) local roads,*
- (b) local bus facilities,*
- (c) local parks,*
- (d) local sporting, recreational and cultural facilities and local social facilities (being community and child care centres and volunteer rescue and volunteer emergency services facilities),*
- (e) local car parking facilities,*
- (f) drainage and stormwater management works,*
- (g) land for any community infrastructure (except land for riparian corridors),*
- (h) district infrastructure of the kind referred to in paragraphs (a)–(e) but only if there is a direct connection with the development to which a contribution relates.*



(2) *Public infrastructure comprising land for riparian corridors cannot be approved under section 116I or 116V of the Act as additional community infrastructure or additional public infrastructure.*

(3) *In this clause:*

**facilities** means buildings and works."

The new "**Essential Infrastructure**" definition now eliminates all buildings and works for community, volunteer rescue, child care, sporting, recreational, cultural and social facilities. This is a major change and as contributions plans are reviewed to be compliant with this definition, works programs will need to be amended to delete buildings and works from many of our Tweed Contribution Plans. The plans most affected will be:

**Section 94 Plan**

**Likely Impact of "Essential Infrastructure" Decision**

5. Shire Wide Open Space	Deletion of above base level park embellishment works
7. West Kingscliff - drainage, open space, community facilities, footpath/cycleways	Deletion of community buildings Deletion of above base level park embellishment works
10. Cobaki Lakes	Deletion of community buildings Deletion of above base level park embellishment works
11. Library Facilities	Deletion of library buildings and any proposed extensions to buildings
15. Community Facilities	Deletion of community buildings
16. Emergency Facilities - Surf Life Saving	This plan has not been applied since a 2009 Direction by the Minister.
18. Council Admin Office & Support Facilities	All of this plans works program would ne ineligible
19. Casuarina Beach/Kings Forest - open space, community facilities, foot/cycleways	Deletion of Kings Forest community buildings Deletion of above base level park embellishment works
26. Shirewide Regional Open Space	Deletion of recreational buildings and above base level park/playing field embellishment works at regional open space sites including: Arkinstall Park, Murwillumbah Hockey, Tweed Coast Reserve.
27. Tweed Heads Master Plan - Local Open Space, Streetscaping	Deletion of above base level streetscape embellishment works

Apart from the circumstances outlined in the Department's 3 September 2010 "Fact Sheet", it is unclear when or if the Government will require non "Essential Infrastructure" to be removed from existing contributions plans.

The overall impact on Councils of the "Essential Infrastructure" requirement seems to be to be:

- Developer contributions can no longer be used to fund community buildings, recreational buildings or above base level park and sporting field embellishment
- These areas will not have such facilities unless Councils choose to raise annual rates to fund them
- Councils can apply to IPART to seek approval to raise annual rates for these purposes.

## **7. Impact on Strategic Infrastructure Planning**

Council's strategic land use plans from 1974 have planned for substantial urban growth. These strategic plans have been accompanied by strategic infrastructure plans to provide the infrastructure necessary to enable this growth to proceed and to service the new population. The "Tweed Development Plan" of 1996 was a key document that identified over a 30 year time horizon the water supply, sewerage, arterial road network, drainage, open space and community facilities that were required to support this growth.

A suite of s94 Contribution Plans and Section 64 Water and Sewer Developer Servicing Plans have been established by Council to finance the necessary infrastructure to enable population growth to proceed. Council's diligence in ensuring that key strategic infrastructure is available in a timely manner, has enabled greenfield urban release areas to proceed when developers seek development approval. To achieve this level of infrastructure readiness, Council has taken on substantial financial risk in debt funding substantial portions of this infrastructure. A recent example is the construction of the Bray Park water treatment plant at a total project cost of around \$80M.

There are inherent risks in providing such infrastructure. Due to the complexity of modern plants and other capital infrastructure they come in large sizes that generally cannot be economically staged in small increments to closely match population growth and must often be provided ahead of the time when their full yield is required. Further developers, not Council, have the control of when urban development staging occurs. Council must rely on its best estimates of the future decisions of developers relating to the pace of urban growth and the resultant contributions cash flow needed to finance infrastructure capital debt.

Nevertheless Tweed Shire Council has been prepared to accept these risks and build key capital infrastructure, as it has had confidence in the contributions system being able to fund future cash flow to pay for these works. In the Tweed context there have been very few appeals targeting Council's s94 contributions plans. It is understood that the majority of developers understand that Council is providing the strategic infrastructure that enables their developments to proceed at a reasonable cost that is equitably apportioned to the developments that benefit. Population is planned to grow from around 90,000 to 120,000 persons over the next 20 years, with the majority accommodated in new greenfield release areas. Council has the s64 and s94 plans in place to ensure the infrastructure is available to enable this growth to happen.

The NSW Government review of the developer contributions system that is now in its third year, imposition of arbitrary caps on the quantum of contributions per lot and the redefining of eligible "public amenities and public services" to "Essential Infrastructure" without any meaningful consultation with the councils that must manage the provision of infrastructure over the long term in an uncertain development environment, undermines the confidence Councils have in this system.

The Government's stated objective in this contributions review is to "boost housing supply and affordability as well as support business and provide a stimulus to the construction industry". In many ways the review is having the opposite effect, if confidence in the contributions system is undermined, Councils may be unwilling to take the financial risks in providing further strategic infrastructure and development of major urban release areas may stall in the absence of this infrastructure. This would reduce housing supply and produce the opposite outcome to the Government's stated objective.

## **8. Conclusion**

The NSW Government's Developer Contributions review over the past three years has included:

- passing of the 2008 Amendment Act, containing the yet unproclaimed Part 5 of the Act that was to overhaul the contribution system,
- arbitrary introduction of \$20,000 contribution cap in 2009 which allowed for exemptions and indexation
- followed by an unindexed \$20,000 cap in June 2010.
- further followed by a "refinement" in August 2010 that allowed Greenfield areas to have a \$30,000 unindexed cap and "grandfathered" sites to have no cap.
- foreshadowed restriction of eligible contribution funded works to "Key Community Infrastructure" then
- further restriction of eligible contribution funded works to "Eligible Infrastructure".

If the Minister approves the \$30,000 cap for Tweed's 18 Greenfield sites and "grandfathering" of the contributions at Seaside City, many of Tweed's concerns will be resolved for the short term. However, the remainder of the Shires "Brownfield" sites still have the unindexed \$20,000 cap.

In the next six months Council is likely to approve amended CP15 - Community Facilities and a substantial revaluation of works costs and contribution levels for CP4 - Tweed Road Contribution Plan. These revisions will elevate contributions per residential lot in most sectors of Tweed Shire to between \$20,000 and \$30,000. Some areas such as Area E at Terranora would exceed \$30,000 (if the cap was not in place). Without price indexation, over a period of time, inflation will cause both Greenfield and Brownfield site contributions to hit their caps and Council will once again be unable to fund all the works in its contributions plans.

Enforcement of the Government's "Essential Infrastructure" policy will result in many of the works in Tweed Shire developer contribution plans being no longer eligible. The forced removal of buildings for community facilities, libraries and recreational facilities from developer contributions plans will cause a major concern in the community.

There is an argument that in some areas of NSW, developer contributions are unreasonably high. This generally occurs in Western Sydney where contributions of \$40,000 to \$50,000 per residential lot are not uncommon. However rather than properly consulting with local government and reforming the system to take into account the needs of the many varied regions of NSW, the Government has instead, reacted to a Sydney problem by imposing an unrealistic cap on all Council's in NSW. The furore that both the 2009 and 2010 cap has caused in local government has led to the Government responding partly to the concerns raised and issuing their current revised higher caps for "Greenfield" and "Grandfathered"

sites. However this has only fixed part of the problem for local government, it is still not price indexed and it has displeased developer interest groups.

Given the history of this issue there may still be other "reforms" the Government has in store for the developer contributions system that may yet cause further difficulties for Councils and their communities.

With the ongoing review of the developer contributions system, it is uncertain whether the Government will eventually proclaim Part 5B of the 2008 Amendment Act or whether it will stick with the old act and implement changes by means of ad hoc Ministerial S94E Directions.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Major impact on funding infrastructure to service new development, see body of report.

**POLICY IMPLICATIONS:**

Major impacts on developer contributions plans, see body of report.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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 NSW Department of Planning - Significant Reform to Local Council Infrastructure Charges (ECM17597342)
  - 2 NSW Department of Planning - Local Development Contributions (ECM17591025)
  - 3 NSW Department of Planning - Recently announced changes to the Development Contributions Reforms (ECM20849584)
  - 4 NSW Department of Planning - Media Release - Government fine tunes Development Contributions System to boost Housing (ECM20849584)
  - 5 NSW Department of Planning - Reforms to Local Development Contributions (ECM21051468)
-

**47 [EO-CM] Extension of Turnock Street, Kingscliff from Elrond Drive to the Tweed Coast Road and Crescent Street**

**ORIGIN:**

**Director Engineering and Operations**

**SUMMARY OF REPORT:**

Knobel Consulting on behalf of Gales Holdings Pty Ltd have submitted concept plans and long sections for the extension of Turnock Street Kingscliff from Elrond Drive roundabout to the Tweed Coast Road and Crescent Street.

The connection from Elrond Drive to the Tweed Coast Road is a key link in Council's arterial road network and is a scheduled item in the Section 94 "Tweed Roads Contribution Plan". The section from The Tweed Coast Road to Crescent Street is not an arterial road, but is a necessary adjustment to align the Crescent Street/Altona Drive access into the western leg of the proposed signalised junction of Tweed Coast Road and Turnock Street (extended).

The connectivity of the proposal is very desirable from a network point of view, however no development application has been submitted at this stage and the proposal will need to go through the normal planning and environmental assessment procedures and obtain approval before it can be fully supported.

**RECOMMENDATION:**

**That Council advises Knobel Consulting:**

- 1. The concept of extending Turnock Street from Elrond Drive roundabout to the Tweed Coast Road and on to Crescent Street, Kingscliff, is supported from a network connectivity point of view.**
- 2. Support for the project as outlined in Knobel Consulting concept plans is, however, subject to the submission of a formal Development Application, planning and environmental assessment and receipt of approval.**

**REPORT:**

Knobel Consulting on behalf of Gales Holdings Pty Ltd have submitted concept plans and long sections for the extension of Turnock Street Kingscliff from Elrond Drive roundabout to the Tweed Coast Road and Crescent Street.

The connection from Elrond Drive to the Tweed Coast Road is a key link in Council's arterial road network and is a scheduled item in the Section 94 "Tweed Roads Contribution Plan". The section from The Tweed Coast Road to Crescent Street is not an arterial road, but is a necessary adjustment to align the Crescent Street/Altona Drive access into the western leg of the proposed signalised junction of Tweed Coast Road and Turnock Street (extended).

The connectivity of the proposal is very desirable from a network point of view, however no development application has been submitted at this stage and the proposal will need to go through the normal planning and environmental assessment procedures and obtain approval before it can be fully supported.

There are sensitive environmental issues in this general area, the environmental impacts of the proposed road will need to be fully assessed during the development assessment process.



18 August 2010

Our Ref: 1177-0255

Attention: Mr Vince Connell  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484

BY EMAIL: [vconnell@tweed.nsw.gov.au](mailto:vconnell@tweed.nsw.gov.au)

Dear Vince

**RE: EXTENSION OF TURNOCK STREET, KINGSCLIFF FROM ELROND DRIVE TO THE TWEED COAST ROAD AND CRESCENT STREET**

Further to a recent meeting between yourself, Mr Patrick Knight and Mr Bill Knobel of Knobel Consulting Pty Ltd representing Gales Holdings Pty Ltd, plans of the proposed extension of Turnock Street, Kingscliff from Elrond Drive to link with the Tweed Coast Road and Crescent Street.

The extension to Crescent Street will link with a new road (Altona Drive) to be constructed across Lot 21 DP1082482 – DA05/1450.

An application was previously lodged as DA 05/0271 with Council in 2005 to establish the corridor for the Turnock Street extension; however, the application was subsequently withdrawn by Gales Holdings. At that time Council considered that the vegetation traversed included Endangered Ecological Community (EEC) but it has been established through the Court process that this is not the case.

The proposal as shown on the Knobel Consulting Pty Ltd plans (attached) would deliver the east-west link between the Tweed Coast Road and the Elrond Drive/Turnock Street intersection as contemplated in Development Control Plan No 51 – Tweed Coast Strategy.

The height of the roadway has been discussed with Council officers and their requirements are that the proposed roadway would provide a flood free access to Kingscliff and that the flood free access be ultimately extended for the intersection of the Turnock Street extension and Tweed Coast Road to Cudgen Road.

A longitudinal section of the proposed new roadway shows the road at or above the  $Q_{200}$  level. Gales Holdings' vision is that the proposed route would become the gateway to Kingscliff and it would be designed with the aesthetic attributes to achieve the most pleasing outlook for vehicles, pedestrians and bicycles.

The benefits include direct access from Tweed Coast Road to Kingscliff, reducing traffic load on currently used residential roads and allowing pedestrian and bicycle routes between Kingscliff and Noble Park Lakeside Estate, Cudgen Heights and future recreational areas west of Tweed Coast Road.

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Knobel Consulting Pty Ltd  
18 August 2010

Page 2 of 2

There has been considerable interest from the Kingscliff community to have the link to the Tweed Coast Road established and consequently our client, Gales Holdings Pty Ltd, is seeking Council's endorsement of the proposal prior to the lodgement of a formal application.

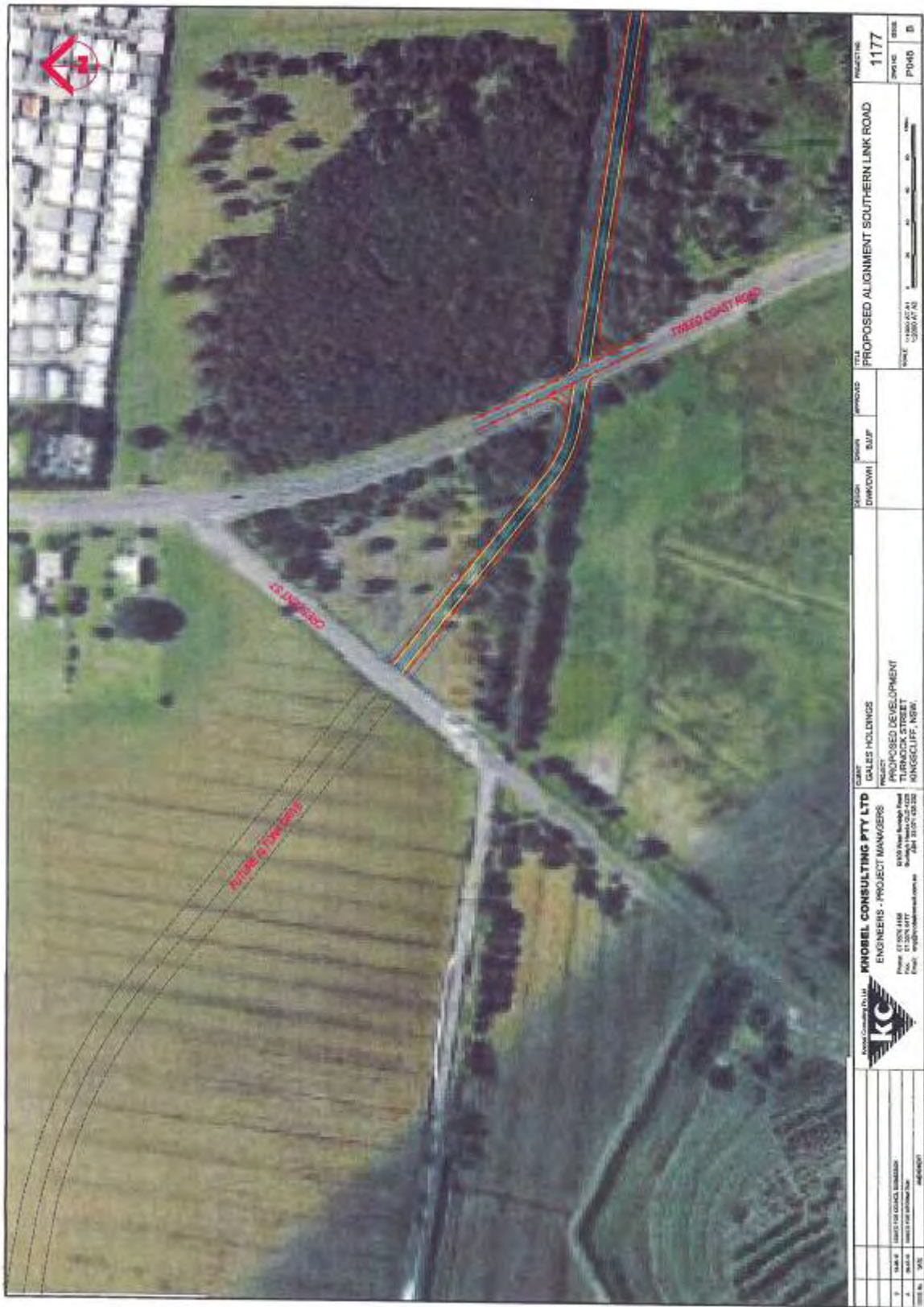
Yours faithfully



**BILL KNOBEL**  
Knobel Consulting Pty Ltd

Attachments – Knobel Consulting Pty Ltd Drawing No's 1177/P048/B, 1177/P049/A, 1177/P051/B and 1177/P052/A  
Copy to: Patrick Knight – Tweed Shire Council





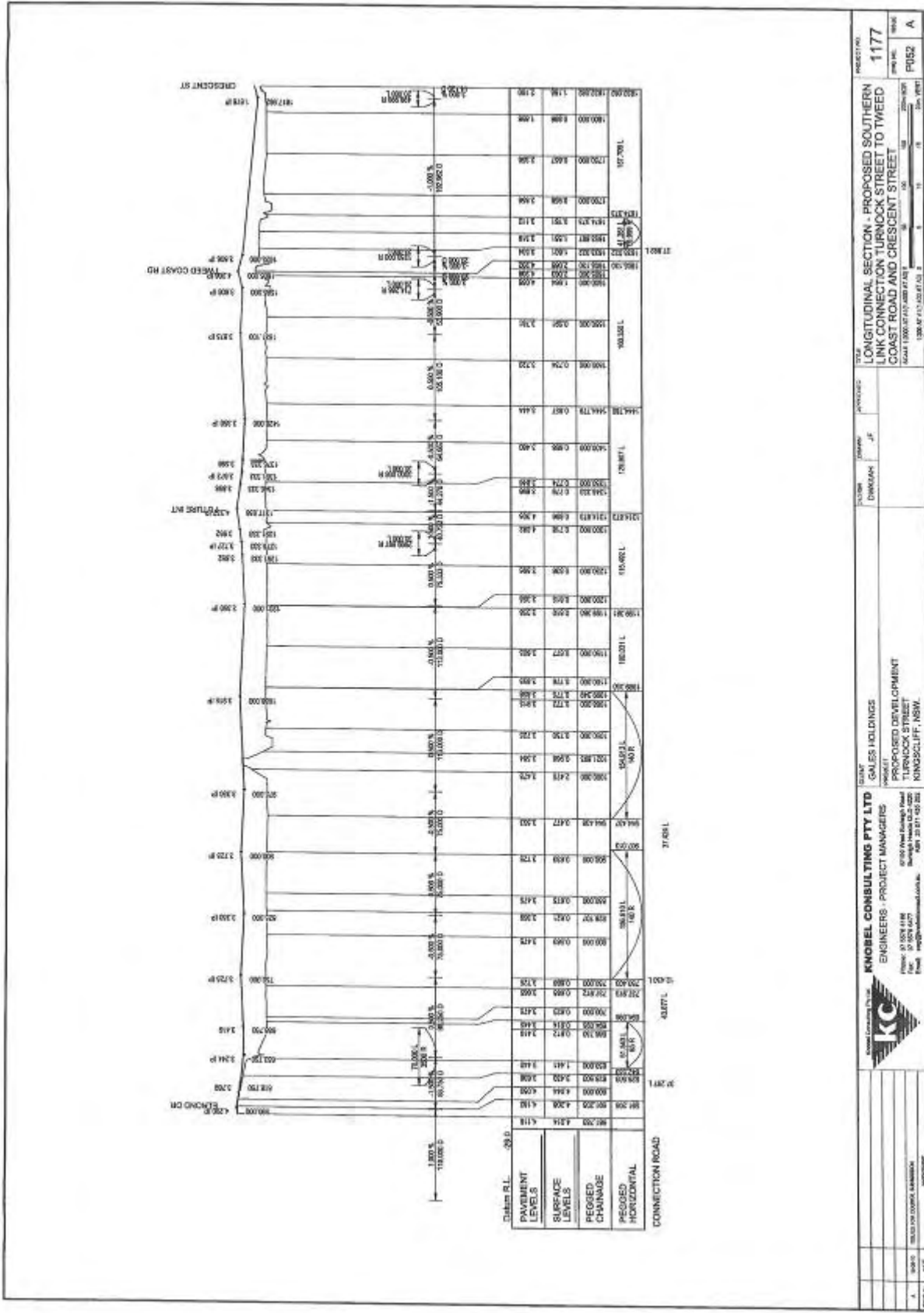
 <b>KINGRIEL CONSULTING PTY LTD</b> ENGINEERS - PROJECT MANAGERS 8/10A Peaseburgh Road Inverclyde PA11 2JY Phone: 01896 544444 Fax: 01896 544444 Email: info@kingrieland.co.uk		CLIENT GALES HOLDINGS PROJECT PROPOSED DEVELOPMENT TURNLOCK STREET KINGSCLEIFF, NS20/1	PROJECT 1177 DATE PD40 DRAWN B
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 <b>KNOBEL CONSULTING PTY LTD</b> ENGINEERS - PROJECT MANAGERS 1575 Macquarie Road Macquarie NSW 2108 Phone: 02 9370 8077 Email: info@knobel.com.au		CLIENT GALES HOLDINGS PROJECT PROPOSED DEVELOPMENT TURNHOOK STREET KINGSCLEIFF, NSW	SURVEYOR DWYDAN BAAF	DATE 20/09/10	SCALE 1:500 AT A1 1:200 AT A2 1:500 AT A3	PROJECT NO. 1177
SHEET NO. 1 OF 1		SHEET TITLE PROPOSED CONNECTION ROAD REALIGNMENT OVERALL PLAN OPTION 2		DATE 20/09/10		PROJECT NO. 1177
DRAWN BY DWYDAN BAAF		CHECKED BY DWYDAN BAAF		SCALE 1:500 AT A1 1:200 AT A2 1:500 AT A3		PROJECT NO. 1177
DATE 20/09/10		DATE 20/09/10		SCALE 1:500 AT A1 1:200 AT A2 1:500 AT A3		PROJECT NO. 1177
SHEET NO. 1 OF 1		SHEET TITLE PROPOSED CONNECTION ROAD REALIGNMENT OVERALL PLAN OPTION 2		DATE 20/09/10		PROJECT NO. 1177



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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 THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES**

### **48 [TCS-CM] Draft Community Strategic Plan 2011/2021**

#### **ORIGIN:**

**Corporate Governance**

#### **SUMMARY OF REPORT:**

The Local Government (Planning and Reporting) Amendment Act 2009 requires Council to develop a Community Strategic Plan within the terms of the Integrated Planning and Reporting Framework. A Draft Community Strategic Plan 2011/2021 has been developed in line with Council's decision of being a Group 2 Council within the appropriate legislation, with a commencement date of this Plan being 1 July 2011.

The Draft Community Strategic Plan 2011/2021 will bring together the community's aspirations for the next 10 years as well as building on the vision established through the Tweed Futures 04/24. A comprehensive program of Engaging the Community has also been developed which encompasses various methods for members of the community to express their thoughts and ideas on the vision for next 10 years.

Legislation requires the community strategic plan to be placed on public exhibition for a period of at least 28 days. Due to the perceived community interest and wishing to gauge the adequacy of the draft plan in concert with the wishes and vision of the community, it is proposed that the plan will be exhibited for a period of 42 days with submissions due to close on 8 November 2010. Following the receipt of submissions, they will all be reviewed with a final 10 year Community Strategic Plan being prepared for Council consideration and further community engagement early in 2011 for the subsequent Delivery Program and Operational Plan, which will enable the plan to be in place for commencement on 1 July 2011.

#### **RECOMMENDATION:**

**That, in accordance with Section 402 of the Local Government Act 1993, the:**

- 1. Draft Community Strategic Plan 2011/2021 be endorsed and placed on public exhibition for a period of 42 days.**
- 2. Engaging the Community Strategy and the associated terms of community engagement be adopted.**

**REPORT:**

The Local Government (Planning and Reporting) Amendment Act 2009 requires Council to develop a Community Strategic Plan within the terms of the Integrated Planning and Reporting Framework. A Draft Community Strategic Plan 2011/2021 has been developed in line with Council's decision of being a Group 2 Council within the appropriate legislation, with a commencement date of this Plan being 1 July 2011.

The Draft Community Strategic Plan 2011/2021 will bring together the community's aspirations for the next 10 years as well as building on the vision established through the Tweed Futures 04/24. A comprehensive program of Engaging the Community has also been developed which encompasses various methods for members of the community to express their thoughts and ideas on the vision for next 10 years.

The 10 year Community Strategic Plan will be complemented by a 4 year Delivery Program and a 1 year Operational Plan. These plans and program will be based on the strategic objectives identified through the community consultation and will highlight the deliverables to be undertaken and the resources required to support these deliverables during the term of the elected council.

Legislation requires the community strategic plan to be placed on public exhibition for a period of at least 28 days. Due to the perceived community interest and wishing to gauge the adequacy of the draft plan in concert with the wishes and vision of the community, it is proposed that the plan will be exhibited for a period of 42 days with submissions due to close on 8 November 2010. Following the receipt of submissions, they will all be reviewed with a final 10 year Community Strategic Plan being prepared for Council consideration and further community engagement early in 2011, which will enable the plan to be in place for commencement on 1 July 2011.

Community consultation will be comprehensive during the 42 day exhibition period and the methods of consultation are detailed in the Engaging the Community Strategy, which is based on social justice principles that establishes the criteria of equity and fairness and the opportunity for all, regardless of background or socio economic status, to participate in decisions that can affect their quality of life.

Feedback is encouraged on this vision for the Tweed to enable Council to review the objectives and strategies that the community wish to see fulfilled over the next 10 years.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

As per section 402 of the Local Government Act 1993, Resourcing will be identified and incorporated into the Final Community Strategic Plan via the associated resourcing strategies.

**POLICY IMPLICATIONS:**

In accordance with the requirements of the Local Government (Planning and Reporting) Amendment Act, 2009.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Draft Community Strategic Plan 2011/2021 (ECM 21321781)
  2. Engaging the Community – Community Strategic Plan 2011/2021 (ECM 21283309)
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**49 [TCS-CM] Monthly Investment Report for Period Ending 31 August 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 \$153,720,809 invested as at 31 August 2010 and the accrued net return on these funds was \$660,940 or 5.16% annualised for the month.

**RECOMMENDATION:**

**That in accordance with Section 625 of the Local Government Act 1993 the monthly investment report as at 31 August 2010 totalling \$153,720,809 be received and noted.**

**REPORT:**

**Report for Period Ending 31 August 2010**

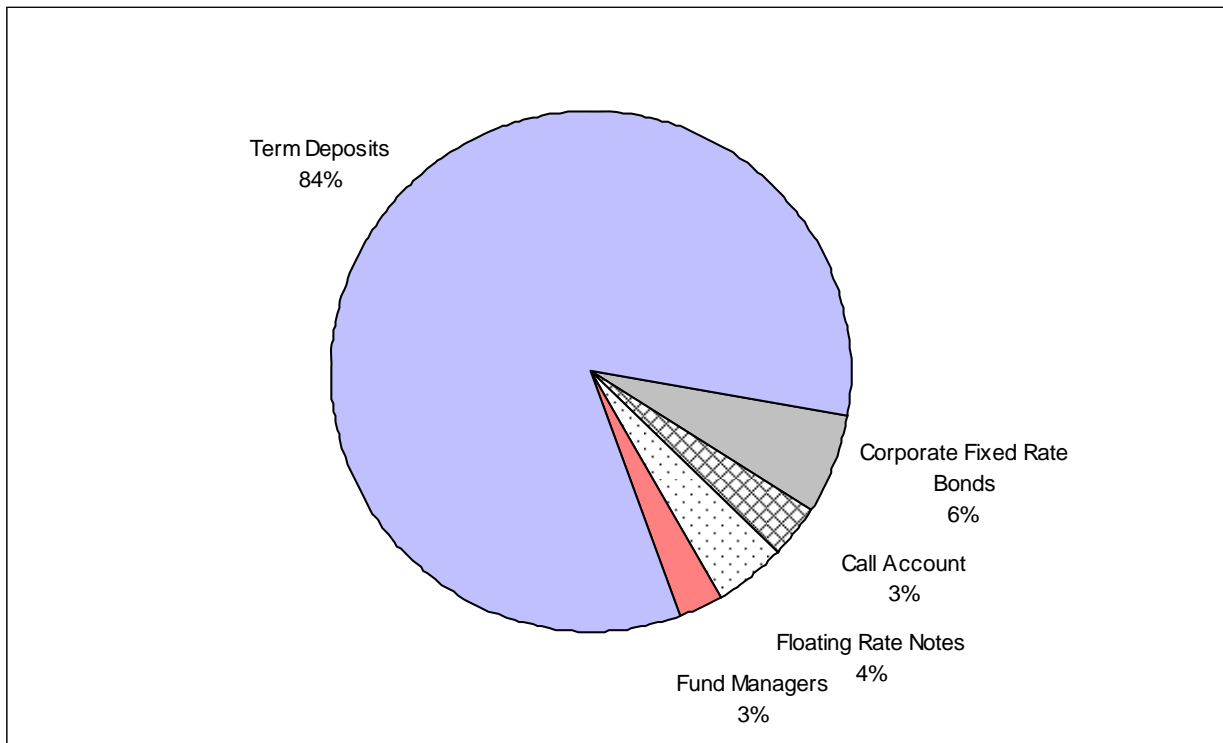
The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies.

**1. RESTRICTED FUNDS AS AT 1 JULY 2009**

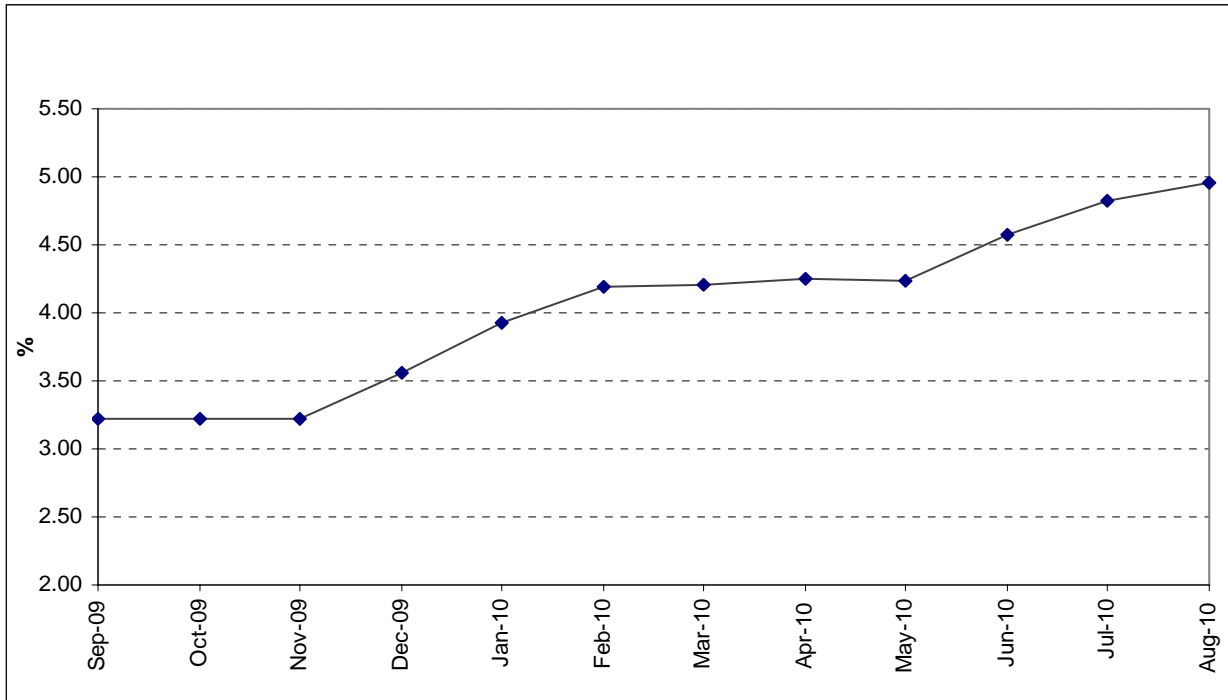
Description	(\$'000)			Total
	General Fund	Water Fund	Sewer Fund	
<b>Externally Restricted</b>	15,427	13,980	14,908	<b>44,315</b>
Crown Caravan Parks	10,145			<b>10,145</b>
Developer Contributions	29,762	19,327		<b>49,089</b>
Domestic Waste Management	8,035			<b>8,035</b>
Grants	3,794			<b>3,794</b>
<b>Internally Restricted</b>	13,816			<b>13,816</b>
Employee Leave Entitlements	1,685			<b>1,685</b>
Grants	2,535			<b>2,535</b>
Unexpended Loans	5,889			<b>5,889</b>
<b>Total</b>	<b>91,088</b>	<b>33,307</b>	<b>14,908</b>	<b>139,303</b>

Note: Restricted Funds Summary next update September 2010

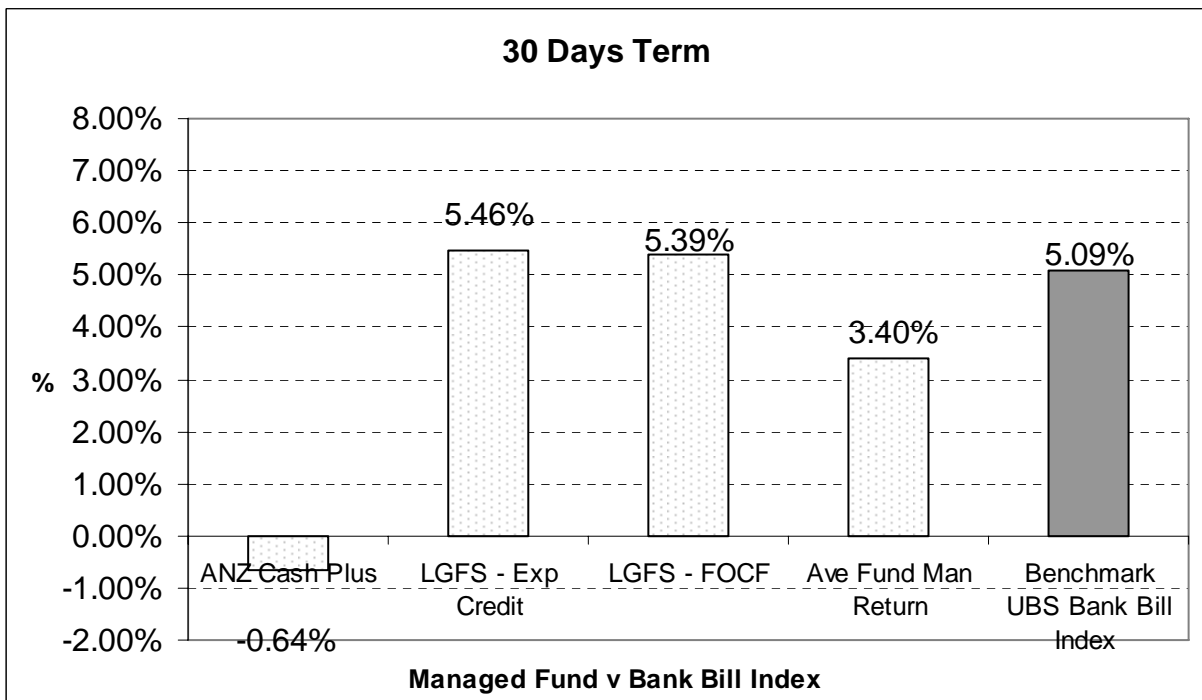
**2. CURRENT INVESTMENT PORTFOLIO BY CATEGORY**



**3. INVESTMENT RATES - 90 DAY BANK BILL RATE (%)**

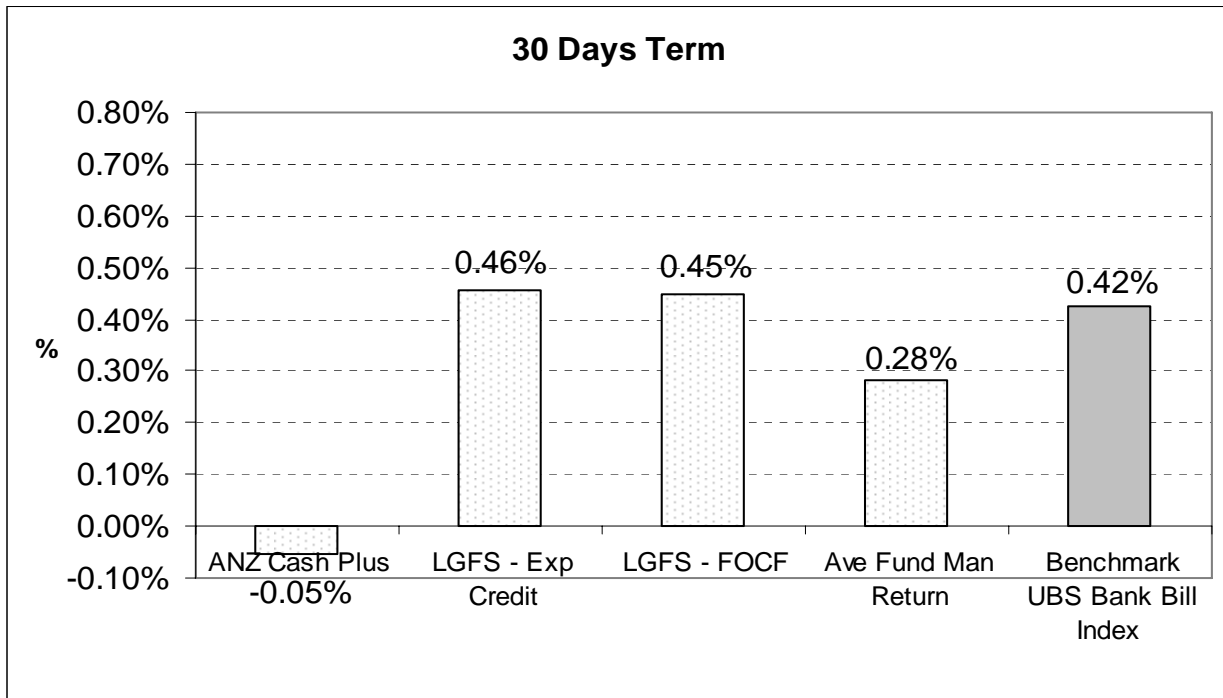


**4. FUNDS MANAGERS PERFORMANCE FOR MONTH - NET OF FEES (ANNUALISED)**



**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	2.41%	\$230,734	\$111,062	\$0	Monthly
LGFS - Enhanced Cash	n/a	39.36%	\$1,783,867	\$1,791,940	\$8,074	Monthly
LGFS - FOCF	AA-	58.23%	\$2,639,146	\$2,650,931	\$0	Quarterly
Macquarie IP	A	0.00%	\$1,614,203	\$0	\$0	Quarterly
<b>Total</b>		<b>100%</b>	<b>\$6,267,949</b>	<b>\$4,552,446</b>	<b>\$8,074</b>	

**7. DIRECT SECURITIES**

Counterparty/ Product Name	Face Value	Market Value	% Return on Face Value	Investment Type	Final Maturity Date	Credit Rating
ANZ	1,000,000.00	Matured	5.14	FRN	17/08/2010	AA
ANZ	1,000,000.00	1,036,520.00	5.15	Bond	08/11/2011	AA
ANZ	1,000,000.00	1,105,090.00	8.65	Bond	22/04/2013	AA
Bank of Queensland	1,500,000.00	1,522,190.49	5.55	Bond	02/12/2010	BBB+
Bank of Queensland	1,000,000.00	1,014,793.66	6.00	Bond	02/12/2010	BBB+
CBA	1,000,000.00	1,006,507.45	5.29	FRN	21/01/2011	AA
CBA	1,000,000.00	1,019,083.88	6.10	FRN	17/04/2012	AA
Deutsche Bank	1,000,000.00	885,146.00	5.72	FRN	23/11/2012	A+
Macquarie/HSBC Members Equity	2,000,000.00	2,004,265.04	5.42	FRN	24/01/2011	A
Westpac	2,000,000.00	1,905,440.00	5.32	FRN	08/03/2012	BBB-
Westpac	1,000,000.00	1,068,900.00	4.90	Bond	24/09/2012	AA
Westpac	1,000,000.00	1,068,900.00	5.15	Bond	24/09/2012	AA
CBA Zero Coupon Bond	2,000,000.00	2,530,040.00	7.28	Bond	22/01/2018	AA
<b>Total</b>	<b>16,500,000</b>	<b>16,166,876.52</b>	<b>5.82</b>			

ABS = Asset Backed Security  
Bond = Fixed Rate Bond  
CDO = Collateralised Debt Obligation  
FRN = Floating Rate Note

**8. TERM DEPOSITS**

TERM DEPOSITS SORTED BY MATURITY AS AT 31/08/10						
Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield	INCOME RECEIVABLE
09-Mar-10	08-Mar-11	(BCU) Bananacoast CU	1,000,000.00	364	6.850	68,312.33
01-Jun-10	30-Nov-10	ADCU Adelaide	1,000,000.00	182	6.200	30,915.07
17-Feb-09	17-Feb-11	Bendigo Bank Adelaide	2,000,000.00	730	4.700	188,000.00
25-Jun-10	22-Mar-11	Bendigo Bank Adelaide	2,000,000.00	270	6.250	92,465.75
06-Jul-10	05-Apr-11	Bendigo Bank Adelaide	2,000,000.00	273	6.300	94,241.10
06-Aug-10	07-Aug-12	Bendigo Bank	2,000,000.00	732	6.600	264,723.29
11-Aug-10	16-Aug-11	AMP AMP Bank (RIMSEC)	1,000,000.00	370	6.310	63,964.38
31-Aug-10	31-Aug-11		1,000,000.00	365	6.310	63,100.00
02-Mar-10	29-Nov-10	ANZ	3,000,000.00	272	6.250	139,726.03
04-Mar-10	01-Dec-10	ANZ	4,000,000.00	272	6.300	187,791.78
27-May-10	24-May-11	ANZ	2,000,000.00	362	6.400	126,947.95

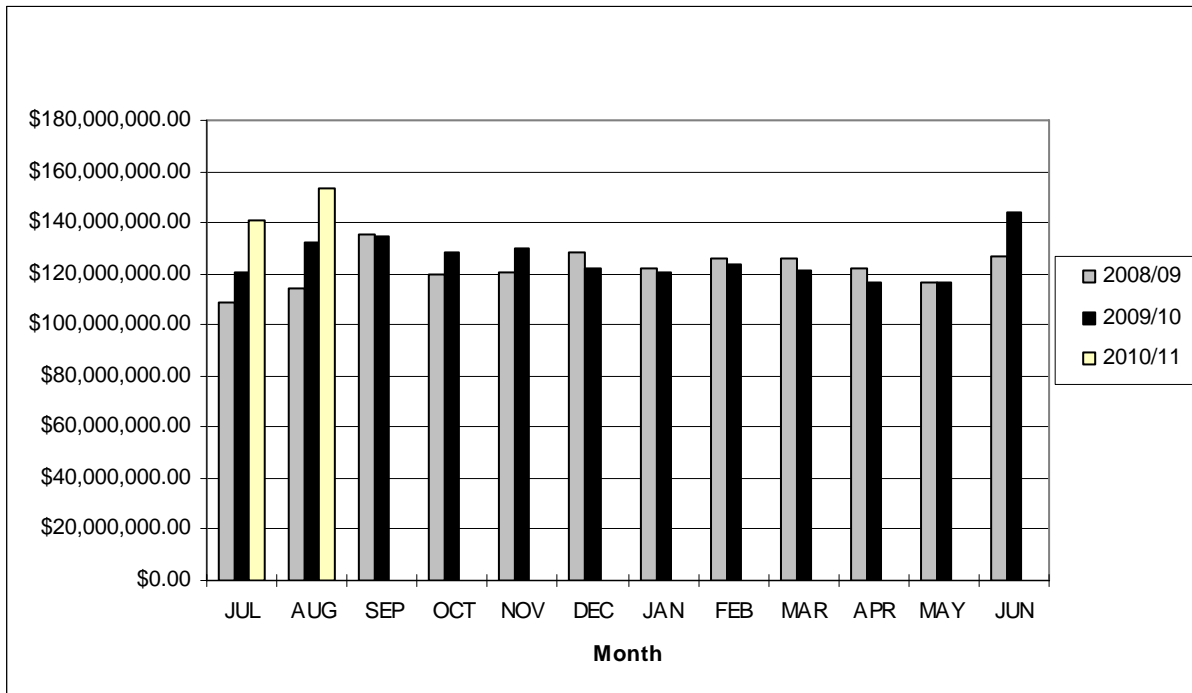
<b>TERM DEPOSITS SORTED BY MATURITY AS AT 31/08/10</b>						
<b>Lodged or Rolled</b>	<b>DUE</b>	<b>Counterparty</b>	<b>PRINCIPAL</b>	<b>TERM</b>	<b>% Yield</b>	<b>INCOME RECEIVABLE</b>
20-Oct-09	<b>19-Oct-10</b>	Bank of QLD	1,000,000.00	364	6.050	60,334.25
23-Feb-10	<b>09-Nov-10</b>	Bank of QLD	2,000,000.00	259	6.300	89,408.22
24-Aug-10	<b>23-Feb-11</b>	Bank of QLD	2,000,000.00	183	6.200	62,169.86
25-Jun-10	<b>22-Mar-11</b>	Bank of QLD	5,000,000.00	270	6.300	233,013.70
04-Aug-10	<b>14-Jun-11</b>	Bank of QLD	2,000,000.00	314	6.330	108,910.68
12-Aug-10	<b>13-Aug-13</b>	Bank of QLD	2,000,000.00	1097	7.050	423,772.60
20-Oct-09	<b>19-Oct-10</b>	Bankwest	1,000,000.00	364	6.000	59,835.62
06-Jul-10	<b>04-Jan-11</b>	Bankwest	2,000,000.00	182	6.050	60,334.25
24-Aug-10	<b>25-Jan-11</b>	Bankwest	2,000,000.00	154	6.000	50,630.14
04-Aug-10	<b>10-May-11</b>	Bankwest	2,000,000.00	279	6.150	94,019.18
11-Feb-10	<b>07-Sep-10</b>	Citibank	1,000,000.00	208	6.280	35,787.40
03-Aug-10	<b>01-Feb-11</b>	Community Mutual Group	1,000,000.00	182	6.190	30,865.21
09-Jun-10	<b>07-Sep-10</b>	CPS CU	1,000,000.00	90	6.100	15,041.10
17-Feb-09	<b>16-Feb-11</b>	Elders Rural Bank	1,000,000.00	729	4.620	92,273.42
01-Jun-10	<b>15-Sep-10</b>	IMB	1,000,000.00	106	6.030	17,511.78
02-Mar-10	<b>16-Nov-10</b>	IMB	1,000,000.00	259	6.290	44,633.15
18-Aug-10	<b>18-Nov-10</b>	IMB CRI	1,000,000.00	93	5.990	15,262.19
19-Aug-10	<b>17-Dec-11</b>	ING	1,000,000.00	182	6.360	31,712.88
25-Aug-10	<b>22-Feb-11</b>	ING (RIMSEC)	1,000,000.00	181	6.320	31,340.27
12-Nov-08	<b>14-Nov-11</b>	Investec Bank	1,000,000.00	1099	6.880	207,153.97
28-Jun-10	<b>11-Jan-11</b>	LGFS	5,000,000.00	197	6.300	170,013.70
29-Jun-10	<b>22-Mar-11</b>	LGFS	2,000,000.00	266	6.250	91,095.89
22-Jun-10	<b>20-Sep-10</b>	LGFS CRI	1,000,000.00	90	5.700	14,054.79
09-Jun-10	<b>27-Sep-10</b>	LGFS CRI	4,000,000.00	110	5.980	72,087.67
30-Aug-10	<b>29-Nov-10</b>	LGFS CRI	5,000,000.00	91	5.900	73,547.95
01-Jun-10	<b>07-Dec-10</b>	Members Equity Bank	1,000,000.00	189	6.200	32,104.11



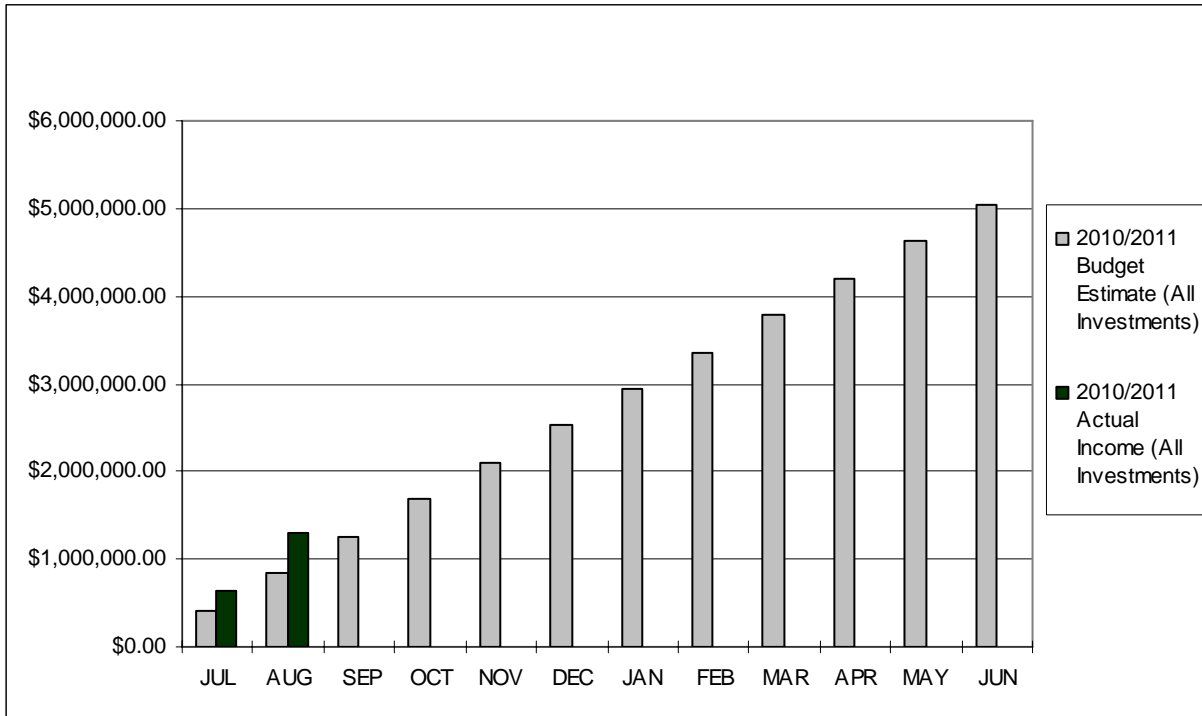
<b>TERM DEPOSITS SORTED BY MATURITY AS AT 31/08/10</b>						
<b>Lodged or Rolled</b>	<b>DUE</b>	<b>Counterparty</b>	<b>PRINCIPAL</b>	<b>TERM</b>	<b>% Yield</b>	<b>INCOME RECEIVABLE</b>
06-Jul-11	<b>11-Jan-11</b>	Members Equity Bank	1,000,000.00	189	6.250	32,363.01
01-Sep-10	<b>02-Sep-13</b>	NAB	4,000,000.00	1098	6.520	784,543.56
10-Dec-09	<b>14-Dec-10</b>	NAB	1,000,000.00	369	6.650	67,228.77
11-Aug-10	<b>11-Aug-15</b>	NAB (RBS)	2,000,000.00	1095	6.000	360,000.00
27-Aug-10	<b>27-Aug-15</b>	NAB (RBS)	2,000,000.00	365	7.000	140,000.00
03-Aug-10	<b>02-Nov-10</b>	Newcastle Permanent Building Society	1,000,000.00	91	5.930	14,784.38
09-Jun-10	<b>12-Oct-10</b>	Qantas CU	1,000,000.00	125	6.100	20,890.41
19-May-10	<b>17-May-11</b>	QTCU	1,000,000.00	363	6.450	64,146.58
06-Jul-10	<b>12-Jul-11</b>	Summerland Credit Union	1,000,000.00	371	6.550	66,576.71
15-Jun-10	<b>14-Sep-10</b>	Suncorp Metway	2,000,000.00	91	6.050	30,167.12
07-Oct-09	<b>05-Oct-10</b>	Suncorp Metway	1,000,000.00	363	6.010	59,770.68
03-Aug-10	<b>02-Nov-10</b>	Suncorp Metway	1,000,000.00	91	6.060	15,108.49
19-May-10	<b>17-Nov-10</b>	Suncorp Metway	1,000,000.00	182	6.320	31,513.42
05-Jan-10	<b>21-Dec-10</b>	Suncorp Metway	1,000,000.00	350	6.900	66,164.38
25-Jun-10	<b>05-Jan-11</b>	Suncorp Metway	5,000,000.00	194	6.300	167,424.66
29-Jun-10	<b>05-Jan-11</b>	Suncorp Metway	2,000,000.00	190	6.500	67,671.23
28-Jun-10	<b>11-Jan-11</b>	Suncorp Metway	5,000,000.00	197	6.310	170,283.56
02-Apr-08	<b>01-Apr-11</b>	Suncorp Metway	3,000,000.00	1095	8.300	747,000.00
12-Nov-08	<b>11-Nov-11</b>	Suncorp Metway	4,000,000.00	1094	6.880	824,846.03
22-Jul-10	<b>18-Jul-12</b>	Suncorp Metway	2,000,000.00	727	6.720	267,695.34
21-Jul-10	<b>23-Jul-13</b>	Suncorp Metway	1,000,000.00	1097	7.300	219,400.00
10-Dec-09	<b>14-Sep-10</b>	Westpac Bank	1,000,000.00	278	6.750	51,410.96
19-Jan-10	<b>21-Sep-10</b>	Westpac Bank	2,000,000.00	245	6.630	89,005.48
05-Nov-09	<b>05-Oct-10</b>	Westpac Bank	2,000,000.00	334	6.260	114,566.58
09-Feb-10	<b>12-Oct-10</b>	Westpac Bank	2,000,000.00	245	6.800	91,287.67

TERM DEPOSITS SORTED BY MATURITY AS AT 31/08/10						
Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield	INCOME RECEIVABLE
17-Feb-10	<b>26-Oct-10</b>	Westpac Bank	2,000,000.00	251	6.760	92,973.15
01-Dec-09	<b>07-Dec-10</b>	Westpac Bank	2,000,000.00	370	6.800	137,863.01
03-Dec-09	<b>14-Dec-10</b>	Westpac Bank	1,000,000.00	376	7.050	72,624.66
16-Dec-09	<b>21-Dec-10</b>	Westpac Bank	1,000,000.00	370	7.000	70,958.90
14-Jul-10	<b>11-Jan-11</b>	Westpac Bank	2,000,000.00	181	6.020	59,705.21
22-Jul-10	<b>19-Jul-11</b>	Wide Bay CU	1,000,000.00	362	6.550	64,961.64
			<b>128,000,000.00</b>		<b>6.45</b>	

**9. MONTHLY COMPARISON OF TOTAL FUNDS INVESTED**

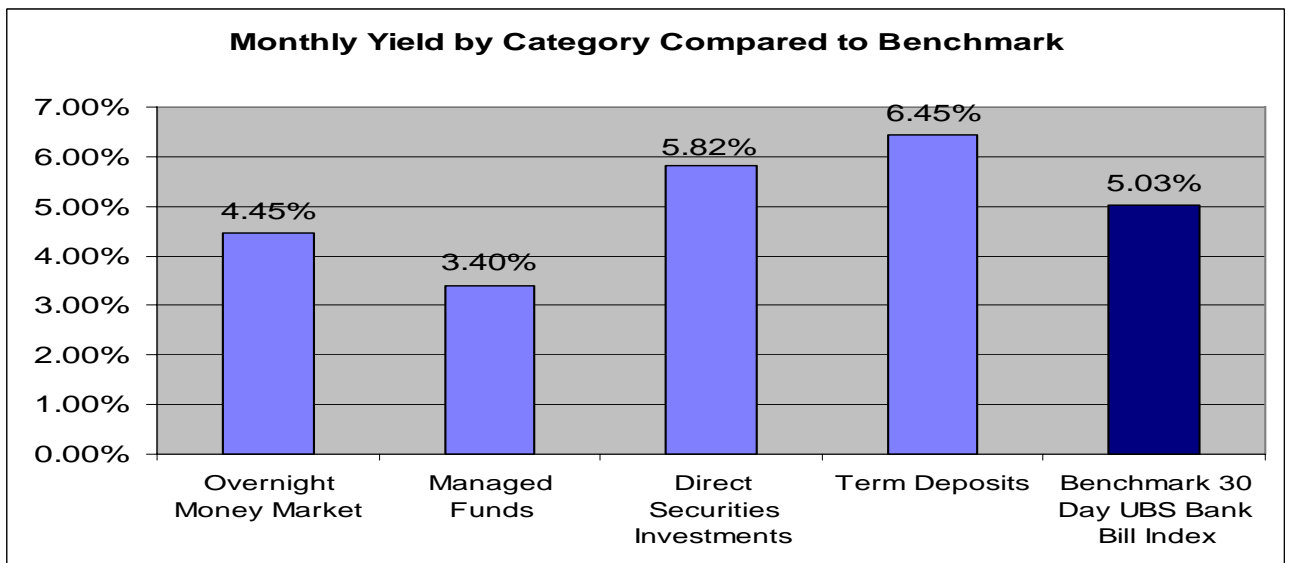


**10. TOTAL PORTFOLIO INCOME YEAR TO DATE**



**11. PERFORMANCE BY CATEGORY**

Category	Face Value	Market Value	Average Yield	Above/(Below) 30 day BBSW Benchmark	
Overnight Money Market	\$5,000,000.00	\$5,000,000.00	4.45%	-0.44%	
Managed Funds	\$4,553,932.84	\$4,553,932.84	3.40%	-1.49%	
Direct Securities Investments	\$17,500,000.00	\$16,166,876.52	5.82%	0.93%	
Term Deposits	\$128,000,000.00	\$128,000,000.00	6.45%	1.56%	
Benchmark 30 Day UBS Bank Bill Index	4.89%	\$155,053,932.84	\$153,720,809.36	5.03%	



**12. SECTION 94 DEVELOPER CONTRIBUTIONS MONTHLY BALANCES & RECEIPTS REPORT  
PERIOD ENDING 31 AUGUST 2010**

<b>Contribution Plan</b>	<b>Plan Description</b>	<b>End of Month Balance</b>	<b>Contributions Received for Month</b>
01	DCP3 Open Space	3,870,717	-
02	Western Drainage	478,924	-
03	DCP3 Community Facilities	34,821	-
04	Tweed Road Contribution Plan	10,406,149	48,285
05	Open Space	1,137,336	60,561
06	Contribution Street Trees	202,640	25,542
07	West Kingscliff	825,647	-
10	Cobaki Lakes	(726)	-
11	Libraries	1,480,466	59,906
12	Bus Shelters	39,948	2,184
13	Cemeteries	(55,132)	11,364
14	Mebbin Springs	72,085	-
15	Community Facilities	1,298,933	584
16	Surf Lifesaving	372,037	17,324
18	Council Administration & Technical Support	1,311,104	129,423
19	Kings Beach	962,960	-
20	Seabreeze Estate	601	-
21	Terranora Village Footpath	24,680	-
22	Shirewide Cycleways	309,665	30,488
23	Shirewide Carparking	1,775,785	-
25	Salt Development	814,446	-
26	Shirewide Open Space	3,951,219	275,609
27	Tweed Heads Masterplan & Streetscaping	84,278	-
28	Seaside City	(675)	-
91	DCP14	86,267	-
92	Public Reserve Contributions	108,283	-
95	Bilambil Heights	421,853	-
<b>Total</b>		<b>30,014,312</b>	<b>661,270</b>

### **13. ECONOMIC COMMENTARY**

#### **Global Economy**

The US Federal Reserve left benchmark interest rates at 0 to 0.25% pa in August and announced plans for more quantitative easing. Principal repayments received from currently held debt and mortgage backed securities (bought from banks by the Federal Reserve during the GFC) will be used to purchase Treasuries, whilst currently held Treasuries will be rolled over when they fall due.

The Bank of Japan continues to try improving the Japanese economy by weakening the yen to boost exports. The BOJ also announced a further 1 trillion Yen in economic aid to stimulate the stagnating economy.

China's economy has been boosted by 100,000 ongoing infrastructure projects like public housing construction and various regional development plans that aim to achieve more balanced domestic growth. Domestic demand should stay firm to uphold GDP growth of around 9% for the remainder of 2010 and into 2011.

#### **Domestic Economy**

The Reserve Bank of Australia left the cash rate unchanged at 4.5% pa at the 7 September meeting. The RBA still views rates as 'appropriate' for the near term. The RBA acknowledged weakening global growth whilst emphasising that Australian growth remained at expected trend levels.

#### **Council's Investment Portfolio Performance**

Council's investment portfolio is currently very conservatively structured with 84% of the portfolio held in term deposits. This investment segment continues to provide above trend returns while capital risk is minimized.

All investment categories except the Cash at Call Account and Managed Funds outperformed the UBS 30 day bank bill benchmark this month. Overall, the investment portfolio has returned an average 2.4% pa above the 30 day UBS bank bill index for the last 12 month period. As already highlighted, 84% of available funds are now invested in term deposits with managed funds being slowly reduced to take advantage of relatively high returns and lower risks associated with term deposits.

An indication of Portfolio performance is provided by totalling investment income for the month and disregarding changes in capital values. Council had \$153,720,809 invested as at 31 August, 2010 and the accrued net return on these funds was \$660,940 or 5.16% annualised for the month.

**14. INVESTMENT SUMMARY AS AT 31 AUGUST 2010**

**GENERAL FUND**

COLLATERISED DEBT OBLIGATIONS	0	
COMMERCIAL PAPER	0	
CORPORATE FIXED RATE BONDS	9,346,434.15	
FLOATING RATE NOTES	6,820,442.37	
ASSET BACKED SECURITIES	0	
FUND MANAGERS	881,483.42	
TERM DEPOSIT - LOAN 104 OFFSET	0	
TERM DEPOSITS	75,000,000.00	
CALL ACCOUNT	5,000,000.00	<b>97,048,359.94</b>

**WATER FUND**

TERM DEPOSITS	20,000,000.00	
FUND MANAGERS	3,644,163.41	<b>23,644,163.41</b>

**SEWERAGE FUND**

TERM DEPOSITS	33,000,000.00	
FUND MANAGERS	28,286.01	<b>33,028,286.01</b>

**TOTAL INVESTMENTS** 153,720,809.36

Council's investments have increased \$13 million from the previous month due to rate instalment payments.

It should be noted that the General Funds investments of **\$97 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)**

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

### 50 [SUB-LTC] Minutes of the Local Traffic Committee Meeting held 19 August 2010

Venue:  
Mt Warning Meeting Room

Time:  
Commencing at 9.30am

Present:  
Committee Members: Cr Barry Longland, Mr Daniel Boorman, Roads and Traffic Authority, Snr Constable Rachel Robbins, NSW Police, Mr Col Brooks on behalf of Mr Thomas George MP, Member for Lismore, Mr Geoff Provest MP, Member for Tweed, Henry Cao (guest from Mr Geoff Provest's office).

Informal: Mr John Zawadzki (Chairman), Mr Ray Clark, Ms Judith Finch (Minutes Secretary).

Apologies:  
Mr Thomas George MP, Member for Lismore, Mr Ian Shanahan Roads and Traffic Authority of NSW, Mr Paul Brouwer, Snr Constable Richard Baxter, NSW Police.

#### CONFIRMATION OF MINUTES OF PREVIOUS MEETING

RESOLVED that the Minutes of the Local Traffic Committee Meeting held 22 July 2010 be adopted as a true and accurate record of proceedings of that meeting.

#### SCHEDULE OF OUTSTANDING RESOLUTIONS

[LTC] Schedule of Outstanding Resolutions Meeting held 19 August 2010

1. [LTC] Eyles Avenue, Murwillumbah

ORIGIN:  
Planning & Infrastructure

FILE NO: ECM 3999809; Traffic - Committee; School Zones; Parking Zones; Safety; Eyles Avenue; Schools - Murwillumbah Public

#### SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B1)

Concern has been raised with cars parking in Eyles Avenue on the school side.

*"These vehicles are causing problems for buses accessing the School Bus Zone. Could 'No Parking' at School finishing times be implemented here?"*



Council officers will investigate this site and report to the meeting.

COMMITTEE ADVICE:

That:-

1. Council officers discuss with the School representatives the possibility of extending the 'No Parking' zone on the eastern side of Eyles Avenue to the intersection with Prince Street.
2. This item be placed on the Schedule of Outstanding Resolutions.

From Meeting held 22/7/10

Mr George requested that Col Brooks be present at the meeting with the School on behalf of Mr George.

*Current Status: That Item 1 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 19 August 2010 remain on the list of Outstanding Resolutions.*

*(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 27 August 2009).*

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2. [LTC] Kennedy Drive, Tweed Heads West

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 3948168; Traffic - Committee; Kennedy Drive, Tweed Heads; Kennedy Drive - Tweed Heads West; Norman Street; Parking - Zones; Traffic - Lights; Traffic - Roundabouts; Boat Ramps

SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B7)

Concern received in relation to increasing traffic problems along Kennedy Drive.

*"In particular the intersection of Norman Street and Kennedy Drive causes local residents a great deal of frustration which is worsened by parking of boats and boat trailers using the boat ramp located on the opposite side of the road.*

*..... Norman Street is one of the few streets where right hand turns are permitted and this also contributes to traffic problems. He has suggested that either a roundabout or traffic lights are needed to facilitate turning into and out of Norman Street."*

The Norman Street/Kennedy Drive intersection has been the subject of community concern for a number of years.

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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 2 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 19 August 2010 remain on the list of Outstanding Resolutions.*

*(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 27 August 2009).*

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3. [LTC] Upper Burringbar Road, Burringbar

ORIGIN:  
Planning & Infrastructure

FILE NO: ECM 17064318; Burringbar Road; Upper Burringbar Road; Traffic -  
Committee; Safety; Speed Zones; Directional Signs; Pedestrian Safety

SUMMARY OF REPORT:

From Meeting held 24 June 2010 (Item B7)

Request received for 50km/hr signage on Upper Burringbar Road between the 2 railway crossings.

*"Due to the recent upgrading of Upper Burringbar Road between the 2 railway crossings, the residents of this area would like to request 50km/hr road signs as well as bike signs. We already struggle with speeding cars and accidents and with the upgrade these drivers will find it easier to speed even more. Our children ride their push bikes to and from school along this road and we feel that these signs are essential to our families safety."*

This item was discussed at the LTC meeting held 15 August 2002 and the item is reproduced as follows:

*"R5690; DW685873*

*Request received for:-*

- 1. Re-positioning of the "Drive to Suit Conditions" sign from its present position just past number 143 Upper Burringbar Road to at least another kilometre along the road.*
- 2. The 50kph zone be continued for at least another kilometre.*
- 3. Replacement of the "Drive to Suit Conditions" sign with an 80kph speed zone further up the road.*
- 4. More effective policing of the drivers on Upper Burringbar Road.*

*Concerns have been raised for safety, especially for children as drivers begin to speed up before the "Drive to Suite Conditions" sign.*

*The Committee noted that there is a footpath from Greenvale Court to the School. The RTA Representative noted that the road environment is suitable for de-restriction signage.*

*The Committee noted that the 50kph speed zone is adequate as it covers from Greenvale Court (rural residential) back to the shopping area.*

*The Committee noted that the extent of existing 50kph zone was a generous interpretation of the guidelines but to extend it another kilometre into a rural environment is not appropriate.*

*The Police Representative advised that resources permitting, Police would be tasked to enforce speeds on Upper Burringbar Road.*

*For Council's information."*

Upper Burringbar Road is a rural road with low traffic volumes and limited adjacent development. Council's accident database shows no recorded crashes along the length of road described in the correspondence.

It was suggested that Council officers investigate the matter further with regard to road conditions, traffic volumes, vehicle speeds and the road environment and report back to the Committee.

COMMITTEE ADVICE:

That the Upper Burringbar Road, Burringbar matter be listed on Outstanding Resolutions.

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*Current Status: That Item 3 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 19 August 2010 remain on the list of Outstanding Resolutions.*

*(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 24 June 2010).*

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## BUSINESS ARISING

Nil.

### A. FORMAL ITEMS SECTION

#### DELEGATIONS FOR REGULATORY DEVICES

A1 [LTC] Sands Street, Tweed Heads

#### ORIGIN:

Planning & Infrastructure

FILE NO: ECM 20364346; Traffic - Committee; Parking Zones; Sands Street; Empire Lane; Bay Street

#### SUMMARY OF REPORT:

Request received for Local Traffic Committee review of parking signage on the eastern side of Sands Street (one way between Bay Street and Empire Lane and over 6m wide). The current situation is that there is no parking for half of the eastern side of Sands Street and no stopping for the remainder of the eastern side of Sands Street. It is considered that this is unnecessary and that vehicles should be able to park on a 2 hour time limited basis similar to the western side of Sands Street.

Council officers noted that parking signage in Bay Street needs to be reviewed.

#### RECOMMENDATION TO COMMITTEE:

That:

1. 'No Stopping' signs be installed on the eastern side of Sands Street , approximately 10m south of the Bay Street intersection.
2. 2 hour parking signage (9.00am to 5.00pm Mon - Fri and 9.00am to 12.00 noon Sat) be installed along the eastern side of Sands Street from the 'No Stopping' signage to 10m before Empire Lane.
3. 'No Stopping' signage be installed on the western side of Sands Street, approximately 10m north of the Empire Lane intersection.

RECOMMENDATION TO COUNCIL:

That:

1. 'No Stopping' signs be installed on the eastern side of Sands Street , approximately 10m south of the Bay Street intersection.
2. 2 hour parking signage (9.00am to 5.00pm Mon - Fri and 9.00am to 12.00 noon Sat) be installed along the eastern side of Sands Street from the 'No Stopping' signage to 10m before Empire Lane.
3. 'No Stopping' signage be installed on the western side of Sands Street, approximately 10m north of the Empire Lane intersection.

*FOR VOTE - Daniel Boorman, Geoff Provest, Cr Barry Longland*

*ABSENT - Snr Constable Rachel Robbins*

*PRESENT. DID NOT VOTE - Col Brooks*

A2 [LTC] Kingscliff High School - Parking Issues

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 19837219; Traffic - Committee; Kingscliff High School; Traffic - Safety; School Zones; Parking Zones; Oxford Street

SUMMARY OF REPORT:

Request received in relation to parking at the front of Kingscliff High School on Oxford Street.

*"Growing numbers of senior students have greatly increased the parking in the street to the point where there is no longer spaces available where parents can drop students off at the front of the school. I believe we could make the traffic island, which separates the bus area, a drop off zone only which would solve the issue."*

It is suggested that 'No Parking' signage be installed on Oxford Street along the centre median island between 8.00am to 9.30am and 2.30 to 4.00pm school days.

Council officers will investigate this matter and report to the meeting.

It was recommended that Council officers discuss possible solutions with the School's representatives and the State Member.

RECOMMENDATION TO COMMITTEE:

That 'No Parking' signage be installed on Oxford Street along the centre median island between 8.00am to 9.30am and 2.30 to 4.00pm school days.

RECOMMENDATION TO COUNCIL;

That Council officers liaise with Kingscliff High School representatives regarding parking issues on Oxford Street at Kingscliff High School.

*FOR VOTE - Daniel Boorman, Geoff Provest, Cr Barry Longland*

*ABSENT - Snr Constable Rachel Robbins*

*PRESENT. DID NOT VOTE - Col Brooks*

B. INFORMAL ITEMS SECTION

GENERAL TRAFFIC ADVICE

B1 [LTC] Wharf Street, Tweed Heads

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 2031903; Traffic - Committee; Safety; Pedestrian Crossings; Wharf Street, Tweed Heads; Boundary Street; Frances Street

SUMMARY OF REPORT:

Wharf Street Tweed Heads has three marked pedestrian crossings at grade between Frances Street and Boundary Street.

It is proposed to install raised platforms at the crossing locations and reinstate the marked crossings.

The marked crossing adjacent to Tweed Centro shopping centre is highly utilised and transverses five lanes (two northbound, two southbound) and a northbound service lane.

A high number of pedestrians were observed crossing Wharf Street outside of the marked crossings.

It is proposed to install the raised platforms to increase the conspicuity of the crossings, reduce vehicle speeds and increase pedestrian usage of the enhanced facilities.

Council has received concerns regarding the visual approach to the crossings.

Mr McKennarley's comments were distributed to the Committee and discussed. It was recommended that the Committee advice be referred to Council's Tweed Equal Access Advisory Committee.

*Snr Constable Rachel Robbins, NSW Police arrived at 10.00am*

COMMITTEE ADVICE:

That

1. The marked pedestrian crossing in Wharf Street, Tweed Heads, opposite Tweed Centro be upgraded to a marked pedestrian crossing on a flat top road hump.
2. Council officers consider improvements to the approach linemarking to the two marked pedestrian crossings on Wharf Street between Bay Street and Boundary Street.
3. Council officers consider including tactile markers for all pedestrian crossings on Wharf Street between Frances Street and Boundary Street.

B2 [LTC] Florence Place, Tweed Heads

ORIGIN:  
Planning & Infrastructure

FILE NO: ECM 20376281; Traffic - Committee; Local Area Traffic Management; Parking - Zones; Directional Signs; Florence Place

SUMMARY OF REPORT:

Request received to designate Florence Place as one-way with vehicles entering the western end and leaving from the eastern end.

Currently vehicles are parking in the wrong direction of travel along the park in the centre of the road. Making the road one-way would allow these vehicles to be parked legally.

Intersections of two lane and one-way streets are undesirable in that cars may enter the one-way street in the wrong direction, potentially causing conflict. One-way streets are therefore generally undesirable and not recommended in this instance.

COMMITTEE ADVICE:

That the request for one-way traffic flow in Florence Place, Tweed Heads is not supported.

B3 [LTC] Chinderah Road and Chinderah Bay Drive, Chinderah

ORIGIN:  
Planning & Infrastructure

FILE NO: ECM 19779745; 20370790; Traffic - Committee; Traffic - Safety; Traffic - Pedestrian Crossings; Pedestrian Safety; Chinderah Road; Chinderah Bay Drive

SUMMARY OF REPORT:

Request received for Local Traffic Committee advice in relation to public and road safety at the intersection of Chinderah Road and Chinderah Bay Drive, especially in relation to the proposed improvements to the Chinderah Bay foreshore at this location. This review should include consideration of a pedestrian refuge crossing near the existing bus stop on Chinderah Bay Drive.

Council officers will provide further information regarding proposed Council works at the foreshore at the meeting.

This item should be placed on the Schedule of Outstanding Resolutions.

COMMITTEE ADVICE:

That Council officers further investigate the matter of the provision of a pedestrian refuge in Chinderah Bay Drive near Chinderah Road.

B4 [LTC] Hillcrest Avenue and Ocean Avenue, Tweed Heads South

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 20081758; Traffic - Committee; Parking Zones; Hillcrest Avenue; Ocean Avenue

SUMMARY OF REPORT:

Request received for:

*"Safety issues with parking on the corner of Hillcrest Avenue and Ocean Avenue, Tweed Heads South. Please identify as No Parking area".*

Caller has requested the *"Rangers patrol the area for illegal and dangerous parking and that the traffic committee review the area as the car parking issues is forcing drivers onto the wrong side of the road on the blind crest of the hill to get passed the parked cars."*

Hillcrest Avenue has double centrelines to the Ocean Avenue intersection from the north approach, which includes on street parking. The pavement width of Hillcrest Avenue is approximately 7.0m.

Double centrelines are not provided on the southern approach. Council officers will investigate the parking issue on-site and report to the meeting. Hillcrest and Ocean Avenues are 50km/hr residential streets.

Council's accident database shows no relevant accidents at this intersection for the period 2004 to 2008.

COMMITTEE ADVICE:

That no action be taken regarding parking on Hillcrest Avenue, Tweed Heads South near the Ocean Avenue intersection.



B5 [LTC] Navigation Lane and Stuart Street, Tweed Heads

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 19781851; Traffic - Committee; Traffic - Control; School - Zones; School - Tweed Heads Primary; Complaint; Access to Property - Driveways; Parking - Zones; Navigation Lane; Stuart Street, Tweed Heads; LN 74364

SUMMARY OF REPORT:

Request received for the installation of 'No Parking' signs along Navigation Lane.

*"The entrance to our car park (entrance and exit roller doors and ramps) is located in Navigator Lane. The local school Tweed Heads primary School, is located in Stuart Street. During drop off and pick up school times, parents park in the very narrow Navigator Lane. On numerous occasions cars have parked over our entrances and exit to our carpark restricting access and causing gridlock in and around our exit.*

*Other cars park right on the corner of Navigator Lane and Stuart Street, as stated a very narrow lane, not allowing cars to turn left from our exit into Navigator Lane, or if able to drive out straight into the oncoming traffic turning into Navigator Lane, thus blocking traffic turning right over the pedestrian crossing located in Stuart Street.*

*This morning was total gridlock, with cars parked over exit, a Garbage collection truck blocking Lane, a number of parents cars abandoned whilst dropping off children, cars turning into Navigator Lane from Stuart Street, 5 cars, forced to all reverse foot by foot in convoy to allow a parent reversing in the entrance to our car park to turn, the exercise took (according to all reports) many minutes to clear. Keep in mind this is happening right near a pedestrian crossing and close to the school entrance, endangering children arriving for school.*

*Our request, I represent all owners and Body Corporate of Tweed Ultima, is for No Parking signs to be placed along Navigator Lane, and in particular on the corner of Navigator Lane and Stuart Street. I would like inspectors to appraise this on any school morning, and afternoon, and in the best interests of all, including the children using the school entrance, arrange for no parking signs to be erected and enforced by Council."*

Council officers will investigate the parking issues raised on-site and report to the meeting.

Council officers advised that a B99 vehicle can exit the Tweed Ultima driveway with cars parked at the kerb.

It was suggested that the Body Corporate contact the garbage operators in relation to this matter.

It was also suggested that the School Principal be advised of the parking concerns of the Tweed Ultima Body Corporate.

COMMITTEE ADVICE:

That no action be taken with regard to parking in Navigation Lane, Tweed Heads.

B6 [LTC] Tweed Street Audit - Member for Tweed

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 19660428; Traffic - Committee

SUMMARY OF REPORT:

The Member for Tweed provided a "Tweed Street Audit" to Council officers at the conclusion of the previous Local Traffic Committee meeting held 22 July 2010.

The Street Audit consisted of numerous issues relating to Tweed Shire road, traffic and other matters.

The issues are varied. Those issues relevant to the Local Traffic Committee will be referred to the Local Traffic Committee. Those issues relevant to Council's operations will be investigated by the relevant Council Unit.

The investigation of each issue will take some time to complete and relevant Local Traffic Committee items will be reported to the next Local Traffic Committee meeting.

For the information of the Local Traffic Committee.

Mr W McKennarney's comments were discussed in relation to audible traffic signals and other matters. These will be assessed in detail in conjunction with the Tweed Street Audit.

COMMITTEE ADVICE:

That the Tweed Street Audit be listed on the Schedule of Outstanding Resolutions.

B7 [LTC] Kyogle Road, Bray Park

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 20168756; Traffic - Committee; Safety; SES; Kyogle Road Bray Park and Murwillumbah; Pty 15012

SUMMARY OF REPORT:

Request received in relation to the State Emergency Service/Rural Fire Service building at Lot 1 DP 1092091 Kyogle Road, Murwillumbah for consideration of the installation of a convex safety mirror to be placed on Kyogle Road near the entrance to the premises.

It is reported that egress and ingress to the site has limited sight distance of traffic approaching from Bray Park and it is considered that a mirror may assist when leaving the premises in potential emergency situations.

Further assessment of the site, including speed and sight distances, will be provided to the Committee at this meeting.

Council officers advised that the sight distance to the right was a minimum of 63m which is adequate for a 60km/h speed. It was suggested that this sight distance could be improved through the trimming of vegetation on the embankment fronting the property.

COMMITTEE ADVICE:

That the installation of a convex safety mirror on Kyogle Road opposite Lot 1 DP 1092091 is not supported and the correspondent be advised that sight distance can be improved through trimming of vegetation on the embankment fronting the property.

B8 [LTC] Tweed Valley Way (Condong to Murwillumbah)

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 19660429; Traffic - Committee; Local Area Traffic Management; Speed Zones; Tweed Valley Way, Condong and South Murwillumbah

SUMMARY OF REPORT:

Request received in relation to speed signs.

*"On Tweed Valley Way between Condong and Murwillumbah, NSW the signs go from 100 to 80 to 70 to 60 to 50km/hr in about 4km. The stretch of road as you enter into Murwillumbah is 70km/hr, whereas majority of towns have a 50km/hr speed limit as you enter into them. I have contacted the RTA, with no response, and the Tweed Shire Council, who say the road is perceived by drivers as an 80km/hr zone, so based on that we are lucky the speed limit is only 70km/hr.*

*This is also a residential area, on the side of the road children wait for and get dropped off by the school bus, and people walk and ride their bikes. The sides of this road is also where cars driving along at speeds of 80km/hr plus, because they have just come from a 100km/hr zone and are now in a "perceived zone" of 80km/hr, pull out to pass people turning into their residential homes/businesses.*

*There have been many accidents along this road already, please address this before a group of school children are mowed."*

Council's traffic data for Tweed Valley Way at "Bullamakanka Park" (near 149 Tweed Valley Way) is as follows (December 2008):

	December 2008	July 2010
Average Daily Traffic Volume	10,330 vehicles	10,805 vehicles
85 <sup>th</sup> percentile speed	75km/h	73km/h

The posted speed limit is 70km/h.

COMMITTEE ADVICE:

That the matter of speed zoning along Tweed Valley Way between Condong to Murwillumbah be referred to the Roads and Traffic Authority of NSW for review.

B9 [LTC] Pottsville Road, Sleepy Hollow

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 19614679; Pottsville Road Pottsville and Sleepy Hollow; Kellehers Road Sleepy Hollow Traffic - Committee; Speed Zones; Parking Zones; Festivals - Speed on the Tweed Event

SUMMARY OF REPORT:

Request received in relation to:

*"As residents in the Sleepy Hollow area we are acutely aware of the high speeds of motorists when they hit the straight stretches of the Pottsville Road from, roughly, the Pioneer Plantation Overpass to Kellehers Road at the foot of the Pottsville Hill.*

*The dangerous crest in the middle of this section is a certain addition to the speeding dangers.*

*Along with others we directly front this road, and many residents have the same entry problems as we have, exiting from the Sleepy Hollow Road and Warwick Park road. We all enter the Pottsville Road with extreme caution & indeed with trepidation.*

*We suggest a speed limit of 80 kms in this section, and a speed camera at the Sleepy Hollow Road entrance, or perhaps on the dangerous crest nearby. It would be preferable to road signs, such as 'concealed driveways ahead' which are sadly ignored by the reckless.*

*On the traffic subject generally, may we also suggest a look at the absurd traffic and parking tangles arising from the recent 'beautification' of the Pottsville CBD at the IGA corner angle."*

Council's accident database shows a number of crashes along Pottsville Road. A speed and safety review is required to adequately address the correspondent's concerns.

The Pottsville Locality Plan currently adopted by Council does address parking and access in and around Coronation Avenue.

COMMITTEE ADVICE:

That the matter of speed management along Pottsville Road at Sleepy Hollow be referred to the Roads and Traffic Authority of NSW for consideration.

B10 [LTC] Adventure Race Australia

ORIGIN:  
Planning & Infrastructure

FILE NO: ECM 19787065; Traffic- Committee; Traffic - Control; Kyogle Road Uki

SUMMARY OF REPORT:

Request received for the Adventure Race Australia event to be held from Mebbin National Park to Clarrie Hall Dam via Byrrill Creek Road, Kyogle Road and McDonalds Road, Uki on Saturday 11 September 2010 from 1.00am to 11.59am.

This is a corporate challenge type event which involves the use of public roads for cycling. This item requires approval of the Committee for this component of the race. The riders travel in small groups and the proponent advises that all road rules would be obeyed and advisory signage would be installed for motorists along these roads. There should be minimum impact on traffic and no concerns have been identified. The proponent has been advised that a separate approval is required from the Police.

It is recommended that the Committee provides no objection to the event subject to standard conditions and Police approval.

COMMITTEE ADVICE:

That the Committee provides no objection to the Adventure Race Australia event to be held from Mebbin National Park to Clarrie Hall Dam via Byrrill Creek Road, Kyogle Road and McDonalds Road, Uki on Saturday 11 September 2010 from 1.00am to 11.59am subject to standard conditions and Police approval.

B11 [LTC] Minjungbal Drive, Tweed Heads South

ORIGIN:  
Planning & Infrastructure

FILE NO: ECM 19786015; Traffic - Committee; Speed Zones; Minjungbal Drive

SUMMARY OF REPORT:

Request received in relation to the speed of traffic on Minjungbal Drive, Tweed Heads South.

*"I travel Minjungbal Drive between the Boyds Bridge and South Tweed quite often.*

*This particular section over time has become a speedway, a great majority exceed the limit of 60.*

*Could speed signs be erected at the kerbside and also painted on the road, to remind drivers, especially Qld. That this is not a highway."*

Repeater signage is appropriate for roads which carry a substantial amount of traffic, such as Minjungbal Drive, which carries well over 20,000 vehicles per day.

Repeater signage is installed generally in accordance with the Roads and Traffic Authority of NSW "*NSW Speed Zoning Guidelines*" which, for a 60 km/hr zone, suggests a 300m separation from the start of the zone to the first repeater sign and 1km for subsequent repeater signs.

Council officers will inspect the site and report to the meeting.

Council officers advised that most signalised intersections along Minjungbal Drive have 60km/hr repeater signage and the spacing of repeater signage is well less than 1km.

COMMITTEE ADVICE:

That no action be taken in regard to the provision of additional 60km/hr repeater signage for Minjungbal Drive, Tweed Heads South.

B12 [LTC] Tweed Coast Road Bogangar, Cabarita Beach

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 20468153; Traffic - Committee; Pedestrian - Safety; Pedestrian - Crossings; Local Area Traffic Management; Tweed Coast Road, Bogangar/Cabarita Beach

SUMMARY OF REPORT:

As part of the public consultation for the Cabarita Beach streetscape upgrade which has recently commenced the community suggested that the existing pedestrian crossing on Tweed Coast Road at Cabarita Beach be converted to a raised platform pedestrian crossing.

A raised platform pedestrian crossing may be an improvement to the existing crossing as it can be more easily seen and also slows vehicles.

COMMITTEE ADVICE:

The Committee has no objection to a raised pedestrian crossing at the existing pedestrian crossing on Tweed Coast Road at Cabarita Beach/Bogangar.

NEXT MEETING:

The next meeting of the Local Traffic Committee will be held 23 September 2010 in the Mt Warning Meeting Room commencing at 9.30am.

There being no further business the Meeting terminated at 11.45am.

**EXECUTIVE MANAGEMENT TEAM COMMENTS:**

**A1 [LTC] Sands Street, Tweed Heads**

**Nil**

**EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:**

**A1 [LTC] Sands Street, Tweed Heads**

**That:**

- 1. 'No Stopping' signs be installed on the eastern side of Sands Street , approximately 10m south of the Bay Street intersection.**
  - 2. 2 hour parking signage (9.00am to 5.00pm Mon - Fri and 9.00am to 12.00 noon Sat) be installed along the eastern side of Sands Street from the 'No Stopping' signage to 10m before Empire Lane.**
  - 3. 'No Stopping' signage be installed on the western side of Sands Street, approximately 10m north of the Empire Lane intersection.**
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**51 [SUB-TRC] Minutes of the Tweed River Committee Meeting held Wednesday 11 August 2010**

Venue:

Canvas & Kettle Meeting Room

Time:

9am

Present:

Cr Katie Milne (Chair); Cr Dot Holdom; Robert Quirk (NSW Cane Growers' Association); Richard Hagley (Department of Environment, Climate Change & Water); David McPherson (NSW Land & Property Management Authority); Pat Dwyer (Department of Industry & Investment NSW); Bob Loring (Department of Primary Industries - Fisheries); Martin Dobney (Action Sands Chinderah); Claire Masters (Tweed Landcare Inc); Scott Petersen (Tweed River Charter Operators); Judy Robinson (Fingal Head Community Representative); Max Boyd (Community Representative); Jane Lofthouse, (Tweed Shire Council).

Apologies:

Carl Cormack (NSW Maritime Authority); Lance Tarvey (Department of Environment, Climate Change & Water); Rhonda James (Restoration Industry); Peter Baker (Tweed Agriculture Representative); Kyle Slabb (Tweed Byron Local Aboriginal Land Council); Tom Alletson, Sebastien Garcia-Cuenca, Mark Kingston (Tweed Shire Council).

Informal:

Anthony Burnham, Ray Musgrave, Mick Denny, Vince Connell, Ross Cameron (Tweed Shire Council).

Minutes of Previous Meeting:

Moved: Max Boyd

Seconded: Robert Quirk

RESOLVED that the Minutes of the Tweed River Committee meetings held 14 April 2010 and 9 June 2010 be accepted as a true and accurate record of the proceedings of that meeting.

Agenda Items:

A1. Tweed Shire Water Augmentation Supply Investigation

Anthony Burnham attended meeting and provided an update on the above. Council staff are currently finalising the preferred option report for Council's consideration.

Discussion on the need for BASIXs to be updated to allow more flexibility.

Moved: Max Boyd

Seconded: Robert Quirk

RESOLVED that the Tweed River Committee support its Councillor members to take forward a notice of motion with the intention of Council developing a policy position on best management practices for sustainable development and subdivisions including, but not limited to:

- a) Requesting a review of BASIX.
- b) Reuse of treated water.
- c) Stormwater quality management and potential for harvesting.

*Anthony Burnham left the meeting at 10am.*

*Vince Connell, Ross Cameron, Ray Musgrave and Mick Denny arrived at 10am*

A2. Presentation on Erosion and sediment Control at Cobaki Lakes Development  
Ray Musgrave and Mick Denny presented information on the current sediment erosion controls on the Cobaki Estate Development site.

It was noted that the site is subject to planning consents spanning several years commencing in the 1990s.

Discussion on adequacy and efficacy on current sediment control and difficulty of monitoring and regulating these.

It was generally agreed that Council needs to develop a policy position to ensure development occurs according to best practice management and that this policy is applied consistently, especially with regard to substantive legal action, against polluters.

Moved: Max Boyd

Seconded: Pat Dwyer

RESOLVED that the following recommendation be submitted to Council.

**RECOMMENDATION:**

That Council staff develop a comprehensive report on what resources are required to ensure that no pollution from Cobaki Estate, or any other source, enters Cobaki and Terranora Broadwaters to achieve the objectives of the Cobaki/Terranora Broadwaters Coastal Zone Management Plan.

*Vince Connell, Ross Cameron, Ray Musgrave and Mick Denny left at 11.15am*

A3. Update by NSW Fisheries on Pest Fish in the Tweed River  
Pat Dwyer presented information on the wide variety and pest fish species and the difficulty in managing these, especially aquarium species.

Recent monitoring demonstrated that the cichlids (pearl earth eater) population has now established in the Tweed River.

A4. Tweed River Committee Program Update  
The table summary of key Tweed River Management Plans was presented. A revised list is attached to these minutes to include status.

**Correspondence In:**

CI1. Coolangatta-Mt Warning Dragon Boat Club Inc.

Jane advised members of the above letter requesting Council to provide toilet facilities at the Condong boat ramp. Advice was sought from Recreation Services. It was decided that funding was not available through the Tweed River Committee for these facilities.

## CI2. Sailability on Tweed

A letter was received from the above seeking a letter of support from the Tweed River Committee and Council to NSW Land and Property Management Authority for the establishment of a site shed on Crown Land on Dry Dock Road.

Moved: Max Boyd

Seconded: Pat Dwyer

RESOLVED that the following recommendation be submitted to Council.

### RECOMMENDATION:

That Council advises Sailability on Tweed that:

- 1) Council supports in principle the establishment of a site shed but that the proposed current site conflicts with the historical location of the original settlement in Tweed, "Tarranora".
- 2) It works with NSW Land and Property Management Authority, in consultation with Council, to locate an appropriate site.

### Correspondence Out:

CO1. Gold Coast Airport

Requesting information on water quality monitoring.

CO2. Qld Main Roads Authority

Requesting information on water quality and vegetation monitoring.

### Business Arising:

BA1. Education Budget

Claire noted that at the last meeting a discussion was held regarding the potential for part of the education budget to be used to refurbish the CAM trailer and employ someone to take the trailer out to schools.

BA2. Outstanding Resolution - Banora Point Wastewater Treatment Plant Discharge Point Manager Water to attend the next Tweed River Committee meeting to discuss above.

### *Next Agenda:*

*Request Manager Water to attend meeting.*

BA3. Foreshore Cleanups

Cr Milne advised the Committee that a report on marine litter had gone to Council but there was no resolution for action. This report will be circulated to the Committee. Jane noted that the National Marine Science facility at Coffs Harbour was currently undertaking a marine litter study on behalf of the Northern Rivers Catchment Management Authority.

BA4. Banora Point Highway Construction

Cr Milne requested that information continue to be provided to Tweed Byron Local Aboriginal Land Council and Aboriginal Advisory Committee on this project.

BA5. Red Water Incident - Chinderah

Cr Milne requested that an update on the recent acid sulfate soils runoff in Chinderah be provided in the Tweed Link for interested persons.

Sebastien and Doreen Harwood to provide the update.

*Cr Holdom left the meeting at 12.45pm*

General Business:

GB1. Navigational Issues - Tweed River

A letter was submitted by Scott Petersen on behalf of Stuart Giblin, Skipper of the MV Golden Swan, expressing concern at the lack of navigational access in certain reaches of the Tweed River. The letter requests dredging of the areas of concern noting the potential for safety issues for their passengers should they become stranded.

Discussion on various options currently being considered for potential dredging along Fingal strait.

GB2. Death of Jerry Bobeldyk

Robert wished to acknowledge the role that Jerry played in the setting up of the Tweed River Management Plan Advisory Committee, now the Tweed River Committee. Jerry approached the then Minister to use the royalties from the dredging of the Tweed River to implement the estuary management plan.

GB3. Recreational Fishing Trust Grants

Pat noted that the recreation fishing trust grants were now open, closing October. This is for project that assist in improving recreational fishing in NSW.

GB4. Quarries

Cr Milne advised the Committee that there was currently action being taken by a resident against a local quarry for pollution. It was noted that pollution of the environment could be an issue for other quarries.

Next Meeting:

The next meeting of the Tweed River Committee will be held Wednesday 13 October 2010.

The meeting closed at 1pm.

#### **EXECUTIVE MANAGEMENT TEAM'S COMMENTS:**

**A2. *Presentation on Erosion and sediment Control at Cobaki Lakes Development***

**Nil.**

**CI2. *Sailability on Tweed***

**Nil.**

#### **EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:**

**A2. *Presentation on Erosion and sediment Control at Cobaki Lakes Development***

**That Council staff develop a comprehensive report on what resources are required to minimise pollutant and nutrient export from Cobaki Estate, or any other source, entering Cobaki and Terranora Broadwaters to achieve the objectives of the Cobaki/Terranora Broadwaters Coastal Zone Management Plan.**

***CI2. Sailability on Tweed***

**As per the Committee's recommendation being, that Council advises Sailability on Tweed that:**

- 1) Council supports in principle the establishment of a site shed but that the proposed current site conflicts with the historical location of the original settlement in Tweed, "Tarranora".**
  - 2) It works with NSW Land and Property Management Authority, in consultation with Council, to locate an appropriate site.**
-

**52 [SUB-TRRMAC] Minutes of the Tweed River Regional Museum Advisory Committee Meeting held Thursday 15 July 2010**

Venue:

Coolamon Cultural Centre

Time:

4.00pm

Present:

Kathryn King (Acting Senior Museum Curator); Max Boyd (Community); Gary Fidler (Community); Sandra Flannery (Community); Faye O'Keeffe (Community); Joan Smith (Tweed Heads Historical Society); Yvonne Waddington (Tweed Heads Historical Society); Helena Duckworth (Uki & South Arm Historical Society); Mary Lee Connery (Uki & South Arm Historical Society); Ron Johansen (Murwillumbah Historical Society); Beverley Lee (Murwillumbah Historical Society).

Apologies:

Cr Barry Longland; David Oxenham (Director Community & Natural Resources); Gary Corbett (Manager Community & Cultural Services)

Minutes of Previous Meeting:

Moved: Helena Duckworth

Seconded: Yvonne Waddington

RESOLVED that the Minutes of the Tweed River Regional Museum Advisory Committee meeting held Thursday 20 May 2010 be accepted as a true and accurate record of the proceedings of that meeting.

Business Arising:

1. Visit by Kylie Winkworth

Kathryn King has emailed Kylie Winkworth with a proposal for conducting workshops centred around the Museum's Strategic Plan and outlining a future vision for the Museum. The proposal includes holding meetings with staff and volunteers prior to the consultant's visit to identify the main issues and areas for discussion. Ms Winkworth has indicated a willingness to be involved but no details or costings have been finalised.

Moved: Sandra Flannery

Seconded: Gary Fidler

RESOLVED that the Acting Senior Museum Curator proceed with the proposal to involve Kylie Winkworth in workshops with Museum staff and volunteers.

2. Letter to Meg McKavanagh

As decided at the last meeting, a letter of appreciation to Meg McKavanagh, previously Museum Collection Assistant has been drafted.

A copy of the letter was forwarded with the agenda for the members' approval. The letter was approved and will be sent out under Max Boyd's signature.

3. Museum Reports to EMT

As requested at the last meeting, the Acting Senior Museum Curator's Report and all Historical Society Reports were forwarded and acknowledged by Council's Executive Management Team.

4. Insurance

Kathryn King is still waiting for documentation on Council's new insurance policy; when received she will present a summary to members of the Committee.

5. Bookings for Museum models

A system and booking sheet have been created to streamline use of the Murwillumbah and Flagstaff Hill models.

The next use of the models is for the Family Fun Day at Salt, Sunday 8 August, as part of Local Government Week.

The Flagstaff Hill model is currently on display at Tweed Heads Civic Centre. For security reasons, no donation box is left with it. A sign will be placed there indicating where people can go for more information, or to make donations.

Correspondence:

2 documents were tabled for the consideration of members:

"Value added: the social and economic contribution of cultural facilities in Central NSW"

"Standing Committee on Public Works – Report on the Development of Arts and Cultural Infrastructure Outside the Sydney CBD." June 2010.

Agenda Items:

1. Acting Senior Museum Curator's Report  
21 May – 30 June 2010

Museum Building and Development Program

- Architectural model for Flagstaff Hill building project

The model for Flagstaff Hill building project was placed on display at the Tweed Civic Centre on Wednesday 9 June. No end date has been negotiated for its display. There is no donation box on display at present due to concerns regarding security - for further discussion at the Museum Advisory Committee meeting of 15 July.

At the last Museum Advisory Committee Meeting on Thursday 20 May, it was discussed that a system should be formulated for the booking out of the architectural models of the Flagstaff Hill building project and Murwillumbah Museum extensions.

Proposed system put forward by myself, Acting Senior Curator, was to form an email group which was alerted each time a booking was requested and then confirmed. The email group to consist of:

Museum Curator – Kathryn King

Museums Assistant – Kirsty Andrew

Presidents of the Historical Societies – Joan Smith, Ron Johansen, Helena Duckworth

Chairperson Museum Advisory Committee – Max Boyd

Chairperson Foundation – Max Boyd

President Friends – Gary Fidler

A booking sheet for both the Flagstaff and Murwillumbah models has been created and saved to the network in the following location: Museums drive:

\\Museum\Administration\Forms\Administration\_Forms

Copies of the two types of booking forms are attached.

- Works to Existing Buildings

The Murwillumbah access ramp building works are still underway. Completion date presently unclear due to work related to galvanizing of the hand rails. A walkthrough of the Murwillumbah Museum building was carried out by Acting Senior Museum Curator, Kathryn King, and Council's Acting Community Worker Aged and Disability, Diana Carbines, to identify other access issues within the building. A number of areas were identified as requiring attention and are being worked through.

- Museum Foundation

The Museum Foundation is working towards resolving how it can achieve Deductible Gift Recipient status for donations received. The Foundation has been very fortunate in the pro bono advice provided by Robert Parsons of Stacks Law firm in exploring the available options. A meeting between Council staff and Museum Foundation representatives is scheduled for 30 June 2010, the outcomes of which will assist in formalizing decisions associated with the structure, operations and function of the Foundation.

### Conservation / Collections

- Acquisitions and Deaccessions

No new acquisitions or deaccessions to report this meeting.

- Conservation work completed on Night Heron, object number M08-026

The Night Heron from the Museum's collection, object number M08-026, has spent the last 4 months in the conservation department of the Queensland Museum, being treated for mould. A conservation report was prepared by Queensland Museum which is attached here. The Night Heron will soon be returned to Murwillumbah Museum and placed on display.

- Museum Collections Assistant advertised

The Museum Collections Assistant position was recently advertised in local media, on the Council's website and in the Museum and Gallery Services Queensland email bulletin. Applications closed 18 June.

### Projects

- Friends of the Museum "Vintage Film night"

The re-screening of the 'Vintage Film night' scheduled for August 2010 has been cancelled due to increased copyright charges attached to Movietone News and Cinesound Review footage, which makes the event financially unviable. The Friends of the Museum apologize for any disappointment, but intend holding another Film Night next year and appeal to anyone who has material which may be suitable for inclusion to please contact Liz Bretherton by phone on 02 6672 5660 or by email at [d.e.bretherton@gmail.com](mailto:d.e.bretherton@gmail.com).

- Migration Projects

- Sea Change: Migration Project 1970s and 1980s

The interviews associated with this project are in the final stages of being transcribed. The next meeting, originally scheduled for 28 July, will take place on Tuesday 27 July at 10.30am at the Coolamon Centre.

- South Sea Islander and Sikh project

Tweed Shire Council took receipt of \$7,700 representing funding from the NSW Migration Heritage Centre in support of the South Sea Islander and Sikh project. The next meeting scheduled for this project is 20 October.



- Local Government Week

Local Government Week, 2 – 8 August 2010, is a Local Government Shires Association initiative and provides an opportunity for Tweed Shire Council to engage with the community. The theme this year is “Building a Brighter Future”. Council’s main event is the annual Family Fun Day which will be held at Salt Central Park on Sunday 8 August from 11am - 2pm. Council will be providing a free community sausage sizzle and a large range of family friendly activities whilst hosting Council information stalls to highlight our full range of services and programs. The Museum will be participating in this event. Anyone interested in supporting the Museum at this event should contact Kathryn King by phone on 02 6670 2500 or by email at [kking@tweed.nsw.gov.au](mailto:kking@tweed.nsw.gov.au).

Recommendations: That the Acting Senior Museum Curator’s report be received and noted by the Committee.

Moved: Kathryn King

Seconded: Joan Smith

RESOLVED that the Acting Senior Museum Curator’s Report be received and noted by the Committee.

2. Murwillumbah Historical Society Report

Report tabled and circulated to all members.

Moved: Ron Johansen

Seconded: Joan Smith

RESOLVED that the Murwillumbah Historical Society’s Report be received and noted by the Committee.

3. Tweed Heads Historical Society Report

Report tabled and circulated to all members.

Moved: Joan Smith

Seconded: Mary Lee Connery

RESOLVED that the Tweed Heads Historical Society’s Report be received and noted by the Committee.

4. Uki & South Arm Historical Society Report

Report tabled and circulated to all members.

Moved: Helena Duckworth

Seconded: Yvonne Waddington

RESOLVED that the Uki & South Arm Historical Society’s Report be received and noted by the Committee.

General Business:

1. Foundation

Max Boyd gave a summary of the meeting between Tweed Shire Council and the Museum Foundation, and where the Foundation is at regarding DGR status.

He stated that the project needs to be driven by those involved and that the Historical Societies should be seeking benefactors and large donations.

2. Museum Collections Assistant

Mary Lee Connery enquired why the Museum has such a low priority in regards to staffing, with only 14 hours dedicated to the Museum Collections Assistant position. Two working days is not enough for this position and there is a backlog of work already.

Kathryn King explained that the position was initially a 3 year 50% grant funded position. With this type of grant there is often the expectation that the organisation will take up fully funding the position, however, this did not take place in this instance.

Mary Lee also enquired about the status of the Senior Museum Curator's position. Kathryn King advised that nothing had been formally received from Sally Watterson as yet.

Moved: Mary Lee Connery

Seconded: Joan Smith

RESOLVED that the following recommendation be submitted to Council.

RECOMMENDATION:

That Tweed Shire Council seriously considers seeking additional funds to increase the number of days allocated to the Collection's Assistant position to care for the collection held on the three sites.

Mary Lee Connery suggested that the Historical Societies and Friends of Tweed River Regional Museum write letters to Council in support of this recommendation.

Next Meeting:

The next meeting of the Tweed River Regional Museum Advisory Committee will be held 16 September 2010.

The meeting closed at 5:30pm.

**EXECUTIVE MANAGEMENT TEAM'S COMMENTS:**

**2. *Museum Collection's Assistant***

Nil.

**EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:**

**2. *Museum Collection's Assistant***

**That Tweed Shire Council seriously considers seeking additional funds to increase the number of days allocated to the Collection's Assistant position to care for the collection held on the three sites.**

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**53 [SUBCOM] Minutes of Subcommittees/Working Groups for Distribution-Not Requiring a Council Decision**

- 1. Minutes of the Aboriginal Advisory Committee Meeting held Friday 6 August 2010 (ECM 20472270)**
  - 2. Minutes of the Tweed Coast Koala Advisory Group Meeting held Tuesday 10 August 2010 (ECM 20472195).**
  - 3. Minutes of the Tweed Coastal Committee Meeting held Wednesday 11 August 2010 (ECM 20472291)**
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## ORDERS OF THE DAY

### 54 [NOM-Cr B Longland] Museums

#### NOTICE OF MOTION:

Councillor B Longland moves that in view of Council's 2004 Memorandum of Understanding with the combined Historical Societies involving Council's 7-Year Plan commitment to a purpose-built Museum at Tweed Heads and the extension of the Murwillumbah Museum, could a comprehensive report be brought forward on the following:

- the scope for revisiting the design and cost estimates for both projects with the architect with a view to identifying substantial savings;
- how it is intended that the \$1million Museum commitment from the Federal Government will be utilised before its expiry on 30 June 2011;
- assuming significant cost reductions can be found, plans for the urgent completion of a Development Application for the Murwillumbah Museum extensions in order that funding opportunities can be exploited as and when they become available;
- reassurance of Council's commitment to these projects (and possible planned commencement dates), for the dedicated volunteer Historical Society workforce involved in the acquisition, care, maintenance and display of the valuable collection that is now in the ownership of Council.

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### 55 [NOM-Cr Holdom] Telecommunications Towers

#### NOTICE OF MOTION:

Councillor D Holdom moves that in conjunction with the resolution on *Development Applications for the Installation of Telecommunications Networks* 18 May 2010 (as shown corrected on the 15 June 2010)

*Minute Number 362*

**RESOLVED** that where Tweed Shire Council is the consent authority for the installation of Telecommunication networks the provider/ applicant/ proponent be requested to undertake the following community consultation before submitting any Development Application(s) for the installation of Mobile Towers and all supporting equipment within the shire; advertisements in the Tweed Link in two (2) concurrent publications, two (2) independent newspapers, a community meeting held within the area that could be affected by the proposal, letter box drops to the surrounding homes/businesses etc that could be affected, door knocks to the surrounding area that could be affected and that this preliminary consultation forms part of the Development

*Application (as supplementary written information and includes copies of all correspondence - inwards and outwards regarding the consultation process undertaken), when finally submitting the Development Application to Council for review/processing/consideration.*

**REPLACE THE WORD "CONCURRENT" WITH THE WORD "CONSECUTIVE"**

Council advise all provider's / applicant's / proponent's that the Tweed Shire Council Aboriginal Advisory Committee is to be included in all of the preliminary consultation as per the original resolution of Council 18 May 2010 and that a full report on that consultation and outcomes is to be submitted with the Development Application/s.

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- 56 [NOM-Cr D Holdom] Workshop-Department of Environment, Climate Change and Water NSW 2010 Border Ranges Rainforest Biodiversity Management Plan - NSW and Queensland, Department of Environment, Climate Change and Water NSW, Sydney**

**NOTICE OF MOTION:**

Councillor D Holdom moves that the General Manager organises a workshop for Councillors on the Department of Environment, Climate Change and Water NSW 2010 Border Ranges Rainforest Biodiversity Management Plan - NSW and Queensland, Department of Environment, Climate Change and Water NSW, Sydney, similar to the public workshop held on 4 September 2010 at the Canvas and Kettle Restaurant, Murwillumbah.

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- 57 [NOM-Cr K Skinner] Youth - Off Road Motor Cycle Track**

**NOTICE OF MOTION:**

Councillor K Skinner moves that Council signals its in principle support for the establishment of an off road motor cycle track as a further means to support youth development in the Tweed and that a workshop be held to enable staff to brief Councillors on issues, constraints and opportunities in developing such a facility and the role that Council could play in that process.

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- 58 [NOM-Cr K Milne] Tweed Tourism and Ecological Economics**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council requests the newly appointed Tourism and Economic arms of Tweed Tourism Board to include in their future strategies ways to encourage a more sustainable local economy.

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**59 [NOM-Cr K Milne] Reward System for Community Incident Reports for Tree Clearing**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council brings forward a report to consider adopting a reward system, similar to the reward for graffiti reports, for community members that report tree clearing incidents, where such a report results in a fine or prosecution.

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**60 [NOM-Cr K Milne] Workshop - Safer Communities Alliance**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council invites the Safer Communities Alliance to a workshop in the earliest possible timeframe to discuss the possibility of implementing an extended bus service to Pottsville now that the Gold Coast Council has agreed to fund the extension of the bus service to Kingscliff.

---

**61 [NOM-Cr K Milne] Further Consultation and Review Kings Forest and Cobaki Lakes**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council writes to the Ministers for Planning and the Environment to request that:

1. An independent review of Kings Forest and Cobaki Estate be undertaken by suitably qualified experts in sustainable planning, such as the Institute of Sustainable Futures, UTS, to achieve leading best practice planning for the future in these highly significant environments.
  2. Further community consultation by the State government be carried out in the form of public forums to better involve the Community in these major town planning initiatives and opportunities.
-

**62 [NOM-Cr K Milne] Chinderah Heritage Fig Tree**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council:-

1. Places an Interim Heritage Order on the White Fig Tree located in the carpark of the Chinderah Tavern known as Lot 2 DP 781464, Nos. 156-160 Chinderah Bay Drive, Chinderah.
2. Writes to the owners of the Taphouse Hotel to express appreciation for the cooperation in the matter of this heritage issue.



**QUESTION TIME**

**63 [QON-Cr D Holdom] Tree Clearing, Pottsville**

**QUESTION ON NOTICE:**

Councillor D Holdom asked can the Director Planning and Regulation please advise Council of the tree clearing within an area of Pottsville recently and also advise Council of the parameters for legal clearing on private properties, who is the consent authority for same, under what Act one must apply for permission to fell Native Vegetation and what legal role Council Officers have under these circumstances?

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**CONFIDENTIAL ITEMS FOR CONSIDERATION**

**REPORTS THROUGH GENERAL MANAGER IN COMMITTEE**

**REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE**

**1 [EO-CM] Naming of Park at Mooball**

**REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret

**REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES IN COMMITTEE**

**2 [TCS-CM] Records Storage Proposal**

**REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

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