



TWEED
SHIRE COUNCIL

Mayor: Cr K Skinner (Mayor)

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

Agenda

Planning and Regulation Reports **Ordinary Council Meeting** **Tuesday 14 December 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.

Items for Consideration of Council:

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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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10 [PR-CM] Tweed Development Control Plan Section A8 - Tweed Brothel Code

ORIGIN:

Planning Reforms

FILE NO: GT1/DCP/A8

SUMMARY OF REPORT:

At its ordinary meeting of 18 May 2010 Council considered a Development Application (DA10/0020) for the establishment of a Brothel at Lot 411 DP 859933, No. 36 Enterprise Avenue, Tweed Heads South.

The application was refused by resolution which, as well as the reasons for the decision, included a requirement for the preparation of a new DCP, it stated that:

- “1. Council prepares a new Section A8 of the Tweed Development Control Plan and that this new component of the Development Control Plan be reported back to the Council as a priority.*
- 2. The new Development Control Plan incorporates a set of new controls relating to the appearance, siting, scale and operation of brothels in the Tweed area.”*

The Council meeting was followed by two subsequent Councillor workshops on 8 June and 16 November 2010 at which a revised draft was tabled for discussion.

This report seeks Council's endorsement for the exhibition of the Draft Tweed Development Control Plan 2008, Section A8 - Tweed Brothels Code, for a minimum period of 60 days.

It is also recommended that the General Manager writes to the NSW Minister for Planning seeking the development of a new licensing system for the operators of brothels, similar to the current licensing system for the owners of licensed premises.

RECOMMENDATION:

That:

- 1. Draft Tweed Development Control Plan 2008, Section A8 - Tweed Brothels Code be publicly exhibited for a period of 60 days and in accordance with the Environmental Planning and Assessment 1979.**
- 2. Following public exhibition of Draft Tweed Development Control Plan 2008, Section A8 - Tweed Brothels Code, and having regard to matters arising from the public consultation and any submissions received, a further report be submitted to Council seeking final adoption of the Plan.**

3. **The General Manager writes to the NSW Minister for Planning seeking the development of a new licensing system for the operators of brothels, similar to the current licensing system for the owners of licensed premises.**

REPORT:

At its ordinary meeting of 18 May 2010 Council considered a Development Application (DA10/0020) for the establishment of a Brothel at Lot 411 DP 859933, No. 36 Enterprise Avenue, Tweed Heads South.

The application was refused by resolution which, as well as the reasons for that decision, included a requirement for the preparation of a new DCP, it stated that:

- “1. Council prepares a new Section A8 of the Tweed Development Control Plan and that this new component of the Development Control Plan be reported back to the Council as a priority.*
- 2. The new Development Control Plan incorporates a set of new controls relating to the appearance, siting, scale and operation of brothels in the Tweed area.”*

The Council meeting was followed by two subsequent Councillor workshops on 8 June and 16 November 2010 at which a revised draft Brothels Code was tabled for discussion.

Further Particulars arising from the 16 November Workshop

Issue 1 Relating to the use of neon lights and external lighting generally. Neon lights are not permitted as signage under Section 7.0 Signage, which states:

Controls:

- a) Illumination of signage is permitted, except by way of flashing, coloured or neon lights, where it is shown to be consistent with signage on other premises located in the same industrial area.*

A new objective and clauses have been added to Section 3.0 Streetscape and Character to include:

New objective:

- ii. To ensure that any external lighting and illumination does not adversely impact on the local area or other properties.*

New clauses:

- e) A lighting plan for all external lighting and illumination shall be submitted for approval with any development application for a brothel establishment.*
- f) Neon lighting, flashing lights or lights with moveable parts are prohibited.*

Issue 2 Issue was raised about the level of provisions relating to site landscaping. There is a requirement for a landscape plan under 4.2 Information Required with a Brothel Development Application, and a new clause under Section 5.0 Building Design and Layout has been included:

- i) *A detailed landscape plan demonstrating the integration of the landscaped areas into the overall building and site design for the purposes of screening and lessening the visual presence or prominence of the brothel development in the streetscape is to be prepared by a suitably qualified or experienced person, approved by the building designer or architect, and submitted with any development application for approval.*

Issue 3 There was a preference expressed about there being greater discussion in the DCP about the various regulatory roles of government agencies, such as NSW Health, and that there should be greater council involvement in the licensing and inspection of brothels.

The inclusion of directory information relating to the business operations of a development is generally beyond the scope of a DCP. Provisions relating to general management and operational issues typically regulate only through a requirement for the submission of an operational management plan as part of any development approval. Such a plan would detail the operational management component of the business and could include health based information.

The Department of Health and WorkCover NSW regulate the sexual health and well being of workers within this industry. It is currently outside the scope of Council's legislative functions.

Section 4.2 - Information Required with a Brothel Development Application, provides a comprehensive list of matter that must be addressed in an application for a brothel establishment and it includes:

- social impact assessment
- **operational management plan**, including security arrangements
- drug and alcohol policy
- health and hygiene plan

Issue 4 The issue of a panic room was raised with reference being made to a recent brothel development application having been considered by Parramatta Council in Sydney, which included a 'panic-room'.

The following extract from the web site of Parramatta Councillor Chiang Lim provides a summary of the recent development proposal for a "panic-room" within a brothel establishment, which was considered by Parramatta Council:

Parramatta received its very first proposal for a brothel to protect their working girls. The proposal was to incorporate what is in effect a panic room inside a brothel. This panic room was to be centrally located in this brothel so that the working girls can seek refuge in the case of any of them being under attack from any of their customers.

For those unfamiliar with what is a panic room, it is a secure reinforced room on the premises where people can seek refuge inside from any attackers. Such a room, when secured from the inside, provides its occupants protection from harm from their attackers, and may provide them with communication devices in order to seek assistance from the police or contracted security personnel.

Unfortunately, under NSW Disorderly Houses Act (state legislation) that was passed in 1995, this law decriminalised prostitution and brothels and allows for such panic rooms to be installed in order to facilitate the trade of prostitution. Not surprisingly, when presented to Parramatta City Councillors to vote, the recommendation was for approval for such a panic room in an existing brothel because it was legal.

As to date a 10 year campaigner against the Pandora's Box effect of this 1995 NSW state law, this proposal was simply confirmation that regulating brothels and prostitution the way that it does only makes things worse, not better.

Originally leading a minority position against the approval of such a panic room as well as the expansion of this brothel, I led the argument that if passed, the majority of Parramatta City Councillors would be putting women in harm's way, effectively encouraging violence towards women.

Thankfully, after two days and rounds of voting, Parramatta City Councillors were given the encouragement needed to refuse this proposal. I am confident that the wives and girlfriends these Councillors and the women of Parramatta would be proud of their decision.

Further scoping of related information available on the world wide web failed to reveal any conclusive information that could be relied on to support the inclusion or otherwise of panic-rooms within Tweed brothels.

There is currently no requirement under the Tweed DCP for a panic-room and there has been no evidence revealed through the preliminary investigation into "panic-rooms" that suggest that the DCP should be amended to include such a requirement.

In its recent consideration and refusal of DA10/0020, for a brothel establishment at Enterprise Avenue Tweed, Council resolved to prepare a new DCP, which was to specifically address certain matters (addressed in the 'background' section of this report) relating to the external appearance and impact of the proposal within the locality however, it did not include a reference to panic-rooms. Likewise, the six reasons given by Council warranting the refusal of the application did not raise any issue with respect to the internal business operations or the safety and security concerns that may otherwise be associated with the need for the provision of a panic-room.

On Appeal to the NSW Land and Environment, which was heard by Commissioner Dixon on 12 August and 21 & 22 September 2010, the issues raised by Council's reasons for refusal were assessed. The Applicant submitted amended plans and the Court upheld the appeal against Council's decision by way of its judgement delivered on 22 November 2010. The brothel development was approved for a trial period of 12 months, subject to Council's conditions of consent.

The Court was not called upon nor did it consider the use or requirement for a panic-room or the safety and security concerns that may ordinarily be associated with that kind of 'personal' refuge shelter.

The issue of personal security and safety whilst very real was neither highlighted nor it seems considered to be demanding of the same level of attention or action as has been demonstrated or necessitated in other areas, consequently it was not raised by either the Council or the Court as a pressing issue requiring of some form of ameliorative attention.

In light of the above, it is recommended that prior to any decision to amend the Tweed DCP to include refuge shelters fitting any description that further research into the use and effectiveness of such devices be investigated, following which a further report to Council can make recommendations on the available information.

Issue 5 A new licensing system, akin to that of a hotel / liquor premises license, aimed at providing Council with a greater regulatory role of brothels was raised as a way of ensuring operational compliance and improving the general wellbeing/protection of sex industry workers

The legalisation of brothels in NSW commenced with the passing of the Disorderly Houses Amendment Act 1995, which legalised brothels and living off the earnings of a prostitute. The Act also amended the Crimes Act 1900 to abolish the common law offence of keeping a brothel and related common law offences. With the passage of the legislation, a brothel then became a commercial business requiring local council approval under the Environmental Planning and Assessment Act 1979.

Since 1995 there has seemingly been a significant increase in the number of commercial brothel premises across NSW and a corresponding increase in the commentary and debate surrounding the inadequacy of the legislative / regulatory schemes, which have left local councils with an extremely limited ability to regulate and control the growth in and issues related to new commercial brothels.

Commentators have noted that the proliferation of brothels has resulted from dysfunctional planning laws which are based only the assessment of development issues and which are without any provision for assessing criminal links with the owners or operators, which is unlike those of the liquor licensing laws.

In light of the above, it is recommended that the General Manager write to the NSW Minister for Planning seeking the development of a new licensing system for the operators of brothels, similar to the current licensing system for the owners of licensed premises.

Stewart v Tweed Shire Council (10431 of 2010)

As discussed in this report above, Tweed Council considered an application for a brothel development at its Ordinary Meeting of 18 May 2010 at which the application was refused, with Tweed Councillors' citing six reasons for refusal.

The matter was heard on appeal to the NSW Land and Environment Court, where Commissioner Dixon upheld the appeal of an amended development application for a trial period of 12 months.

The main issues arising for the Court's consideration may be summarised for the purposes of this report as; the proposed hours of operation, car parking and the perceived impact on the locality.

These issues were managed by; the reduction in the hours of operation from the proposed 24hr to comply with the 6pm to 6am requirement under the DCP and conditions of consent requiring the modification to the car parking arrangement. The Commissioner assessed the local environment noting that the area was dominated by commercial / trade based development and that the impact of the brothel development would be limited given that context, with the inclusion of a landscaped screening area to the front entry area, because the customer car parking of other neighbouring premises was predominantly screened or orientated away from the brothel and therefore not visible, and because the amended hours of operation further reduced the potential for conflict.

The amended brothel development, as approved, was generally compliant with the current Tweed DCP Brothels Code. The Draft DCP further covers the issues considered by the Court. In particular, the Draft further clarifies and provides controls for:

- A clear purpose for the Brothel Code
- Public notification requirements
- Referral requirements, e.g. other agencies
- Limits on new approvals for 12 months
- Details on applications to close a brothel
- Consent authority requirements – consent considerations
- Development application requirements – information required
 - Hours of operation
 - Social impact assessment
 - Economic impact assessment
 - Operational management plan
 - Security and lighting plan
 - Car park and access plan
 - Landscaping plan
 - Drug and alcohol policy
 - Health and hygiene plan
- Proximity (land-use) based prohibitions to brothel development
- Comprehensive building controls including:
 - Streetscape and character
 - Building setback and height
 - Building design and layout
 - Screening
 - Waiting rooms
 - Maximum number of rooms
 - Showers & hand basins
 - Staff room
- Car parking
 - Secure, screened, lighting
- Signage
- Location
- Operational, safety and security
 - Security intercom
 - Surveillance monitoring (car park, hallways, reception, stairs)
 - Maximum number of sex workers
- Disability access

- Hours of operation
 - 6pm to 6am
- Health and waste

The draft Tweed Brothels Code is consistent with the planning principles laid down in *Martyn v Hornsby Shire Council* [2004] NSWLEC 614 and further addresses those limited issues raised in *Stewart v Tweed Shire Council* [2010] NSWLEC 1319.

Conclusion

The draft Tweed Brothels Code would be one of, if not, the most detailed (draft) DCPs regulating brothel developments in the State of NSW.

The DCP is premised on the need to permit development for commercial brothels because they are a lawful land-use activity. However, there is recognition of the extraordinary sensitivity of this land-use as it sits within the moral beliefs and views of the broader community. There is a need to establish a balanced approach between those views and beliefs and clear parameters to enable an adequate level of acceptability of development through robust planning controls.

The draft Plan has sought to ensure that the controls operate to control the external impacts of development as well as the internalised operational management in a very stringent way without unduly prohibiting brothel development by default. This approach recognises the lawfulness of brothel development and the corresponding requirement on local councils to ensure that they do not breach anti competition laws by prohibiting development altogether or prohibiting them on unreasonable or unjust terms.

The provisions within the Plan are designed to ensure minimal impact to the broader community by regulating a variety of key criterion relating to building form and location, to ensure that the operational environment of the development responds to needs, security and protection of both the workers within that industry and the public.

The draft Plan is considered to be suitable for and is recommended for public exhibition.

The statutory period for the public exhibition of the DCP in accordance with s 74E of the *Environmental Planning and Assessment Act 1979*, is stipulated under Regulation 18(2) of the *Environmental Planning and Assessment Regulation 2000*, as 28 days.

Given that the exhibition period will extend through the Christmas holiday period it is recommended that the public exhibition of the draft Plan be extended to take into account that many residents may be away or otherwise preoccupied with seasonal festivities.

This report seeks Council's endorsement for the exhibition of the Tweed Development Control Plan 2008, Section A8 - Tweed Brothels Code, for a minimum period of 60 days.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Tweed Development Control Plan, Section A8 – Tweed Brothel Development Code (ECM 24922810)
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11 [PR-CM] Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code

ORIGIN:

Planning Reforms

FILE NO: GT1/DCP/B23

SUMMARY OF REPORT:

Following deferral from the 16 November 2010 Council meeting, this report seeks final endorsement of the Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code (the 'Code').

The draft Code was initially submitted to Council's meeting of 16 November 2010 for endorsement; however, due to a desire for more clarity regarding certain aspects of the Code, the matter was deferred and referred for further consideration at a Councillor Workshop.

A Councillors Workshop was held on 30 November 2010 and addressed:

1. Clarification of building heights and appropriate building types in the Southern and Central Precincts;
2. Clarification of building height and setback within the northern precinct including clarification of visual setting diagram interpretation;
3. Mapping updates for the Creek Street Precinct, and
4. Legal Framework for Plan Making in NSW.

As a result, a number of minor amendments were made to the document, including the insertion of several diagrams and associated text to the Code to facilitate a clearer explanation of these issues; as discussed in the report below.

A section entitled '1.2.5 Planning Provisions Repealed' has been added to the introductory section of the Code stating that the adoption of the 'Code' would effectively repeal the Hastings Point area specific interim controls within DCP A1. As such resolution 3 has been amended to reflect this.

This report recommends the final adoption of the draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code.

RECOMMENDATION:

That:

- 1. Council receives and notes the amendments to the publicly exhibited Draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code, arising from the review of public consultation submissions.**
- 2. Council adopts the exhibited Draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code, as amended, and provided as an attachment to this report, and resolves to give public notice of the Plan's adoption in accordance with Clause 21(2) of the Environmental Planning and Assessment Regulation 2000.**
- 3. A notice be placed in the Tweed Link notifying of the repeal of the Hastings Point Interim Development Controls within the Tweed Development Control Plan Section A1 – Residential and Tourist Development Code and commencement of Tweed Development Control Plan Section – B23 Hastings Point Locality Based Development Code.**
- 4. Council forwards a copy of the adopted Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code, to the Director-General of the NSW Department of Planning in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000.**

REPORT:

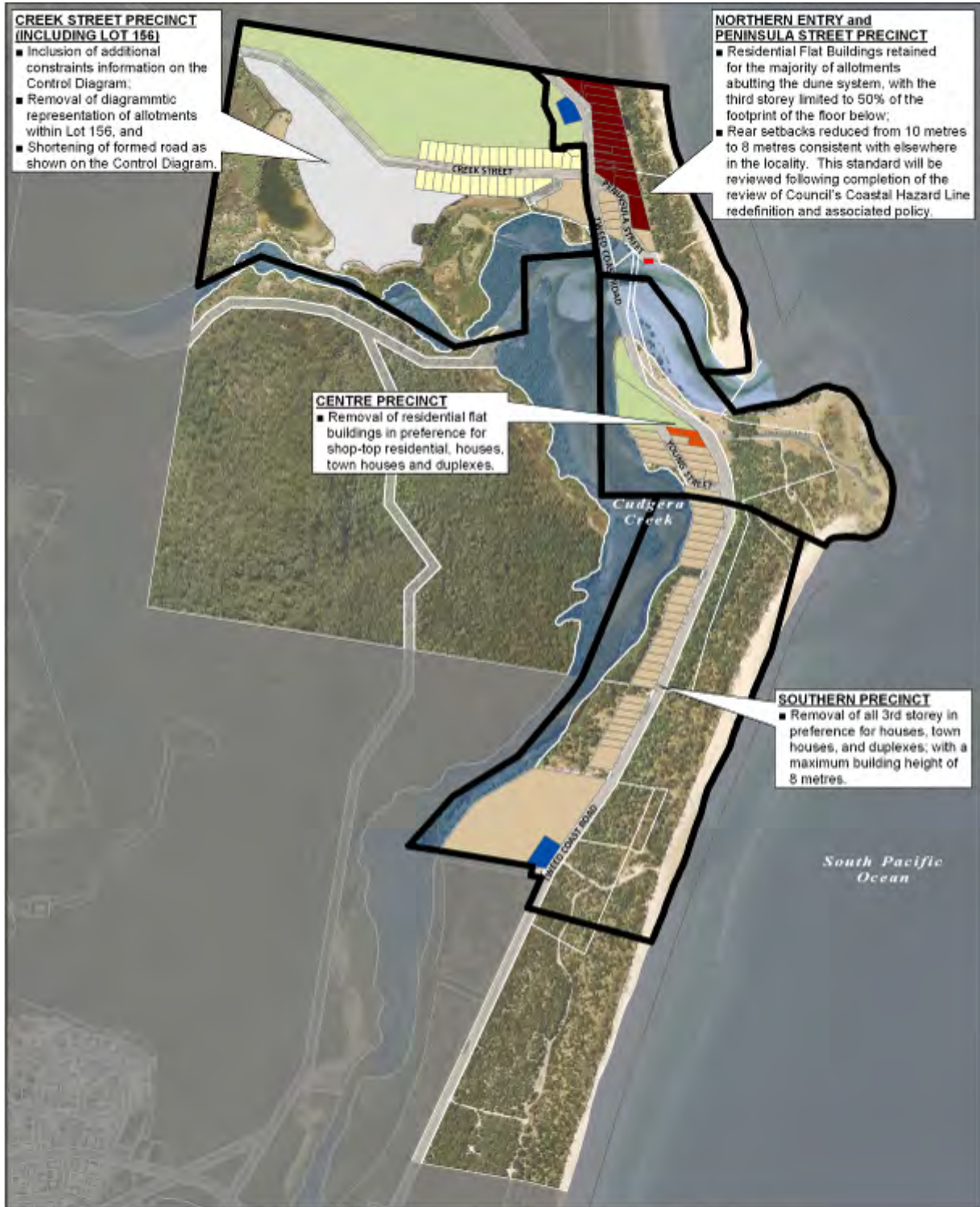


Figure 1 - Hastings Point - Summary of Key Post Exhibition Amendments
Tweed Development Control Plan - Section B23

SOURCE:
Aerial Imagery taken
October 2008 by
Rugby Spatial Pty Ltd

Caravan Parks	Houses / Dual Occupancies	Houses / Dual Occupancies / Residential Flat Buildings	Subdivision - Houses / Dual Occupancies	Commercial
Public Buildings	Houses / Dual Occupancies / Town Houses			Commercial / Shop-top

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Date: 29 November, 2010
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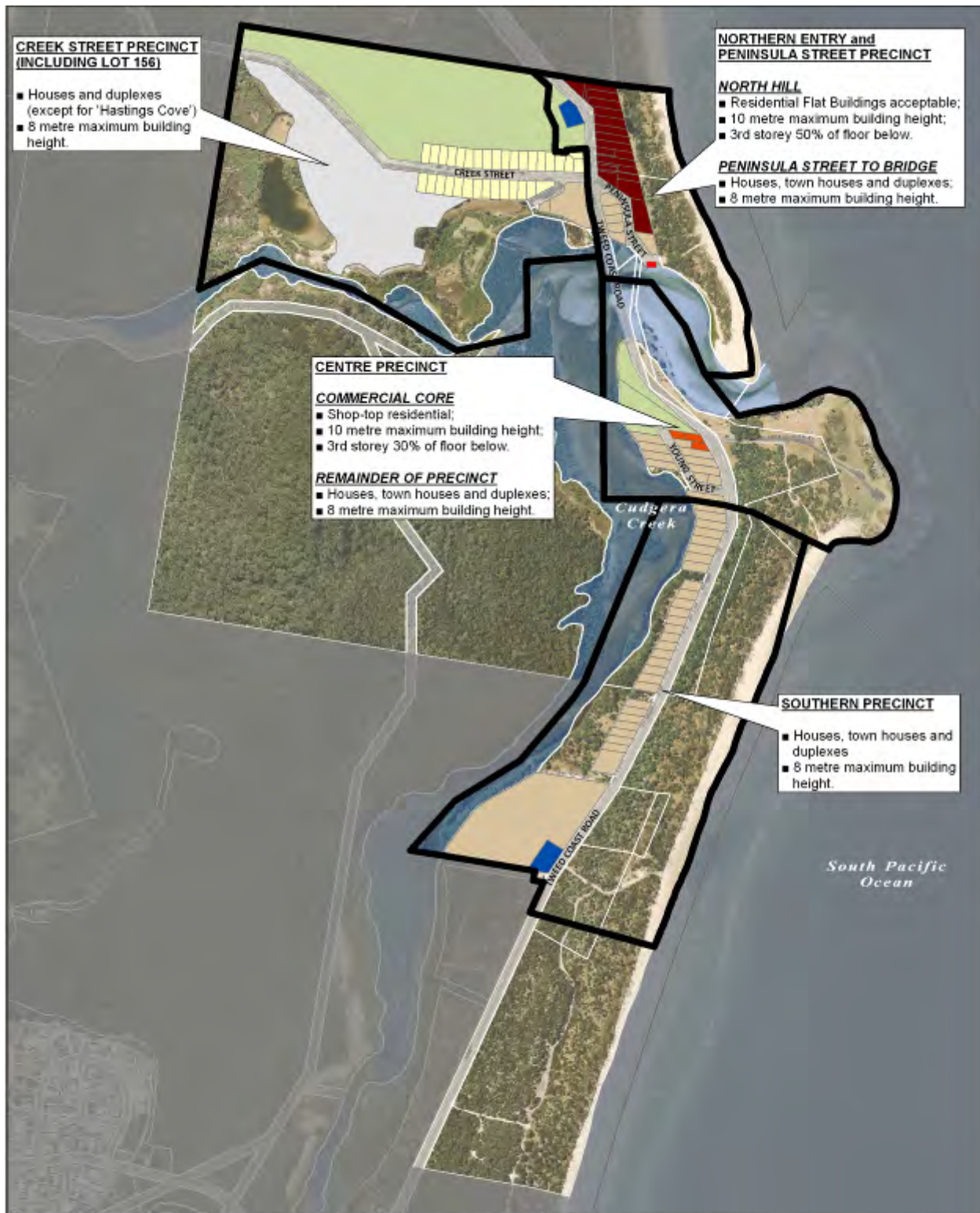


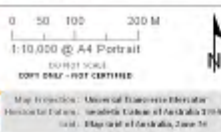
Figure 2 - Hastings Point - Summary of Key Development Standards
Tweed Development Control Plan - Section B23

SOURCE:
Aerial imagery taken
October 2009 by
Fago Spatial Pty Ltd

Caravan Parks	Houses / Dual Occupancies	Houses / Dual Occupancies / Residential Flat Buildings	Subdivision - Houses / Dual Occupancies	Commercial
Public Buildings	Houses / Dual Occupancies / Town Houses	Houses / Dual Occupancies / Residential Flat Buildings	Subdivision - Houses / Dual Occupancies	Commercial / Shop-top

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Background

The draft Code was initially submitted to Council's meeting of 16 November 2010 for endorsement; however, due to a desire for more clarity regarding certain aspects of the Code, the matter was deferred and referred for further consideration at a Councillors Workshop, which was subsequently held on 30 November.

Post-exhibition variations

Following detailed review of the final draft received from the consultant Ruker Urban Design, and consideration of public submissions received during the public exhibition of the document, a number of amendments were made to the Code. A summary of more significant post-exhibition variations to the Code are represented in Figure 2. These amendments include:

- Northern Entry and Peninsula Street Precinct:
 - Residential flat buildings retained for the majority of allotments abutting the dune system facing the ocean only;
 - Rear setbacks on allotments abutting the dune system facing the ocean reduced from 10 metres to 8 metres consistent with elsewhere in the locality, and
 - Text and illustrations added to clarify potential building design outcomes;
- Creek Street Precinct (including Lot 156):
 - Inclusion of additional constraints information for Lot 156 on the Control Diagram;
 - Removal of hypothetical allotments shown within Lot 156, and
 - Shortening of formed road as shown on the Control Diagram.
- Centre Precinct:
 - Removal of residential flat buildings from all but the commercial core, giving preference to shop-top residential, houses, town houses and duplexes.
- Southern Precinct:
 - Removal of all 3rd storey development options, giving preference to houses, town houses and duplexes; with a maximum building height of 8 metres.

Issues presented in the Workshop Discussion Paper

The key issues presented at the 30 November 2010 Councillors Workshop included:

1. Amendment to building types building heights in the Centre and Southern Precincts;
2. Clarification of development scenarios for the Northern Entry and Peninsula Street Precinct;
3. Mapping updates for the Creek Street Precinct, and
4. Legal Framework for Plan Making in NSW.

A summary of key points is presented below.

Amendment to building types building heights in the Centre and Southern Precincts

The Southern and Central Precincts are typified by low scale, low rise development with deep setbacks, generous building separation, open spaces, vegetated and landscaped areas.

Building types considered to be consistent with the desired future character of the Southern and Centre Precincts include:

- Houses (8.0 metres – 2 storeys);
- Dual occupancies (8.0 metres – 2 storeys);
- Town houses (8.0 metres – 2 storeys), and
- Shop-top housing (10.0 metres – 3 storeys), restricted to the commercial core only.

The additional height and building mass typical of most residential flat buildings (RFBs) are of a character considered to be in contradiction to the existing and desired future character of these Precincts, with the exception of the commercial core of the Centre Precinct.

The commercial core in the Centre Precinct was considered to be suitable for a three-storey mixed-use development, providing a greater public purpose, as well as being a focal point or 'anchor,' an important element of any urban settlement. A well designed building in this location would be consistent with existing building types and reinforce this function within Hastings Point. For further reading, refer to Attachment 2: Discussion Paper presented at Councillor Workshop 30 November 2010.

Clarification of development scenarios for the Northern Entry and Peninsula Street Precinct

The Northern Entry and Peninsula Street Precinct consist of three distinctive areas:

- The petrol station and caravan park;
- The northern hill fronting the South Pacific Ocean and/or Tweed Coast Road, and
- Lots located between Tweed Coast Road and Peninsula Street.

Building types considered to be consistent with the existing building types and desired future character of the Northern Entry and Peninsula Street Precinct include:

- Houses (8.0 metres - 2 storey);
- Dual occupancies (8.0 metres – 2 storey);
- Town houses (8.0 metres – 2 storey), and
- Small residential flat buildings (10 metres – part three storey), restricted to the northern hill part of the precinct.

In the draft exhibited Code, rear setbacks for buildings on the eastern side of allotments facing the ocean were shown as being 10 metres. This was considered excessive and inconsistent with setbacks elsewhere in Hastings Point, and was reduced to 8 metres; however, this standard will be reviewed following completion of the review of Council's Coastal Hazard Line redefinition and associated policy.

Amended wording and diagrams reinforcing the intent of the height and setback controls have now been added as described in Attachment 2: Discussion Paper presented at Councillor Workshop 30 November 2010.

Mapping updates for the Creek Street Precinct

In the exhibited Code, the Control Diagram for the Creek Street Precinct, showed a number of hypothetical allotments fronting Creek Street in Lot 156, and the extension of Creek Street beyond its current limits. This Diagram was created without the benefit of a site master plan or detailed consideration of constraints affecting the site and as such has been amended in accord with the Discussion Paper presented at the Councillor Workshop of 30 November 2010, including the addition of more detailed site constraints information; see Attachment 2.

Clarification of potential to vary the adopted DCP

There have also been a number of queries as to whether the DCP controls (particularly the maximum height control) can be varied for individual developments once the Plan is adopted. Similar to the current Tweed DCP A1 process, the adopted Hastings Point Plan will allow Council to consider variations to the controls, subject to an appropriate level of justification provided by a development applicant.

However, the process for variations will change once the new Tweed Local Environmental Plan 2010 is gazetted. Using the proposed two storey height limit control for residential developments in the southern and central precincts as an example:

Under the current Tweed LEP 2000

- Height limit under TLEP 2000 is 3 stories, so no variation to the LEP would be required.
- A variation to the HPLBDC height provisions would need to be sought through the DA process. Any variation would need to address the objectives of the particular precinct plan, with a formal development control variation addressed in the Statement of Environmental Effects. Criteria for formal variations are identified in DCP A1 Mandatory Controls (pg 5-6).
- Merits based assessment of proposed variation as part of the application process, no amendment to HPLBDC required unless of significant departure.

Under proposed Tweed LEP 2010 (assuming locality height provisions had been absorbed within the TLEP 2010)

- Height limit would need to be varied under Clause 4.6 seeking variation to height provisions as part of a development application process. Alternatively, a Planning Proposal may be required to amend the Tweed LEP 2010, depending on the nature of the development concept.
- A variation to the HPLBDC height provisions would need to be sought through the DA process. Any variation would need to address the objectives of the particular precinct plan, with a formal development control variation addressed in the Statement of Environmental Effects. Criteria for formal variations are identified in DCP A1 Mandatory Controls (pg 5-6).
- Merits based assessment of proposed variation as part of the application process, no amendment to HPLBDC required unless of significant departure.

There have been further questions as to whether development proposals that involve the amalgamation of a number of individual sites will provide a more favourable basis for the variation of the Hastings Point Plan controls. The officers have expressed the view that the amalgamation of sites to facilitate larger scale developments is not generally a supported principle given the sensitivities of the existing character and scale of the Hastings Point area, and that any such proposal would be more appropriately determined through a planning proposal process (rezoning) for the site, rather than a DCP/LEP variation to a building control.

Conclusion

The Hastings Point Locality Based Development Code has been drafted based upon extensive community consultation, physical constraints analysis and design investigations, to define and protect the unique qualities of the locality which make it identifiably different to other small coastal villages in the Tweed.

The document was presented to 16 November 2010 Council meeting, with the resolution deferred for further clarification of certain issues at a Councillor workshop held on 30 November 2010 at which time a number of post-exhibition amendments were highlighted.

While amendments have been made to the document, the limited extent and nature of the amendments, and the extensive investigations underpinning these changes, makes a re-exhibition of the draft Plan un-warranted.

In light of the above, the draft Code is considered suitable for adoption, as amended.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Report to Council meeting of 16 November 2010 (ECM 25015806)
2. Discussion Paper presented at Councillor Workshop 30 November 2010 (ECM 25017941)
3. Draft Development Control Plan B23 - Hastings Point Locality Based Development Code

- Part 1 - Introduction (ECM 25018989)
 - Part 2 - Hastings Point in Context (ECM 25018991)
 - Part 3 - Vision for Hastings Point (ECM 25018997)
 - Part 4 - Precinct Specific Strategies (ECM 25020001)
 - Part 5 - Visual Settings (ECM 25020004)
 - Part 6 - Building Type Controls (ECM 25109494)
 - Part 7 - Appendices (ECM 25020007)
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12 [PR-CM] Draft Tweed City Centre Local Environmental Plan

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006

SUMMARY OF REPORT:

This report provides an update on the progress of the Draft Tweed City Centre Local Environmental Plan 2009 (“the Plan”), which was publicly exhibited from 27 January to 30 April 2010.

The Planning Reforms Unit has been working with the Department of Planning’s ‘Urban Renewal Team’ to complete the assessment of public submissions, and where appropriate, to make any necessary amendments to the Plan. This work is progressing through the Department and Parliamentary Counsel slower than was originally anticipated, and as such, the Plan is not ready to be reported and considered for re-exhibition.

In addition to the amendments arising from the submission review, other important issues were raised with the Department relating to the standard instrument LEP (“the template”) and included the use of certain ‘local provisions’ and the application of the dictionary of terms (definitions) to certain provisions. The Department’s response to the issues are still outstanding, and it is considered an imperative that further direction on these issues are provided prior to finalising any report back to Council on the current Council wide and Tweed City Centre Draft LEPs.

This report canvasses the key amendments to the Plan that have been agreed to between the Department and Council staff at this point in time. Whilst further refinements will likely be made between now and the reporting to Council, (for which Council’s endorsement will be sought for a re-exhibition of the Plan), those amendments discussed are not likely to change significantly during this time.

Under the provisions of the Environmental Planning and Assessment Act 1979 it is possible for Council to consider a report detailing the proposed amendments only and to likewise publicly exhibit the amendments. It is the Department’s preferred option for Council staff to report the amendments only to Council and to exhibit the proposed amendments, with a copy of the unamended draft Plan providing the background document. It is also their preferred option that the corresponding draft development control plan be reported and re-exhibited separately.

The Department’s proposed approach is not supported by Council officers, and it is considered in the best interest of both the Council and the Tweed community to finalise both the draft LEP and DCP concurrently, prior to a further report being submitted to Council to endorse their re-exhibition. Council’s support for this position is being sought through this report.

RECOMMENDATION:

That:

- 1. The report on Draft Tweed City Centre Local Environmental Plan be received and noted.**
- 2. Council endorses the process of a concurrent finalisation of the Draft Tweed City Centre Local Environmental Plan and Draft Development Control Plan prior to any further report to Council seeking the endorsement of the re-exhibition of these plans.**

REPORT:

Council's Planning Reforms Unit (PRU) along with their consultant, JBA Urban Planning and the NSW Department of Planning Centres and Urban Renewal Team, commenced preparing a suite of strategic planning documents for the Tweed Heads and Tweed Heads South (including Draft LEP, DCP and Vision documents), which was in accordance with the 4 year priority actions of the *Tweed 4/24 Strategic Plan*, also referred to as "Tweed Futures."

These plans were finalised in late 2009 and publicly exhibited between 27 January and 30 April 2010, representing a total of 95 days as compared to the minimum statutory requirement of 28 days.

For the exhibition period, the PRU produced a range of documents to assist the community understand the process and how they could best respond to any concerns they may have. The Users' Guide, Zone Comparison Table and Fact Sheets were an important extension of the consultation process. In addition to this, the PRU conducted a number of 'road show' presentations in local venues at which the community could meet with PRU officers, generally during the period 2:00pm till 7:00pm weeknights at Murwillumbah, Uki, Tyalgum, Pottsville, Kingscliff and Tweed Heads; more than 350 people took the opportunity to visit the display and talk to PRU officers.

Documentation was on public exhibition for the duration of the public exhibition period and available for viewing at Murwillumbah, Uki, Tyalgum, Pottsville, Kingscliff, and Tweed Heads. The documents could also be viewed on line 24 hours a day, CDs were prepared for those with a computer but limited internet access and hard copies were provided to these with no computer access or who required a non-electronic version.

Submissions could be lodged via email or by post, with more than 400 submissions being received against the draft Tweed LEP 2010 (Shirewide LEP) which are currently being reviewed in detail prior to finalising a report to Council. With specific regard to the draft CC Plan, 57 submissions were received and the issues raised have been taken into consideration and where warranting amendments have been made.

The main issues as raised include:

- Objection to the proposed increase in building heights
- Impact on airport operations
- The lack of new infrastructure provision to support the increase in population
- Limited objection to specific zone changes
- Request by the Land and Property Management Authority to:
- Review building heights and FSR on the Flagstaff Hill site
- Request by Tweed Heads Bowls Club to review proposed building height to match existing height under the Tweed LEP 2000

Proposed Amendments to the Plan

Several areas of the Plan have been amended as a result of the public submissions received during the public exhibition period. The proposed additional amendments are each addressed below.

Zoning Changes

Environmental Protection

Post further review by Council's Natural Resource Management Unit and submissions received from NSW Department of Environmental, Climate Change and Water (DECCW), zoning changes have been made to refine and predominately increase the amount of land covered by environmental protection zoning. These amendments generally occurred in the following areas:

- Vegetated areas adjoining Eden Street and Tweed Terrace on Flagstaff Hill
- Vegetated areas to the immediate South of 'The Anchorage Islands'
- Razorback Ridge Reserve

Zoning of residential land on Razorback Hill

Several submissions were received objecting to the perceived 'down zoning' of properties from 2(b) Medium Density zoning to R2 Low Density Residential under the exhibited draft plan. The subject sites are located within the 'Ridgeline' and 'Razorback Precinct', for which the relevant character statement is provided in the 'Vision' document:

'The development controls anticipate minimal changes to the precinct with a two storey height limit for the majority of the precinct and some medium density buildings on the flatter areas east of Adelaide Street.'

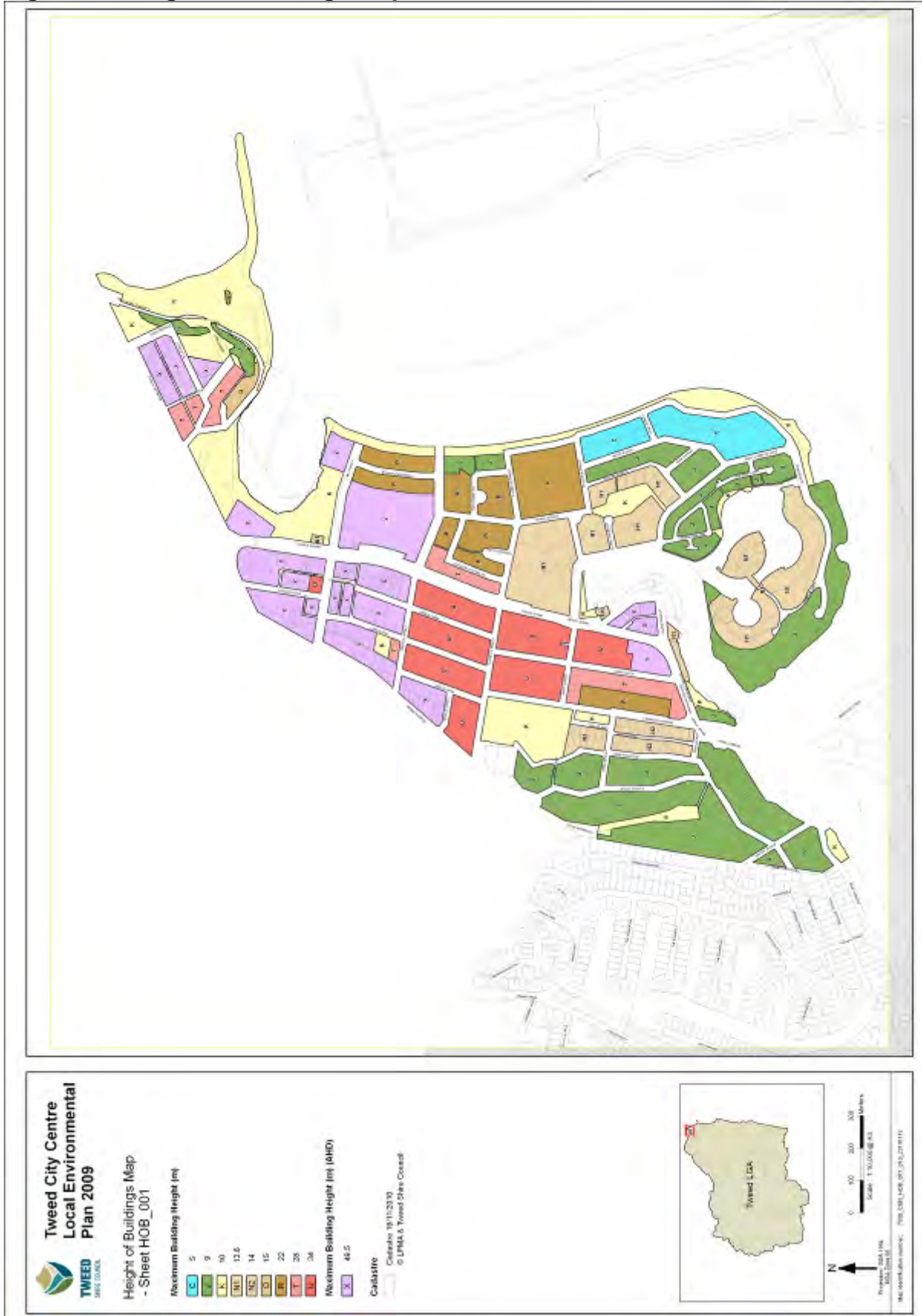
The future character analysis foreshadows medium density development on the flatter sites and as such the R2 Low Density Residential zone is suited to achieving the desired outcome. The retention of the existing medium density zoning will afford landowners the opportunity to pursue innovative design solutions that address the future desired character and density of the precinct whilst maintaining the need to protect and respect the natural land form and topographical features of the area.. The draft DCP will provide provisions to guide development in these areas.

Attachment 2 provides a draft Land Zoning Map incorporating the proposed amendment.

Height of Buildings

The exhibited building heights were widely discussed during the exhibition period and within the submissions received. Figure 1 (also provided as Attachment 2) represents the Height of Buildings Map being prepared as an amendment to the exhibited draft Plan.

Figure 1 – Height of Buildings Map



A summary of the building height changes includes:

- No increase in building heights across the locality
- Reduction in permitted building heights for elevated land on Flagstaff Hill
- Reduction in permitted building heights west of Stuart Street and north of Bay Street
- Reduction in building height along Thomson Street
- Maximum building height before any prescribed permitted 'bonuses' of 49.5m AHD

In essence, the proposed amendments peer back the increases in building height sought under the exhibited Plan meaning that the draft Plan more closely resembles the current Tweed LEP 2000. There are however some limited opportunities through a suite of bonus provisions to increase height and density on some identified key sites.

The current vision of Tweed through the Tweed LEP 2000 with its relatively lower scale city form, when compared to the neighbouring Gold Coast, will remain substantially intact, maintaining a stronger point of difference to the adjoining Coolangatta developments, which was a key issue raised through the public submissions.

Opportunities are still available within the Plan to obtain a greater building height than 49.5m AHD by virtue of cl. 6.9 – Design Excellence (local). In order to embody design excellence within the Tweed City Centre, cl. 6.9 provides that development having a capital value of more than \$2,000,000 on a key site and/or development higher than 35 metres in height requires the undertaking of an architectural design competition. The clause enables the consent authority to grant up to 10% more building height and floor space ratio than the maximum limits prescribed within the map set. The 'Key Sites' identified through the Plan include:

- Lot 703 of DP 877250 Coral Street
- Lot 1 of DP 777183, Wharf Street (Twin Towns Services Club)
- State and Council land bordered by Stuart Street, Stuart Lane and Bay Street
- Centro/Tweed Mall Shopping Centre
- 'Civic Precinct' comprising Council offices, Southern Cross University, Tweed Heads Bowls Club and Saint Cuthbert's Anglican Church
- All parcels on 'Monastery Hill'
- Lot 30 of DP 1084807 - The 'Von Bibra' site
- Lot 1 of DP1014402 - The former 'Scott's Fruit Market' site;

The general reduction of building height also reduces the potential population growth likely to be accommodated over and above that under the Tweed LEP 2000. A desktop analysis indicates that an upper population density ratio of about 1,000 – 1,500 people above the current planning provisions is likely to be achieved under the amended draft Plan. Despite the reduced potential growth, the draft Plan is still considered to meet the targets and expectations of the City Centre as outlined within the NSW Far North Coast Regional Strategy 2006. The reduction in density will also reduce the impact upon existing public infrastructure.

Land and Property Management Authority - Flagstaff Hill sites

The NSW Lands and Property Management Authority (LPMA) compiled investigative information in a submission relating to the proposed FSR over the Flagstaff Hill development site. The LPMA investigations concluding that the FSR controls were too low relative to the site area and height controls. Senior Urban Designers from DoP's Urban Renewal Team have reviewed the proposed FSRs and provided comment that the prescribed FSR was considered satisfactory. This advice has been forwarded to LPMA for their consideration along with advice that should they wish to undertake further urban design modelling to demonstrate different FSRs, that information would be reviewed at a later stage.

Tweed Heads Bowls Club

A submission was received from the Tweed Heads Bowls Club which detailed a desire to review building heights for their site, to value add to the community. The submission also details a desire to seek opportunity and supports the need for a separate feasibility study as detailed within the Vision document.

The subject site is located within the Civic/Campus Precinct and has an approximate existing ground level of less than 3m AHD. Chapter 8 of the draft Vision document identifies that:

'In the interim of the finalisation of the Council's Tweed Valley Floodplain Risk Management Study to determine the extent and impacts of climate change sea level rise planning benchmarks, the increased development densities are proposed only on the elevated city centre land over 3.5m AHD.'

Accordingly, the development standards identified within the draft LEP (i.e. zoning, height of buildings, FSR etc.) were based upon a translation the current Tweed LEP 2000 controls into the standard instrument template and not provide a measurable increase in development potential. The exhibited Height of Buildings Map indicated a 10 metre maximum height for the site. Post submission review amendments have been pursued to better reflect the existing site improvements and Tweed LEP 2000 provisions. Accordingly, the amended Height of Buildings Map now includes a 13.6 metre maximum building height.

Notwithstanding that the subject site may have additional development potential to that which is enabled under the draft Plan, consistent with Council's adopted Flood Risk Management Policy in December 2007 no increase in development potential can be pursued until the completion of Council's Tweed Valley Floodplain Risk Management Study.

Council's Planning Reforms Unit will seek to review land within the Tweed City Centre Study Area that is below 3.5m AHD upon the conclusion of the Tweed Valley Floodplain Risk Management Study. In addition, the PRU also seeks to review and advance the previously prepared 'Civic Precinct Masterplan' upon the conclusion of the Tweed Valley Floodplain Risk Management Study.

Inclusion of additional clauses

During the preparation of the Plans, there was consultation with Gold Coast Airport Limited (GCAL) to discuss any potential areas of conflict arising on airport operations arising from the implementation of the standard instrument "template" LEP.

The existing Obstacles Limitation Surface (OLS) relating to Gold Coast Airport is 49.5m AHD across the entire Tweed City Centres study area. Buildings can exceed the prescribed OLS however; any such structure is classified as a 'controlled activity' and requires approval from the Australian Department of Infrastructure, Transport, Regional Development and Local Government.

GCAL raised specific concern that the draft LEP did not highlight or identify the need for this approval, requesting the inclusion of a local clause relating to avoidance of obstacles in the Gold Coast Airport's airspace.

As discussed above, the building heights throughout the Plan have been amended since public exhibition to a maximum height of 49.5m AHD, consistent with the OLS. Whilst the building heights have been reduced, the ability for landowners to obtain greater building height and FSR through architectural design excellence (up to 10% bonus), it is considered that the inclusion of a local clause relating to avoidance of obstacles in the Gold Coast Airport's airspace is imperative to providing landowners with guidance that other policies and instruments will need to be considered in the preparation of applications exceeding 49.5m AHD in height.

In addition to abovementioned clause, an aircraft noise clause is to be inserted into the Plan. Whilst aircraft noise does not affect the Tweed City Centre area it is considered beneficial to include the clause to assist the future integration of the Tweed City Centre LEP with the Shirewide LEP.

Refinement of existing provisions

Roads

Following concerns raised by DECCW and units within Council, the land use tables within the draft CC Plan have been amended to change 'Roads' from a 'Permitted without Consent' use to 'Permitted with Consent'. The changes do not affect the permissibility of roads, rather the assessment process required to construct or modify roads.

Design competition

Clause 6.9(4) of the draft CC LEP provides that an architectural design competition is required for any development having a capital investment value of more than \$2m on the Key Sites Map. Concern was raised within the submission period that many internal renovations and refurbishments of the sites identified would exceed the \$2m threshold, unnecessarily requiring an architectural competition for internal works.

Accordingly amendments have been made to Clause 6.9(4) of the draft CC Plan to read as follows:

"Development involving the erection of new buildings or external alterations to an existing building having a capital investment value of more than \$2m.

CONCLUSION:

The Tweed City Centre is a unique and diverse place and has many challenges to face as new development occurs and as the population increases. Among those challenges is maintaining the sense of place that is distinct from the immediately neighbouring Gold Coast. This requires careful planning around the type and scale of development that should be permitted to occur in Tweed Heads, whilst at the same time ensuring that development is not unduly stifled and that the area can transition in a coordinated and properly managed way; responding to the continued growth and development pressure.

The amended draft Plans have taken all relevant factors into consideration, including public opinion, and are designed to foster the growth of the Tweed City Centre as a contemporary multi-functional centre focused on providing integration of employment, residential and recreational uses in a liveable and vibrant urban environment.

Council staff believe that the amended plans are more closely aligned with the expectations and the future vision for the locality expressed by the Tweed community and will be working toward finalising the draft Plans for public re-exhibition in early 2011.

In the meantime, Council staff will continue working with the Department of Planning in developing a standardised LEP that provides an appropriate level of localised provisions that will deliver the regulatory framework required to guide the appropriate protection and development of the Tweed Shire.

It is recommended that the first step toward achieving an appropriate outcome, and to ensure that the Tweed community is properly informed, that could endorse the continued and concurrent development and exhibition of both the Draft LEP and DCP and rejects the Department of Planning's preferred option of re-exhibiting the amendments concurrently with the superseded (previously exhibited plan) and ahead of the draft DCP.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Land Zoning Map (ECM 25009464)
 2. Draft Height of Buildings Map (ECM 25009466)
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13 [PR-CM] Development Application DA10/0612 for a Tennis Court at Lot 9 DP 1092500, No. 43 Sunnycrest Drive, Terranora

ORIGIN:

Development Assessment

FILE NO: DA10/0612 Pt1

SUMMARY OF REPORT:

An application has been lodged to construct a private tennis court with overhead lighting and earthworks on the subject allotment.

The tennis court is proposed to be setback a minimum of 8.0 metres from Terranora Road.

The allotment has vehicular access from Sunnycrest Drive however also has frontage to Terranora Road which is a designated road requiring a thirty metre building alignment under the provisions of part 5, clause 24 of the Tweed Local Environmental Plan (LEP) 2000.

The location of the tennis court and lights can only be approved subject to an objection under the provisions of the State Environmental Planning & Assessment Policy (SEPP) 1 to permit the tennis court to be located 8.0 m from the Terranora Road Boundary of the site.

Given that the proposed SEPP 1 variation is greater than 10% this application has been referred to Council for determination in accordance with the previous directions of the NSW Department of Planning.

The proposal is considered to be acceptable, is unlikely to have an adverse impact on Terranora Road or adjoining properties and is considered to be worthy of support.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to clause 24 of the Tweed Local Environmental Plan 2000 regarding the setback of the tennis court from Terranora Road be supported and the concurrence of the Director General of the Department of Planning be assumed.**
- B. Development Application DA10/0612 for a tennis court at Lot 9 DP 1092500, No. 43 Sunnycrest Drive, Terranora be approved subject to the following conditions:**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Site Plan prepared by Greg Millhouse except where varied by the conditions of this consent.

[GEN0005]

2. Stormwater or surface water runoff from the tennis court or battered banks shall not be concentrated onto adjoining residential premises and adequate drainage shall be provided to divert water away from batters.

[GENNS01]

3. The battered banks around the tennis court shall be landscaped to consolidate the surface and minimise erosion.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

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

[PCC1145]

PRIOR TO COMMENCEMENT OF WORK

5. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

7. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

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

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

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

10. 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]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

14. All cut or fill associated with the construction of the tennis court is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

15. 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]

16. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

17. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

USE

18. 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, lighting glare or the like.

[USE0125]

19. Hours of operation of the tennis court are restricted to the following hours: -

7.00 am to 10.00pm - Mondays to Fridays

8.00 am to 10.00pm - Saturdays, Sundays & Public Holidays

[USE0185]

20. Any external artificial lighting to the tennis court shall be shielded where required to the satisfaction of Council's General Manager or delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises or to traffic using Terranora Road

[USENS01]

REPORT:

Applicant: Mr G Millhouse
Owner: Mr GJ Millhouse and Mrs KM Millhouse
Location: Lot 9 DP 1092500 No. 43 Sunnycrest Drive, Terranora
Zoning: 1(c) Rural Living
Cost: \$20,000

BACKGROUND:

A Development Application has been received to construct a tennis court with fencing, overhead lighting and associated earthworks on the subject allotment.

The tennis court will be located a minimum of 8.0 metres from Terranora Road and includes 4 overhead light poles, fencing and associated earthworks.

The earthworks which will be undertaken to accommodate the tennis court will comprise cut and fill with battered banks being utilised to support such earthworks.

The land is zoned 1(c) Rural Living, is located between Sunnycrest Drive and Terranora Road and has a moderate slope downhill from Sunnycrest Drive to Terranora Road.

Notwithstanding that the allotment has vehicular access from Sunnycrest Drive it also has frontage to Terranora Road which under the provisions of the Tweed Local Environmental Plan (LEP) 2000 is a designated road.

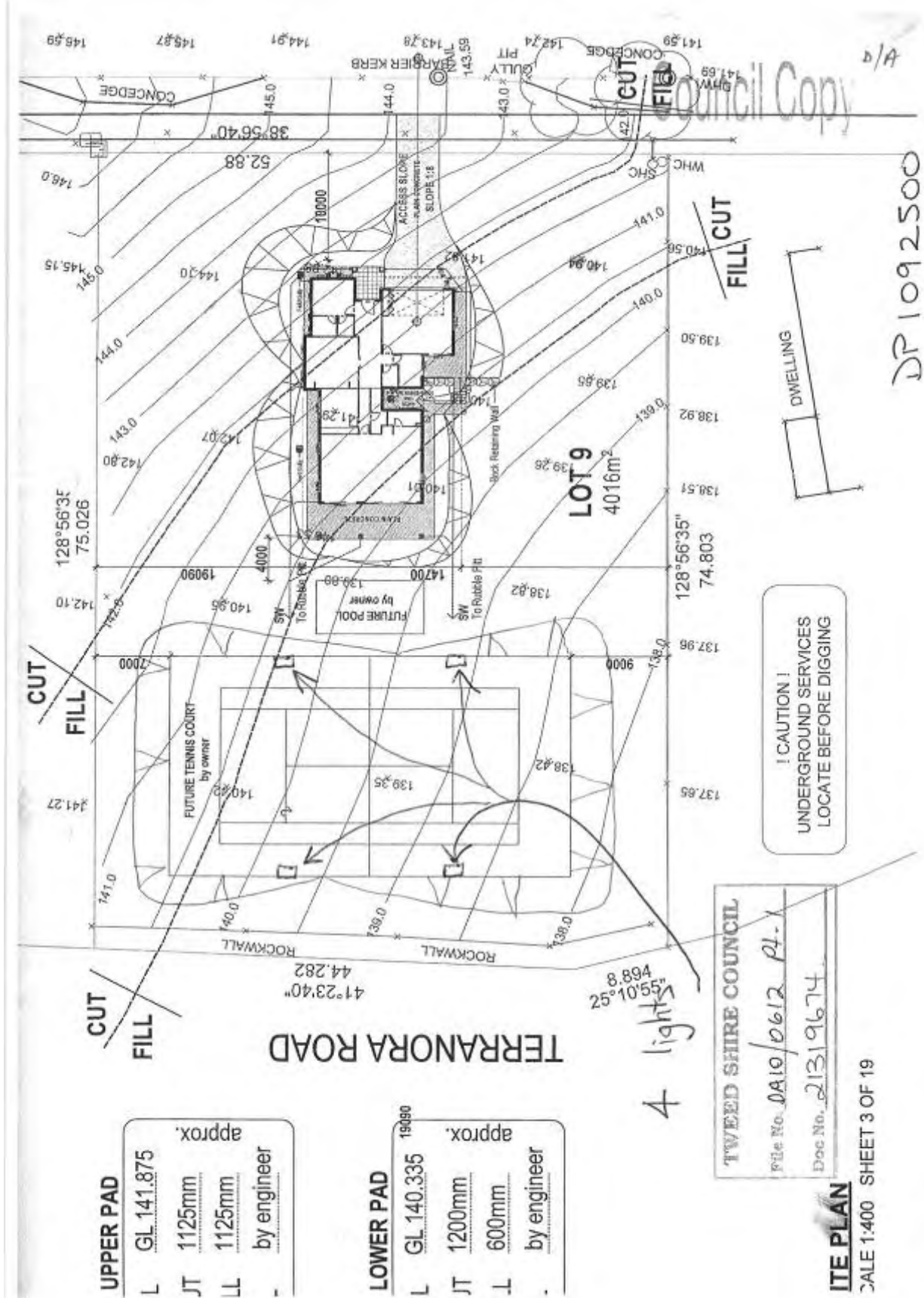
The allotment contains an existing dwelling and a future in-ground swimming pool is proposed between the dwelling and tennis court.

The location of the proposed tennis court is the only suitable area of land left on the allotment.

The Applicant has lodged an objection to vary the thirty metre building setback under the provisions of the State Environmental Planning Policy No. 1 (SEPP 1) to permit the tennis court to stand a minimum of 8.0 metres from Terranora Road.

The SEPP 1 objection is considered later in this report.

DEVELOPMENT 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

The proposal satisfies the aims of the plan

Clause 5 - Ecologically Sustainable Development

The proposed development is in keeping with ecologically sustainable development principles and is in line with community expectations for the site having regard to the zoning provisions, development control plan provisions and the limitations of the site.

Clause 8 - Zone objectives

The proposal is consistent with the primary objectives of the zone.

Clause 15 - Essential Services

Surface runoff water from the tennis court can be disposed of to the Terranora Road drainage system which is downhill from the tennis court.

Clause 16 - Height of Building

Proposal is for a tennis court with overhead lighting poles which will be 6 – 8 metres high and will be integrated into the fencing.

It is considered that the height of the lighting poles would be unlikely to cause any significant adverse impact on adjoining properties or to Terranora Road due to the spatial separation of the lighting poles from adjacent property boundaries and the specialised design of the lighting boxes.

Clause 17 - Social Impact Assessment

The proposal is unlikely to have any adverse social impact on the locality. Conditions of consent have been imposed in relation to hours of operation and control of lighting spill.

The lighting which is proposed to be used is specialised tennis court lighting which is designed with spill and glare control systems which will illuminate the tennis court however will restrict light spillage to 10 lux, 1 metre from the court.

Clause 24 – Designated Roads

Terranora Road is a designated road which requires a thirty metre building alignment. The proposal does not satisfy this requirement and a SEPP1 objection has been lodged in this regard.

Clause 35 - Acid Sulfate Soils

Allotment is subject to class 5 acid sulphate soils which will be unaffected by the development.

Other Specific Clauses

N/A

State Environmental Planning Policies

SEPP No. 1 - Development Standards

A SEPP 1 objection has been lodged against the requirement under clause 24 of the Tweed LEP 2000 for the tennis court and fencing to observe a thirty (30) metre building alignment to Terranora Road

The Applicant has made the following submission in support for their request for a SEPP 1 variation:

“The proposed tennis court will be located 8.0 metres from the alignment of Terranora Road and the alignment does not comply with the 30 metre setback requirement. It is submitted that the development standard requiring a 30 metre setback is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- application of the 30 metre setback requirement for structures is an anomaly as it was not intended to apply to small lots fronting roads with low travel speeds,
- compliance with the standard is not appropriate given the minimum area requirements applicable to this zone,
- vehicular access to the lot is via Sunnycrest Drive, no additional access from the designated road is proposed,
- the depth of the subject allotment is inadequate to construct a tennis court to comply with this standard due to the location of a dwelling and proposed swimming pool on the allotment.
- the proposed tennis court will be located above the level of Terranora Road and the tennis court and overhead lighting ,will not impact on Terranora Road.

For the above reasons, Council is requested to uphold the objection and grant consent to the development application as proposed.”

The above comments from the Applicant are supported as it is considered that the tennis court will have no adverse impact on Terranora Road.

Clause 22 – Development near designated roads

- **To protect and improve the capacity, efficiency and safety of designated roads.**

Response - there will be no vehicular access to the subject site off Terranora Road and therefore the capacity, efficiency and safety of this road will not be compromised.

Vehicular access to the site is via Sunnycrest Drive.

- **To prevent development on designated roads that would detract from the scenic attractiveness of the area of the Tweed.**

Response - the proposed development will comprise a residential tennis court and is considered to be consistent with the rural residential character of the area.

This subdivision was approved to permit the construction of single dwellings and ancillary structures and due to the physical limitations of the allotments it is considered impractical to enforce a thirty metre building alignment to Terranora Road.

The proposal will therefore not have an adverse impact on the scenic attractiveness of the area.

- **To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.**

Response – The tennis court is not a habitable structure therefore is not subject to assessment in relation to traffic noise.

Clause 23 – Control of access

- **To control access to designated roads.**

Response – no vehicular access is proposed off Terranora Road.

Clause 24 – Set backs to designated roads

- **To control development along designated roads.**

Response - the allotment exists in an area which is zoned for rural residential use and in a subdivision which was specifically created for residential dwellings therefore the proposal is considered to be consistent with the objectives of the zoning of the area.

The proposal was considered by Council's Traffic Engineer who raised no objection to the proposal.

The tennis court will be partly screened by existing vegetation on the lot and road reserve and therefore will have no impact on Terranora Road.

A condition of consent will be imposed to control light spill adjacent to Terranora Road and adjacent land.

SEPP No. 71 - Coastal protection

The proposal satisfies the aims & objectives of the above policy.

SEPP (Building Sustainability Index BASIX) 2004

The proposal does not require a Basix certificate.

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

The Draft Tweed Local Environmental Plan 2010 has been exhibited and the proposal is not inconsistent with the aims and objectives of this plan.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposal is subject to the provisions of DCP A1 in relation to :-

DESIGN CONTROL 2

Topography, Cut & Fill - Objectives

- To retain the existing landform,
- To limit the extent of excavation,
- To moderate the effects of building height and bulk on sloping land,
- To minimise the extent of earthworks on residential land and earthworks associated with residential development,
- To ensure that the building design is appropriate for site topographical conditions,
- To ensure development is sympathetic with the existing topography and water cycle of the site.

Controls

The controls which are applicable to this proposal are as follows:

- e. site excavation / land reforming is to be kept to a minimum required for appropriately designed site responsive development.
- f. the maximum level of cut is 1m and fill is 1m.
- h. cut areas are to be set back from the boundaries at least 900mm; fill areas are to be set back from the boundary a minimum of 1.50m
- l. stormwater or surface water runoff shall not be redirected or concentrated onto adjoining properties so as to cause a nuisance and adequate drainage is to be provided to divert water away from batters

The proposal is considered to satisfy the relevant controls of the DCP. Conditions of consent have been imposed to control surface water runoff.

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

Clause 92(a) Government Coastal Policy

The subject development is consistent with the aims & objectives of the policy

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

No fire safety considerations are involved

Clause 94 Buildings to be upgraded

No buildings will be upgraded.

(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 consistent with a rural residential type location and is not likely to have any adverse impact on the natural or built environment. The proposal is likely to have a positive impact on the locality.

Access, Transport and Traffic

Vehicular access to the site is from Sunnycrest Drive and will remain unchanged. No vehicular access is proposed off Terranora Road.

Flora and Fauna

The allotment is cleared and no flora or fauna will be impacted on by the development.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed use is consistent with surrounding land uses.

Topography

Minor cut & fill will be carried out as part of this proposal. Such cut & fill will satisfy the controls of DCP A1

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

Under the provisions of DCP 11 - Public Notification of Development Proposals, adjoining and affected property owners were notified of the proposal and no objections were received.

(e) Public interest

There are no adverse public interest issues anticipated should this application be approved.

OPTIONS:

1. Approve the application with conditions, or
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Refusal of the application may expose Council to a challenge in the Land & Environment Court.

POLICY IMPLICATIONS:

Approval of this application is considered to be unlikely to undermine Council's policies in this matter.

Each application is considered on its merits and the variation from the Tweed LEP 2000 has been considered and is regarded as being worthy of approval due to the particular circumstances of the site.

CONCLUSION:

Under the circumstances it is considered that the proposal to construct the tennis court with a minimum building line of 8.0 metres to Terranora Road is reasonable for conditional approval.

The SEPP 1 objection to reduce the statutory building line has been considered and under the circumstances it is considered that the variation is justified and should be supported.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

- 14 **[PR-CM] Land and Environment Court Judgement relating to Development Application DA10/0020 for the Establishment of a Brothel at Lot 411 DP 859933, No. 36 Enterprise Avenue, Tweed Heads South**

ORIGIN:

Development Assessment

FILE NO: DA10/0020 Pt2

SUMMARY OF REPORT:

This report is a summary of proceedings involved with the Class 1 Appeal against Council's determination in the NSW Land and Environment Court in relation to the refusal of the proposed brothel at 36 Enterprise Avenue, Tweed Heads South (DA10/0020).

A judgement has been handed down in relation to the court hearing, with the appeal being upheld. The approved development has been quite extensively modified from what was originally assessed.

The consent is for a trial period of 12 months, subject to satisfaction of Deferred Commencement conditions. It should also be noted that the Court has ordered the applicant to pay Council's Section 97B costs as agreed by the parties.

RECOMMENDATION:

That the report on Land and Environment Court Judgement relating to Development Application DA10/0020 for the establishment of a brothel at Lot 411 DP 859933 No. 36 Enterprise Avenue, Tweed Heads South be received and noted.

REPORT:

Applicant: Ms S Stewart
Owner: Mr DG Davey, Mr JG Fisher, Mrs GM Fisher and Mrs DA Davey
Location: Lot 411 DP 859933, No. 36 Enterprise Avenue, Tweed Heads South
Zoning: 4(a) Industrial
Cost: \$200,000

BACKGROUND:

A development application was lodged for the establishment of a brothel within Unit 2 of the recently constructed factory extensions. The proposal included internal works on the ground floor and additions in the form of a mezzanine level. Overall, the development proposes 7 works rooms with associated bar area, reception area, staff room and car parking provisions. The proposed hours of operation for the development were 24 hours per day.

Council officers submitted a report to Council's meeting of 18 May 2010 recommending approval of DA10/0020, subject to conditions. At this meeting Council resolved to refuse the application.

Council was then served notice of a Class 1 Appeal against Council's determination in the NSW Land and Environment Court. At the meeting of 15 June 2010, Council resolved that in respect of its decision to refuse DA10/0020, Council engages its solicitors to defend the refusal of the brothel. A planning consultant was engaged to represent Council on the matter, in light of council officers recommending approval.

On 12 August 2010 the appeal hearing commenced on the site, where residents gave evidence to Commissioner Dixon, addressing their concerns in relation to the proposal including the location, hours of operation and management concerns. The parties then drove around the precinct including viewing the adjoining residential area and schools, Epic Skate Centre and Kidz Biz children's play area, the industrial precinct, and the approved brothels in the area, noting their particular locations and entry/access arrangements.

After reconvening in the Tweed Heads Local Court, the Applicant indicated to the Court that it sought to amend its application to trading hours of 10am to 6am (i.e. 20 hour trading), or if the Court was not minded to grant those hours, it would accept 6pm to 6am trading. The Applicant acknowledged it would agree to the imposition of a 12 month trial period. It also acknowledged an amendment to the plans to provide access to a toilet in the waiting area was necessary.

During the hearing, the Applicant's town planner acknowledged it would be best to provide a detailed plan of management for the proposed development. As a consequence, the proceedings were adjourned to allow the applicant to amend plans and more importantly submit a Plan of Management for the proposal.

The second day of the hearing was held in Sydney on 21 September 2010. At the hearing a number of concessions were made by the Applicant:

- *No alcohol is to be provided on the premises;*
- *12 hour trading – 6.00pm to 6.00am was proposed;*
- *A trial period was accepted;*

- *The disabled toilet arrangements on the ground floor were amended such that the disabled toilet adjacent to work room 2 was made part of work room 2 and that the toilet off the waiting room was amended to be a disabled access toilet;*
- *The bar and basin in the waiting area was removed;*
- *The entry/exit of the premises was rearranged to ensure a clear path of travel from the disabled car parking space;*
- *CCTV cameras were installed in all common areas;*
- *Toilets were inserted in all of the work rooms; and*
- *A Plan of management was provided.*

At the hearing, Commissioner Dixon encouraged the parties to negotiate and agree upon a figure which represented costs in terms of section 97B. As a result of the application before the Court on 21 September 2010 being materially different from the application which was filed with the Court in these Class 1 proceedings, all aspects of the development had to be re-assessed having regard to the amended plans and documentation sought to be relied upon by the Applicant.

The Applicant originally offered to pay Council's costs "thrown away" in the amount of \$2,000. The offer was rejected. Council's costs up to 15 September 2010, when the amended documentation was received, including costs for Counsel and expert costs were calculated to be approximately \$54,000.

In order to resolve the issue of costs promptly between the parties, Council advised the Applicant that they would accept payment of \$42,000, for those costs pursuant to section 97B. This represented a discount of in excess of 20% of Council's costs in the assessment of, and proceedings relating to, the original development application the subject of the appeal.

The Applicant agreed to pay Council's costs in the amount of \$42,000 subject to the payments being made in instalments. (i.e. a payment of \$15,000 up front and bi-monthly payments of \$9,000 with the final payment being made on 12 April 2011).

Council accepted the Applicant's offer and proposal for instalment payments on the basis that the Applicant agreed to the Court making the following proposed order (in draft format):

"The Applicant is to pay those costs of the consent authority that were incurred in respect of the assessment of, and proceedings relating to the original development application the subject of the appeal in the amount of \$42,000. The first payment of \$15,000 is to be made on 15 October 2010, the second payment of \$9,000 is to be made on 15 December 2010, the third payment of \$9,000 is to be made on 15 February 2011 and the fourth and final payment is to be made on 15 April 2011 and time is of the essence. In the event that any payment is not made on the due date the total remaining amount becomes due and payable immediately."

It should be noted that a debtor's account has been set-up for the payment of costs, linking it with DA10/0020. This allows Council to issue future invoices for the additional instalments. The initial up-front payment of \$15,000 was paid on 18 October 2010.

The Court handed down judgment in these proceedings on 22 November 2010, as noted in the attached document. The judgement made the following Orders:

1. *The appeal is upheld.*
2. *Development consent for a trial period of 12 month is granted to DA 10/0020 for the establishment of a brothel at 2/36 Enterprise Avenue, Tweed Heads subject to the council's conditions which form Annexure A to this judgment.*
3. *The council is directed to file a copy of the conditions as amended by this judgment within 7 days.*
4. *The Applicant is to pay those costs of the consent authority that were incurred in respect of the assessment of, and proceedings relating to the original development application the subject of the appeal in the amount of \$42,000. The first payment of \$15,000 is to be made on 18 October 2010, the second payment of \$9000 is to be made on 15 December 2010, the third payment of \$9,000 is to be made on 15 February 2011 and the fourth and final payment is to be made on 15 April 2011 and time is of the essence. In the event that any payment is not made on the due date the total remaining amount becomes due and payable immediately.*
5. *The exhibits are returned apart from exhibits D and E.*

The attached development plans are those lodged with the Court on the second day of the hearing. These will need to be amended in order to satisfy the Deferred Commencement conditions. The attached draft Plan of Management will also need to be amended to satisfy the Deferred Commencement conditions. Final approval of the plans and Plan of Management will be delegated to Council, rather than being stamped by the Court.

Prior to the lapsing of the 12 month trial period, the Applicant will have the ability to lodge a S96 application to continue the business beyond the 12 months time frame. Any such application would have to be assessed on merit, taking into consideration any complaints received in relation to the development. The application would also need to demonstrate that the business had complied with the provisions of the approved Plan of Management.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The payment of the \$42,000 (Council costs) does not cover all of the legal fees involved with this application. As a result of the appeal, Council has incurred legal expenses in the order of \$72,000 (up to and including 29 October 2010). The payment of \$42,000 reduces Council's expenses to approximately **\$30,000**. However, it should be noted that additional fees will be incurred from Council's solicitors for any expenses incurred after 29 October 2010.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Court Judgement and Conditions of Consent (ECM 24970927)
 2. Development Plans lodged with the Court (ECM 24970972)
 3. Draft Plan of Management (ECM 24970977)
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- 15 **[PR-CM] Development Application DA02/1983.14 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Lot 74, 77, 93 DP 755715, Dungay Creek Road, Dungay**

ORIGIN:

Development Assessment

FILE NO: DA02/1983 Pt6

SUMMARY OF REPORT:

Council is in receipt of an application to amend the subject development consent for the Granada Film Productions site located at Dungay (“I’m a Celebrity Get Me Out of Here”), which is a survival reality format program set in a ‘jungle’ environment.

One of the original conditions was to time limit the development as the applicant at the time foreshadowed the activity would be completed by 1 June 2004 and consequently the development consent was time limited to that date.

Due to the success of the programs internationally there have been opportunities for further productions and as such this is the fifth application that the applicant has submitted for an extension on the time frame. The last of these extensions was until 1 June 2011. The proposed extension is to time limit the consent to 1 June 2014, being a further 36-month extension.

The following report addresses the relevant provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), and the objections received by Council.

The recommendation is for the extension in time to be granted subject to further conditions to address environmental issues.

RECOMMENDATION:

That Development Application DA02/1983.14 for an amendment to Development Consent DA02/1983 for the use of property for filming and producing a television program at Lot 74, 77, 93 DP 755715, Dungay Creek Road, Dungay be approved and the conditions be amended as follows:

1. **Amend the Consent to state at the end:
The consent to expire on 1 June 2014.**

2. **Delete Condition No. 1A and replace it with new Condition No. 1B which reads as follows (Note: existing Condition 1B is to be re-numbered to Condition 1.1 – see Item 3 below):**

- 1B. The development shall be completed in accordance with the Statement of Environmental Effects; Drawing No 34504 prepared by Brown and Haan Surveyors and dated 27/11/2002; Drawing No 34505 prepared by Brown and Haan Surveyors; Plans No A1219 prepared by Edwin Shirley Stage Australia Pty Ltd dated 28/11/2002; Plan No A1-221102 Sheets 1 & 2 prepared by Richard Harry Engineering Services and dated 11/2002; Plan No 232311 prepared by Waco Kwikform and dated 26/11/2002, except as amended by Drawing No.20345 Sheets 1 to 5 prepared by Brown and Haan and dated 26/2/2003; Plans and documentation prepared by Richard Harry Engineering Services dated 3/2/2003. Where amended the development shall be completed in accordance with Plan No.20345 Dwg 345C6 prepared by Brown and Haan dated 22/9/2003, and plans and documentation prepared by Richard Harry Engineering Services Pty Ltd dated 23/9/2003, except where varied by these conditions. Where amended the development shall be undertaken in accordance with Sheet Nos. 2,3 & 4 of Site Plan 20345 prepared by Brown & Haan Surveyors, Floor Plan Nos. B12052-01 & B12052-02, 4034531, BH5-1230, MP3630, 4036921_1, 4044234-01 and 4044417_01 prepared by Ausco Building Systems and submitted with the amendment application dated 9 September 2006, and *Dungay Creek Road Environmental Management Plan prepared by Ecosure dated June 2008 (and any subsequent amendments) and the Site Management Plan as submitted on 27 August 2010.*
3. Delete existing Condition No. 1B, then re-number and amend the condition as Condition 1.1 which reads as follows:
- 1.1** Prior to commencement of filming in the 2011 Filming Session the applicant is to provide to Council a *Flora and Fauna Assessment report detailing results of survey undertaken in accordance with the Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities - Working Draft dated November 2004 (DEC 2004) for approval by Director Planning and Regulation. Survey is to stratify the site and sample each stratification unit but is to concentrate effort on 'use' areas and their surrounds, including activity nodes, trials areas and helicopter pad. Particular targeted survey is to be undertaken to determine species' reliance upon particular sites or localities (such as important roost or home range habitat) within parts of the site that are, or are intended to be, used during any part of the filming or associated activities or where native vegetation is proposed to be cleared. Direct and indirect impacts and Key Threatening Processes on native flora and fauna must be considered and recommendations for impact avoidance formulated, including a training and education package for site employees.*
4. In order to be consistent with the numbering of the conditions, amend existing Condition 1C by re-numbering the condition to Condition 1.2 as follows:
- 1.2** Prior to commencement of the filming in the 2008/2009 Filming Session the applicant is to obtain a current approval to operate an on-site sewerage management system.

5. The following new GENERAL condition is to be ADDED as Condition 1.3:
- 1.3** *Prior to commencement of filming in the 2011 Filming Session the applicant is to provide to Council a Habitat Restoration Plan in general accordance with Council's draft guidelines (attached) as applicable to the use, for approval by Director Planning and Regulation. The Plan is to target removal of weed species from the areas under use and their surrounds and is to detail methods to encourage natural regeneration of these areas. Works are to be implemented in accordance with the approved Habitat Restoration Plan throughout the consent period.*
6. Delete Condition 4A and replace it with Condition 4B which reads as follows:
- 4B.** Relevant recommendations *within the approved Flora and Fauna Assessment Report referred to within Condition 1.1A shall be included within a revised Environmental Management Plan within four (4) weeks of the approval of the Flora and Fauna Assessment Report.*
- Any removal or relocation of protected fauna on the property shall only be undertaken in accordance with scientific licence or under written advice from the Department of Environment, Climate Change and Water. No planting of exotic species or weeds is to occur on the site. Any introduced fauna is to be sourced from agents certified to be free of pests and diseases with potential to impact native fauna, in particular introduction of Plague Minnow or Mosquito Fish (*Gambusia holbrooki*) with aquatic species; chytrid fungus causing the disease chytridiomycosis with amphibians; Psittacine circoviral (beak & feather) disease with birds and *Phytophthora cinnamomi* with plants.
7. Delete Condition 34A and replace it with Condition 34.1 which reads as follows:
- 34.1** The Dungay Creek Road Environmental Management Plan prepared by Ecosure dated June 2008 is to include Tweed Shire Council to receive Environmental Compliance Reports at the end of each 'wrap-up' period of filming, inclusive of the 2010/2011 filming season.
8. In order to be consistent with the numbering of the conditions, amend existing Condition 34B by re-numbering the condition to Condition 34.2 as follows:
- 34.2** Should Council receive complaints regarding use of the subject site Council can instigate the commencement of a Community Liaison Committee that consists of a representative of the local community, a representative of Granada Productions Pty Ltd, representatives from Council's Planning and Development Division, Environment and Community Services Division and Engineering and Operations Division. This Committee could monitor the performance of the Site Management Plan.
9. In order to be consistent with the numbering of the conditions, amend existing Condition 34C by re-numbering the condition to Condition 34.3 as follows:
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34.3 If the Community Liaison Committee is formed a community liaison officer and community contact phone number shall be available on a 24 hour basis on the days of the production (including 24 hours pre and post the commencement of the production). Details of the name of the contact person and the contact telephone number must be provided to Council, locally advertised and affected residents notified of these details by means of an individual letter drop to each household.

10. Delete Condition 37 which reads:

37. Adequate storage of an on-site potable water supply shall be provided at all times.

11. The following new USE condition is to be ADDED as Condition 44.1:

44.1 Water supplied for human consumption must comply with the NSW HEALTH Private Water Supply Guidelines 2008 and the Australian Drinking Water Guidelines published in 2004 by the National Health and Medical Research Council. Registration of the premises shall be maintained with Tweed Shire Council's Public Health Register for Private Water Suppliers including payment of associated fee.

REPORT:

Applicant: Granada Productions Pty Ltd
Owner: Mr CD Parker, Mr ID Sharman, Ms LK Brannian and Ms EL Parker
Location: Lot 74, 77, 93 DP 755715, Dungay Creek Road Dungay
Zoning: 1(a) Rural and 7(d) Environmental Protection (Scenic/Escarpment)
Cost: Nil

BACKGROUND:

Council is in receipt of an application to amend the subject development consent for the Granada Film Productions site located at Dungay (“I’m a Celebrity Get Me Out of Here”).

Council’s Development Assessment Panel originally considered a report on the proposed activity on 20 December 2002 and approved the activity subject to a number of conditions. One of the conditions was to time limit the development, as the applicant at the time foreshadowed the activity would be completed by 1 June 2004 and consequently the development consent was time limited to that date.

At the time of considering the proposal there was some uncertainty in relation to potential complaints and environmental impacts during operation. As such Council implemented a time limited consent and a requirement for a cash bond to the amount of \$20,000 for the rectification of any non-compliance with the conditions of this consent which may not be addressed upon completion of filming. These conditions have provided Council with an opportunity to review the activity and ensure the site is appropriately remediated.

Use of the site to date has been for up to seven months of the year in three distinct activity modes:

- the **‘pre-production’** period (up to 3 months) for the installation of temporary structures, site preparation and staff facilities;
- the **‘production’** period (up to 3 months) when up to 600 staff working in shifts 24 hour per day; and
- the **‘wrap up’** (about one month) when many of the structures and facilities are dismantled and de-rigged.

The intensity of activity and number of people on site varies between the three periods, with the production period of some twelve weeks being the most intensive.

For the remainder of the year (hibernation), there are a limited number of people accessing the site sporadically for maintenance purposes or environmental monitoring purposes.

Due to the success of the programs internationally there have been opportunities for further productions and as such this is the fifth application that the applicant has submitted for an extension on the time frame. The last extension of the approval lapses on 1 June 2011.

The proposed extension is to time limit the consent to 1 June 2014, being a further 36-month extension on the previous 84-month (7 year) extension already granted.

The applicant has noted that the implementation of the proposed extension can be achieved by amending the final page of the consent to state that the Consent will expire on 1 June 2014.

CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- “(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.”*

Minimal Environmental Impact

The applicant has noted that the proposed modifications are not expected to have any environmental impacts. The Statement of Environmental Effects (SEE) notes that potential operational issues arising from filming and production are managed, monitored and mitigated by way of the Site Management Plan (SMP), the Environmental Management Plan (EMP) and conditions of consent.

The SEE also notes that...*‘operational experience over the past seven years has demonstrated that filming and production does not give rise to significant impacts because of the nature of the development, the relatively short time during which the site is used (maximum period of seven months of the year) and the management and mitigation measures implemented by the production team’.*

Site Rehabilitation and Flora / Fauna

In terms of site rehabilitation and flora / fauna, the SEE notes the applicable conditions of consent requiring rehabilitation of the site at the completion of filming and production activities (Condition 42), as well as mitigation measures in the flora and fauna report.

Council’s Specialist Planner / Ecologist has reviewed the history of the application to ensure the proposed extension will have minimal environmental impact. The following comments have been provided with regard to flora / fauna and site rehabilitation:

‘Flora and Fauna

The originally submitted flora and fauna assessment involved a brief consideration of vegetation species and communities on the site. The fauna assessment submitted with the application applied to a different site and was used as an indication of species likely to occur on the site. A conclusion was drawn that the use would be concentrated within cleared and degraded areas and would involve little clearing of native vegetation, thus was unlikely to result in a significant effect on threatened species, populations or ecological communities.

Given that the original approval in 2002 was for a temporary use of six months only, this was a reasonable approach at the time. However, with progressive extensions, the use has now extended for seven years and a further three years is now requested. Thus, it must be considered a long-term use of the site and no guarantee exists that this or a similar series will not continue beyond the current requested extension period to 2014.

This issue of the substantial increase in time over that originally proposed was raised within the Environmental Health Officers comments for the previous 2007 modification, requesting extension until June 2011. Condition 1B was added requiring:

- 1B Prior to commencement of filming in the 2008/2009 Filming Session the applicant is to provide to Council a further flora and fauna assessment and a Plan of Management to address any environmental impacts from the filming activities for the duration of the consent. The assessment report is to include consultation with the Department of the Environment & Climate Change.*

As a result of this and an additional amended condition, number 34A (repeated below) an Environmental Management Plan (EMP) was produced and approved by Council.

- 34A Prior to the commencement of any productions after 31 December 2005, a Site Management Plan is to be prepared by the applicant and approved by the Director, Planning and Development that addresses, but not limited to the following:*

- (i) Traffic to and from the site as well as within the site*
- (ii) Noise associated with the production*
- (iii) Night time lighting*
- (iv) Hours of use of the site*
- (v) Use of helicopters*
- (vi) Removal of solid waste from the site*
- (vii) The extent of notification of the event to affected residents as required by condition 34C*

This plan requires regular monitoring of flora and fauna on site, as well as water quality testing, waste, hazardous material and sediment and erosion control. It also considers other issues with the ability to impact on-site ecological values including traffic management, lighting and mosquito and biting midge control. Emergency and non-conformance protocols are detailed and an environmental liaison officer nominated. Environmental monitoring has been undertaken on a regular basis since 2008. Council has not had the benefit of reports generated from these monitoring activities.

Additional information was requested to enable consideration of the environmental controls implemented as part of the EMP and results of monitoring to date, as well as discussion over any observed non-compliance and resulting action undertaken. The report was received on 5 November 2010 and gives an informative overview of activities on site since 2008, stating that few non-compliances have been observed in this period. Regular summary reports in relation to monitoring results would be useful to inform Council of activities on site and this has been recommended as an additional condition below.

A site visit undertaken on 26 October 2010 revealed that the operation appears well run and those in control of the site apply strict procedures as to the way the site may be used and the areas of the site used. Permanent and temporary buildings are located within 'nodes' restricted to those parts of the site that were already cleared when the original application was submitted and no significant encroachment is noticeable when aerial photography is compared over the intervening years. Parts of the site would appear to be the endangered ecological community Lowland Rainforest in the NSW North Coast, which can occur up to 700m altitude.

Canopy walkways are present and serve to reduce impact upon sensitive rainforest and riparian vegetation communities beneath, and a number of threatened rainforest plants were tagged with flagging tape for easy recognition. Staff were open and informative in response to question regarding use of the creek and associated rainforest areas, although 'trials' areas further into the forest were not viewed due to difficulty of access and set-ups for filming.

One apparently healthy rainforest tree some 30cm dbh and 10m in height was noted (when driving, species not ascertained) as having been cut down with a chainsaw on Lot 74, where two new 'trials' areas were being constructed. It is not known whether this was necessary to establish the new sites or was undertaken by the landowner separately. Loose earth, apparently from one of these pad sites being established, was noted piled in a windrow within 20m of a tributary to Dungay Creek without being surrounded by sediment control measures.

The activities undertaken during trials and during site occupation have potential to impact on native fauna. The environmental review report states: "Trials consist of physical and mental challenges that can involve the use of native and exotic fauna and flora. They take place in sets that are constructed on land and water within the natural surroundings. Staff have also advised that reptiles may be relocated if a perceived danger exists to contestants.

Any translocation should be done under scientific licence issued by DECCW. The EMP has stated that DECCW have advised that since animals are not moved more than 200m from their capture point, nor are they held for longer than a week, a scientific licence is not necessary. However, any 'sampling' of native animals existing on the site requires the catcher to hold a scientific licence and Animal Ethics approval. This amendment has been recommended below.

The environmental review states "All use of fauna (native and exotic) in the trials is done in accordance with the Code of Practice for Animals in Film and Theatrical Performances and in consultation with RSPCA (NSW)." Use of fauna has been discussed with the EMP author who has advised that any native fauna used (such as yabbies, spiders, bush cockroaches and, for one series, crocodiles) is sourced from suppliers and no fauna is used from the site. Potential disease or pest introduction to the site arising from importation of fauna to the site needs to be avoided and has been conditioned.

Restoration work

Site Restoration work was conditioned to be undertaken following completion of the first filming season in 2003. This had the intent of replanting the cleared area where the social base is now located. None of this work has been undertaken to date because the area is continually required for use and is occupied by the mess tent and other structures.

Condition 6 also required a vegetation screen to screen Lot 74 from properties to the south. Granada staff advised that attempts have been made to implement this screen but difficulties arise because Granada are not the owners of the land and thus permission from landowners must be obtained and this has been limited and conditional to date.

It is considered that planting the entire cleared area on which the social base currently sits may not be the best use of restoration works because:

- The landowner may not wish for that part of the site which is zoned 1(a) to be entirely occupied by forest which reduces usable farmland or land for other use;
- Planting is a resource intensive activity which requires collection and propagation of appropriate plants or else purchase, planting and ongoing maintenance of potted plants. Questions arise in relation to how 'local' purchased plants are, due to potential for genetic 'pollution' of existing plants of the same species on site. Most ecosystems will restore themselves naturally once the competition from weeds is removed and a less interventionist approach usually achieves a better result.
- Planting requires the site to be vacated and this has no definite time-frame at the present time. Once the filming period has been completed, Granada will no longer be on site and thus responsibility will fall to the landowner, not necessarily a desirable or enforceable outcome in the absence of a signed agreement or restriction on title.

In the intervening period, a number of weeds, most of which were prevalent when the development was first proposed, have become firmly established and are encroaching on edges and areas of forest. It is considered that a better use of resources that can be tied to the applicant and start almost immediately is that of bush regeneration works around the site that, by removing weeds from edges and interior areas, allow the natural seed bank to regenerate into a suitable forest community. This change has been raised with Granada personnel and received a favourable response, thus been recommended as an amended condition.

Issues remaining

1. There is a lack of definitive information as to the site's ecological values and the potential presence of threatened species, given that no baseline flora and fauna survey has ever been undertaken. This means that no comparative analysis is able to be undertaken to determine whether the activities, undertaken over the extended time period since the original short-term approval, are potentially impacting on sensitive species. Such impacts could be seen in localised extinctions, site avoidance, and behavioural changes such as attraction or repulsion from lights, interruption to or decline in breeding success, and loss, alteration or pollution of habitat. This is particularly important for species with roost or 'home range' habitats on site that are used continually or returned to year after year, e.g. Koala, large forest owls. It is considered that a flora and fauna survey in accordance with accepted guidelines is required for the purpose of monitoring species impacts, if any. This has been recommended as a condition below.

2. *Uncertainty remains as to the way the site is used in terms of “trials areas” and whether this may involve clearing of native vegetation to enable setting up of competition areas within the forest or collection and use of native fauna as well as potential for release of exotic fauna known to be used. This is covered within the condition referred to above.*
3. *Potential exists for introduction of serious pests or diseases during importation of flora and fauna into the site. This matter has been conditioned.*

Because the Environmental Management Plan deals with flora and fauna issues, amongst other things, it is considered that it should be referenced within the consent. Thus it could be added to the list of plans at Condition 1A or, because it is a result of previous Condition 1B, be part of a modification of this condition.

Introduction of exotic species to waterways and alterations of the natural flow regimes of rivers and creeks are regarded as Key Threatening Processes under the Fisheries Management Act, with the ability to result in serious impacts on aquatic and riparian flora and fauna species. Numerous conditions relate to measures to ensure creek ecology and water quality is not impacted. Although these have a direct bearing on flora and fauna it is considered that these conditions will be adequately covered by Council’s Environmental Health Officers and the Office of Water, who have received referrals.

RECOMMENDED CONDITIONS

*Amend Condition 1A in two ways - to include reference to the submitted EMP and to remove the words “**and remediation of the site is to occur upon completion**”. Remediation/restoration to be addressed within an additional condition as detailed below:*

- 1A. *Where amended the development shall be undertaken in accordance with...**and Dungay Creek Road Environmental Management Plan prepared by Ecosure dated June 2008.***

Add additional GENERAL condition below 1A to read as follows:

- 1.3 *Prior to commencement of filming in the 2011 Filming Session the applicant is to provide to Council a Habitat Restoration Plan in accordance with Council’s draft guidelines (attached)) for approval by Director Planning and Regulation. The Plan is to target removal of weed species from the areas under use and their surrounds and is to detail methods to encourage natural regeneration of these areas. Works are to be implemented in accordance with the approved Habitat Restoration Plan throughout the consent period.*

Amend Condition 1B to read:

- 1.1 *Prior to commencement of filming in the 2011 Filming Session the applicant is to provide to Council a Flora and Fauna Assessment report detailing results of survey undertaken in accordance with the Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities - Working Draft dated November 2004 (DEC 2004) for approval by Director Planning and Regulation. Survey is to stratify the site and sample each stratification unit but is to concentrate effort on 'use' areas and their surrounds, including activity nodes, trials areas and helicopter pad. Particular targeted survey is to be undertaken to determine species' reliance upon particular sites or localities (such as important roost or home range habitat) within parts of the site that are, or are intended to be, used during any part of the filming or associated activities or where native vegetation is proposed to be cleared. Direct and indirect impacts and Key Threatening Processes on native flora and fauna must be considered and recommendations for impact avoidance formulated, including a training and education package for site employees.*

Amend Condition 4a to read:

- 4B. *The recommendations within the approved Flora and Fauna Assessment Report referred to within (insert new condition number from above amendment) shall be included within a revised environmental management plan and complied with at all times.*

*Any removal or relocation of protected fauna on the property shall only be undertaken in accordance with scientific licence or under written advice from the Department of Environment, Climate Change and Water. No planting of exotic species or weeds is to occur on the site. Any introduced fauna is to be sourced from agents certified to be free of pests and diseases with potential to impact native fauna, in particular introduction of Plague Minnow or Mosquito Fish (*Gambusia holbrooki*) with aquatic species; chytrid fungus causing the disease chytridiomycosis with amphibians; Psittacine circoviral (beak & feather) disease with birds and *Phytophthora cinnamomi* with plants.*

Amend Condition 34A to read:

- 34.1 *Prior to the commencement of any productions after 31 December 2010, the Dungay Creek Road Environmental Management Plan prepared by Ecosure dated June 2008 is to be amended to include relevant recommendations from the approved Flora and Fauna Assessment Report and to include Tweed Shire Council to receive Environmental Compliance Reports at the end of each 'wrap-up' period of filming'.*

Noise

The applicant notes that filming and production will continue in accordance with the management and mitigation measures contained in the SMP and the EMP.

Council's Environmental Health Unit has assessed the proposed modifications in terms of noise, providing the following comments:

'A review of Council's records does not indicate the receipt of any noise complaints received in the preceding 12 months. No further assessment required. Adequate conditions have been previously applied to address any issues that may arise'.

Traffic

The applicant refers to Annexure D of the original development application and SEE, which comprises a Traffic Report. The report concludes that...*'upgrading of Dungay Creek Road will permanently improve the safety and amenity of Dungay Creek Road and ensure that the temporary inconvenience resulting from increased traffic for the short time period involved will be negligible'*. The applicant also refers to the most recent S96 to extend the consent (December 2007), whereby Council's Traffic Engineer advised that the existing roads are suitable and capable of accommodating the required traffic.

The SEE summarises that the scale, intensity and operational arrangements for the development will remain the same as currently approved and concludes that traffic issues are adequately managed and mitigated by the SMP and the EMP.

Council's Traffic Engineer and Development Assessment Engineer have raised no objection to the proposed modifications.

It should be noted that Council's Engineers' comments are in relation to the local road network being capable of handling the additional traffic, as opposed to the issue of impact to amenity for local residents as a result of the increase in traffic during the 7 months that the development operates. The justification provided by the applicant in relation to the upgrade of the road and the increase in traffic volume being "short term" relates to the original application (for 1 year only). The continual extension of the consent raises the issue of when a "temporary" development is no longer temporary.

Although issues raised by neighbours with regard to traffic impact are acknowledged, it is difficult to refuse the application on this matter, when previous assessments have not done so. The proposed extension of time does not increase the traffic above what has been previously approved. In addition it is also acknowledged that the Community Liaison Officer for Granada is aware of the impacts to neighbours and has attempted to put mitigation measures in place in order to reduce any potential impact in relation to traffic (and other) matters. It is Council's understanding that the Community Liaison Officer will continue to do so, in the event of any warranted complaint from neighbouring properties. Therefore, the proposed extension of time is supported in relation to traffic.

Waste Disposal

The applicant notes that the volume and type of solid and liquid wastes generated by the development will remain essentially the same and will continue to be managed in accordance with the SMP and the EMP.

Council's Environmental Health Unit has assessed the proposed modifications in terms of on-site sewage management, providing the following comments:

'A current approval to operate, OSSM01371, is in place expiring on 10 February 2012. A further approval will be required after that date under the provisions of the Local Government Act 1997'.

Water Quality

The SEE notes that water quality monitoring and management (both potable and surface) will continue in accordance with the EMP.

Council's Environmental Health Unit has assessed the proposed modifications in terms of potable water supply, providing the following comments:

'Source of potable water supply - ground water. Guidelines for Private Water Suppliers were introduced in 2008 by NSW Health to assist operators to comply with the requirements of the Australian Drinking Water Guidelines 2004. Council now maintains a register of Suppliers to assist in surveillance. Condition accordingly. The Guidelines have been forwarded with these comments so as to be included within any consent issued.'

Council's Environmental Health Unit has recommended the DELETION of **Condition 37** (which reads: Adequate storage of an on-site potable water supply shall be provided at all times).

In addition, they recommend a new USE condition, to be read as **Condition 44.1**:

44.1 Water supplied for human consumption must comply with the NSW HEALTH Private Water Supply Guidelines 2008 and the Australian Drinking Water Guidelines published in 2004 by the National Health and Medical Research Council. Registration of the premises shall be maintained with Tweed Shire Council's Public Health Register for Private Water Suppliers including payment of associated fee'.

Water quality / management issues are also controlled by existing conditions of consent applied by DECCW. There are no proposed changes to the General Terms of Approval under Part 3A of the Rivers & Foreshores Management Act.

Food Safety

Council's Environmental Health Unit has noted the following:

'Premises is subject to routine inspections. An inspection of the premises was last conducted on 25 October 2010'.

Economic Analysis

The SEE refers to the Economic Impact Assessment with regard to expenditure and employment effects and notes the following extracts:

'Expenditure Effects

- *The TV show injects recurrent expenditure of at least \$4.27 million per year into the local economy.*
- *The most significant local expenditure component is on local wages (ie. employment creation) at about \$3 million (IAC) and \$1 million (IBES) and accommodation (ie. local business support) from about \$600,000 to \$800,000 annually. Most of the non-local based crew stay at accommodation within the Tweed Shire (and annual expenditure on this equates to more than \$600,000), with some more senior crew staying on the border in Coolangatta, Queensland.*
- *Applying appropriate industry multipliers demonstrates that the show contributes at least:*
 - *\$7.67 million per year to Australian GDP and*
 - *\$3.8 million in state-wide expenditures.*

Employment Generation

- *The TV show employs a direct Australian workforce of about 500 workers of which about 104 (20%) are undertaken by Tweed Shire residents.*
- *In addition, there is a travelling international crew and production workforce from the UK of about 100 workers*
- *Indirectly, the show also supports an estimated 40 year-round equivalent jobs per year based upon multiplier effects from the local expenditures. This is expected to continue through to mid-2014.*

Infrastructure Investment

Granada has invested in the development of infrastructure that otherwise would not have been delivered if not for the show, as well as donated monies and goods to local schools and community groups.

Granada has previously contributed to the repair, delivery and maintenance of localised infrastructure such as roads, culverts and tree planting. Granada has also paid for the replacement of convex safety mirrors at blind corners along Dungay Creek Road and adopted a traffic management plan (which involved the reduction in car-trips through the provision of a carpark just prior to the Dungay Creek Road turn-off.)

Each year the site is regularly maintained and inspected to ensure that the environment is not adversely affected.

The producers of the show are intending to also contribute to further road maintenance and the construction of a culvert (subject to council approval and other approvals as may be required from other government authorities) to further demonstrate that they are willing to put back into the community'.

Upon completion of the show, Granada estimates that it will spend a significant amount on remediation and de-construction of facilities to return the land to its natural state. This amount has not been disclosed however it will result in the creation of at least 5 direct and 10 indirect full-time jobs created per year.

Community Contributions

Granada has also contributed funds and goods to local schools within the Tweed Shire as follows, having contributed.

- *\$1,150 to local primary school (2009)*
- *\$8,850 to local high schools in Dungay/Murwillumbah (2009)*
- *Donations of computers to local schools (for children with special needs).*

The positive economic benefit of the proposed development is not disputed.

Conclusion

The proposed development has been assessed against all relevant heads of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act.

In accordance with the above comments from Council officers, the amended / additional conditions above have been incorporated into the recommendation.

Based on adoption and compliance with these conditions (in addition to all original conditions) it is considered that the proposal amendment is not considered to raise significant environmental impacts.

Substantially the Same Development

The applicant has referenced Land and Environment Court decisions with regard to the threshold requirement that the development to which the consent as modified relates is substantially the same development for which consent was originally granted.

The following key principles have been applied:

- *The comparison is undertaken at a general level rather than between detail;*
- *The question is whether the development as a whole is essentially or materially the same development;*
- *If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development; and*
- *It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.*

In summary, the applicant submits that having regard to the fact that the operational details of the development will not change and the key principles, the threshold question is satisfied on the basis that :

- *'The development as a whole, being for filming and producing a television program, will remain unchanged.*
- *The proposed modifications will not alter the statutory or policy compliance of the proposal, create any other material difference and do not give rise to any significant environmental impacts.*
- *The siting, bulk and scale of the buildings essentially remain the same.*
- *The likely impact of the modification is minor.*
- *No changes to the nature, scale, intensity and operational details of the development will occur.*

The submission put forward by the applicant with regard to the proposed modifications being substantially the same development as that originally approved is generally concurred with.

The proposed activity is not being modified by the changes. The development will still be "temporary" in nature (in that it is a time limited consent) and the site will still be required to be remediated. The recommended conditions of consent will require a Habitat Restoration Plan, with works to be implemented in accordance with the approved Habitat Restoration Plan throughout the consent period.

The proposed modifications are considered to satisfy the key principles for determining the threshold requirements. It is not considered that a 36 month extension changes the nature of the development and as such the proposed modifications are considered to be acceptable, subject to the proposed additional conditions of consent.

Concurrence or Integrated Authority Consultation

The Act provides for consultation with state government authorities in the event that conditions to be amended are those imposed by or of interest to such agencies.

The activity operates under a Part 3A Permit under the Rivers and Foreshore Improvement Act 1948. The time frame extension does mean that permits will need to be extended, however, none of the conditions of consent are proposed to be removed and as such formal consultation in relation to the proposed amendment is not required. Despite not being required to formally consult with DECCW (NSW Office of Water), a copy of the S96 was forwarded for comment. No response has been submitted to Council. Therefore, the existing DECCW conditions of consent will remain unchanged.

However following determination Council is to advise the Department of Environment, Climate Change and Water of the modification to the time frame to enable the provision of further permits.

Advertising and Consideration of Submissions

The proposed amendment was notified for a period of fourteen (14) days from Wednesday 15 September 2010 to Wednesday 29 September 2010.

During this period Council received five (5) different submissions, three of which were from various members of the same family. The submissions raising an objection to the proposed S96 addressed the following issues:

Issue	Response
<p>A land owner was approached for permission to use part of their land temporarily, as the creek crossing was to be upgraded to make it wider and safer. They were later told that Granada could no longer afford this. They want the upgrade completed or at least agreed to before this application proceeds, as the size of trucks and volume of traffic is ridiculous for the tiny crossing.</p>	<p>The applicant has noted the following:</p> <p><i>“Granada undertook to make a contribution to the upgrade of Dawes Crossing. This project has now been fully funded by Granada (\$167,000 + GST). The delay was – in part – because Council was responsible for organising the development consent and according to Council officers, the Department of Primary Industries (Fisheries and Aquaculture) objected to some elements of the plans originally submitted by Council.</i></p> <p><i>Modifications to the design were then made and Granada understands that approval from all interested parties has now been obtained. Granada is waiting for Council to schedule works which may not be able to start until March 2011 due to concerns with the weather”.</i></p> <p>Council's Traffic Engineer has confirmed the above in general. The Works Unit have also confirmed that the Dawes Crossing upgrade will likely be undertaken well before March 2011, subject to weather.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>

Issue	Response
<p>The above objection also notes that the crossing and road are on their boundary and Council land is fenced on the other side of the road. Residents in the area have no access to the creek. They believe that a reasonably sized area could be reclaimed and planted with native vegetation, which would in some way make up for the fact that walking and riding bikes or horses along the road during site preparation and filming time is impossible or dangerous.</p>	<p>Reclamation of land as noted is not considered to be part of the assessment of this application. Rather it should be addressed separately and in consultation with Council's Engineering and Operations Unit</p> <p>This issue does not warrant refusal of the application.</p>
<p>Water quality of the creek is of great concern. Road base has filled corners of the creek that runs from the film site, and on two occasions muddy coloured water running through the creek has been noted in times of no rain. Water quality tests should be made on a regular basis, and these given to residents who use the creek for their gardens and animals.</p>	<p>The applicant has noted the following:</p> <p><i>“Granada engages Ecosure Pty Limited to assess (inter alia) several waterways on the Granada site, including Dungay Creek and Ecosure advise in relation to other environmental issues with respect to the creek:</i></p> <ul style="list-style-type: none"> <i>(a) every two weeks during the Production Period</i> <i>(b) at the commencement of Pre-production Period and then every month during that period</i> <i>(c) during the De-rigging Period; and</i> <i>(d) twice during the Hibernation Period.</i> <p><i>They provide Granada with reports after each inspection which includes recommendations that are to be addressed by Granada.</i></p> <p><i>There have been no reported cases of elevated sediment concentrations in the Creek based on the monitoring undertaken. The “muddy coloured water” (turbidity) could have emanated from a number of potential sources other than the Granada site and is, according to Ecosure, naturally higher after rainfall”.</i></p> <p>It is not considered appropriate to pass on water quality tests to surrounding residents. A recommended condition of consent will ensure that Tweed Shire Council will receive Environmental Compliance Reports at the end of each 'wrap-up' period of filming.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>

Issue	Response
<p>Distressing fauna death – the increase in traffic has resulted in four water hen and native duck deaths. Also noted are a few dead water dragons and a carpet python. The worst area is along Dungay Creek Road (between 1.5km and 1.8km from the Dungay Road turn off) where the creek and road are adjacent.</p>	<p>The applicant has noted the following:</p> <p><i>“Granada has acknowledged that there is an increase in traffic when the site is in use for the production.</i></p> <p><i>There has also been increased traffic due to alterations and additions to houses, being carried out by both land owners of the site over the past 3-4 months. Other properties and land uses also contribute towards additional traffic on Dungay Creek Road.</i></p> <p><i>In accordance with the Site Management Plan (SMP) and to overcome concerns about fauna, signs have been erected at the beginning of Dungay Creek Road and at the top of Dungay Creek Road (near the entrance to 366 Dungay Creek Road) alerting drivers to the speed limits imposed and also to the presence of native species along the road. Granada was only recently advised, by a local resident who alerted us to the problem of the dead fauna, that it has not been Granada staff responsible for the killing the animals but that it has been contractors. Again, other properties and land uses contribute towards additional traffic on Dungay Creek Road.</i></p> <p><i>Granada has also made a formal request to Council’s Traffic Engineer for 2 additional signs (one in each direction) to be erected between 1.5km and 1.8km along Dungay Creek Road with the image of a kangaroo or other native fauna (as deemed appropriate by Council) on them to assist in reducing the risks to the local fauna”.</i></p> <p>Council’s Traffic Engineer has confirmed the above, noting that the signage will be implemented in due course.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>In terms of general traffic, the employees of the film site in general are found to obey speed limits set down by the company. Local contractors, in general, are the ones observed to drive dangerously on such a narrow country road.</p>	<p>The applicant has noted the following:</p> <p><i>“In accordance with the SMP, Granada monitors the daily number of delivery trucks and staff vehicles coming to the site and follows the management measures in the SMP.</i></p> <p><i>Any time that Granada becomes aware of a local contractor exceeding the speed limit on the road, they are advised that they must obey the speed limits in future. Granada takes all possible steps in the circumstances to manage speed”.</i></p> <p>Granada’s Transport Policy (2010) notes that Dungay Creek Road is a public road (80kph) and therefore Granada cannot erect speed restriction signs. However, it also notes that at inductions, crews are advised of the recommended speeds along Dungay Creek Road (from the site to 2nd causeway – 30kph and from 2nd causeway to main road – 50kmph).</p> <p>It should also be noted that speeding vehicles on public roads are a police matter.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>

Issue	Response
<p>Increased traffic.</p>	<p>The applicant has noted the following: <i>“As is normally the case, at the start of the re-production Period there is a noticeable increase – especially with deliveries being made to the site, but it is permissible under the SMP and Granada has acknowledged it in the application before Council. However, no intensification of the use and traffic generation is contemplated in the future”.</i></p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>Empty beer bottles and plastic soft drink bottles have been littering the road side. This is possibly due to people working for Granada – there must be some policing as drink driving and littering cannot be condoned.</p>	<p>The applicant has noted the following: <i>“No alcohol is kept on site for use by the crew and Granada believes that is unlikely that its crew are throwing empty beer bottles out of car windows as drinking whilst working (even on the drive to or from work) would put them in breach of their employment contracts and they would be counselled accordingly.</i></p> <p><i>Granada has staff whose job it is to conduct a regular litter patrol along the length of Dungay Creek Road during the Pre-production and the Production Periods”.</i></p> <p>It is difficult to determine if the drinking / littering has been done by any person associated with Granada.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>From earlier letters, the objector believes that contractors and delivery vehicles must not exceed 40kph. They have noticed that almost all trucks and cars speed along Dungay Creek Road. Only extremely few cars slow down when we are walking and those seem to be driven by older people or Granada executives – they are polite and slow down, the rest are not.</p>	<p>The applicant has noted the following: <i>“Granada agrees that no-one should exceed the speed limit and it continues to address this concern, including with increased signage and regular surveillance by the security staff”.</i></p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>

Issue	Response
<p>This show began as a one year approval in December 2002 with a very wide and broad DA as it was only for one year. The approval keeps getting extended despite Council acknowledging in a previous application for an extension that it does impact on local residents. As residents directly opposite the site, we suffer the upset to our quiet valley for many months of the year. It is not just the 7 months of the year of on-site times, but additional visits at any time of the year for Granada to do 'essential' maintenance.</p> <p>The flora and fauna assessment talks about the 'short term' nature of the production but concern must be raised when it happens year after year.</p>	<p>The applicant has noted the following:</p> <p><i>"Granada has permission under the SMP to use the site for 7 months (up to 3 months for Pre-production + up to 3 months for Production + up to 1 month for De-rigging).</i></p> <p><i>Additional use for maintenance with limited staff on site is permitted. Granada believes that it is important to carry out essential maintenance due to flood damage if it occurs on site. Equally, re-rigging of suspension bridges to prevent any damage to the trees is important and can only be done when the site is in hibernation.</i></p> <p><i>Granada takes its environmental and site specific issues seriously, especially if there could be impact upon the site and/or to land owners further downstream.</i></p> <p><i>This year this site is only being used in Pre-production for 34 days (not 3 months) and for 19 days for De-rigging (not an entire month). Wherever possible, Granada tries to minimise the time spent on the site.</i></p> <p><i>Traffic management measures continue to be improved each year and Granada continues to look at implementation of additional measures to minimise the impact on the residents".</i></p> <p>A detailed flora and fauna assessment has been undertaken by Council's Ecologist and appropriate conditions applied.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>Some years after the initial approval the area of use was extended to include a 'trials' area, which is a few hundred metres from the objectors house. This results in traffic goes up and down the road for months on end. The entrance area to the trials area is ugly and tree plantings to remediate the site have failed for a variety of reasons.</p> <p>Granada have put some thought into trying to reduce traffic to the site but have been unsuccessful for the most part. A car park on Campbell's Road reduces traffic by a very small amount. Some car pooling may be happening but we still see vehicles with only one or two people in them.</p> <p>Delivery trucks have access to the site 12 hours a day. Truck access should only be permitted during the middle of the day outside of school bus hours.</p>	<p>The applicant has noted the following:</p> <p><i>"Granada introduced the car park for crew on Campbell's Road (which can accommodate up to 50 cars.</i></p> <p><i>Granada instructs staff that they must car pool and use the car park and the frequency of the bus service to and from the site has been reduced".</i></p> <p>The applicant's Transport Policy notes that whenever possible it is requested that deliveries are made between 9.00am and 2.30pm or 4.15pm and 7pm, therefore avoiding the school bus.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>

Issue	Response
<p>A number of years ago Granada promised to screen the side of the Council road where we see and hear traffic travelling to the site. They did make attempts to do this on two occasions but for a number of reasons, including the planting of inappropriate trees for screening and tree failure, or possible removal, we still experience the inconvenience of traffic at the same level as before. Will this be addressed?</p>	<p>The planting of trees along the road verge is not permitted, without the approval of Council. Any approval would require the plantings to be undertaken by Council staff, utilising the correct species and maintenance regime.</p> <p>Any planting of screening trees on private property is a civil matter, with both parties negotiating the outcome in terms of number of, location etc.</p> <p>In this regard, Granada has verbally advised that additional tree plantings have been negotiated with the land owner.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application</p>
<p>The benefit to the community of the bitumen road have been requoted by Granada over and over – unfortunately that benefit to the local community is well over and Granada need to do a lot more to compensate the residents for their ongoing inconvenience.</p>	<p>The applicant has noted the following:</p> <p><i>“Notwithstanding the observations of the objector, many people along Dungay Creek Road have acknowledged to Granada that the bitumen road has been a benefit to the community.</i></p> <p><i>Granada organised for some of its old computers in the Sydney office to be sent to Dungay Public School. Unfortunately the computers could not be donated to the school because of concerns with the compatibility of the operating systems.</i></p> <p><i>Granada has recently donated three prizes to the value of \$1000 to Murwillumbah Public School to assist in raising money for the school through the sale of raffle tickets.</i></p> <p><i>Granada would also like to continue to make donations to the local schools and will make a donation of \$5000 to Dungay public School at the end of this year as part of its overall policy of charitable giving”.</i></p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application</p>
<p>To the objector’s knowledge, no road improvements have been made by Granada during the past 3 years.</p>	<p>Further to the above, applicant has noted the following:</p> <p><i>“In addition to the improvements to Dawes Crossing (which has been dealt with and is in Council’s hands), Granada paid for 2 new convex mirrors to be installed on Dungay Creek Road in August 2007, after the previous convex mirrors went missing”.</i></p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application</p>

Issue	Response
<p>Many residents complain but feel they are powerless. Our family keeps putting up with the real disturbance to the lifestyle we chose, with the hope that it will be over soon, but renewals keep getting granted. Granada have been quick to point out that on previous occasions that complainants are in the small minority, however a few of the residents work for Granada and several other locals are unhappy and feel that it is pointless to complain because the application is going to just be approved regardless of their concerns.</p>	<p>The applicant has noted the following: <i>“Condition 34C of the consent requires a Community Liaison Officer and this role effectively performed by Granada, which has a staff member on regular contact with the local residents</i></p> <p><i>There has been a letter box drop every year. In addition to this Granada places an advertisement in Tweed Daily News newspaper and includes contact details and direct phone numbers”.</i></p> <p>Council’s assessment of any application is thorough, taking into consideration of potential impact upon the local residents and environment. Any issue raised by objectors is given due consideration.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>The objector acknowledged that Emma McDonald and Andrew Dawson have liaised with them regularly regarding issues with Granada’s presence in the valley. However, the objector noted that the German production has made a visit to speak personally with them and made some contribution to locals by agreeing to upgrade the causeway and perhaps next year doing some work along Dungay Creek Road eliminating weeds. The UK show however just continue to do what they please and give very little in way of acknowledgement that over a decade of our peaceful lifestyle is impacted on each year.</p>	<p>The applicant has noted the following: <i>“The weeds referred to are on Council land.</i></p> <p><i>Granada has informed the objector that it has spoken with Council. Council has advised that weed removal can only be done by Council or by an approved Council contractor. Granada has spoken with Council and asked that it add Dungay Creek Road to its work request list for weed maintenance”.</i></p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>The objector notes that in previous conversations with Council staff they were told that the original application should not have been approved and if it had been known then that it was not a ‘one or two’ season show the application would not have been looked at as leniently. This latest application is just a photocopy of the previous applications without any attempt to review and the following items should not have been included as they are inaccurate:</p> <p>Section f(ii) Traffic Annexure D of the original application – while on the original application period (18 months) it could possibly be assumed (by a non-local) that the benefit of the road upgrade might outweigh the inconvenience – this does not hold true when we look at an 11 ½ year presence. How can an engineer state “that the temporary inconvenience...for the short period will be negligible? Site use of 7 months out of 12 <u>every</u> year will amount to 77 months or 6 ½ years which cannot be described as a ‘short period’ in anyone’s description.</p>	<p>The applicant has noted the following: <i>“The Modification Application is supported by a Town Planning Report addressing relevant statutory matters in accordance with Section 96 of the Act. It is not a photocopy of previous applications (which in any case were prepared by a different consultant) and the direct quotes it contains from previous applications are relevant to the Modification Application.</i></p> <p><i>In particular, the quotation in relation to the references in the original Traffic Report reflect the professional opinions of an experienced Civil Engineer who concluded that the upgrading of Dungay Creek Road will permanently improve the safety and amenity of the road. Clearly this is relevant to Council’s further consideration of this Modification Application”.</i></p> <p>Council’s Traffic Engineer and Development Engineer have raised no objections to the proposal in terms of the local road network.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>

Issue	Response
<p>The trees planted to screen road noise were not successful.</p>	<p>The applicant has noted the following: <i>“Granada has made at least 2 attempts to plant the native trees local to the area for the purpose of screening and a third attempt to mulch / preserve other trees planted to enhance their growth. However, the bulk of the trees needed for screening and reduction of traffic noise are owned by others, not on Council road reserve or land owned by the objector.</i></p> <p><i>Many of the trees planted are still alive and are flourishing. Granada will continue to do what it can to support the planting of additional trees, however, it cannot control their viability or longevity once planted on land not owned by the objector”.</i></p> <p>As noted above, Granada has verbally advised that additional tree plantings have been negotiated with the land owner.</p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>The fact that Granada admit to spending \$30,000 on fuel at Taylors Corner Garage shows the enormity of the traffic flow, given that it is just one service station of many that they use and the fuel bought is only for the use of hire cars and onsite vehicles. Additionally there are delivery vehicles and the local workforce using their own vehicles.</p>	<p>The applicant has noted the following: <i>“Purchasing supplies from Taylor’s Corner Garage demonstrates Granada’s support of a local Murwillumbah business.</i></p> <p><i>The cost incurred at the garage includes purchasing fuel for cars (many of which are driven only on site, and drums of diesel for generators used on site”.</i></p> <p>This issue is considered adequately addressed and is not considered to justify refusal of the application.</p>
<p>Due to a Private Property sign on the Council road placed opposite the entrance to our property, tourists sit and wait for the elimination of celebrities. If the sign was not there they may go up as far as Granada security and be dealt with by them. During the show last year we had people camp out for several days in the school bus turnaround. As it is a public road they have every right but we find this intrusive to the quiet lifestyle we wish to live. We have even had people drive up to our house and ask about the camp location.</p>	<p>The applicant has noted that these issues have been addressed above. They also note that this objector has previously been employed by Granada on <i>I’m a Celebrity, Get Me Out of Here!</i> And has undertaken work experience at the Granada offices in the United Kingdom</p> <p>This issue is not considered to justify refusal of the application.</p>

It is acknowledged that local residents are impacted during the times of filming, during the pre-production and during the wrap period due to the additional traffic. However, Granada has endeavoured to mitigate the impacts of traffic and their filming activities whenever requested to do so. Additional appropriate conditions of consent have been recommended for the proposal. Based on this assessment, the S96 application for a time extension is recommended for approval.

Public interest

Granada Productions appear to be a well run organisation, who have agreed to comply with all of the recommendations by Council staff to date. The provision of the Site Management Plan and Environmental Management Plan provides Council with opportunity to ensure that any potential impacts can be satisfactorily mitigated.

Although the issue of continual extension of time is of concern, the proposed conditions of consent relating to this application are considered to result in an acceptable outcome in terms of flora and fauna issues. The social / economic benefits of the proposal must also be taken into consideration in terms of balancing any negative issues raised by the development. The proposed extension of time is therefore not considered to be in conflict with the public interest.

OPTIONS:

1. Approve the S96 Application in accordance with the recommendation.
2. Refuse the S96 Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The original assessment of the application concluded by providing that: -

"The subject land is considered to be suitable for the proposed development. The environmental attributes of the site have made it desirable as a location for the proposed filming. These attributes are valued by the applicant and as such will be protected through environmental management measures within a plan for the site.

The remediation of the land following completion of the development will be of benefit. It is considered that the addition of activity in the Dungay Creek area will be able to be undertaken in a manner to limit nuisance to other residences"

These comments are still concurred with. Furthermore, the economic impacts to the broader community as a result of the continuation of the production are considered beneficial to the community. Subsequently, this application is recommended for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Site Management Plan (ECM 25075262)
 2. Environmental Management Plan (ECM 25076264)
 3. Economic Impact Statement (ECM 25075261)
-

16 [PR-CM] Development Application DA10/0430 for the Erection of a Second Dwelling to Create a Dual Occupancy at Lot 494 DP 755740, No. 15 Adelaide Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA10/0430 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application for the addition of a second dwelling to the subject site which has an existing residential use in order to create a detached dual occupancy. Councillor Skinner has requested that the development application be reported to Council.

The proposal is best defined as 'multi-dwelling housing' in accordance with the Tweed Local Environmental Plan 2000 (LEP 2000).

Multi-dwelling housing is permissible under Item 2 in the 2(b) Medium Density Residential zone, taking into consideration that it is a land use not included in Item 1, 3 or 4 of the zoning table. The character and form of existing residential development in the vicinity is also taken into account in the assessment of the proposal.

The proposed development has issues regarding access from Sellicks Lane, intensity of land use, non-compliance with mandatory controls and unsuitability for the site given the steep and established, predominantly low density residential character of the area. Total impact of the development could not be assessed given the lack of detail provided relating to issues such as overshadowing and cut and fill.

The addition of the proposed second dwelling represents an increase in floor space ratio for the site that exceeds the maximum allowed for detached dual occupancy development by 11.34% (77.52m²).

Good urban design outcomes are not achieved by the proposed development. The applicant's solution has been to locate a second, poorly articulated dwelling in a tight, physically constrained location where rear setback and deep soil zone provision is compromised, proximity to adjacent dwellings is increased and primary vehicular access is unviable.

It is submitted that the proposal (detached dual occupancy) is a form of residential development within an established residential area that is unsuitable in scale, form and purpose. The proposal increases the density of the site beyond the zoning objectives and is considered to have adverse effects on the character and amenity of the area.

Should the proposed development be approved, it would set an unacceptable precedent for future development of steep residential areas due to its general non-compliance with development standards and criteria for the location of detached dual occupancies.

Following inspection of Sellicks Lane by Council's Traffic Engineer, Engineering Assistant Traffic and the Road Safety Officer, the following was clarified:

- Sellicks Lane is steep containing an existing poorly constructed driveway from Charles Street and an existing poorly constructed retaining wall (about 1.2m high) which provides access to an existing garage (13 Adelaide Street)
- The existing driveway and retaining wall appear not to have been constructed to professional engineering standards and most likely were not approved by Council
- The driveway and retaining wall were most likely built by the property owner who owns the garage
- Sellicks Lane from the retaining wall to Adelaide Street is unconstructed and very steep (>20%)
- While this remains a lawful point of access for the subject development, considerable upgrade works to the laneway are required in order for the proposed development to proceed.

The following engineering works would be required to be undertaken by the applicant in order to upgrade Sellicks Lane to an acceptable condition to support additional access points:

- Reconstruction of the retaining wall to a structural engineer's design and construction certification with pedestrian railing and warning (end of road) signage
- Reconstruction of the lane to Council's standards from Charles Street to the retaining wall
- Provision of a vehicle turnaround facility in accordance with AS 2890.1 suitable for a standard vehicle (5.2m length; 1.94m width) at the end of the driveway to be located totally within the lane road reserve. This may involve dedication of private land from 15 Adelaide Street to Council as road reserve.

The proposed development attracted two individual objections. The objections were focused on the impacts of the development upon adjacent properties, inconsistency with residential development controls and the unsuitability of access arrangements.

Having regard to the objections received, an assessment against Clause 8(1) of the Tweed LEP 2000 and non-compliance with Development Control Plans A1 and A2, the proposed detached dual occupancy is not considered suitable for the location and therefore the proposed development is recommended for refusal.

RECOMMENDATION:

That Development Application DA10/0430 for the erection of a second dwelling to create a dual occupancy at Lot 494 DP 755740, No. 15 Adelaide Street, Tweed Heads be refused for the following reasons:

1. The proposed development does not comply with Development Control Plan A1: Residential and Tourist Development Code (Part B), in particular:
 - Rear setback
 - Rear deep soil zone
 - Impermeable site area
 - Floor space ratio
 - Overshadowing
2. The proposed development does not comply with Development Control Plan A2: Site Access and Parking Code, in particular:
 - On-site car parking
 - Driveway access
3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

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

The Tweed LEP 2000:

- Clause 4: Aims of this plan - – proposed density of the site is not compatible with the existing and future streetscape and amenity of the area
 - Clause 8(1): Consent Considerations - the proposal sets an unacceptable precedent for densification of steep residential areas
 - Clause 11: Zoning - the proposal does not achieve a good urban design outcome.
4. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

The use of the rear portion of the subject site for the location of a second dwelling results in an overdevelopment of the site. This is considered an unacceptable outcome for the site due to its requirement for multiple variations to development controls, unsupported access from the laneway and impact upon existing residential uses within close proximity of the site.

5. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed LEP 2000 specifically as it relates to residential development controls and the objectives of the 2(b) Medium Density Residential zone.

REPORT:

Applicant: Ms MA D'arcy
Owner: Ms MA D'arcy
Location: Lot 494 DP 755740, No. 15 Adelaide Street, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$170,000

BACKGROUND:

The Subject Site

The subject land is described as Lot 494 DP 755740 Adelaide Street, Tweed Heads and has a total area of 683m². The site has a 15m frontage to Adelaide Street and is approximately 36m in length. The rear boundary has a length of 27.177m. The allotment is irregularly shaped in that it is not a regular, rectangular shape and it exhibits steep topography with an overall 22.5% gradient.

The site is located on the western side of Adelaide Street where the land rises steeply to Charles Street and beyond to Razorback Road providing easterly views over Tweed Heads and Coolangatta.

Current improvements include a three-bedroom two-storey single dwelling with frontage to Adelaide Street and a 12m setback to the rear boundary, the result of recent additions and alterations to a timber framed dwelling which was located on the site until 2009.

On-site parking and manoeuvring is provided for a minimum of three cars within a single garage at ground level and at the front of the dwelling underneath the deck that extends forward from the upper level towards Adelaide Street.

Remaining open space behind the existing two-storey dwelling where the proposed second dwelling is to be located amounts to an average area of 294m² constituting 12m (depth) x 24.5m (width), as indicated below.



A single, uncovered cement parking 'platform' is located to the rear of the site adjacent to the rear boundary and Sellicks Lane.



The site is located in an area generally characterised as low-density residential despite its current medium density residential zoning. Adjoining land to the south was developed as a detached dual occupancy in 2007.

Sellicks Lane

Sellicks Lane adjoins the northern boundary of the subject site. Sellicks Lane is a steep, narrow, Council-owned laneway that has historically linked Adelaide Street with Charles Street. The lower portion of Sellicks Lane (below) is unformed and currently not suitable for pedestrian access.



The upper portion of the laneway is a poorly constructed “driveway” that currently provides limited vehicular access from Charles Street to an approximate mid-way point down the hill to Adelaide Street.



A small concrete platform and a 1.2m poorly constructed retaining wall (that drops off sharply to the lower portion) are located at the mid-point.



Mid-way drop-off point

Currently, the laneway provides primary vehicular access to one (1) adjoining property at 13 Adelaide Street. The driveway was originally intended to service this single dwelling which, due to topographical site constraints, has never had vehicular access available from Adelaide Street. As such, a garage associated with the dwelling at 13 Adelaide Street is located adjacent to the small platform and retaining wall at the mid-point of the laneway (below).



Garage associated with 13 Adelaide Street

The laneway also provides secondary vehicular access to three (3) adjoining properties that contain single dwellings: 14 Charles Street (not currently utilised due to difficulty of access), 16 Charles Street and 15 Adelaide Street (subject site).



These properties have primary access to their properties and suitable off-site parking arrangements from either Charles or Adelaide Street.

The Proposed Development

Council is in receipt of a Development Application for the addition of a second dwelling to the subject site which has an existing residential use in order to create a detached dual occupancy. The application was lodged 29 June 2010.

Many of the issues identified during the assessment of the development application were raised by Council in an informal pre-lodgement meeting in August 2009.

The proposal includes:

- Construction of a three-bedroom, two-storey dwelling with single carport and decking within the rear setback of the subject site
- Associated earthworks, landscaping and retaining walls
- Primary access to the second dwelling from the secondary Sellicks Lane frontage
- Location of a rear deep soil zone adjacent to the southern boundary between the existing dwelling and the proposed dwelling
- Provision of services through the front portion of the site from the primary Adelaide Street frontage
- Pedestrian access to the proposed dwelling along the northern boundary of the site (as amended by the applicant in correspondence dated 25 October 2010 with the intention to replace a proposed pedestrian access within Sellicks Lane).

The proposed, benched dwelling is located adjacent to the rear boundary of the site. It has a long, narrow shape, unlike surrounding dwellings, with a consistent width of 4.4m for a length of 21m inclusive of the carport. The dwelling maintains a two-storey height from ground level to the eastern (front) elevation, to the southern (side) elevation and to the majority of the western (rear) elevation.

Due to lack of detail provided with the application, it is not possible to ascertain the degree of cut and fill and resultant height / impact of retaining walls.

The applicant states that the development is proposed to be subdivided to create two Strata Titled lots and that Adelaide Street is considered to be the primary frontage for the proposed dwelling (as contained within Lot 494 DP 755740), not Sellicks Lane.

Site History

The subject site was most likely originally developed 50 or 60 years ago, consistent with adjoining development to the north at 13 Adelaide Street. A two-storey single dwelling occupied the site up until at least April 2009 (below) with access from Adelaide Street.



Previous dwelling at 15 Adelaide Street

The application for “dwelling additions & alterations including elevated deck located with primary & secondary setback” (DA09/0171) was lodged 2 April 2009 soon after the applicant acquired the property. Notification of the application was provided to four (4) adjacent property owners. No objections were received.

Plans for the upper floor consisted of three bedrooms, living rooms, media room, kitchen and ancillary wet areas. A 50.95m² deck was included to the front elevation. Plans for the ground floor consisted of a single garage and an internal storage area with internal stairs. Additional undercover car parking would be provided under the deck area.

Calculation of gross floor area (GFA) was limited to the upper level at 150.4m² with a floor space ratio of 0.22:1. A privacy screen was required for the southern end of the front deck.

A concession was granted in respect of the front setback to the deck during the assessment of the application due to the irregular shape of the front boundary and wide, not easily identifiable road reserve.

A similar concession was granted in respect of the northern side setback to the deck and the upper living area due to the likelihood of Sellicks Lane (as a secondary road frontage) only ever being developed for pedestrian use at that point on the lower section in proximity to Adelaide Street.

An application to amend DA09/0171 was lodged 24 June 2009 (DA09/0171.04) after it became apparent to the owner that the original design was 'too costly to construct'. To reduce costs, a redesign of the roof (pitched roof to skillion roof), deletion of the internal stairs and minor changes to the external building materials was submitted for consideration.

The amendment was approved 13 July 2009.

A second application to amend DA09/0171 was lodged 14 December 2009 (DA09/0171.06) to fit out the lower floor of the dwelling by converting the storage area for use as a rumpus room, additional bathroom, study and sewing room.

An additional GFA of 88.47m² was added to the originally approved dwelling resulting in a total GFA of 238.87m² with a floor space ratio of 0.35:1. Total site coverage (including the 225.53m² area of the house and the deck) came to 33%. The impermeable site area (inclusive of roof, driveway, concrete paths and porous paving) totalled 319.4m² or 46.76% of the site, which was less than the maximum allowed of 65%.

The second amendment was approved 14 January 2010.

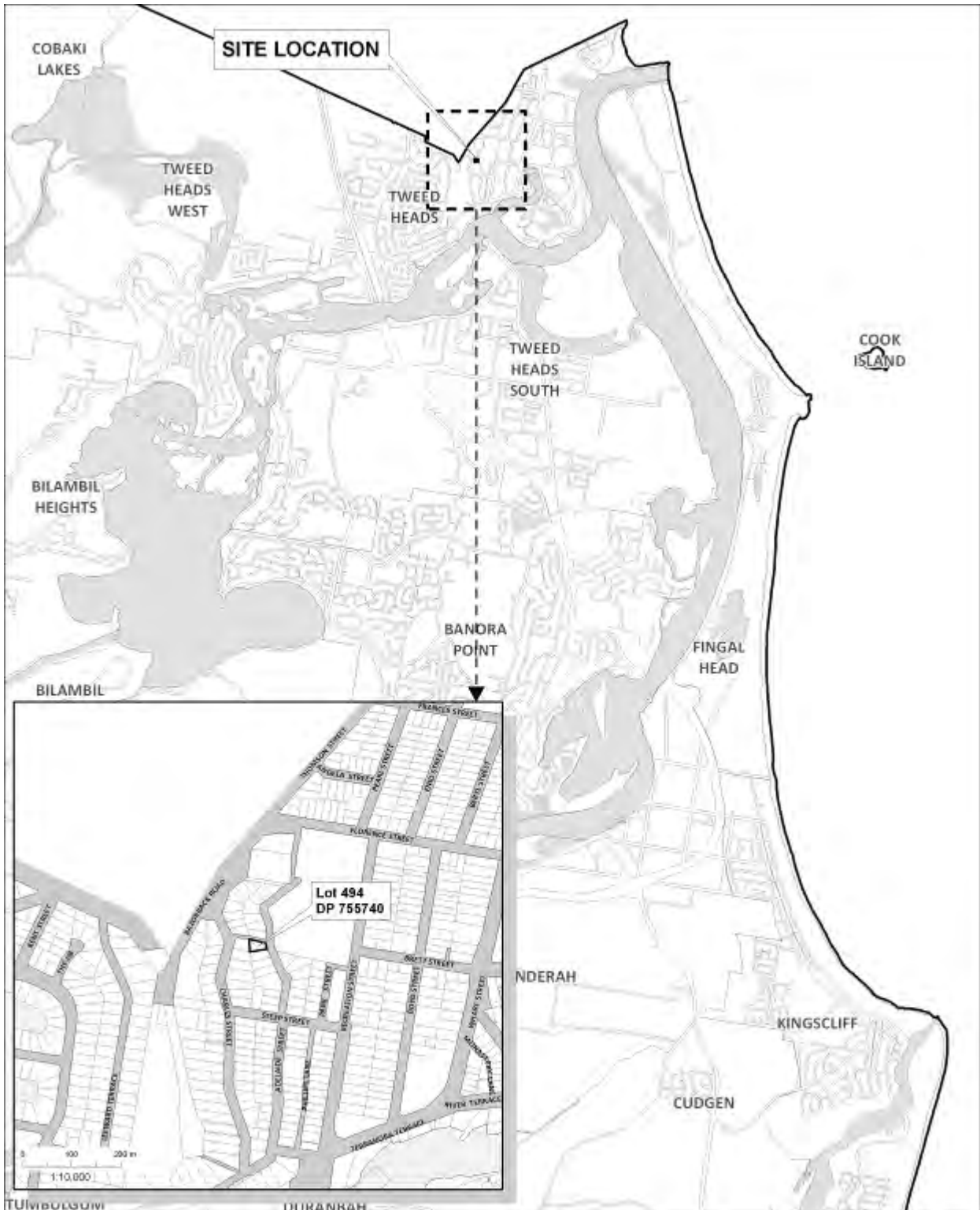
Public Submissions

The proposed development attracted two individual objections following exhibition of the application. The objections were focused on the suitability of the site given the impacts of the development upon adjacent properties, inconsistency with residential development controls and the unsuitability of access arrangements.

Conclusion

Having regard to the site's characteristics, the site history, the objections received following notification and an assessment against Clause 8(1) of the Tweed LEP 2000 the proposed detached dual occupancy is not considered suitable for the location and therefore the proposed development is recommended for refusal.

SITE DIAGRAM:



Locality Plan
 Lot 494 DP 755740
 15 Adelaide Street, Tweed Heads

Disclaimer: While every care has been taken for the accuracy of this data, Council does not warrant, represent or guarantee the accuracy, reliability, completeness or suitability for any particular purpose and declines all responsibility and all liability (including without limitation, liability as employer for all purposes, losses, damages (including indirect or consequential damage) and costs) which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered a reference only. It should not be relied on for any construction, engineering or other technical requirements. The information is not to be used for any other purpose. The information contained in this document remains valid for 12 months only from the date of supply.

Cadastre, 30 November 2010
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 Boundaries shown should be considered approximate only.



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CLIENT
UNIVERSITY OF SYDNEY

PROJECT
PROPOSED
DUAL OCCUPANCY
LOT 404
15 MARLBOROUGH
TWEED HEADS



OWNER
UNIVERSITY OF SYDNEY

DESIGN
BRAD RIDGELL

DATE
15/11/2009

SCALE
1:100 @ A2

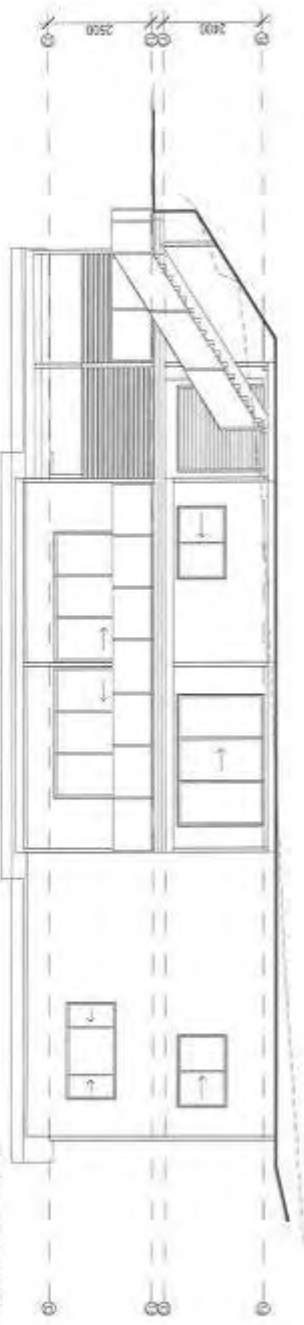
REVISIONS
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C 15/03/10

SHEET NUMBER
01 OF 18

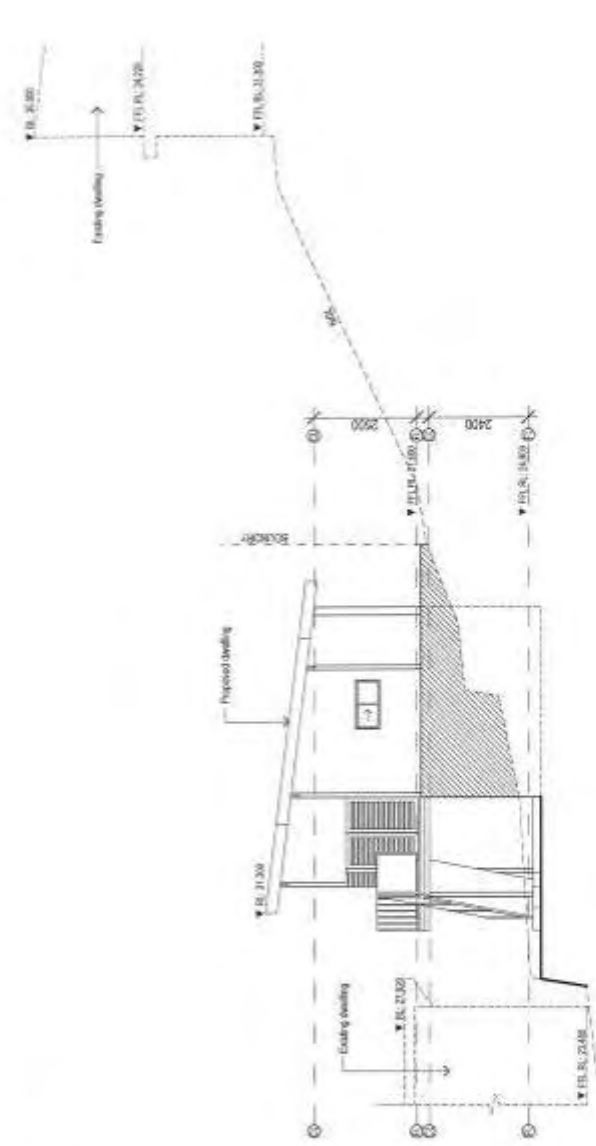
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- NOTES:**
- * LA will require to IRC Act
 - * Provide DPG & color audio provisions to DGR signage
 - * ALL External and Internal doors & windows to be operable from inside and confirmed by buller
 - * Specify to window schedule
 - * Provision according to BS91 (old) R2.1 Item
 - * All windows A 2022 to be fixed
 - * Most accessibility work to be undertaken with out of order
 - * All shower trays to be ADA LATE
 - * Water pressure limited to 3.0 bar at the water
 - * All bathroom to be 100mm above finished floor level



ELEVATION 1 1:100



ELEVATION 2 1:100

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CLIENT
 M'DARCY

PROJECT
 PROPOSED
 DUAL OCCUPANCY
 LOT 404
 15 ADELAIDE ST
 TWEED HEADS
 5223/11



UNIVERSITY
 BR

SCHEME
 CLIENT/CM

DATE
 17/10/2009

SCALE
 1:100 @ A3

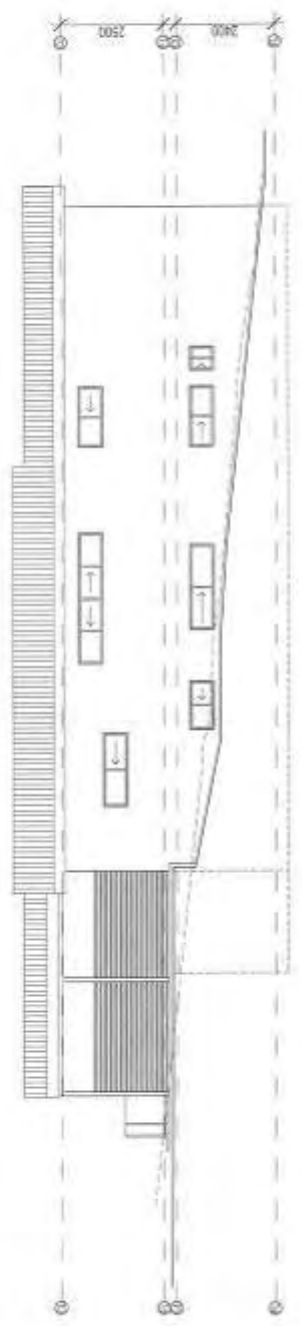
REVISIONS
 B 18/02/10
 C 19/03/10

SHEET NUMBER
 7 of 15

JOB NUMBER

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- NOTES:**
- U/L all things to WC door
 - Provide DPT & cold water provision to DR spaces
 - Provide cold water to all kitchen units to be installed as per plan
 - Stairing to external walls
 - Provision to ceiling (living) only 102.5 batts
 - All windows 5, 5000 to be 6-paned
 - Mechanically vent rooms without natural ventilation
 - All shower rooms to have 600mm x 600mm floor drain
 - All shower rooms to have 100mm x 100mm floor drain
 - ALL 100mm x 100mm floor drain to be 100mm x 100mm



ELEVATION 3 1:100



ELEVATION 4 1:100

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CLIENT
 MCMRBY

PROJECT
 PROPOSED
 DUAL OCCUPANCY
 LOT 40A
 19 ADELAIDE BT
 TWEED HEADS
 NORTH

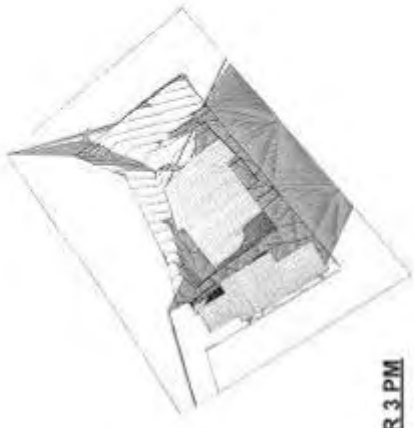
DATE
 11/10/2010

SCALE
 1:100 (PLAN)
 1:100 (SECTION)

SHEET NUMBER
 1 OF 1

JOB NUMBER
 100001

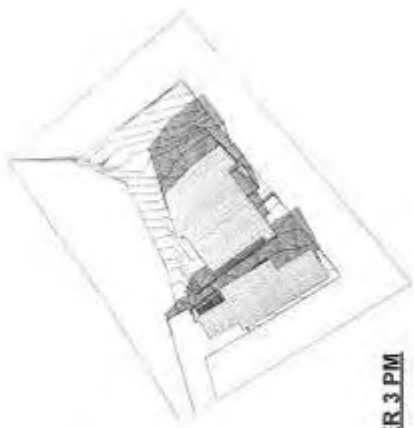
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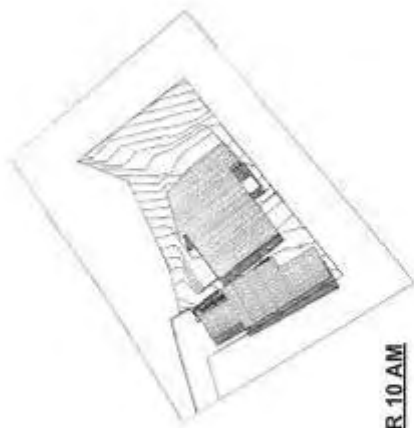
WINTER 3 PM



WINTER 10 AM



SUMMER 3 PM



SUMMER 10 AM

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”.

The proposed development is not considered to meet the provisions of Clause 4 as the maximisation of density of the property is not compatible with the existing and future streetscape and amenity of the area.

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.

Although the proposal has little impact on biological diversity or ecological integrity, it does not provide a suitable area for the regeneration of vegetation to the rear of the site.

Clause 8 – Consent Considerations

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

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

Assessment of the proposal as outlined below in relation to Clause 11 results in the development being inconsistent with the primary objective of the 2(b) Medium Density Residential zone.

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

The proposed development is best suited to a larger, more regular shaped site with fewer topographical and access constraints.

Should the proposed development be approved, it would set an unacceptable precedent for future development of steep residential areas due to its general non-compliance with development standards and criteria for the location of detached dual occupancies.

Clause 11 - Zone objectives

The subject site is located within the 2 (b) Medium Density Residential zone.

The primary objective of the 2(b) Medium Density Zoning is *to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.*

Medium density housing is encouraged within the 2(b) zone to the north-east and east of Adelaide Street where 6 storey, 12 storey and 50m AHD height limits apply where the land is generally free of topographical constraints.

Secondary objectives of the 2(b) zone allow for non-residential development that supports the residential use of the locality, tourist accommodation that is compatible with the character of the surrounding locality and discourages the under-utilisation of land for residential purposes in this particular area.

It is not considered that the subject site currently under-utilises land for single dwelling purposes at a floor space ratio of 0.35:1 given the topographical constraints of the site.

The addition of the proposed second dwelling represents an increase from medium density with an increase in floor space ratio for the site that exceeds the maximum allowed for detached dual occupancy development by 11.34%.

Good urban design outcomes are not achieved by the proposed development. The applicant's solution has been to locate a second, poorly articulated dwelling in a tight, physically constrained location where rear setback and deep soil zone provision is compromised, proximity to adjacent dwellings is increased and primary vehicular access is unviable.

It is submitted that the proposal (detached dual occupancy) is a form of residential development within an established residential area that is unsuitable in scale, form and purpose. The proposal increases the density of the site beyond the zoning objectives and is considered to have adverse effects on the character and amenity of the area.

Clause 15 - Essential Services

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

The subject land is provided with town water, reticulated sewer, electricity and telecommunications services. However, the plans do not indicate how the second dwelling will access these services.

Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to two storeys. The proposed dwelling complies with this criterion at a maximum height of 6.5m from finished ground level.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The site exhibits Class 5 Acid Sulfate Soils (ASS) and is located within 137m of Class 2 ASS to the east. The Clause states that works within 500m of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1m AHD in that adjacent land are classified as specified works. However as the site is elevated, Acid Sulfate Soils are not considered a constraint for the proposed development.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B of the NCREP is applicable to this proposal as the subject land falls under the jurisdiction of the NSW Coastal Policy.

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies.
- (b) Council is also required to consider the Coastline Management Manual
- (c) A consideration of the North Coast: Design Guidelines is required
- (d) Public access to the foreshore must not be impeded.
- (e) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space.

The proposal is considered not to be inconsistent with Clause 32B (a), (b) (d) and (e) as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent public open space.

Consideration of the proposal raises concerns in relation to several design principles of the North Coast: Design Guidelines, as follows.

Four principles from the North Coast Urban Design Guidelines that apply to all future coastal development are:

- Ensure development responds sensitively to the density and scale of the existing settlement
- Ensure planning and development respond to the local topography and climate
- In multi-dwelling development, provide a street entry for each dwelling, avoid battle-axe, villa-style development and design appropriately to topography, climate and aspect
- Reinforce original subdivision patterns and streetscapes that characterise the settlement, maintain consistent setbacks from front and rear of lots in low density areas and continuous street and awning edges along core streets/perimeters of major blocks
- Encourage deep soil zones to centre of blocks to allow the cultivation of large trees with large canopies and to permit infiltration of rainwater to the watertable.

The proposed development substantially increases the density and scale of the existing locality west of Adelaide Street on a constrained site unsuitable for such an arrangement. It represents a departure from the original (low density) subdivision pattern of single dwellings on larger allotments and does not maintain a consistent rear setback in line with the predominant character of the locality.

A street entry (such as Adelaide Street) is not provided for the proposed dwelling. In addition, the deep soil zone (currently adjoining the rear deep soil zone of 16 Charles Street) is not proposed to be aligned with the rear boundary. It is proposed in the middle of the subject site adjacent to the southern boundary and between the existing and proposed dwelling. This placement does not enable deep soil zones to be located in the centre of 'blocks' ('blocks' meaning a consolidated block of residential lots, as illustrated below).



In this respect, the proposal is not consistent with (c) – a consideration of the North Coast Urban Design Guidelines.

Clause 43: Residential development

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

Considerations within this clause relate to satisfactory:

- density in relation to impact upon environmental features
- road widths
- access to services (and physical suitability of the land)
- design of the road network, and
- site erosion control.

This proposal impacts upon the above considerations in that the proposed density is unsuitable for a topographically constrained site and that site erosion control has not been addressed.

SEPP No 71 – Coastal Protection

The matters for consideration under Clause 8 of this SEPP have been addressed and summarised below:

The subject land does not have frontage to the coastal foreshore reserve and therefore many of the objectives from a) to p) do not apply to the subject site.

Of note is matter for consideration (d):

The suitability of the development and its type, location and design and its relationship with the surrounding area.

The proposal is not considered suitable in its type (detached), location, design and relationship with the surrounding area. Previous discussions in this report raise issues of non-compliance of the proposed development with the zone objectives of Tweed LEP 2000 and the provisions of Council's Development Control Plan A1.

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

The draft Tweed City Centre Local Environmental Plan 2009 was on exhibition in early 2010. The draft LEP decreases the density of the subject site from medium density to R2 – Low Density Residential with a minimum allotment size of 450m² per dwelling. Detached dual occupancy is a permitted form of residential development within this zone on sites with a minimum area of 900m². Floor space ratio requirements remain consistent with current DCP A1 provisions.

Discussion with the Planning Reform Unit has revealed that the purpose of the decrease in density is due to the topographical constraints of the site which are considered to be unsuitable for medium density development. Dual occupancy development would be prohibited on this steep 683m² undersized site under the draft LEP provisions. A 25% variation to the development standard would apply.

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

Tweed Development Control Plan

The applicant states in correspondence dated 25 October 2010:

“The assertion by Council that the proposal requires a significant number of variations to DCP Section A1 and A2 is entirely refuted. Council’s planning assessment is flawed and is based on subjective interpretations of the controls within the DCP.”

A1-Residential and Tourist Development Code

DCP A1 controls prevail over dual occupancy developments in low and medium density residential zones within the Tweed City Centre.

Council’s assessment of the proposal has been merit based and consistent with the assessment of dual occupancies located on dual public road frontages from which primary vehicular access is achieved exclusively for each dwelling (Design Control 3 – Setbacks – Front Setbacks - Control b.).

Mandatory Controls

Accordingly, an assessment of the proposal against DCP A1 revealed numerous inconsistencies (15) with the controls contained therein. When variations occur, the applicant is required to supply a ‘mandatory control plan’ that provides examples of compliant options for the site and offers justification for any departure from development standards.

The ‘mandatory control plan’ provided to Council with application documentation upon lodgement (attached) addresses only the rear setback variation and merely shows the overlapping of building envelope lines. It serves to demonstrate why the applicant has submitted a non-compliant proposal based on one fixed scenario that requires maximum building separation distances from the existing dwelling and a significant encroachment on rear setback requirements.

As such, the applicant has not demonstrated how and why mandatory controls cannot work on this site through the provision of a detailed design of a compliant proposal. This is contrary to the process outlined on Page 5 of DCP A1 (Introduction) titled “Mandatory Controls”.

The applicant states in the Statement of Environmental Effects that *“strict adherence to the rear setback control would result in the development being unworkable, and would prevent the intensification of development on the site.”*

It was suggested to the applicant in correspondence dated 1 October 2010 that mandatory controls may be met through further investigation of alternative attached dual occupancy forms. The applicant responded as follows:

“This concept is entirely unacceptable to the owners of the property, who recognise that a detached dwelling which capitalises on the views of the site is the only option that is economically viable. It is considered pointless to prepare architectural plans for an attached dual occupancy as the owners are well aware that the economics of such a development would make such a development unviable.”

Following a meeting with the applicant on 14 October 2010, Council conceded to the alternative view that Adelaide Street could be considered the primary frontage of the proposed dwelling and the subject site given that Sellicks Lane is unformed to the majority of the northern boundary of the subject site.

As such, a revised A1 assessment of the plans as submitted was undertaken in accordance with an amended interpretation of front setback controls considering the site as ‘infill development’ (Design Control 3 – Setbacks – Front Setbacks - Control c.).

Eight (8) significant variations to DCP A1 controls remain indicating that the proposal results in an undesirable overdevelopment of the site:

Suitable locations for dual occupancy housing

Control a.

- a. Dual occupancy developments on residentially zoned and must be located:
- on sites with a minimum area of 900m², or
 - if the land is within the 2(b) zone it has a minimum area of 450m²; and
 - on significantly regular, rectangular or square, shaped lots.

The allotment is not a ‘significantly regular, rectangular or square’ shaped lot. In addition, the subject site exhibits steep ‘irregular’ topography with a 22.5% gradient over the site and a 35% gradient on the rear portion of the site upon which the new dwelling is proposed to be located.

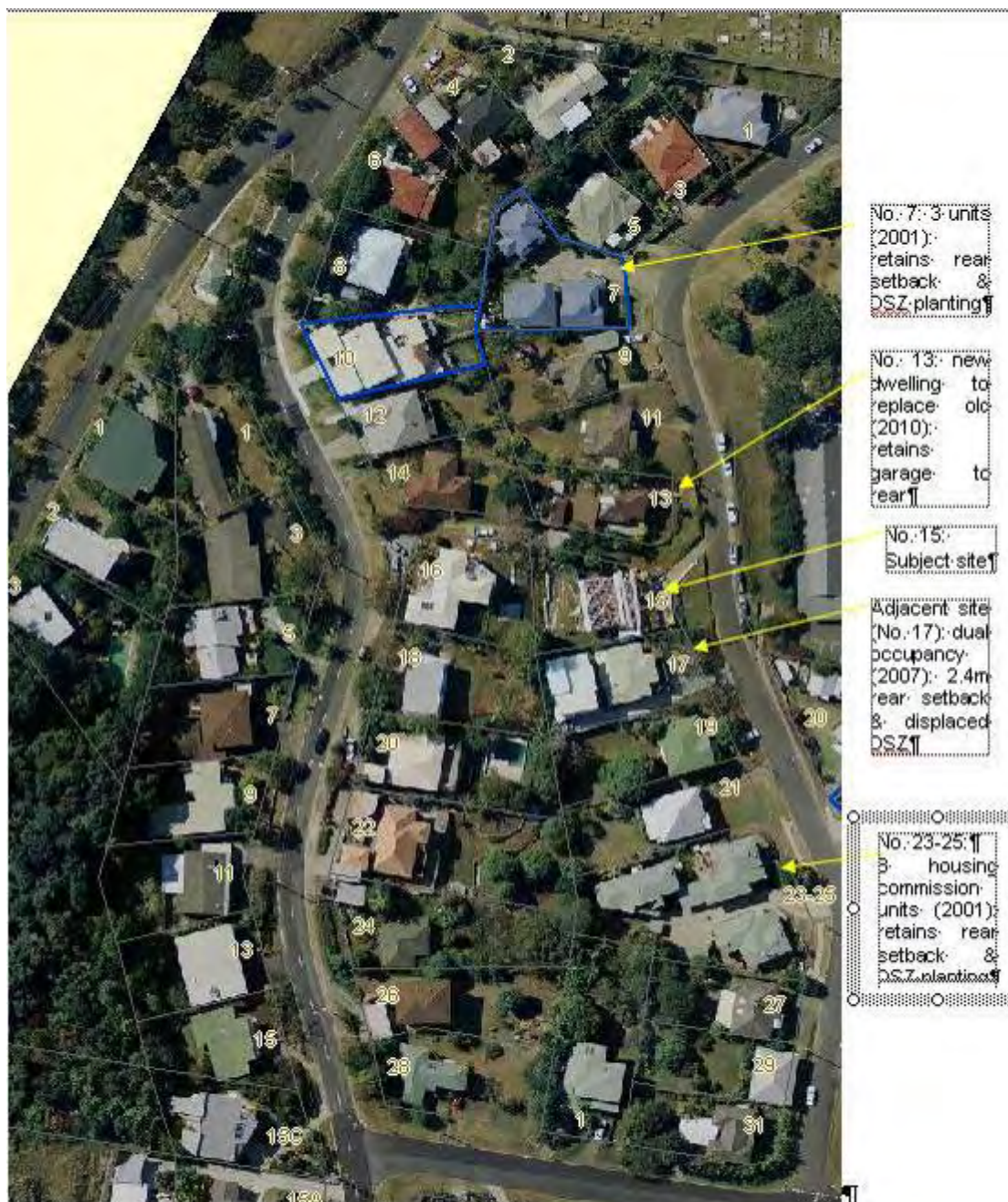
Control g.

- g. Dual occupancy housing is to be compatible with residential streetscape character.

The proposed dual occupancy is only similar to a dual occupancy development adjacent to the south at 17 Adelaide Street that was approved in a similar, but less constrained configuration 22 November 2007 via DA07/0930 under separate controls, prior to DCP A1 coming into force in April 2008.

Review of the assessment of the adjacent dual occupancy development against prior controls (A1 – Multi Dwelling Housing) indicates that only three minor variations to standards needed to be considered (600mm encroachment into required 3m rear setback; 1m² exceeding the building envelope; 50m² shortfall of private open space) and that the proposal was considered consistent with the performance criteria. In addition, the overall Floor Space Ratio of the development was low at 39%. There was no requirement for a rear deep soil zone. These standards are no longer considered acceptable for residential development.

October 2009 aerial imagery (below) indicates that the adjacent development is not compatible with the predominant residential streetscape character. The existence of the adjacent development, as an isolated case, cannot be utilised as justification or a precedent for the duplication of similar development that may breach controls within DCP A1 and in turn, set an undesirable precedent for future dual occupancy development within the locality, and even within the Shire. This is a variation to Control g.



Residential Streetscape Character

Deep soil zones

Controls b, c and g.

- b. All sites are to provide two Deep Soil Zones, one to the rear and one to the front of the property.
- c. Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 5.5m. Greater than 8m may be provided if desirable.
- g. Deep Soil Zones cannot be covered by impervious surfaces as concrete, terraces, outbuildings or other structures.

Calculation rules:

Two dimensions are used to measure deep soil zones; depth and width.

Depth: Depth is measured perpendicular to the boundary (front or rear) towards the centre of the site to the edge of the building footprint.

Width: width is measured as a percentage of the length of the boundary (front or rear).

In accordance with calculation rules (above), the required 48.64m² rear deep soil zone for this site is as follows:

- Width of 8m (30% of average width of 21.45m is 6.43m). The eastern frontage has a dimension of 15.74m. The western rear boundary has a dimension of 27.177m.
- Depth of 6.08m (18% of average length at 33.8m). The northern side boundary has a dimension of 31.046m. The southern side boundary has a dimension of 36.566. This is clear from both the site plan and the landscape intent plan.

Application details indicate the placement of a 'rear' deep soil zone with a total area of 45.2m² (8m width x variable length from 5m to 6.3m = average of 5.65m) in the centre of the site adjacent to the southern boundary.

It is clear from the calculation rules and all diagrams accompanying DSZ controls that the rear deep soil zone is intended to be located along the rear boundary. This is reinforced by a Design Guideline that states:

It is preferable that deep soil zones on the rear boundary extend along the full length of the boundary as this is generally where the opportunity exists to create or expand on a vegetation corridor between properties and is often an area where established trees and vegetation exists already.

The applicant states:

"There is no potential benefit to be achieved by locating the Deep Soil Zone at the rear boundary."

The proposed dwelling is setback 1.54m from the rear boundary removing the opportunity for a rear deep soil zone to be located in the required location adjacent to the rear boundary and in association with the rear deep soil zone for 16 Charles Street. This is a variation to Control b.

The dwelling should be setback from the rear boundary by 6.08m for a width of 8m to cater for the correct dimensions of the rear deep soil zone. However, it can only cater for a depth of 1.54m. This is a variation to Control c.

The proposed structure is located over the rear deep soil zone which represents a variation to Control g.

Impermeable site area

Control g.

g. The maximum areas for impervious surfaces are:

- 70% of the allotment – On lot sizes less than 500m²
- 65% of the allotment – On lot sizes between 500m² and 750m² inclusive
- 60% of the allotment – On lot sizes greater than 750m².

Plans supplied in support of the proposed dwelling indicate a total impermeable site area (for the 294m² site at the rear of the lot) of 172.1m². Alterations to the existing dwelling on the subject site resulted in an overall impermeable site area of 319.4m², including the concrete paths at the rear of the lot.

Taking this into account (and granting a concession of 14.4m² for some of the concrete paths to the rear), an overall impermeable site area for the whole allotment is assessed at 477.1m² or 69.85% which exceeds the 65% maximum allowed on an allotment of 683m² by 33.15m² or 4.85%.

Rear setback

Control c.

c. The minimum rear boundary setback is 5m or the deep soil zone whichever is the greater. The minimum building separation distances must be met.

The proposal provides a consistent rear setback of 1.54m which is a 70% variation from the control standard (5m minimum) and a 75% variation (6.08m minimum) where the deep soil zone should be located.

A compliant rear setback consists of a 6.08m rear deep soil zone for a width of 8m with the balance of the rear setback at a minimum of 5m.

Floor space ratio

Control c.

a. The maximum FSR for Dual Occupancy housing is:

- 0.55:1 for attached dwellings except where the dwellings do not cover more than 50% of the site in which case the max. is 0.65:1.
- 0.45 for detached dwellings.

Council's records on file indicate that the gross floor area (GFA) of the upper level of the existing dwelling is 150.4m² and the GFA of the lower level of the existing dwelling is 88.47m², consistent with the most recent Section 96 amendment. This is a total of 238.87m² GFA.

The GFA of the proposed dwelling as indicated on the BASIX certificate as conditioned floor area is 146m².

Therefore, with a site area of 683m² and a total GFA of 384.87m² for both dwellings, the Floor Space Ratio is 0.5634:1 which exceeds the maximum allowable of 0.45:1 for detached dwellings by 11.34%. This represents an additional GFA of 77.52m².

Further possible variations

The applicant stated that they would not address outstanding issues until it was known whether Council would support the application. As such, an assessment of the following was not possible and may have resulted in further variations to development controls in addition to those identified above.

Overshadowing

Shadow diagrams provided for the proposal are not satisfactory. They are too small in scale, do not include 12 noon in winter or the context of adjacent buildings envelopes. The shadow diagrams indicate the potential for a significant degree of overshadowing to the southern adjoining allotment, including the area designated as private open space for Unit 2.

Amended shadow diagrams for June 21 9am, 12 noon and 3pm should be provided indicating the degree of overshadowing to adjacent allotments, in particular, the southern adjoining allotment at 17 Adelaide Street.

View sharing

A visual impact assessment has not been submitted in accordance with DCP B2 and therefore it is not clear as to what degree views are impacted. A preliminary assessment of the application indicates that the second dwelling will obscure some views to the adjoining properties behind and to the south of the subject site.

In accordance with DCP B2, a visual impact assessment is required with development applications west of Adelaide Street indicating graphically and by use of photo-montages, the impact of the proposed development on the views from adjacent properties.

Topography, cut and fill

It is not possible to verify the degree of excavation within and beyond the building footprint from the level of information provided on the plans. Accurate spot levels, cross-sections, minimum and maximum amounts of cut and fill and proposed heights of retaining walls have not been provided.

It is recommended that a Geotechnical Engineering Assessment be carried out on site given the site's steep terrain and the proposed cut and fill. This information would be required prior to determining the extent of possible variations to Topography, Cut and Fill controls.

Landscaping

Proposed plantings include several species that are undesirable and / or cultivars. The landscaping plan needs to be amended to reflect more suitable local native species, as follows:

	Proposed	Amended
1	Wodyetia bifucata (foxtail palm)	Archontophoenix cunninghamiana (Bangalow palm)
2	Alpinia zerumbet varigata (ginger)	Alpina arundelliana or caerulea (native ginger)
3	Westringia jervis gem (dwarf native rosemary)	Westringia fruticosa (native rosemary)
4	Lomandra bunyip (small mat rush)	Lomandra hystrix (slender mat rush)
5	Dypsis lutezens (golden canes)	Linospadix monostachya (walking stick palm)

BASIX

As per BASIX requirements, a skylight (located in the upper floor toilet which does not have access to natural light) is to be shown on the plans.

Waste management

A waste management plan is recommended for the proposed site for ongoing waste management, demolition of existing structures and construction waste management.

In particular, and in consideration of the degree of excavation proposed, the waste management plan submitted should include information to address Control b. of Waste Management (below).

- b. Excavation that will result in waste material having to be transported off-site must be minimised through the use of site response building design. Where practical excavated material should be reused on site.

A2-Site Access and Parking Code

In accordance with DCP A2, dual occupancy developments are to provide car parking as follows:

- 1 spaces per 1 bed, 2 per 2 bed or more plus provision for driveway parking of another vehicle

The existing dwelling has three (3) bedrooms. It provides parking for one vehicle within a single garage and driveway parking for a second and third vehicle. A total of 3 spaces is provided which is satisfactory.

The proposed dwelling has three (3) bedrooms. It provides carport parking for a single vehicle and driveway parking for a second vehicle adjacent to Sellicks Lane. A total of two (2) spaces are provided. As such, the proposal does not meet the minimum requirement for the parking of 3 vehicles.

Proposed access to and egress from the site does not comply with Council's "Driveway Access to Property Design Specification". A detailed assessment of the inadequacy of Sellicks Lane as a primary access to the proposed development is outlined below in this report.

B2-Tweed Heads

The subject site is located north of First Avenue and west of Adelaide Street within the Razorback Precinct. It is currently zoned for medium density residential development and has a building height limit of two storeys. This precinct is characterised by its 'exceptional views' over Tweed Heads. The Precinct plans provide details on how the precincts are to be developed.



South-easterly Razorback precinct views over the existing dwelling from Sellicks Lane



Objectives within the Razorback Precinct section of this DCP include (as specific to the site):

- facilitate the development of the area north of First Avenue as a predominantly medium density area (NB: not exclusively medium density)
- retain an attractive residential area – buildings that respect the slope of the land and allow retention of views from adjoining land
- ensure that development on visually prominent sites is relatively unobtrusive.

These objectives detail the broad planning intent for the precinct.

A visual impact assessment is required with development applications west of Adelaide Street indicating graphically and by use of photo-montages, the impact of proposed developments on the views from adjacent properties. The applicant has not supplied a visual impact assessment.

In B2.1.4 and B2.1.5 of DCP B2, the reader is directed to DCP Section A1 for the assessment of residential buildings less than four (4) storeys in height, as follows:

A1 – Multi dwelling Housing

Section A1 applies only to residential developments comprising of three storeys or less. For such development, section A1 is to be used in lieu of the Design Guidelines contained in Clauses B2.9 and B2.11 of this Section.

The applicant has relied on the Razorback Precinct's objective for the location of residential development of a predominantly medium density character to justify the location of a second dwelling on the subject site which results in an overdevelopment of the site with undesirable and unjustified variations to controls under DCP A1.

B2.7.4 states that development in the Razorback precinct may be supported only where the proposal is in accordance with the provisions of A1 – Multi Dwelling Housing (in addition to the general Vision for Tweed Heads, the precinct objectives and any relevant strategic policies for the precinct).

Draft B2-Tweed City Centre

Draft B2 – Tweed City Centre of the Tweed Development Control Plan 2009 will repeal the current DCP B2. It applies to the North and South Tweed City Centre. The subject site is within the northern area. The subject site is located within the "Ridgeline & Razorback Precinct". The draft DCP states:

The Ridgeline and Razorback precinct is located on the western edge of the city centre, generally west of Recreation Street. Development in the precinct is predominantly single detached dwellings stepping up the escarpment to take advantage of easterly views.

The development controls anticipate minimal changes to the precinct with a two storey height limit for the majority of the precinct and some medium density buildings on the flatter areas east of Adelaide Street.

The subject site is west of Adelaide Street and has an overall gradient of 22.5% (9m fall over 40m).

In addition, the draft DCP B2 states at 7.7 Dual Occupancy (under 7.0 Residential Development Controls) that:

The Tweed Shire Development Control Plan 2008 applies to dual occupancy development in the Low Density and Medium Density Residential Zone in the Tweed City Centre.

In summary, DCP A1 – Residential and Tourist Code controls prevail over dual occupancy developments in low and medium density residential zones within the Tweed City Centre.

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

Clause 92(a) Government Coastal Policy

The subject site is governed by the requirements of Clause 92(a) Government Coastal Policy. The proposal does not pose a threat to coastal processes.

(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

Pedestrian Access

The development application originally proposed a pedestrian footpath linking Adelaide Street with the mid-point of Sellicks Lane. On 2 September 2010, the applicant was requested to demonstrate:

- Pedestrian safety if the proposed footpath is to have shared access with an existing driveway
- That the longitudinal gradient of the footpath will comply with Tweed Shire Council's maximum grades, cross fall and safety standards eg. handrails.

The applicant addressed these matters by suggesting deletion of the proposed pedestrian pathway shown on Sellicks Lane with an alternative path proposed on the subject site adjacent to the northern boundary of the property. The applicant did not lodge amended plans to support this arrangement.

Earthworks

The application details state that all fill earthworks external to the building footprint will have a maximum height of 900mm and the proposed retaining walls to be a maximum of 1.2m in height. However, the plans provided do not illustrate the proposed retaining wall heights.

From the elevations provided, the ground floor level is proposed at RL 24.9m AHD. The proposed finished surface level externally is 300mm less (slab thickness) being RL 24.6m AHD.

The proposed retaining wall adjacent to the existing dwelling on site has natural surface levels ranging from RL 25m AHD on the northern property boundary to RL 23m AHD on the southern property boundary. Calculations from the drawings provided indicate the proposed retaining wall to be 1.6m at the highest point, exceeding the maximum of 1.2m as stated in the application details.

As mentioned previously in this report, a Geotechnical Engineering Assessment should be carried out on site to verify the degree of proposed earthworks.

Access from Sellicks Lane

Sellicks Lane is a public laneway accessed from Charles Street with a width of approximately 6m. It is located on Council land and partially over an existing private driveway on Charles Street. It may at any time be used by members of the general public for either pedestrian or vehicular purposes.

The current condition of the existing laneway is unacceptable and does not meet Tweed Shire Council standards.

The applicant has ongoing use of Sellicks Lane only as a secondary vehicular access to the existing dwelling fronting Adelaide Street.

On 2 September 2010, the applicant was required to demonstrate how Sellicks Lane will:

- Meet Tweed Shire Council's standard road formation for Laneway access
- Allow larger vehicles such as trucks to turn around at the cul-de-sac
- Provide a safe cul-de-sac so that vehicles' wheels do not go over the edge of the road formation.

The applicant has not addressed these matters.

Following inspection of Sellicks Lane by Council's Traffic Engineer, Engineering Assistant Traffic and the Road Safety Officer, the following was clarified:

- Sellicks Lane is steep containing an existing poorly constructed driveway from Charles Street and an existing poorly constructed retaining wall (about 1.2m high) which provides access to an existing garage (13 Adelaide Street)
- The existing driveway and retaining wall appear not to have been constructed to professional engineering standards and most likely were not approved by Council
- The driveway and retaining wall were most likely built by the property owner who owns the garage
- Sellicks Lane from the retaining wall to Adelaide Street is unconstructed and very steep (>20%)

- While this remains a lawful point of access for the subject development, considerable upgrade works to the laneway are required in order for the proposed development to proceed.

The following engineering works would be required to be undertaken by the applicant in order to upgrade Sellicks Lane to an acceptable condition to support additional access points:

- Reconstruction of the retaining wall to a structural engineer's design and construction certification with pedestrian railing and warning (end of road) signage
- Reconstruction of the lane to Council's standards from Charles Street to the retaining wall
- Provision of a vehicle turnaround facility in accordance with AS 2890.1 suitable for a standard vehicle (5.2m length; 1.94m width) at the end of the driveway to be located totally within the lane road reserve. This may involve dedication of private land from 15 Adelaide Street to Council as road reserve.

Council has also received requests from the community and the State Member to provide a pedestrian link between Charles and Adelaide Streets along Sellicks Lane.

As such, any required access works must be compatible with the ultimate provision of a disabled person compliant and continuous pedestrian access within the lane.

The above access works are expected to add considerable expense to the proposed development and are not considered to be feasible in relation to the current proposal.

Any detail submitted by the applicant in relation to the upgrading of Sellicks Lane would be subject to further assessment in accordance with Council standards.

Contamination

An aerial photography check (1962, 1970, 1976) did not reveal any potentially contaminating activity at the site. A dwelling appears to have existed on the site since at least 1962. A check of the Tweed Topographical maps from 1974 and 1985 revealed no evidence of crops within the immediate locality.

Flora and Fauna

The subject site does not contain any vegetation of note. The adjacent Sellicks Lane contains a mature Poinciana Tree on the upper section.

Contrary to November 2009 aerial imagery, photographs submitted by the applicant 12 August 2010 indicate removal of mature vegetation from the lower portion of Sellicks Lane adjacent to the northern boundary of the subject site.

A site visit by the assessing officer on 22 September 2010 confirmed the removal of at least three (3) mature trees on Council's unformed portion of public laneway as per the circled area in the photograph below.



A photograph of the site / laneway obtained from the Building Services Unit (below) dated 26 May 2010 indicates that vegetation within the circled area was intact at that time.



Approval for the removal of vegetation on Council land was not granted within the development consent for DA09/0171 (additions and alteration to the existing dwelling at 15 Adelaide Street) or either of the two subsequent Section 96 amendments.

It is Council's policy that tree removal from road reserves may only be undertaken with Owner's Consent and by Council staff or contractors working on behalf of Council.

This matter has been referred to the Recreational Services Unit for further investigation.

(c) Suitability of the site for the development

Services

The applicant has stated that all required services to the proposed dwelling such as water, sewer, garbage disposal and stormwater are to be provided through the existing dwelling site fronting Adelaide Street.

The applicant has not provided further detail to support this arrangement.

Reticulated Sewer

Council's piped effluent disposal infrastructure runs down Sellicks Lane from Charles Street to a manhole adjacent to the rear of 14 Charles Street. It would be possible for further connections to be made to the infrastructure at this point in accordance with Council's standards.

Stormwater

There is no lawful point of discharge or connection to water supply within Sellicks Lane. The applicant would be required to supply a stormwater management plan that clarifies the proposed method of roof water disposal to Adelaide Street.

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

The application was not considered integrated and therefore not referred to public agencies for comment.

The application was notified to adjoining owners for a two-week period from 12 July 2010 to 26 July 2010 in accordance with DCP A11. Two submissions were received during the exhibition period objecting to the proposal.

Issues raised in the submissions by the two objectors include:

- Overshadowing
- Impact upon visual and acoustic privacy – noise impact precedent set with adjacent dual occupancy
- Blocking of views
- Proposed development and fencing as 'visual barrier'
- Inconsistency with DCP A1 with specific objection to minimal rear setback

- Lack of foresight of landowner when completing recent rear extensions to the existing dwelling to consider alternative renovation designs to allow compliance with rear boundary requirements
- Lack of consultation in relation to the Section 96 amendments to the original approval for the existing dwelling on the subject site
- Traffic / safety impact upon Sellicks Lane including traffic flow, pedestrian flow, visitor parking, construction vehicle access, congestion on Charles Street, illegal parking, use of lane by heavy vehicles
- Degraded nature of the Sellicks Lane road surface currently and following development
- Consideration of aesthetic appeal of 50 year old Poinciana tree (encroaches 500mm into the alignment of Sellicks Lane) necessary should any upgrade to Sellicks Lane occur.

	Applicant's Response	Council Assessment
1	There is a distance of over 3m between the proposed dwelling and the adjacent dwelling to the south.	The proposed dwelling is setback 1.622m from the southern boundary. The adjacent dwelling is setback 1.9m to 2.1m from the adjoining boundary. Overshadowing impact could be accurately demonstrated on an amended shadow diagram.
2	Ample access to light will be retained by the existing duplex.	An amended shadow diagram would confirm the impact of overshadowing to the southern adjacent development.
3	The proposed development contains only two high level windows on its southern facade.	Impact arises from the location of a 6.5m building height to the bedroom windows, patio and private open space of the adjacent dwelling.
4	The applicant agrees to install a privacy screen to the southern end of the upper floor verandah if required.	Council would condition for this to occur.
5	The variation to DCP A1 is fully justified.	Multiple variations to DCP A1 have not been justified.
6	Development consent for the existing dwelling was amended on two occasions: first being to alter the roof profile, second to install additional rooms within the lower floor.	As no objections had been received during the notification of the original proposal, minor amendments to the proposal not considered to impact upon adjoining properties were not notified.
7	It is doubtful whether views towards the cemetery and beyond to Coolangatta can be obtained from the adjacent property to the south.	A visual impact assessment provided by the applicant would verify the nature of views obtained from the adjacent property to the south.

	Applicant's Response	Council Assessment
8	The development will generate only a minor increase in traffic flow on Sellicks Lane.	The three-bedroom proposal generates an additional 6.5 trips per day via Sellicks Lane.
9	An increase of approximately 5 vehicle trips per day at the intersection of Sellicks Lane and Charles Street is not anticipated to result in any traffic safety issues	Traffic safety has been assessed by Council officers. It is not considered that intensification of the use of Sellicks Lane in its current condition is safe.
10	Safety of the Sellicks Lane access was not raised as an issue of concern in relation to the redevelopment of No. 13 Adelaide Street.	There was no change or intensification proposed to the primary vehicular access and use of Sellicks Lane in the assessment of DA10/0315 (demolition of existing dwelling; construction of two-storey dwelling /swimming pool).
11	As the laneway is not a thoroughfare, it does not, and should not be used by pedestrians in its current state.	Sellicks Lane may at any time be used by members of the general public for either pedestrian or vehicular purposes.
12	Traffic and deliveries during the construction period would not be excessive and would be of a short term nature.	The condition of Sellicks Lane is not suitable for such traffic, even of a short-term nature.
13	Ample on-street parking is available on Adelaide Street for worker's vehicles.	This would need to be outlined in a traffic management plan for the construction period and include delivery vehicles.
14	Opportunity was not available to reposition or reconfigure the original dwelling on the site.	There was opportunity to amend the original application twice. The lower floor area of the existing dwelling was capable of containing a separate dwelling unit.
15	The proposed dwelling has a low height particularly at the rear boundary	The proposed dwelling has a maximum height of 5.6m at the rear boundary.
16	There are minimal windows and openings at the rear of the proposed dwelling directing sound levels eastward, not towards the existing dwelling at the rear of the site	There are 3 windows to the lower level (rumpus, bathroom, laundry) and 3 windows to the upper level (bathroom, lounge and dining). Regardless of positioning of these windows, the proximity of the openings to the rear boundary and elevation of 16 Charles Street gives rise to some impact of an acoustic and visual nature.

	Applicant's Response	Council Assessment
17	Construction of the second dwelling will add to the modern appearance of the site	Construction of the second dwelling on the site will add to congestion on the site and on Sellicks Lane. It is not consistent with the future character of the Razorback precinct.
18	With regard to the Poinciana tree, it is not anticipated that any significant upgrading works will be required to Sellicks Lane.	Significant upgrading of Sellicks Lane is required that may impact upon the existing Poinciana Tree.

(e) Public interest

The issues raised within the submissions are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for intensive utilisation of steep residential land with unsuitable access for multi-dwelling purposes and therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.
2. Grant in-principle support for the proposal, and that the officers bring back a further report to Council with recommended conditions of development consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

The proposed development could potentially set an unwarranted precedent for over-intensification of residential land on topographically constrained sites.

CONCLUSION:

Having regard to the objections received following notification, an assessment against Clause 8(1) of the Tweed LEP 2000, the residential character of the area, the proposed density and the proximity of the development to adjacent residential properties the proposed use is not considered suitable for the location and therefore the proposed development is recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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17 [PR-CM] Development Application DA10/0552 for a Proposed Subdivision to Create a Public Road, Associated Acoustic Fencing and Residual Lot at Lot 12 DP 830659, Chinderah Road, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA10/0552 Pt3

SUMMARY OF REPORT:

Consent is sought for a subdivision to create a public road, road construction, associated acoustic fencing and a residual lot at Lot 12 DP 830659, Chinderah Road Chinderah.

The public road is proposed to facilitate access to an industrial zoned allotment (Lot 1 DP 102255) which was the subject of DA09/0006. DA09/0006 approved the subdivision of Lot 1 DP 102255 into four (4) lots of approximately 5000m² each, as well as the construction of Ozone Street from Chinderah Bay Drive to the frontage of the subject site (approximately 630m²).

The proposed road constitutes a two lane public road, 320m in length constructed to an urban wider access standard. The proposed road will be accessed via Chinderah Road and terminate in a cul-de-sac at the frontage of Lot 1 DP 102255. The proposed road **replaces** the road approved as part of DA09/0006. A concurrent S96 modification to DA09/0006 has been submitted to delete the previously approved road and is also before Council.

A 2.5m high acoustic fence is proposed along the boundary of Lot 12, the road reserve and adjoining Lot 109 DP 755701, the Royal Pacific Tourist retreat. Two (2) deferred commencement conditions have been applied with regard to the proposed fence as follows:

'The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.

The developer shall submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets'.

The first condition is to ensure that the proposed fence can comply with the provisions of Council's DCP A3 with regard to permitting the free flow of flood water. The second condition relates to the dedication of the new road reserve and acoustic fence to Council. To date, no detail on asset ownership/maintenance has been supplied by the applicant.

The residual lot has an area of 3525m². No end use of this lot has been proposed though it is noted that the draft LEP reinforces the low density residential zoning the site currently exhibits.

Approximately 3000m² of fill material is to be exported to the site for allotment filling to achieve the required levels for road and drainage purposes. This equates to approximately 0.5m of fill across Lot 12 (to RL 2.2m AHD). Finished levels of the road range from 1.56m AHD (near proposed intersection with Chinderah Road) to 2.025m AHD along the northern side of the proposed road within the Ozone Street road reserve.

Approximately 600m² of the existing Endangered Ecological Community (EEC) along the drain requires removal and the road construction also requires the removal of two large habitat trees at the proposed intersection with Chinderah Road, being Forest Red Gum and Pink Bloodwood. The following deferred commencement conditions have also been applied with regard to ecological matters:

'A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (Eucalyptus tereticornis) and Pink Bloodwood (Corymbia intermedia) impacted by the proposed development. The Habitat Restoration Plan must include:

- *a schedule and timing of works to be undertaken*
- *written agreement from the owner of the agreed site to planting and/or restoration works on the land*
- *a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
- *a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
- *a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*

A legally binding commitment by the consent holder to funding and/or undertaking an sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010'.

Council's Environmental Health Officer, Traffic Engineer, Development Assessment Engineer and Ecologist have reviewed the application.

The application is being reported to Council at the request of the Director, Planning and Regulation in response to previous Council and community interest in the approved DA09/0006.

RECOMMENDATION:

That Development Application DA10/0552 for a proposed subdivision to create a public road, associated acoustic fencing and residual lot at Lot 12 DP 830659, Chinderah Road, Chinderah be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.
- B. The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.
- C. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:
 - a schedule and timing of works to be undertaken
 - written agreement from the owner of the agreed site to planting and/or restoration works on the land
 - a suitable protection mechanism on the land to ensure the trees are protected in perpetuity
 - a legally binding commitment by the consent holder to funding and/or undertaking the proposed works
 - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- D. A legally binding commitment by the developer to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the *Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117* prepared by Planit Consulting dated March 2010.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects, plans approved by Schedule A of this consent and plans as detailed in the table below, except where varied by the conditions of this consent.

Title	Drawn	Dated
Proposed Subdivision Plan DWG Ozonest_sub_01/Rev 1	Planit Consulting	11/2010
Proposed industrial subdivision civil works plan – preliminary (SK5/Issue A)	Cozens Regan Williams Prove	07/2010
Proposed industrial subdivision intersection detail (SK7/Issue A)	Cozens Regan Williams Prove	07/2010

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. The level of fill placed on the site shall not exceed RL2.2m AHD.

[GENNS01]

5. Department of Environment, Climate Change and Water General Terms of Approval

- The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.
- In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives and the archaeologist to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.
- An application for a Care and Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process and is to provide evidence of the support with any application for a care and control permit.

- If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.
- The applicant must continue to consult with and involve all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.
- The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. 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]

7. 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]

8. 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]

9. 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]

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

Intersection Works

- (a) The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- (b) A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

Road Works

- (c) Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- (d) Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

Stormwater

- (e) The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- (f) The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

Sewer

- (g) All common rising mains shall be located in road reserve. The developer shall provide a connection for each lot to be serviced by pressure sewer within the lot to be served in accordance with Council's standard specifications and drawings. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.**
- (h) All lots within the development shall be provided with a connection to Council's Sewerage System.**

General

- (i) Any works associated with the Ozone Street road construction that encroach on private land require the written consent of the affected landholder(s). A copy of the consent(s) shall be submitted to the PCA prior to the works being undertaken.**

[PCC0875]

- 11. 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]

- 12. 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.

[PCC1105]

13. 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]

14. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan shall be compiled in collaboration with the owners of adjoining Lot 109 DP 755701 and submitted plan shall include landscaping along both sides of the acoustic fence (i.e.: within Lot 12 DP 830659 and adjoining Lot 109 DP 755701) for the entire length of the road reserve.

Prior to installation of such landscaping, written owners consent from the owners of Lot 109 DP 755701 shall be obtained.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

15. 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]

16. 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.

[PCW0375]

17. 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]

18. 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]

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

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

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

[PCW0985]

20. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

[PCWNS01]

21. Commencement of works in accordance with the approved Habitat Restoration Plans and legally binding agreement as detailed in Schedule A must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation within Ozone Street road reserve or the Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) within Chinderah Road road reserve.

[PCWNS02]

DURING CONSTRUCTION

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

[DUR0005]

23. 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]

24. 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]

- 25. 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]

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

[DUR0815]

- 27. 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]

- 28. 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]

- 29. 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]

- 30. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.**

[DUR1045]

- 31. 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]

32. 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]

33. 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]

34. 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]

35. 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]

36. 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]

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

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

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

[DUR2035]

38. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

39. 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]

40. 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]

41. 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]

42. All works associated with the access road and associated infrastructure is to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

43. Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

44. 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]

45. 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.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Council's contributions sheet and 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:

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

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]

46. 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]

47. 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]

48. 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]

49. 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]

50. 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]

51. 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) A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow.”
 - (c) A Positive Covenant for each allotment sewered by a pressure sewer system, enabling Tweed Shire Council with rights to construct, install and maintain the pressure sewerage infrastructure in accordance with the following terms:

TERMS OF PUBLIC POSITIVE COVENANT

- 1. *Pressure sewerage reticulation infrastructure is to be constructed within the land referred to herein and such infrastructure will comprise a pump station, valve pit, control panel and associated pipelines excluding gravity house connections and plumbing,*
- 2. *Such infrastructure is to be supplied by Tweed Shire Council at commencement of construction of a dwelling on the land referred to herein.*
- 3. *All costs in relation to the installation of the pressure sewer reticulation infrastructure within the land referred to herein will be borne by Tweed Shire Council.*
- 4. *The control panel for the pumping station is to be wired into the household switchboard by a registered electrician and all electricity to operate the control panel and pump station shall be supplied from the household switchboard. All costs in relation to the running of the pressure sewerage reticulation are to be borne by the registered proprietor.*
- 5. *The pressure sewer infrastructure will at all times remain the property of Tweed Shire Council to be inspected, serviced, repaired and maintained in good working order only by Tweed Shire Council*
- 6. *Tweed Shire Council shall have the right to enter upon the land referred to herein with or without equipment, at all reasonable times to inspect, construct, repair, service and maintain in good working order all pressure sewerage reticulation infrastructure in or upon the said land pursuant to “Power of Entry” provisions under sections 191 and 191A of the NSW Local Government Act, 1993. This right to enter is restricted to the land in which the pressure sewerage infrastructure is placed for the time being and includes any points of egress or ingress to or from the said land.*

- 7. The registered proprietor of the land referred to herein shall not construct any type of development, including external buildings, swimming pools or permanent structures which may interfere with the sewerage reticulation infrastructure, or impede access to any part of the sewerage reticulation infrastructure for the purposes of repair, maintenance and service.**
- 8. If at any time it becomes necessary to relocate any part of the sewerage reticulation infrastructure for the purposes of construction of external buildings, swimming pools or building extensions and/or modifications Tweed Shire Council will not object to the relocation of the existing sewer pump station or associated pipeline providing that the registered proprietor makes the necessary application to Tweed Shire Council as the consent authority to modify the existing sewerage reticulation infrastructure and upon the registered proprietor obtaining development consent to do so. The registered proprietor will bear all costs in relation to the application and the re-location which is to be carried out by Tweed Shire Council.**
- 9. The registered proprietor shall be responsible for notifying Tweed Shire Council when maintenance, repair, relocation or service is necessary on the sewerage reticulation infrastructure.**
- 10. Should any part of the sewerage reticulation infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.**
- 11. The registered proprietor shall indemnify Tweed Shire Council and any adjoining landowners against any damage and injury to their land, property or person arising from the failure of any component of the sewerage reticulation infrastructure due to the negligent use or misuse of the sewerage reticulation system by the registered proprietor or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor.**
- 12. Tweed Shire Council shall indemnify the registered proprietor against all damage and injury to property and person (including any damage to the land referred to herein and any land adjacent to the land referred to herein) arising from the failure of any component of the sewerage reticulation infrastructure and its construction, inspection, repair, service and maintenance and or in entering upon and occupying the subject property for such purposes.**
- 13. Any reference to Tweed Shire Council, excepting as consent authority, means its employees, agents, contractors, servants.”**

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]

- 52. 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]

- 53. 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]

- 54. 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 - Sewerage Pump Station**
- (e) 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]

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

[PSC0925]

56. 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]

57. 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]

58. 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]

59. Electricity

(a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity 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]

- 60. For each lot serviced by a pressure sewer system, a capital contribution of \$14,800 shall be provided for the installation of each individual pressure sewer pump station prior to the issue of the subdivision certificate. Tweed Shire Council will then install the pump station at a suitable location within each lot at the building stage.**

[PSCNS01]

- 61. Primary weeding and/or planting and establishment must be completed in accordance within approved Habitat Restoration Plans prior to issue of subdivision certificate.**

[PSCNS02]

- 62. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.**

- 63. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.**

- 64. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water.**

REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Redback Enterprises Pty Ltd
Location: Lot 12 DP 830659, Chinderah Road Chinderah
Zoning: 2(a) Low Density Residential
Cost: \$350,000

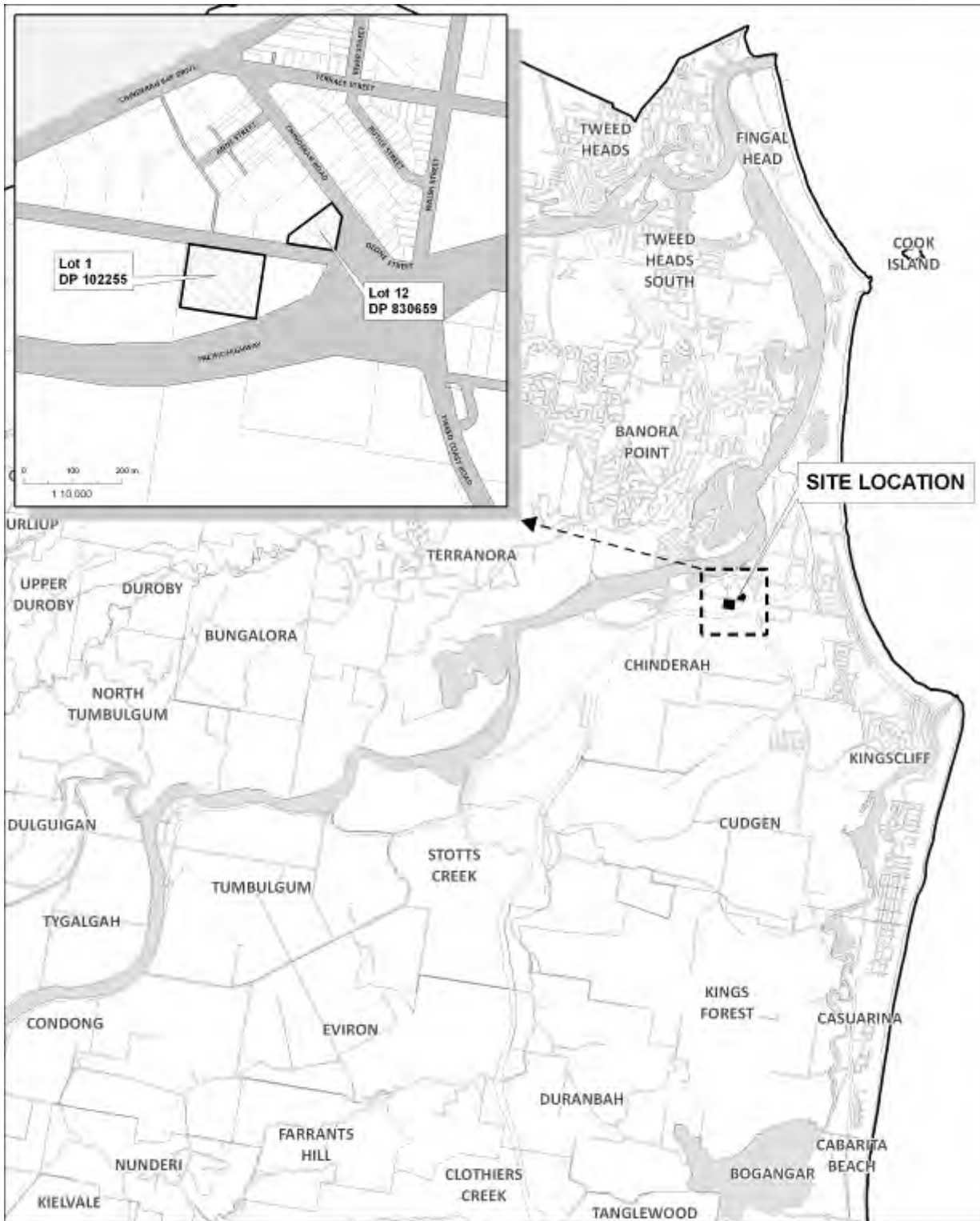
BACKGROUND:

This application relates to DA09/0006 which approved a 4 lot industrial subdivision, the construction of Ozone Street from Chinderah Bay Drive to the property frontage (approximately 630m²) and associated drainage works. A S96 application to modify this consent has been submitted to change the approved access (obtained via new road through Lot 12 DP 830659, involving construction of only a small component of Ozone Street) instead of along the previously approved length of Ozone Street.

The reasoning behind the application (provided by the applicant) is that DA10/0552 provides for:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 102255, No.16-18 Ozone Street, Chinderah;
 Lot 12 DP 830659, Chinderah Road, Chinderah

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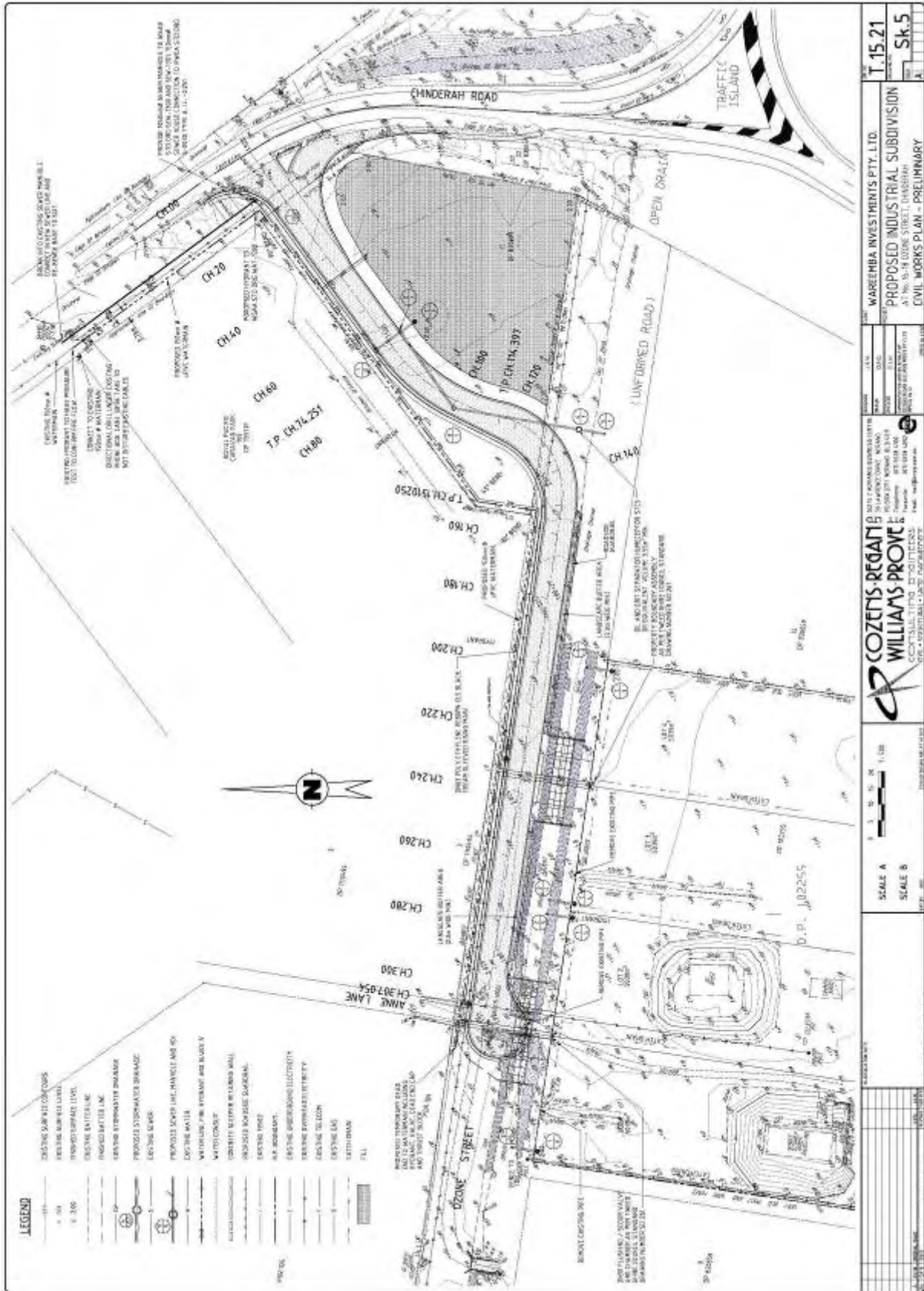
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TWEED SHIRE COUNCIL

DEVELOPMENT PLANS:





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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is permissible in the zone and is not considered to significantly detract from the unique natural and developed character of the Tweed Shire as a whole. Detailed conditions have been applied to regulate impacts of the proposed development which are generally considered to be minor. The proposed development represents a relatively minor intensification of both Lot 12 DP 830659 and Lot 1 DP 102255 which is zoned 4(a) Industrial. Subject to the imposition of conditions, the proposed development is considered to have the potential to create positive economic development with negligible impacts on Tweed's environmental and residential amenity qualities.

The proposed development is considered to be consistent with Clause 4.

Clause 5 - Ecologically Sustainable Development

A detailed assessment has been undertaken of the application with respect to ecological and environmental health matters. Subject to conditions of consent, all matters are considered adequately addressed and the precautionary principle is considered to be satisfied. Subject to conditions to regulate impacts of the proposed development, construction of the road is not considered to impact significantly on intergenerational equity or the conservation of biological diversity. Detailed assessment has been undertaken on amenity and environmental considerations and the proposed development is considered to accord with Clause 5.

Clause 8 – Consent Considerations

The primary objective of the zone requires the provision and maintenance of a low density residential environment. The proposed road remains consistent with the primary objective in that it does not intensify use of the site above the existing low density context and does not prejudice the ability of existing Lot 12 DP 830659 to meet the zone objectives at a later date, were consent sought in the future for residential development.

The aims and objectives of the TLEP have been considered above. The proposal is considered to be consistent with the aims and objectives of the TLEP 2000.

Subject to conditions of consent, the proposed road construction is not considered to have unacceptable cumulative impacts. The characteristics of the site are unique in that the proposed development seeks a revised means of access to an approved industrial subdivision, separated from the main industrial area in Chinderah, in proximity to the Pacific Highway as well as a residential area. As such, approval of this application is unlikely to create a precedent for similar development and is not considered to generate significant impacts in terms of noise or amenity for nearby residents subject to conditions. It is noted that this will require further assessment when applications for the use of each of the 4 industrial allotments are submitted and these uses are known.

The applicant has submitted that construction of the road proposed by this application will result in:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

Council planning officers generally concur with the above and conclude that the proposed development is unlikely to have significant adverse cumulative impacts.

The proposed development is considered to be consistent with Clause 8.

Clause 11 – Zone Objectives

The subject site (Lot 12) is zoned 2(a) Low Density Residential. Subdivision and road construction are permissible in this zone. The application also covers a portion of the unzoned Ozone Street road reserve, addressed under Clause 13 below.

The objectives of the 2(a) zone are set out below:

Primary Objective:

To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.

Secondary Objectives:

To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

To allow for non residential development that is domestically based, or services the local needs of the community and does not detract from the primary objective of the zone.

The proposed development maintains the status quo in terms of residential development as no intensification of residential development is proposed. Subject to future assessment and consent, Lot 12 DP 830659 retains the ability to contain future residential development with access from the proposed new road. As such, the proposed development is considered to be consistent with the primary zone objective in that it maintains the existing low density residential environment.

The proposal is also consistent with the secondary objective in that the amenity of the 2(a) zone is not considered to be significantly affected by the proposed road (being non-residential development). This road will service future industrial development on Lot 1 DP 102255 which is permissible in the 4(a) zone.

Clause 13 – Development of Uncoloured Land on the Zone Map

This clause requires the development of uncoloured land to be compatible with surrounding development and zones.

The section of uncoloured land is a portion (approximately 147m) of the Ozone Street road reserve located between Lot 12 DP 830659 and Lot 1 DP 102255. The uncoloured land is bounded by both 2(a) Low Density Residential and 4(a) Industrial zoning. In this instance, development of the uncoloured land as a 'road' is considered to be consistent with the objectives of both adjoining zones as a low density residential character is maintained by the proposed road and a road is an appropriate component of an industrial development which is required to enable future industrial development on the site.

Clause 14 – Development Near Zone Boundaries

Lot 12 DP 830659 and Lot 1 DP 102255 are separated by approximately 30m of road reserve and as such this clause is not applicable. In any case, the proposed development is permissible within each zone.

Clause 15 - Essential Services

Council's piped water and sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards for the residual lot. It is noted that the proponent proposes to service the lot by a single property sewer pump station connected to the proposed sewer rising main from the pressure sewer system to be provided in the industrial subdivision (DA09/0006). A contribution of \$14, 800 is payable to Council for installation of the sewer pump station. In addition, the standard S64 sewer charge for 1 additional lot has been applied, to be paid prior to the issue of a subdivision certificate.

Electricity and telecommunication services are currently provided to the area via Country Energy and Telstra infrastructure. Conditions regarding the provision of all services have been applied.

Clause 16 - Height of Building

The proposed development does not require a consideration of building heights.

Clause 17 - Social Impact Assessment

The proposed development for a subdivision, road and acoustic fencing is not considered to create significant social impacts by way of employment generation or positive economic impacts. It is noted that a number of matters (including social concerns) were raised during the submission process. These matters are addressed further later in this report.

Clause 19 – Subdivision Generally

This clause permits the subdivision of 2(a) zoned land with consent.

Clause 22 – Development Near Designated Roads

Chinderah Road is a Council Designated Road and provides the sole means for vehicular access to Lot 12. As such, consideration of Clause 22 is required (it is noted that the subject site is also bound by the Pacific Highway, a proposed classified road). In this regard, a detailed traffic assessment has been undertaken by Council's Traffic Engineer and Development Assessment Engineer. This assessment concludes that the proposal is consistent with Clause 22 and that no road capacity, safety or operational performance implications are raised by the proposed road and its intersection with Chinderah Road.

Clause 23 – Control of Access

Clause 23 permits the opening of a road with an intersection to a designated road with development consent. This is what is sought by the subject application.

Clause 24 – Setbacks to Designated Roads

This clause does not apply as no buildings are proposed within the subject application. It is noted that this clause will require future consideration should residential development be proposed on the residual lot.

Clause 34 – Flooding

The subject site (inclusive of the Ozone Street road reserve) is affected by flooding, with a 1 in 100 year flood level of 3.2m AHD. The site (and road reserve) is also covered by the Probable Maximum Flood (PMF) as well as a 'Low' flood velocity.

The proposal has been reviewed by Council's Flooding Engineer and Development Assessment Engineer. Due to the nature of the development (i.e.: road and fence only), the proposal is not considered to increase the extent or nature of the existing flood hazard or increase the risk or severity of flooding of other land in the vicinity. It is noted however that DCP A3 (as discussed later in this report) requires fencing on land in Chinderah to be designed so as to permit the free flow of flood water or be collapsible under water/debris loads. Considerable negotiation has been undertaken with respect to this with the applicant and a deferred commencement condition has been applied to ensure the fence is designed appropriately.

The proposed development is not considered to impact adversely on emergency services as it is small scale in nature and does not propose any type of habitable development.

The provisions of DCP A3 (Version 1.3) with regard to site filling and drainage have been addressed with the following comments made by Council's Development Assessment Engineer:

"It is noted that levels on the site do not exceed the required maximum RL2.2m AHD. A condition of consent will be applied to the development similar to condition 4 of DA09/0006.01 which states; "The level of fill placed on the site shall not exceed RL2.2m AHD."

*The following condition of consent is included within the consent conditions;
A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow".*

Finished levels of the road range from 1.56m AHD (near proposed intersection with Chinderah Road) to 2.025m AHD along the northern side of the proposed road within the Ozone Street road reserve.

Such conditions ensure compliance with the site filling and drainage provisions of DCP A3. The flooding related matters prescribed by Clause 34 are therefore considered satisfied.

Clause 35 - Acid Sulfate Soils

Both Lot 12 and the Ozone Street road reserve contain class 3 acid sulfate soils. The proposal involves the installation of three (3) box culverts which will require minor excavation (approximately 0.5m below ground level). Detailed assessment has been undertaken by Council's Environmental Health Officer and conditions applied with respect to compliance with an acid sulfate soils management plan and inspections by Council's Environmental Health Officer prior to the commencement of works.

Clause 44 – Development of Land within Likely or Known Archaeological Sites

The applicant submitted an Aboriginal Cultural Heritage Assessment prepared by Everick Heritage Consultants, concluding that no items of indigenous cultural heritage or potential historic cultural significance were identified on the portion of Lot 12 encompassing the proposed road or the subject section of the Ozone Street road reserve (the report also considers Lot 1 DP 102255 – as required under DA09/0006).

This assessment was forwarded to the Department of Environment, Climate Change and Water (DECCW) for review of its adequacy. DECCW advised that the assessment has been undertaken in accordance with the Department's guidelines for aboriginal cultural heritage.

Advice was also supplied noting that no known aboriginal cultural heritage values will be impacted by the proposed road development. However, it was noted that there may be a likelihood of evidence of Aboriginal occupation being uncovered during construction works. Should this occur, DECCW have recommended six (6) conditions of consent as follows:

1. *The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.*
2. *In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives the archaeologist and to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.*
3. *An application for a Care & Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process, and is to provide evidence of the support with any application for a care and control agreement.*

4. *If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.*
5. *The applicant must continue to consult with, and involve, all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.*
6. *The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.*

These conditions have been applied.

The proposal is considered to be consistent with Clause 44 and Council is satisfied that the site does not contain any known items of Aboriginal or archaeological significance.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

Inclusive of compensatory habitat works to the satisfaction of Council (as per the approved Habitat Restoration Plan approved under DA09/0006), the proposal is considered to be consistent with Clause 15.

Clause 32B: Coastal Lands

The NSW Coastal Policy applies to the subject site and Council must therefore take into consideration the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

Broadly, the proposal does not contravene the provisions of the above documents, and will not impede public access to, or overshadow the foreshore.

The proposal is consistent with Clause 32B.

Clause 47: Principles for Commercial and Industrial Development

Whilst not specifically relevant to the subject application, Clause 47 (2) specifies that before granting consent for industrial development, Council must consider that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. This application is not for industrial development, however the proposed road is to serve the industrial subdivision approved under DA09/0006. Clause 47 was addressed in the assessment for DA09/0006 and subject to the access arrangement under the existing consent (DA09/0006) or the proposed road under DA10/0552, appropriate access to the transport system (i.e.: the Pacific Highway and local road network) will be provided.

The proposal is consistent with Clause 47.

Clause 81: Development adjacent to the ocean or a waterway

This clause specifies that Council must not consent to an application for development on land within 100m of the ocean or any substantial waterway unless satisfied the development does not limit access to available open space, does not detract from the amenity of the waterway and is consistent with any foreshore management plan applying to the area.

In this instance, the proposed road construction and subdivision does not limit access to open space (whilst it does propose to create a road in a road reserve area presently utilised by locals as open space). There is no foreshore management plan applying to the area and only minor clearing (which will be offset elsewhere) is necessary to facilitate road construction (including the installation of box culverts over the existing drain).

The proposal is consistent with Clause 81.

SEPP No. 14 - Coastal Wetlands

The existing drain along the Ozone Street road terminates into an area of the Tweed River identified under SEPP 14 (and also classified as a sensitive coastal location under SEPP 71).

Consideration of SEPP 14 only occurs if the subject site is covered by the policy, which in this case it is not. Subject to conditions to prevent sediment/runoff impacts into the Tweed River, the proposed development is considered to generally accord with SEPP 14.

SEPP No 71 – Coastal Protection

The subject site is covered by SEPP 71, although the site is not identified as a sensitive coastal location under the Policy.

A detailed SEPP 71 assessment was requested of the applicant, which concluded that the proposed development is consistent with the prescribed matters for consideration.

Specifically, the proposed development will not affect access to any coastal foreshore areas and is considered to be suitable for the subject locality due to the site's proximity to the Pacific Highway and other industrial development. The proposal is not considered to impact adversely on the coastal foreshore, will not create overshadowing and is not considered to detract from the scenic qualities of the New South Wales coast, being relatively minor in nature.

The applicant has indicated their intention to engage in compensatory works to offset the loss of part of the Endangered Ecological Community (EEC) via the approved Habitat Restoration Plan (approved under DA09/0006) as well as the loss of one Forest Red Gum and one Pink Bloodwood tree in the road reserve (a deferred commencement condition has been applied with regard to finding a suitable site for compensation for these two trees).

No wildlife corridors are mapped on the subject site or along the Ozone Street road reserve. The subject site is located outside of the coastal erosion zones under the NSW Coastal Policy and coastal processes will not impact on the proposed development. The proposal does not have the potential to create conflict between land based and water based activities.

With regard to Clause 8(l), the Cultural Heritage Assessment has noted that the site is not within proximity to any known archaeological sites. General Terms of Approval supplied by the Department of Environment, Climate Change and Water have been applied in the unlikely event that cultural material is uncovered during the construction process, including the requirement to cease works if any item is disturbed and the need to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council.

In terms of cumulative impact, the development is not considered to pose a significant impact to the EEC community due to vegetation removal being compensated for via the approved Habitat Restoration Plan. It is noted that a deferred commencement condition has also been applied with regard to a suitable offset for the loss of two existing habitat trees within the road reserve at the proposed intersection of the new road with Chinderah Road. Conditions have been applied by Council's Ecologist in this regard.

Subject to conditions as detailed above, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

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

Draft Tweed Local Environmental Plan 2010

The draft Tweed Local Environmental Plan 2010 (DLEP) zones the subject site R2 – Low Density Residential (the equivalent zone). The DLEP also zones the Road Reserve as RE1 – Public Recreation.

A road is permitted without consent in the R2 zone and the RE2 zone. Subdivision remains permissible with consent in the R2 zone.

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

Tweed Development Control Plan

A2 - Site Access and Parking Code

At the subdivision stage, the provision of car parking is not required. The applicant will be required to demonstrate compliance with DCP A2 at the time of lodgement of an application for the future development of the residual allotment or each of the industrial allotments approved under DA09/0006.

A3-Development of Flood Liable Land

Council's records indicate the site (and road reserve) are flood liable, with a design flood level of 3.2m AHD, as well as being covered by the PMF.

DCP A3 specifies the following for fill for commercial and industrial development on flood liable land:

“For drainage purposes only, land will only be required to be filled to the approximate level of the centre line of the adjacent road (excluding the Pacific Highway) unless adequate alternative stormwater drainage is provided.

Lots with existing levels less than RL 2.2m AHD may be filled to a maximum height of RL 2.2m AHD.”

The following deemed to comply solution may be implemented on each allotment as an alternative to providing flood modelling;

- i) *On each allotment a maximum of 50% of the plan area of the lot may be occupied by structures, buildings, stockpiles and/or fill that exceeds RL2.2m AHD.*
- ii) *On each allotment, flow obstructions (defined as fill, structures, buildings, stockpiles and the like above RL 2.2m AHD) are to be located so that at least 50% of any cross section of the lot, transverse to the direction of flood flow, is clear of flow obstructions. This is to provide a local flood path on each allotment.*

Commercial and industrial development will be required to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.”

It is noted that levels on the site do not exceed the required maximum RL2.2m, with the existing ground level being approximately 1.3 – 1.5m AHD. The finished level of the site is 2.0m AHD and as such approximately 500mm to 700mm fill will be required.

A condition has been applied to the effect that:

The level of fill placed on the site shall not exceed RL2.2m AHD.

The following condition of consent has been applied with regard to the above (for future development):

A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow.

DCP A3 also specifies that in the Chinderah locality (which generally has a low flood velocity) all fencing must be of a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of debris or floodwater.

A deferred commencement condition has been applied with respect to the above as follows:

‘The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council’s General Manager or his delegate’.

This has been applied to ensure compliance with DCP A3 and to enable comprehensive assessment of the proposed fence design to be undertaken by Council’s planning, engineering and environmental health staff.

Subject to satisfaction of the deferred commencement condition, compliance with DCP A3 is considered to be achieved.

A5-Subdivision Manual

This policy contains guidelines for subdivision development. Relevant to this application (which creates a residual lot of 3525m²), the policy specifies that subdivided land in the 2(a) Low Density Residential zone must meet the following criteria:

- Have a minimum lot size of 450m² (dwelling house)
- Have a minimum lot size of 900m² (dual occupancy)
- Have a minimum lot size of 1350m² (integrated housing)
- Be capable of containing a 10m x 15m building platform.

The proposal is consistent with the above criteria and it is noted that the subdivision to create the road does not preclude the residual lot from being used for future residential purposes (i.e.: the minimum lot sizes for different types of residential development are exceeded as shown above), subject to future traffic noise considerations.

In addition to the above, consideration is required of the physical and environmental constraints of the site, the degree of landforming, stormwater and drainage and buffers as follows:

Physical constraints

Lot 12 is relatively unconstrained in physical terms, being relatively flat and with vehicular access off Chinderah Road. The Ozone Street road reserve does not contain any waterways (besides the adjacent open drain), is not bushfire prone and the proposal does not necessitate significant changes to the natural landform other than site filling. The site is flood prone (3.2m AHD and covered by the PMF).

Environmental constraints

Lot 12 contains limited established vegetation, being mostly grassed. Two habitat trees (Forest Red Gum and Pink Bloodwood) are located within the existing road reserve at the proposed intersection and are required to be cleared. Ozone Street road reserve contains established native vegetation including an Endangered Ecological Community (EEC) along the drainage channel. The site is not bushfire prone. The site does exhibit class 3 ASS and appropriate conditions have been applied in this regard by Council's Environmental Health Officer with regard to road construction, including the installation of box culverts.

The applicant has acknowledged the presence of EEC vegetation on the site and appropriate compensation will be undertaken in line with the approved Habitat Restoration Plan under DA09/0006.

The proposal is considered to be consistent with the NSW Coastal Policy.

Significant Vegetation

As mentioned, the road reserve supports significant vegetation including an Endangered Ecological Community of Swamp Oak. The applicant has agreed to persevere with the implementation of the approved Habitat Restoration Plan under DA09/0006 as an offset for loss of approximately 600m² of the EEC.

Conditions have been applied in this regard, including a deferred commencement condition with regard to negotiation of a suitable site (or agreement as to compensatory planting on the residual lot) for compensation for the loss of the Forest Red Gum and the Pink Bloodwood.

Aboriginal Heritage or Cultural Items

A Cultural Heritage Assessment has been submitted which concludes that Lot 12 (and the Ozone Street road reserve) are unlikely to contain any items of known aboriginal or cultural heritage. Conditions have been applied (recommended by the Department of Environment, Climate Change and Water) in the event that any items are uncovered during construction works.

Landforming

The application proposes minor earthworks to fill the site to RL 2.2m AHD. The site at present is relatively flat with no structures. Apart from the removal of the existing vegetation within the road reserve and the two mature trees within the road reserve at the proposed intersection, the proposed filling works will not significantly alter the natural landform and is not considered to impact upon any nearby properties in this regard.

Issues relating to access, stormwater, drainage, waterways and flooding are detailed further elsewhere in this report.

The proposed development is considered to be generally consistent with DCP A5. Ongoing compliance with DCP A5 has been applied as a condition of consent.

A11-Public Notification of Development Proposals

Amendments were made to the above policy as a result of DA09/0006 in order to notify permanent occupiers of caravan parks and manufactured home estates in the same way as landowners. The proposed development was placed on public exhibition for a period of fourteen (14) days from 6 October 2010 to 20 October 2010.

During this period, 41 submissions were received, with two (2) late submissions, two (2) anonymous submissions and one (1) petition being received.

The matters raised in the submissions are addressed further in this report.

A13-Socio-Economic Impact Assessment

The proposal is not considered to create significant social or economic impacts.

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. However, the site is not located within the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes and the proposal will not overshadow any foreshore reserves or restrict public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

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

Context and Setting

The proposed development is consistent with the 'mixed use' character of Chinderah. No significant adverse impacts are envisaged for the locality.

Traffic Noise

If not properly managed, traffic noise from the proposed access road has the potential to impact upon adjacent land zoned 2(a) Low Density Residential used for the purposes of residential living and a caravan park. The proposal is supported by a Noise Level Impact Assessment (NLIA) prepared by Craig Hill Acoustics dated 6 July 2010. Council's Environmental Health Officer has advised that the report has been prepared in general accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999.

Potential noise impacts upon adjacent land uses have been summarised by Council's Environmental Health Officer as follows:

Chinderah Road Dwellings/Vacant Lots

Several submissions have been received from property owners relating to the generation of traffic noise from the proposed access road. The NLIA indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the NLIA indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.

Royal Pacific Tourist Retreat

The existing caravan park is located immediately adjacent to the proposed access road. Modelling undertaken by the NLIA indicates that potential daytime (7:00am to 10:00pm) noise impacts will exceed the noise criteria detailed in the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1). It is proposed to mitigate potential noise impacts below the relevant noise criteria by constructing a 2.5m acoustic barrier along the entire length of the access road (approximately 320m).

Modelling undertaken in the NLIA also indicates that there will be significant noise impacts during night time periods (10:00pm – 7:00am) without a further increase in the height of the acoustic barrier to 4-6.5m. Council's planning officers have raised concerns with the height of such a fence for amenity reasons. As such, night time traffic noise will be further addressed and controlled during the assessment of any development applications for future industrial land uses on the site.

It is considered that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. Night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses, which may include conditions restricting operating hours.

It is noted that the achievement of the daytime noise criteria is also dependent upon enforcement of a 50kph speed limit along the proposed new road, to be set by the RTA.

Traffic noise is therefore considered to be adequately addressed for the proposed road construction with further consideration with regard to night time noise impacts to occur during assessment of development applications for future development on the lots approved by DA09/0006.

Swamp Oak EEC

The overall impact on the Swamp Oak is stated within the Flora and Fauna Assessment as removal of some 300m² of the community, although this has recently been verbally updated by the consultant planner to 600m². Although this aspect requires a more accurate calculation (by GIS measure it may be over 1000m²), on balance there will be a lesser impact on the EEC than the previous proposal, which was estimated to require removal of some 4500m² of EEC.

The other important benefit from an ecological perspective is that impacts within the drainage channel itself (a tidal channel providing habitat for aquatic species) will be limited to two large culverts to enable the two drain crossing points to be established into the industrial lot, rather than halving the channel width and concrete lining the bed and one bank as was previously proposed. Thus water quality within the channel and subsequently flowing to the adjacent Tweed River is at significantly lower risk from export of sediment and acidic runoff (arising from disturbance of potential acid sulfate soils) and in-stream habitat values, including mangroves, are unlikely to be lost.

Thus the formation of a smaller proportion of the Ozone Street road reserve in a section further from the Tweed River with significantly reduced impacts on the channel alignment is seen as an ecological benefit. It does not however, obviate the need to compensate for loss of EEC. Verbal agreement to implement the approved compensatory project has been given by the consultant planner but caution is required because:

- consent in writing from the owner of the industrial lot to the financial implication arising from the compensatory project has not yet been received;
- it is not a straightforward matter to tie the off-site works to the consent amendment in a way which will ensure the compensatory works (which span a five year time frame) will be undertaken and maintained to form a suitable offset, particularly once permission to clear the existing EEC has been given, and
- the quantity of compensation has not yet been agreed.

The above matters have been addressed via the proposed deferred commencement conditions.

Forest Red Gum and Pink Bloodwood

Whilst a reduced impact is seen along and adjacent the drainage channel in comparison to the previous access road alignment from Chinderah Bay Drive, additional impact occurs with the loss of two semi-mature trees from the road reserve area of Chinderah Road. The trees are a Forest Red Gum (*Eucalyptus tereticornis*) and a Pink Bloodwood (*Corymbia intermedia*) (Plate 1). These two species of tree are known to be two of four main species associated with another floodplain Endangered Ecological Community known as *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*. The NSW Scientific Committee determination for the community states:

“Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion is the name given to the ecological community associated with clay-loams and sandy loams, on periodically inundated alluvial flats, drainage lines and river terraces associated with coastal floodplains.

The structure of the community may vary from tall open forests to woodlands, although partial clearing may have reduced the canopy to scattered trees. Typically these forests and woodlands form mosaics with other floodplain forest communities and treeless wetlands, and often they fringe treeless floodplain lagoons or wetlands with semi-permanent standing water (e.g. Pressey 1989a).

*Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion has a tall open tree layer of eucalypts, which may exceed 40 m in height, but can be considerably shorter in regrowth stands or under conditions of lower site quality. While the composition of the tree stratum varies considerably, the most widespread and abundant dominant trees include *Eucalyptus tereticornis* (forest red gum), *E. siderophloia* (grey ironbark), *Corymbia intermedia* (pink bloodwood) and, north of the Macleay floodplain, *Lophostemon suaveolens* (swamp turpentine).”*

Both trees provide known forage habitat for nectar-reliant species including the Grey-headed Flying Fox (a threatened species), Rainbow Lorikeets and Eastern Rosellas. Forest Red Gums are a favoured food tree for Koalas and Chinderah is an area known to support a Koala population, at least until recently. Thus the trees are significant despite their position and all efforts to retain them were requested during assessment. It appears that the access road is unlikely to meet minimum engineering standards in terms of distance from the roundabout if the trees are to be retained. In the absence of clear evidence of present reliance on the trees for roosting or as part of a home range by Koalas or other threatened species, it is unlikely that the loss of the two trees could successfully be argued as causing a significant impact on threatened species, populations or ecological communities whereby the development could be refused. However, the significance of the trees requires compensation at the least. A ratio of 10:1 (gained:lost) is considered appropriate due to the size and age of the trees and the known habitat value they provide, where planting and reestablishment of trees of such size will take time and care.

A suitable site for establishment of replacement trees is the residue lot created after the access road through Lot 12 DP 830659 is severed. The planning consultant has indicated reluctance to impose restriction on this site and no alternative site has been nominated. Whilst Council's preference is the residue lot because it is adjacent and of suitable soil type and elevation, a suitable alternative may be considered. The uncertainty over this aspect requires deferring commencement until this issue is satisfactorily agreed and a condition has been applied accordingly.

The following deferred commencement conditions have been applied to address all matters raised above:

1. *A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (Eucalyptus tereticornis) and Pink Bloodwood (Corymbia intermedia) impacted by the proposed development. The Habitat Restoration Plan must include:*
 - *a schedule and timing of works to be undertaken*
 - *written agreement from the owner of the agreed site to planting and/or restoration works on the land*
 - *a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
 - *a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
 - *a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
2. *A legally binding commitment by the consent holder to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.*

Amenity

The scenic values of Chinderah are considered to stem from its proximity to the Tweed River and low density residential character. However, Chinderah is also located in close proximity to the Pacific Highway and contains some large scale commercial and industrial developments on both sides of the highway. With this in mind, the proposed development is not considered to detract from the scenic values of the area which relate more to the Tweed River (further north-west of the subject site) than to the location of the subject site.

With regard to amenity, Council planning officers commenced considerable negotiation with the applicant to reduce the height of the proposed acoustic fence to 2.5m. In addition, the applicant will be required to submit a detailed landscaping plan which demonstrates landscaping on both sides of the proposed fence (i.e.: including within the Royal Pacific Tourist Retreat), with appropriate owners consent.

Subject to the plan being satisfactory to Council, the landscaping is considered to appropriately ameliorate amenity impacts of the proposed fence.

Stormwater Drainage

Engineering plans prepared by Cozens Regan dated July 2010 show access provided to the industrial subdivision over the open channel via 3 x 1500 x 750 box culverts from Ozone Street. The system will be required to be designed to cater for an ARI storm event of 100 years. Detailed conditions of consent have been applied by Council's Flooding Engineer/Development Assessment Engineer to ensure an acceptable drainage design at construction certificate stage.

Asset Management

The applicant proposed to dedicate the road and acoustic fence to Council, however no details with regard to asset management/handover of the road/fence were supplied during the assessment process.

As future asset owner, the Director Engineering and Operations has indicated that the handover of the acoustic fence would not be accepted, as there is no current budget for maintaining such an asset.

To rectify this issue, the following deferred commencement condition has been recommended by Council's Infrastructure Engineer (in consultation with the Director Engineering and Operations) and applied:

The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.

Fence Design

The applicant neglected to properly consider the provisions of DCP A3 – Development of Flood Liable Land in the design of the proposed acoustic fence. Subsequent discussions with Council's Infrastructure Engineer have indicated that a further deferred commencement condition with regard to the proposed fence design is warranted to enable comprehensive assessment of the design (in light of meeting DCP A3 and acoustic requirements), but also to ensure that an appropriate funding proposal with regard to Council's management of the fence is obtained.

The following deferred commencement condition has been applied:

'The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.'

This has been applied.

It is noted that the acoustic fence was originally proposed to be 4.5-6m high (as a result of being designed to cater for 24 hour traffic movements). Negotiation with the applicant has enabled the fence height to be reduced to 2.5m, based on a speed limit of 50kph and further consideration of night time traffic noise at the time consent is sought for development on the industrial allotments (a 2.5m high fence meets the daytime noise criteria). This is considered to be much more appropriate in terms of visual amenity and submission of a detailed landscaping plan has been applied as a condition of consent.

Subject to satisfaction of the deferred commencement conditions the proposed development is considered to be appropriate with regard to flooding matters.

(c) Suitability of the site for the development

Flooding

The subject site is flood prone, is covered by the Probable Maximum Flood (PMF) and exhibits a low flood velocity.

The residual lot will be filled to no more than 2.2m AHD.

A detailed assessment of flooding impacts has been undertaken under DCP A3 above. Subject to the imposition of conditions (including the above deferred commencement conditions), the proposed development is considered to be acceptable with regard to flooding matters.

Access, Transport and Traffic

The entry point to the road is approximately 150m from the existing Chinderah interchange. This has been reviewed by Council's Traffic Engineer who has advised that such a distance is appropriate. Sight distance is approximately 132m to the east and 300m to the west. It is noted that the existing edgeline on the southern side of Chinderah Road is proposed to be removed and this section of the road widened to create a new turning lane to cater for B double movements. A traffic island is also proposed to be installed to separate this lane from the existing alignment of Chinderah Road.

A SIDRA analysis was prepared by a traffic consultant which demonstrates that Chinderah Road has significant spare capacity. The consultants report concluded that the proposed road and its intersection with Chinderah Road will not have any adverse road safety, capacity or operational performance implications. As such, the proposed road is not considered to have the potential to unreasonably impede through traffic movement on Chinderah Road.

Chinderah Road is approximately 8m wide, within a 30m wide road reserve (approximate). As such, the proposed road through Lot 12 is not considered to have the potential to jeopardise any future improvements or realignment of Chinderah Road as substantial width remains within the road reserve. It is noted that there is no other practicable method of access to the subject site other than from the designated road (or via the approved access arrangement under DA09/0006).

Acid Sulfate Soils (ASS)

Council's ASS Planning Map indicates that the site is class 3 land, which applies to works beyond 1 metre below the natural ground level. The submitted plans indicate that excavations to approximately 2m below ground level are proposed for the construction of culverts and therefore ASS are anticipated to be encountered. The proposal is however, anticipated to have a lesser impact on ASS than the previously approved access road (under DA09/0006) due to lesser interference with the existing drain.

An amended Acid Sulfate Soil Management Plan has been prepared by HMC Environmental Consulting dated 26th November 2010. The management plan has been prepared in general accordance with the Acid Sulfate Soil Manual 1998 and is considered adequate. Conditions with regard to compliance with this plan have been applied.

Water/Sewer

Council's reticulated potable water supply is available to the area. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

Council's piped sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards.

Council's Water & Sewer Engineer has advised that no objections are raised to the development and has provided the following comments:

"I have no objections to the proposed development however I note that the proposed 150 water main is shown as connecting to an existing 150 in Chinderah Road. Council's GIS shows that this is a 100 water main and that the nearest 150 is at the corner of Walsh Street and Chinderah Road.

It is noted that from the plans included in the SEE, the proponent proposes to connect water and sewer services to the residual lot. The original lot has been charged water access rate for some period but has not been charged a sewer access charge. Accordingly, a s64 Development Charge for Sewer of 1 ET should apply.

The standard clause relating to provision of water to the lot should be applied.

It is noted however that the proponent proposes to service the lot by a single property sewer pump station connected to the proposed SRM from the pressure sewer system to be provided in the industrial subdivision.

In this case, as the proposed lot is zoned residential, it is recommended that the usual clause for pressure sewer systems be applied to this lot rather than the method conditioned in the industrial subdivision.

Council requires a positive covenant to be placed on the affected lot that will permit Council access for the installation, maintenance and replacement of the pump station equipment, the provision of electricity by the householder, and the placement of the control box and alarm system on an exterior wall of the dwelling".

In addition, Council's Water and Sewer Systems Engineer has advised that a capital contribution of \$14,800 shall be paid for the installation of the individual pressure sewer pump on Lot 12. The pump will then be constructed at the time of construction of the dwelling on that lot.

Detailed conditions with regard to the above, including the 1ET sewer charge have been applied. The sewer charge and the \$14800 capital contribution shall be required to be paid prior to issue of a subdivision certificate.

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

41 public submissions were received, with two (2) late submissions, two (2) anonymous submissions and one (1) petition with 36 signatures being received. The matters raised in these submissions are detailed below.

Comments were also received from the Department of Environment, Climate Change and Water (DECCW) and the New South Roads and Traffic Authority (RTA):

DECCW: Were referred a copy of the revised Cultural Heritage Assessment. DECCW advised that the assessment has been undertaken in accordance with the Department's guidelines for aboriginal cultural heritage. Advice was also supplied noting that no known aboriginal cultural heritage values will be impacted by the proposed road development. However, it was noted that there may be a likelihood of evidence of Aboriginal occupation being found within the project area. Should this occur, DECCW have recommended six (6) conditions of consent which have been applied.

RTA: Were referred a copy of the proposed development and reviewed the proposed development at the Development Traffic Advisory Group (DTAG) meeting. No objections were raised at the DTAG meeting, however the RTA's property section supplied a further submission, summarised as follows:

"The RTA owns adjacent land to Lot 1 DP 102255 (Lots 13 and 14 DP 830659). The location of these sites has been identified by the RTA and the NSW Department of Planning as being suitable for highway service centre usage. This was formalised by a S117 direction dated 29 November 2009, The site has inherent benefits for this proposed usage including strategic positioning on the Chinderah Road interchange and proximity to the existing BP highway service centre.

To make the site viable as a highway service centre, Lots 13 and 14 would require amalgamation with Lot 1. The RTA had held negotiations with the proprietor to this effect with no agreement reached.

The potential to establish a highway service centre on the site would be lost if the subject application is approved. Notwithstanding, the RTA intends to offer this land to the open market for long term lease as a highway service centre site early in the new year which will allow any other interested parties to express interest in this potential use."

The above is not a matter for Council's concern under the Act and has no real bearing on the subject development application (or the associated S96 modification). Approval of the subject application does not preclude the RTA from entering into negotiations with any party with regard to the future development of the site.

It is noted that no objection on traffic grounds was received from the RTA.

Public Submissions

The applicant was referred a copy of all public submissions for consideration. A copy of the applicant's response is available on file.

Submission	Response
The development will create noise pollution	Council's Environmental Health Officer has given detailed consideration to noise impacts and applied strict conditions to regulate impacts. It is noted that an acoustic wall is proposed to ameliorate noise impacts for residents of the adjoining caravan park. It is considered that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. Night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses, which may include conditions restricting operating hours. With respect to dwellings on the northern side of Chinderah Road, the Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.
The development will create air pollution/fumes	The proposed development is to create a public road which is not considered to create any significant adverse levels of air pollution or fumes. Council is not the regulatory authority for such matters.
Increased traffic would reduce quality of life and amenity	The proposed development is relatively minor in that it facilitates access only to an approved industrial subdivision, the end uses of which are not known at this stage and would be subject to future assessment to regulate traffic and amenity impacts. With regard to the subject application, it is noted that an acoustic fence is proposed to mitigate traffic noise impacts on adjoining Lot 109 (Royal Pacific Tourist Retreat) and detailed conditions have been applied with regard to significant landscaping to screen the proposed acoustic fence from Chinderah Road. In addition, a condition has been recommended to the effect that landscaping at the developers cost be provided within Lot 109 to soften the impact of the proposed fence, if this is to the satisfaction of the park owners and residents.
Tourists would bypass the area because of increased traffic	Council's Development Assessment Engineer has assessed the application and advised that the proposed traffic generation is within the capacity of the existing road. It is considered that Chinderah's amenity/tourism values are more centred on the riverfront environment along the north east running section of Chinderah Bay Drive (i.e.: past the Chinderah Hotel) than on development in the vicinity of the subject site. Tourism generation is not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

Submission	Response
<p>The acoustic assessment makes no reference to existing residential houses across Chinderah Road</p>	<p>Further information was requested of the applicant to address this shortcoming. Council's Environmental Health Officer has advised that the Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.</p>
<p>Traffic noise will create sleep awakenings</p>	<p>Council's Environmental Health Officer has completed detailed assessment of the development with respect to traffic noise. Subject to satisfaction of the deferred commencement conditions and subsequent installation of the acoustic barrier, road traffic noise is considered to be within acceptable criteria for residents of the Royal Pacific Tourist Retreat during the daytime. Houses on the northern side of Chinderah Road currently experience noise levels that exceed the relevant noise criteria from the Pacific Highway. Noise modelling undertaken proposed development indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.</p> <p>No end uses of any lots are known at this stage and as such, it is considered appropriate to give further consideration to night time traffic noise during the assessment of any development applications for future industrial land uses on the site. The possibility of sleep awakenings will be addressed further at this stage and conditions restricting operating hours are likely to be applied.</p>
<p>The proposed acoustic fence will direct noise into an existing dwelling on Chinderah Road and headlights from exiting vehicles will shine in a master bedroom</p>	<p>The Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal, inclusive of the proposed acoustic wall will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.</p> <p>Impacts from headlights and the like are considered more appropriately addressed once end uses of the industrial allotments are proposed as different business will have different operating hours. Conditions of consent with regard to limited operating hours can be applied at this stage.</p>
<p>Alternatives to the acoustic barrier require windows to be shut and the provision of alternative ventilation which will require electricity to run and be an ongoing cost to the resident</p>	<p>Such 'sound shell' treatment measures were recommended by the applicant's acoustic consultant for utilisation where the recommended 6m high acoustic wall was unable to be achieved. Further investigations into this wall have resulted in a reduction in height to 2.5m only and imposition of a 50kph speed limit. The 6m high wall and sound shell treatment are no longer required.</p>

Submission	Response
Approval of this DA will allow for future development of the adjoining land which will increase noise levels, traffic flow and accidents in this area	Consent is sought only for a subdivision to create a public road and the construction of an acoustic fence. The application has been considered on its merits and on the facts presented before Council. Future development of any land in the Chinderah locality would require separate development assessment and noise, traffic and safety impacts would be addressed at that time.
There is not adequate sight distance. The 'curved' road would lead to accidents and destruction of residents property	The submitted traffic report identifies that available sight distance to/from the east (roundabout) is approximately 132m and to/from the west (river) is approximately 300m. The report specifies that the design sight distances are 97m (50kph zone) and 123m (60kph zone). The design distances are exceeded for both speed zones (Chinderah Road has a 50kph speed limit and Chinderah Bay Drive has a 60kph limit). Council's Traffic Engineer and Development Assessment Engineer have reviewed this report and raised no objections to the proposed sight distances from the proposed new road.
Acoustic fences do not work	The proposed acoustic fence is supported by a report from an acoustic consultant and has been reviewed by Council's Environmental Health Officer who has raised no objections subject to conditions. Deferred commencement conditions have been applied to ensure the fence design is appropriate with regard to Council's flooding controls and to ensure funds are provided for the ongoing maintenance of the fence by Council.
Sealing of Ozone Street would stop the congestion of Chinderah Road	Sealing of Ozone Street (presumably from Chinderah Bay Drive to Lot 1 DP 102255) was approved via DA09/0006. The applicant is now seeking to change this via a S96 application to DA09/0006 and the subject DA. The submission is not clear how sealing Ozone Street would assist with traffic flows on Chinderah Road. No further consideration is required.
Lot 12 is zoned 2(a) Low Density Residential and should not be developed for non residential uses such as the proposed public road. Lot 12 should be used for residential purposes, consistent with surrounding properties.	A road is permissible in the 2(a) zone under the Tweed Local Environmental Plan 2000.
Noise barriers would have to be very high to have any effect (due to houses being high set to be out of the flood area) and this would be visually unappealing.	Detailed assessment of the proposed acoustic barrier has been undertaken and negotiations with the applicant has resulted in the fence height being reduced to 2.5m. Deferred commencement conditions have been applied with regard to further design considerations of the proposed fence and conditions have been applied with respect to landscaping to improve the visual amenity of the fence which is considered to be acceptable given the constraints of the site.
The noise barrier would restrict flow of water and breezes	Deferred commencement conditions have been applied to ensure compliance with Council's DCP A3 with regard to the free flow of flood water. The proposed fence height has been reduced to 2.5m which is considered to have a negligible impact on the flow of breezes.

Submission	Response
The access arrangement under DA09/0006 has the least impact on surrounding residents and businesses	The applicant has proposed a revised access arrangement, the impacts of which have been assessed by Council officers. Approval of the revised access arrangement is recommended by this report.
The proposed road is too close to the interchange and would create safety issues, especially with children crossing the road to and from home/the school bus	Traffic reports have demonstrated that the proposed road is an acceptable distance from the Chinderah interchange and that sufficient sight distance exists. There is presently no identified crossing for children to access a bus stop (presently informal) in front of the adjoining caravan park. Council's Development Assessment Engineer has advised that a crossing in this location would be extremely undesirable due to proximity to the existing interchange. Road safety matters (with regard to speed limits etc) are a matter for the NSW Police. It is noted that members of the community may seek advice from Council's Works Unit as to the installation of a formal pedestrian crossing though this is unlikely to be supported.
The purpose for which Lot 12 was approved was a childcare centre, the level of traffic created by the childcare centre would be light traffic only.	The childcare centre consent (DA06/0282) is due to lapse on 25 January 2012. The subject development application does not propose any use of the industrial allotments, however detailed traffic assessment has concluded that the proposed road is suitable for industrial traffic.
The traffic volume data used in the application was from 2004 and is thus out of date	Traffic modelling has indicated that significant spare capacity is available along Chinderah Road. The reference to 2004 in the traffic report refers to traffic data obtained from Council, which was not used as the sole data source for traffic assessment. The traffic assessment concludes that the proposed new road and its intersection with Chinderah Road will be compliant with the relevant road design criteria and will not have any adverse road safety, capacity or operational performance implications.
Property resale value would be affected	Property values are not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.
Traffic drawings do not show the relationship of turning trucks to the existing properties on the north side of Chinderah Road	Turning templates submitted as part of the Traffic Assessment show demonstrate that right hand truck movements from the proposed intersection are contained wholly within the existing road reserve. In addition, the traffic report has demonstrated that the proposed intersection will not affect the surrounding traffic network.
The recommended 'sound shell' treatment is unacceptable	The sound shell treatment was recommended originally where the 6m fence height could not be achieved along the boundary between Lot 12 and Lot 109. Further investigations have now been undertaken into the proposed fence with the sound shell treatment no longer being required or proposed.
Tree removal would harm wildlife	Compensation for vegetation loss has been enforced via conditions of consent and Council's Ecologist is satisfied with this outcome.
Land use conflict between industrial and residential uses. Mixing residential with industrial is a poor mix	The Tweed Local Environmental Plan 2000 prescribes mixed zoning in the Chinderah locality. Detailed assessment of the application has been undertaken in light of the potential for land use conflict and conditions of consent have been applied to ameliorate traffic noise and amenity impacts.

Submission	Response
There are hidden plans to build 24 units on the balance of Lot 12	The applicant has confirmed that the reference to 24 units within the application documentation was an oversight and that no development of any sort is proposed on the residual allotment at this stage. Any development on this site would be subject to future merit assessment.
The proposed road is for future access to a BP service station	Any proposal for a BP service station would be subject to detailed assessment procedures. No such application has been submitted to Council.
Trucks slowing down will have to use engine brakes	Enforcing speed limits is a responsibility of the NSW Police and is not within Council's jurisdiction. If trucks are obeying the speed limit when exiting the interchange it is not anticipated that the use of engine brakes will be necessary.
The existing road is unsafe and experiences high incidences of traffic accidents. Increasing traffic on this road will only make this worse.	The traffic report has concluded that there is spare capacity along Chinderah Road to accommodate additional traffic. Traffic safety issues such as speeding cars and illegal traffic manoeuvres are a matter of Police concern and are outside Council's jurisdiction. Council is of the opinion that adequate sight distance exists in this location.
Chinderah has an existing industrial area east of the highway, industry does not need to also be located on the west	The zoning permits industrial development on Lot 1 DP 102255.
Lot 1 DP 102255 (the industrial subdivision site) could and should be rezoned residential	The draft Tweed Local Environmental Plan 2010 was recently on public exhibition. Concerned residents had the ability to raise zoning related concerns during the exhibition period. The existing draft document 'rolls over' the current industrial zoning of Lot 1. The proposed development is presently permissible under both the existing LEP 2000 and the draft LEP 2010.
Local Chinderah residents were not notified	As per amendments to Council's DCP A11 – Public Exhibition of Development Proposals, advertising and notification was undertaken which included residents of every nearby caravan park and properties with direct frontage to the proposed development site.
Direct highway access in the far southwest corner of the subdivision (Lot 1 DP 102255) could be utilised as an alternative entry/exit without using Ozone Street or the interchange/Chinderah Road. This would have zero impact on the community as a whole	Such an arrangement has not been proposed by the applicant.
The developer did not appropriately consult adjoining landowners. This is a denial of natural justice by the omission of due process	The applicant contends that appropriate consultation was undertaken with owners of Lot 12 DP 830659, Council and the owners of Lot 1 DP 102255 (the industrial subdivision site). Council is bound to assess all properly made applications under the Environmental Planning and Assessment Regulations 2000. The submitted application is consistent with Schedule 1 Part 1 of the Regulation and is thus considered to be properly made. A comprehensive assessment of all elements of the application has been undertaken.

Submission	Response
The merits of the application cannot be judged on the information supplied by the developer and his consultants alone.	Council planning officers have undertaken a detailed and objective assessment of all relevant issues and determined that the application is worthy of approval.
Through local knowledge Council is aware of the safety hazards of the interchange and therefore should apply the precautionary principles	The precautionary principle has been assessed under Clause 5 of the Tweed Local Environmental Plan 2000 (as above) and is considered to be satisfied.
The acoustic wall will be targeted and vandalised	<p>The following deferred commencement condition has been applied to ensure funds are available for the ongoing maintenance of the acoustic fence by Council:</p> <p><i>The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.</i></p>
Loss of quality of life for residents living in caravans due to being imprisoned and completely enclosed by a concrete barrier	The proposed acoustic wall has been significantly reduced in height from 4.5m-6m to 2.5m. Homes of residents of the caravan park in proximity to the proposed fence/road are setback approximately 11m from the boundary to Lot 12, however are located adjacent to the rear boundary (along the road reserve). The existing dwelling on Lot 109 is setback approximately 7m from the side boundary, separated by a garage. Conditions have been applied requiring landscaping to be provided on either side of the proposed fence – i.e.: within the caravan park also to reduce visual impacts of the proposed fence (provided this is to the satisfaction of the property owner).
Driveways will be unable to be safely accessed	No changes are made to the configuration of access to any driveways in proximity to the proposed new road.
The new road won't allow enough room for a 4WD vehicle and caravan in tow to stop safely.	There are no minimum standards with respect to property access for caravan parks. No change is made to the existing property access arrangements for the adjoining caravan park.
<p>The development will look like a prison and has a major potential to close the Royal Pacific Tourist Retreat</p> <p>Chinderah is the gateway to the northern rivers region, it should be a statement of the beauty visitors can expect along the north coast</p>	<p>Considerable negotiation was undertaken with the applicant with regard to improving the visual amenity of the proposed acoustic fence. The negotiated outcome is a 2.5m high fence with landscaping and is considered to be a reasonable compromise given the site's constraints and the level of community opposition to the development on visual amenity grounds. Though not ideal, the proposed development is considered to be reasonable from a visual amenity perspective given the constraints of the subject area. Deferred commencement conditions require a detailed plan of the fence to be submitted to Council for approval. Consideration of financial matters is not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.</p>

Submission	Response
The DA should be rejected because the development is not required and the application shows contempt towards Council and adjoining owners.	Council is bound to assess all properly made applications under the Environmental Planning and Assessment Act 1979.
The ability to turn left and right when exiting 8-10 Chinderah Road will be curtailed	Inspection of the plans indicates that no change will be made to the existing alignment of Chinderah Road at the frontage of number 8-10.
Existing noise from the BP is unbearable, similar truck noise within the confines of Chinderah village cannot be tolerated	Detailed assessment of the proposed road in terms of noise impacts has been undertaken by Council's Environmental Health Officer with conditions applied including a 50kph speed limit along the proposed new road. Further assessment can be undertaken for any proposed development on the industrial lots should development applications be received in the future.
Many residents of the Royal Pacific Tourist Retreat have major health problems which will be worsened by the drift of diesel exhaust fumes and pollution from industrial traffic	The proposed development is to create a public road which is not considered to create any significant adverse levels of air pollution or fumes. Council is not the regulatory authority for such matters. Further assessment in this regard can be undertaken when consent is sought for the development of the industrial lots.
The Ozone Street drain provides the only means of drainage to a portion (around 20ha) of Gales land in Kingscliff. Council should ensure that any works around the drain do not limit its drainage function.	No changes aside from the installation of culverts are proposed to the existing drain with impacts on the drain for the revised access proposal being significantly less than that approved by DA09/0006. Culverts will maintain the existing drainage function.

None of the above matters are considered to represent reasons for refusal of the development application. Conditions of consent (including deferred commencement conditions) have been applied with respect to matters raised above where required.

(e) Public interest

A detailed assessment has been undertaken based on all matters raised above which concludes that the proposed development generally results in a lesser environmental impact than the access arrangement approved by DA09/0006. Deferred commencement conditions with regard to the proposed fence have been applied to ensure an appropriate design and to obtain funding for Council's future management of the asset. Detailed conditions have been applied to regulate the development and subject to the recommended conditions, the proposed development is considered to be in the public interest.

OPTIONS:

1. Approve the application in accordance with the recommended conditions for deferred commencement.
2. Refuse the application for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the ability to appeal the decision in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

A comprehensive assessment has been undertaken of the merits of the application by Council's planning, engineering, ecological and environmental health staff and was also reviewed by the NSW RTA and NSW Police at the Development Traffic Advisory Group. The application is considered to be worthy of approval, subject to satisfaction of the recommended deferred commencement conditions which will result in a net environmental gain in time, secure funding for Council's ongoing maintenance of the proposed acoustic fence and enable comprehensive assessment to be undertaken of the proposed fence design.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council report relating to DA09/0006 (ECM 25121073)
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- 18 **[PR-CM] Development Application DA09/0006.01 for an Amendment to Development Consent DA09/0006 for a Four (4) Lot Industrial Subdivision, Construction of Part of Ozone Street and Associated Drainage at Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah**

ORIGIN:

Development Assessment

FILE NO: DA09/0006 Pt3

SUMMARY OF REPORT:

DA09/0006 approved a 4 lot industrial subdivision, the construction of Ozone Street from Chinderah Bay Drive to the property frontage (approximately 630m) and associated drainage works.

This application seeks to modify this consent to change the approved access arrangement by way of construction of a new road through Lot 12 DP 830659. A concurrent development application (DA10/0552) has been submitted to Council for a subdivision to create a public road and an associated acoustic fence. The modification results in approximately 320m of road construction instead of 630m.

The reasoning behind the application (provided by the applicant) is that the new access arrangement under DA10/0552 provides for:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

The S96 application is being reported to Council at the request of the Director, Planning and Regulation, in response to the previous Council and community interest relating to the approved DA09/0006.

RECOMMENDATION:

That Development Application DA09/0006.01 for an amendment to DA09/0006 for a four (4) lot industrial subdivision, construction of part of Ozone Street and associated drainage at Lot 1 DP 102255, No. 16-18 Ozone Street Chinderah be approved subject and the conditions be amended as follows:

Schedule A Conditions

1. **Condition A (Habitat Restoration Plan) is to be DELETED and replaced with Condition AA which reads as follows:**

AA. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:

- a schedule and timing of works to be undertaken
- written agreement from the owner of the agreed site to planting and/or restoration works on the land
- a suitable protection mechanism on the land to ensure the trees are protected in perpetuity
- a legally binding commitment by the consent holder to funding and/or undertaking the proposed works
- a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.

2. A NEW Condition AA.1 be ADDED which reads as follows:

AA.1 A legally binding commitment by the consent holder to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.

3. Condition B be DELETED.

4. A NEW Condition C be ADDED which reads as follows:

C. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.

4. A NEW Condition D be ADDED which reads as follows:

D. The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.

Schedule B Conditions

5. Condition No. 1 is to be DELETED and a NEW Condition 1A is to be added which reads as follows:

1A. The development shall be completed in accordance with the Statement of Environmental Effects and plans as follows:

Lot Layout Plan (T.15.21/DWG 17/Issue A) prepared by Cozens Regan Williams Prove and dated 11/10 H

Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.

Cultural Heritage Assessment prepared by Everick Heritage Consultants and dated June 2010.

6. A NEW GEN Condition 1A.1 be ADDED which reads as follows:
1A.1 All conditions of DA10/0552 must be satisfied prior to release of subdivision certificate.
7. Condition No. 4 is to be DELETED and a NEW Condition No. 4A is to be added which reads as follows:
4A. The level of fill placed on the site shall not exceed RL 2.2m AHD.
8. Condition No. 7 is to be DELETED and a NEW Condition No. 7A is to be added as which reads follows:
7A. 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.
9. Condition No. 9 is to be DELETED and a NEW Condition No. 9A is to be added which reads as follows:
9A. 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.

Intersection Works

- The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

Road Works

- Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

Stormwater

- The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

Sewer

- All common rising mains shall be located in road reserve. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
- The pump stations are to be designed within a small compound that includes the control box and concrete slab.
- A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
- The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.

10. Condition No. 16 is to be DELETED.

11. Condition No. 19 is to be DELETED.

12. Condition No. 20 is to be DELETED.

13. Condition No. 27 is to be DELETED and a NEW Condition No. 27A is to be added which reads as follows:

27A. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

14. Condition No. 29 is to be DELETED and a NEW Condition No. 29A is to be added which reads as follows:

- 29A. Commencement of works in accordance with the approved Habitat Restoration Plans and legally binding agreement as detailed in Schedule A must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation within Ozone Street road reserve or the Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) within Chinderah Road road reserve.
15. Condition No. 30 is to be DELETED and a NEW Condition No. 30A is to be added which reads as follows:
- 30A. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.
16. Condition No. 31 is to be DELETED and a NEW Condition No. 31A is to be added which reads as follows:
- 31A. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.
17. Condition No. 32 is to be DELETED and a NEW Condition No. 32A is to be ADDED which reads as follows:
- 32A. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.
18. Condition No. 33 is to be DELETED and a NEW Condition No. 33A is to be added which reads as follows:
- 33A. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
19. Condition No. 46 is to be DELETED.
20. Condition No. 58 is to be DELETED and a NEW Condition No. 58A is to be added which reads as follows:
- 58A. All works associated with the access road and associated infrastructure are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

New Conditions

21. The following new GEN Condition No. 4.1 be ADDED which reads as follows:
 - 4.1. Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.
22. NEW PSC Condition No. 85 is to be ADDED which reads as follows:
 85. Prior to issue of the subdivision certificate the acoustic barrier approved by Schedule A of this consent shall be constructed to the satisfaction of Council's General Manager or delegate.
23. NEW PSC Condition No. 86 is to be ADDED which reads as follows:
 86. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plans prior to issue of subdivision certificate.
24. NEW DUR Condition No. 62.1 is to be ADDED which reads as follows:
 - 62.1 Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Wareemba Investments Pty Ltd
Location: Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah
Zoning: 4(a) Industrial
Cost: Nil

BACKGROUND:

On 22 October 2009 deferred commencement consent was granted to DA09/0006. DA09/0006 involved the subdivision of Lot 1 DP 102255 into four (4) allotments of similar size (5000m²), each with a direct frontage of 38.5m to a proposed new road pavement to be constructed along the existing Ozone Street road reserve.

The approved plans show approximately 630m of new road, from Chinderah Bay Drive along the length of the Ozone Street road reserve, terminating in a cul-de-sac at the frontage of the subject site.

The proposal also incorporated concrete lining of the drainage channel and filling of the subject site. The subject site is zoned 4(a) Industrial. No buildings or first use development was proposed on any allotment, with this to be subject to future consent.

Two deferred commencement conditions were applied, being:

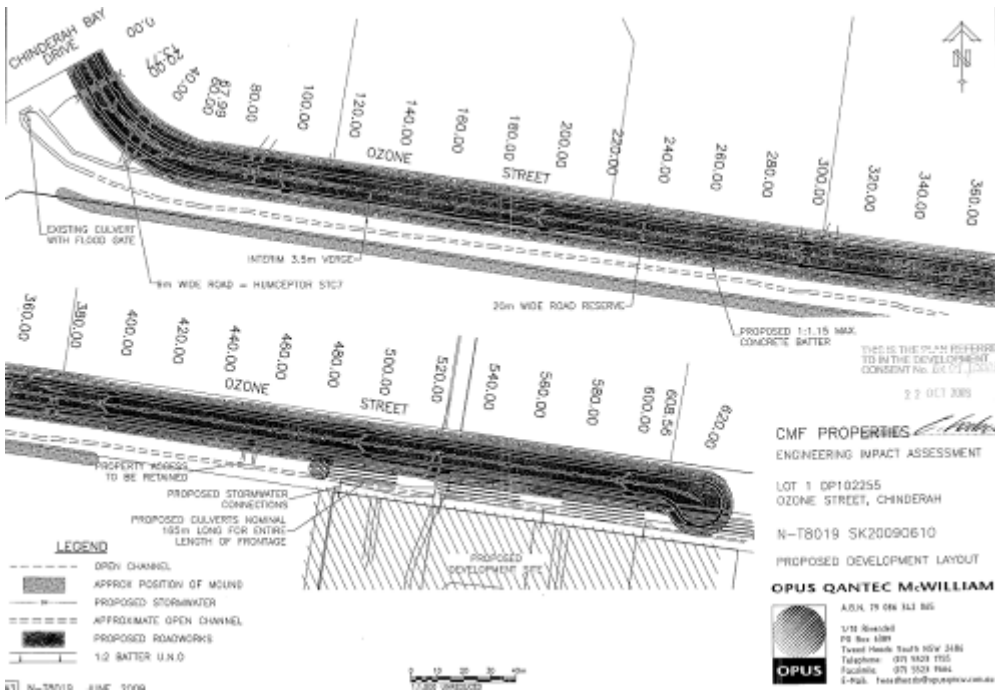
- A. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 2 for 1 basis of the Swamp Oak Floodplain Forest impacted by the proposed development. The Habitat Restoration Plan must include:
 - a schedule and timing of works to be undertaken
 - a statement of commitment by the consent holder to funding the proposed works
 - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- B. An Aboriginal archaeological heritage assessment shall be prepared by a suitably qualified and experienced consultant to the satisfaction of Council's General Manager or his delegate to determine the impact of the proposed subdivision and road works. The assessment shall include consultation with the Tweed Byron Local Aboriginal Land Council and any other related stakeholders. The assessment shall also include any mitigation and management measures where required.

The applicant satisfied the deferred commencement conditions on 21 April 2010 and the consent has been fully operative from that date.

Proposal

The applicant seeks permission via a S96 application to modify the approved access arrangement, to provide vehicular access through nearby Lot 12 DP 830659 and a short section of the Ozone Street road reserve, rather than the full length of the reserve from Chinderah Bay Drive (approximately 630m). Construction of the new road is proposed by DA10/0552, concurrently before Council.

Existing approved Access Arrangement (from Chinderah Bay Drive)



Proposed Access Arrangement (under DA10/0552, via Chinderah Road and Lot 12 DP830659)



The applicant has advised that the S96 application seeks to modify the following conditions to reflect access being obtained through Lot 12 DP 830659, instead of along the entire length of the Ozone Street road reserve:

- Deletion of Condition A 'Habitat Restoration Plan'. This condition will not be required as the modified proposal does not include the removal of any trees within the road reserve;
- Deletion of Condition B 'Aboriginal archaeological heritage assessment'. This condition has been satisfied as part of the amended development application'
- Modification of Condition No. 1 so as to reflect the proposed change of access to the four (4) lot industrial subdivision, as per the attached plans submitted with the S.96 application;
- Modification of Condition No. 9 (a) to reflect the road configuration as per amended plans, which would read 'Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 14m road reserve width;
- Deletion of Condition No. 29 as this condition will not be required as the modified proposal does not propose the removal of any trees within the road reserve;
- Modification of Condition No. 30 to include "where relevant" as follows: "A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained, where relevant, prior to commencement of the works"
- Modification of Condition No. 31 to include "where relevant" as follows: "A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be obtained, where relevant, prior to commencement of the works;
- Deletion of Condition No. 46 as this is deemed to be no longer relevant in relation to the amended proposal; and
- Modification of Condition No. 58 to include reference to second letter from HMC dated 11 October 2010.

PLANNING ASSESSMENT

The following comments are supplied with regard to the above requested amendments to conditions:

Schedule A - Deferred Commencement Conditions

The applicant has requested that Condition A – Habitat Restoration Plan and Condition B – Cultural heritage assessment be deleted.

No objection is raised to the deletion of the condition relating to the Cultural Heritage Assessment as this has been satisfied. It is noted that Condition A has been modified slightly to reflect the loss of two habitat trees. Deferred commencement Conditions C and D have also been added.

Schedule B

Condition 1 – Approved Plans

Condition 1 is required to be amended to reflect the revised access arrangement and presently reads:

1. *The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: SK20090604 (9m wide road) and SK20090610 (road layout) prepared by Opus Qantec McWilliam and dated June 2009, Figure 6.0 (9m wide road option 2) as amended in red, prepared by Opus Qantec McWilliam and dated November 2008, DWG 00926-01 (Proposed Subdivision Plan) prepared by Planit Consulting and dated October 2008, and the Habitat Restoration Plan approved under Schedule A of this consent, except where varied by the conditions of this consent.*

Condition 1 will be DELETED a NEW Condition 1A added as follows:

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

Lot Layout Plan (T.15.21/DWG 17/Issue A) prepared by Cozens Regan Williams Prove and dated 11/10 H

Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.

Cultural Heritage Assessment prepared by Everick Heritage Consultants and dated June 2010.

Condition 4 – Approved fill levels

Whilst not requested by the applicant, modification to Condition 4 is required to reflect the revised levels as a result of the proposed road under DA10/0552. Condition 4 presently reads:

4. *The level of fill placed on the site shall not exceed RL 2.0m AHD.*

This condition will be DELETED and REPLACED with the following Condition 4A as follows:

- 4A. The level of fill placed on the site shall not exceed RL 2.2m AHD.**

Condition 7 – Fill

Condition 7 requires amendment and currently reads:

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

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

This condition will be DELETED and REPLACED with the following Condition 7A as follows:

- 7A. 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.**

Condition 9 – Civil Works

The applicant has requested Condition 9 be amended to reflect the new road arrangement proposed by DA10/0552. Condition 9 currently reads:

9. *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 adopted Design and Construction specifications.*

URBAN ROAD

- (a) *Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.*

INTERSECTION

- (b) *Construction of an intersection layout for a basic left turn treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.*

This condition will be DELETED and REPLACED with the following Condition 9A as follows:

- 9A. 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.**

Intersection Works

- **The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.**
- **A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.**

Road Works

- **Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.**

- Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

Stormwater

- The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

Sewer

- All common rising mains shall be located in road reserve. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
- The pump stations are to be designed within a small compound that includes the control box and concrete slab.
- A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
- The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.

Condition 16 – Engineering Plans

The matters prescribed by Condition 16 have been incorporated into Condition 9A above.

Condition 16 shall be DELETED.

Condition 19 – Transverse Drainage

The matters prescribed by Condition 19 have been incorporated into Condition 9A above.

Condition 19 shall be DELETED.

Condition 20 – Earth Bund

Works are no longer proposed in proximity to the existing earth bund located on the southern side of the Ozone Street road reserve. The condition is no longer required.

Condition 20 currently reads:

20. Roadworks in Ozone Street shall maintain the integrity of the earth bund along the southern boundary of the road reserve.

Condition 20 shall be DELETED.

Condition 27 – Acid Sulfate Soils

Existing Condition 27 requires amendment to reflect the revised ASS Management Plan and development description and currently reads as follows:

27. *Prior to the commencement of works on the access road and open drain an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009 is undertaken.*

Existing Condition 27 is to be DELETED and REPLACED with the following Condition 27A:

- 27A. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.**

Condition 29 – Habitat Restoration Plan

Condition 29 currently reads:

29. *Commencement of works in accordance with the approved Habitat Restoration Plan must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation.*

The applicant proposed to delete this condition stating that removal of trees in the road reserve was no longer required. This is incorrect and the revised access arrangement still results in the removal of approximately 600m² of Endangered Ecological Community (EEC) Swamp Oak vegetation.

Council's Environmental Health Officer has reinforced the requirement for compensation for the loss of the EEC via the approved Habitat Restoration Plan.

As such, Condition 29 will remain.

Condition 30 be DELETED and a NEW Condition 30A be added as follows:

- 30A. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.**

Condition 31 be DELETED and a NEW Condition 31A be added as follows:

- 31.A A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.**

Condition 32 be DELETED and a NEW Condition 32A be ADDED as follows:

32A. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.

Condition 33 be DELETED and NEW Condition 33A be added as follows:

33A. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.

Condition 46 – Footpath

Condition 46 requires the provision of a concrete footpath along the length of Ozone Street. A revised footpath for the proposed new road alignment has been referenced within Condition 9A. Condition 46 is no longer required.

Condition 46 will be DELETED.

Condition 58 – Acid Sulfate Soils

Existing Condition 58 requires amendment to reflect the revised ASS Management Plan and currently reads as follows:

58. All works associated with the access road and open drain are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009.

Condition 58 will be DELETED and REPLACED with the following Condition 58A:

58A. All works associated with the access road and associated infrastructure are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

New Conditions

NEW GEN condition 4.1 be ADDED as follows:

4.1. Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.

NEW PSC condition 85 be ADDED as follows:

85. Prior to issue of the subdivision certificate the acoustic barrier approved by Schedule A of this consent shall be constructed to the satisfaction of Council's General Manager or delegate.

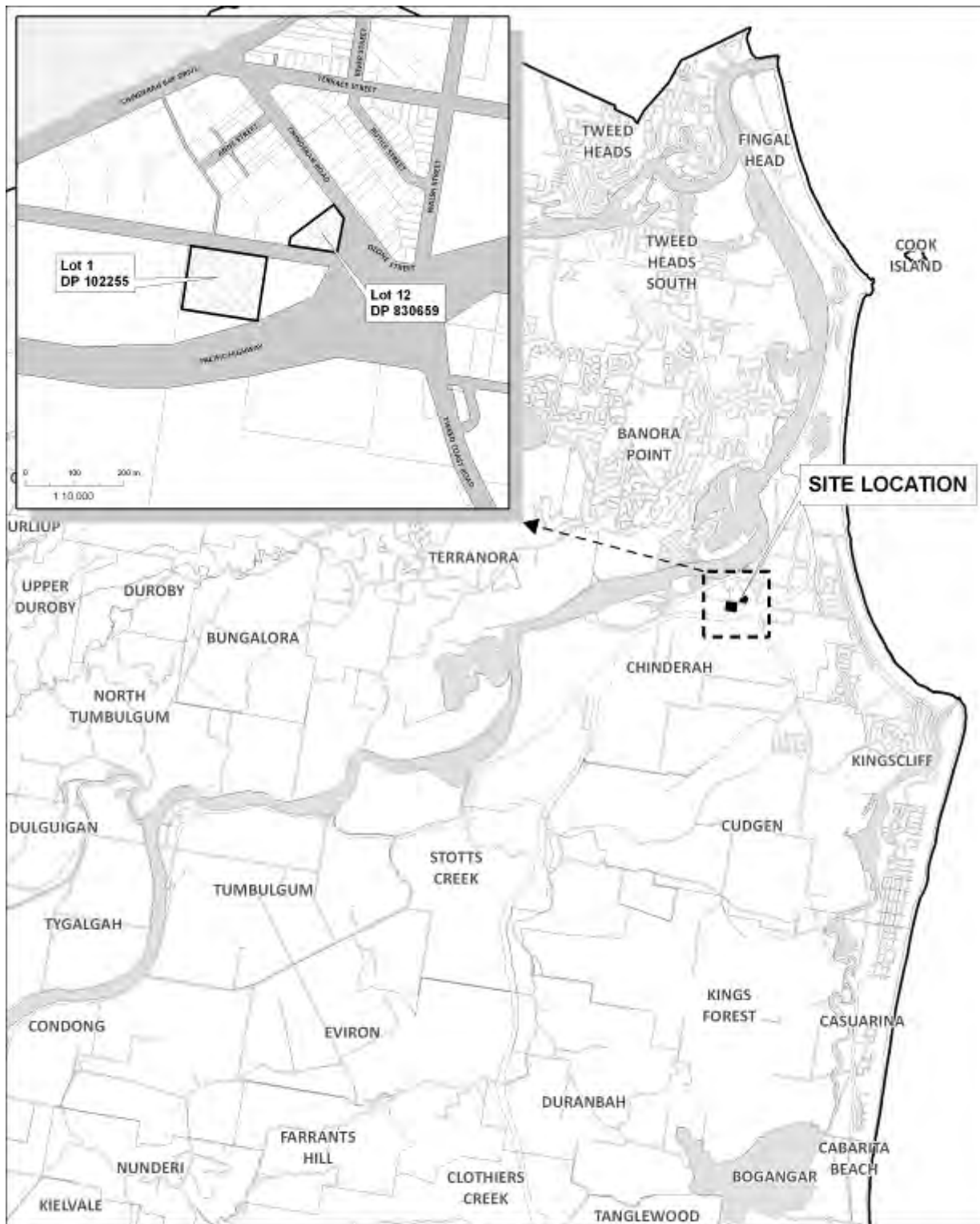
NEW PSC Condition 86 be ADDED as follows:

- 86. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plans prior to issue of subdivision certificate.**

NEW DUR Condition 62.1 shall be added as follows:

- 62.1 Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.**

SITE DIAGRAM:



Locality Plan

Lot 1 DP 102255, No.16-18 Ozone Street, Chinderah;
 Lot 12 DP 830659, Chinderah Road, Chinderah

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council neither guarantees nor warrants its accuracy, reliability or suitability for any particular purpose and excludes all responsibility and all liability, including, without limitation, liability in negligence for all damages, direct, indirect, consequential, special or incidental, arising and lost which may be incurred as a result of data being inaccurate in any way and for any reason. This disclaimer is not intended to constitute an offer of insurance or any other financial product. It is not intended to be relied upon as a substitute for professional advice and should not be used as such. It is intended to provide information only and should not be used to make any decision or any other action. The information contained on this document remains valid for 14 days only from the date of supply.</small></p>	<p><small>Drawing: 30 November, 2010 G Land and Property Management Authority (LPA) & Tweed Shire Council Boundaries shown should be considered approximate only.</small></p>	<p><small>Scale: 1:10,000 GBA</small></p>	<p><small>Civic and Cultural Centre 3 Tumbulgum Road Murrumbidgee NSW 2484 PO Box 218 Murrumbidgee NSW 2484 T (02) 9078 2400 (08) 292 9172 F (02) 9078 2428 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>	<p>TWEED SHIRE COUNCIL</p>
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DEVELOPMENT PLAN:



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

The 4 lot industrial subdivision was the subject of detailed assessment under DA09/0006 with regard to the heads of consideration prescribed by S79C of the Environmental Planning and Assessment Act 1979.

The subject S96 application remains consistent with such matters as detailed below (only relevant matters have been addressed).

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

Tweed Local Environmental Plan 2000

The proposed development remains consistent with the Clause 44 of the Tweed Local Environmental Plan. It is noted that a revised Cultural Heritage Assessment was submitted for DA10/0552 which confirmed that the occurrence of aboriginal cultural or heritage items within the new road location was unlikely (as per Clause 44). The Department of Environment, Climate Change and Water reviewed the heritage assessment and recommended general terms of approval to form conditions of consent in the event that any cultural items were uncovered during construction works for the proposed new road. Such conditions have been applied to DA10/0552 with a new condition added to the S96 to the effect that:

Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.

The deferred commencement consent condition (Schedule A) previously applied with regard to Clause 44 is proposed to be deleted as part of this S96 as it is no longer required.

State Environmental Planning Policy 71 – Coastal Protection

The proposed development remains consistent with SEPP 71. It is noted that compensation for the loss of approximately 600m² of the Endangered Ecological Community (EEC) vegetation will be enforced via the approved Habitat Restoration Plan for Lot 1 DP 285117, Elsie Street, Banora Point which formed part of the deferred commencement conditions for the original development application. An additional condition has also been applied by Council's Ecologist to the effect that provision of a legal agreement requiring compensatory restoration work to be undertaken (in accordance with the approved plan for the Elsie Street site under DA09/0006) and/or funded by the owner of the industrial subdivision lot for a five year period is required. This has been inserted as a new condition.

Conditions relating to implementation of the plan remain.

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

The draft TLEP 2010 maintains the industrial zoning of the subject site.

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

Development Control Plan Section A3 - Development of Flood Liable Land

The parent site is flood prone to a design level of RL 3.3m AHD. Ground levels on the site range from RL1.42m to RL1.82m. Approximately 0.5m of fill was approved to be imported onto the site under the parent application.

Condition 4 will be amended to reflect fill to 2.2m over the parent site (approximately 0.7m fill) instead of 2.0m as originally approved to ensure uniformity with the proposed road under DA10/0552.

The proposal remains consistent with DCP A3.

Development Control Plan Section A11 – Public Notification of Development Proposals

Amendments were made to the above policy as a result of DA09/0006 in order to notify permanent occupiers of caravan parks and manufactured home estates in the same way as landowners.

The S96 application was advertised for a period of fourteen (14) days from 2 October to 20 October 2010. During this period, nil submissions were received with respect to the S96. It is noted that numerous submissions were received for the concurrent DA10/0552 which have been addressed in detail in that report.

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

The proposal remains consistent with all matters prescribed by the Regulations.

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

Access, Transport and Traffic

Proposed access to the 4 lot subdivision is via a new road 320m in length constructed to an urban wider access standard. The proposed road will be accessed via Chinderah Drive, following the Ozone Street road reserve alignment and terminating in a cul-de-sac. Part of the proposed road is constructed over Lot 12 DP 830659 (the subject lot associated with this development application) and the Ozone Street reserve.

Development application DA09/0006 currently has an approved 9m wide road pavement within the Ozone Street reserve. The actual width of the Ozone Street road reserve is 30.18m. Industrial road standards generally require a 13m wide pavement. The rationale for the 9m wide pavement is that a reduced width requires less construction works to create a level platform for the road and associated drainage. A 9m wide pavement is considered adequate to service the 4 lot subdivision.

An existing drain is located on the southern side of the road reserve. A series of 3 x 1500 x 750 box culverts from Ozone Street to Lot 1 DP 102255 has been proposed over the open drainage channel. Two x 30m access points are provided to the 4 allotments, each individual access being 15m in width, being suitable for an industrial subdivision.

Council's road design specifications for a cul-de-sac specify that the maximum length is 120m. Due to site constraints and the distance required to access Lot 1 DP 102255, it is considered that the 320m length road is acceptable.

Appropriate amendments have been made to the consent to accommodate the above.

Swamp Oak EEC

The overall impact on the Swamp Oak is stated within the Flora and Fauna Assessment as removal of some 300m² of the community, although this has recently been verbally updated by the consultant planner to 600m². Although this aspect requires a more accurate calculation (by GIS measure it may be over 1000m²), on balance there will be a lesser impact on the EEC than the previous proposal, which was estimated to require removal of some 4500m² of EEC.

The other important benefit from an ecological perspective is that impacts within the drainage channel itself (a tidal channel providing habitat for aquatic species) will be limited to two large culverts to enable the two drain crossing points to be established into the industrial lot, rather than halving the channel width and concrete lining the bed and one bank as was previously proposed/approved. Thus water quality within the channel and subsequently flowing to the adjacent Tweed River is at significantly lower risk from export of sediment and acidic runoff (arising from disturbance of potential acid sulfate soils) and in-stream habitat values, including mangroves, are unlikely to be lost.

Thus the formation of a smaller portion of the Ozone Street road reserve in a section further from the Tweed River with significantly reduced impacts on the channel alignment is seen as an ecological benefit. It does not however, obviate the need to compensate for loss of EEC. Verbal agreement to implement the approved compensatory project has been given by the consultant planner but caution is required because:

- consent in writing from the owner of the industrial lot to the financial implication arising from the compensatory project has not yet been received;
- it is not a straightforward matter to tie the off-site works to the consent amendment in a way which will ensure the compensatory works (which span a five year time frame) will be undertaken and maintained to form a suitable offset, particularly once permission to clear the existing EEC has been given, and
- the quantity of compensation has not yet been agreed.

Deferred commencement conditions have been applied to address the above matters.

Forest Red Gum and Pink Bloodwood

Whilst a reduced impact is seen along and adjacent the drainage channel in comparison to the previous access road alignment from Chinderah Bay Drive, additional impact occurs with the loss of two semi-mature trees from the road reserve area of Chinderah Road. The trees are a Forest Red Gum (*Eucalyptus tereticornis*) and a Pink Bloodwood (*Corymbia intermedia*) (Plate 1). These two species of tree are known to be two of four main species associated with another floodplain Endangered Ecological Community known as *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*. The NSW Scientific Committee determination for the community states:

Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion is the name given to the ecological community associated with clay-loams and sandy loams, on periodically inundated alluvial flats, drainage lines and river terraces associated with coastal floodplains.

The structure of the community may vary from tall open forests to woodlands, although partial clearing may have reduced the canopy to scattered trees. Typically these forests and woodlands form mosaics with other floodplain forest communities and treeless wetlands, and often they fringe treeless floodplain lagoons or wetlands with semi-permanent standing water (e.g. Pressey 1989a).

*Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion has a tall open tree layer of eucalypts, which may exceed 40 m in height, but can be considerably shorter in regrowth stands or under conditions of lower site quality. While the composition of the tree stratum varies considerably, the most widespread and abundant dominant trees include *Eucalyptus tereticornis* (forest red gum), *E. siderophloia* (grey ironbark), *Corymbia intermedia* (pink bloodwood) and, north of the Macleay floodplain, *Lophostemon suaveolens* (swamp turpentine).*

Both trees provide known forage habitat for nectar-reliant species including the Grey-headed Flying Fox (a threatened species), Rainbow Lorikeets and Eastern Rosellas. Forest Red Gums are a favoured food tree for Koalas and Chinderah is an area known to support a Koala population, at least until recently. Thus the trees are significant despite their position and all efforts to retain them were requested during assessment. It appears that the access road is unlikely to meet minimum engineering standards in terms of distance from the roundabout if the trees are to be retained. In the absence of clear evidence of present reliance on the trees for roosting or as part of a home range by Koalas or other threatened species, it is unlikely that the loss of the two trees could successfully be argued as causing a significant impact on threatened species, populations or ecological communities whereby the development could be refused. However, the significance of the trees requires compensation at the least. A ratio of 10:1 (gained:lost) is considered appropriate due to the size and age of the trees and the known habitat value they provide, where planting and re-establishment of trees of such size will take time and care.

A suitable site for establishment of replacement trees is the residue lot created after the access road through Lot 12 DP 830659 is severed. The planning consultant has indicated reluctance to impose restriction on this site and no alternative site has been nominated. Whilst Council's preference is the residue lot because it is adjacent and of suitable soil type and elevation, a suitable alternative may be considered. The uncertainty over this aspect requires deferring commencement until this issue is satisfactorily agreed and a condition has been applied accordingly.

The following deferred commencement conditions have been applied to address all matters raised above. It is noted that such conditions apply also to DA10/0552. The previous deferred commencement condition relating to the Habitat Restoration Plan for the Swamp Oak EEC has been satisfied and has been replaced by the similar need for a plan for the loss of the Forest Red Gum and Pink Bloodwood.

1. *A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:*

- *a schedule and timing of works to be undertaken*
 - *written agreement from the owner of the agreed site to planting and/or restoration works on the land*
 - *a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
 - *a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
 - *a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
2. *A legally binding commitment by the consent holder to funding and/or undertaking an sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.*

Traffic Noise

Traffic noise from the proposed access road under DA10/0552 has the potential to impact upon adjacent land zoned 2(a) Low Density Residential used for the purposes of residential living and a caravan park. The proposal is supported by a Noise Level Impact Assessment (NLIA) prepared by Craig Hill Acoustics and dated 6 July 2010. Council's Environmental Health Officer has reviewed this report and advised that it has been prepared in general accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999.

Several submissions have been received from property owners relating to the generation of traffic noise from the proposed access road. The NLIA indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the NLIA indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 are anticipated.

The existing caravan park is located immediately adjacent to the proposed access road. Modelling undertaken by the NLIA indicates that potential daytime (7:00am to 10:00pm) noise impacts will exceed the noise criteria detailed in the NSW EPA Environmental Criteria for Road Traffic Noise 1999. It is proposed to mitigate potential noise impacts below the relevant noise criteria by constructing a 2.5m acoustic barrier along the entire length of the access road.

Modelling undertaken in the NLIA also indicates that there will be significant noise impacts during night time periods (10:00pm – 7:00am) without a further increase in the height of the acoustic barrier to 4-6.5m. Council's planning officers have concerns with regard to the visual amenity of a 4-6m high fence and as such, night time traffic noise will be further addressed and controlled via conditions during the assessment of any development applications for future industrial land uses on the site.

Council's Environmental Health Officer has advised that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. As above, night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses.

With regard to the timing of the proposed acoustic wall, the following condition has been applied:

Prior to issue of the subdivision certificate the acoustic barrier referenced within Schedule A of DA10/0552 and detailed in the Noise Level Impact Assessment prepared by Craig Hill Acoustics (REV 3 - 25/11/10) shall be constructed to the satisfaction of Council's General Manager or delegate.

The proposed modified access arrangement is therefore considered to be acceptable with regard to traffic noise.

Acid Sulfate Soils (ASS)

Council's ASS Planning Map indicates that the site is class 3 land. The submitted plans indicate that excavations to approximately 2m below ground level are proposed for the construction of culverts and therefore ASS are anticipated to be encountered. The proposal is anticipated to have a lesser impact on ASS than the previously approved access road approved by DA09/0006. An amended Acid Sulfate Soil Management Plan has been prepared by HMC Environmental Consulting dated 26 November 2010. The management plan has been prepared in general accordance with the Acid Sulfate Soil Manual 1998 and is considered adequate. Amended conditions have been applied as follows:

Existing Condition 27 be replaced with the following Condition 27A:

27A. Prior to the commencement of works on the access road and associate infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

Existing Condition 58 be replaced with the following Condition 58A:

58A. All works associated with the access road and associated infrastructure is to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

(c) Suitability of the site for the development

The site is considered to remain suitable for the development.

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

No submissions were received during the exhibition period.

(e) Public interest

The proposed development remains largely as approved, with the proposed road reconfiguration being the only amendment. The proposed amended road design results in less clearing, less road construction and less loss of Endangered Ecological Community (EEC) vegetation along the road reserve. The applicant has indicated that rehabilitation of the Elsie Street site will still be undertaken in accordance with the approved Habitat Restoration Plan and that the two trees (Forest Red Gum and Pink Bloodwood) to be removed from the road reserve at the intersection of the proposed new road and Chinderah Road will be compensated for via a deferred commencement condition (applied to DA10/0552 and the subject S96) to negotiate a suitable site (ideally on the residual allotment). Based on such outcomes and the detailed assessment presented above, the proposal is considered to be in the public interest.

CONSIDERATIONS UNDER SECTION 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, is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Minimal Environmental Impact

The proposed modification has been reviewed by Council's Development Assessment Engineer, Environmental Health Officer and Ecologist. Comments received by each officer confirm that the revised access arrangement under DA10/0552 generally results in lesser environmental impacts than the previously approved DA09/0006. The modified access arrangement results in lesser impact on the Endangered Ecological Community and offsetting of the (reduced) EEC loss is still proposed to be compensated for via the approved Habitat Restoration Plan approved as part of the deferred commencement conditions for DA09/0006. A reduced amount of road construction (320m instead of 630m) is now proposed. As such, the footprint of the development can be seen to have decreased.

The proposal is therefore considered to have minimal environmental impact.

Substantially the Same Development

The proposed development remains a four lot industrial subdivision which requires construction of an access road within a dedicated road reserve (though part of the road is now proposed to be constructed through adjoining private property). Loss of EEC vegetation is still proposed though on a lesser scale, to be compensated for as per the approved Habitat Restoration Plan.

The proposal is therefore considered to be substantially the same development.

OPTIONS:

1. Approve the application in accordance with the recommended modified conditions, subject to the approval of DA10/0552.
2. Refuse the application for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the ability to appeal the decision in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed modified access arrangement is considered to be substantially the same development as that originally approved under DA09/0006 however with reduced environmental impacts. The application is considered to be worthy of approval, subject to satisfaction of the recommended deferred commencement conditions which will result in a net environmental gain in time, secure funding for Council's ongoing maintenance of the proposed acoustic fence and enable comprehensive assessment to be undertaken of the proposed fence design. As such, the subject S96 application is considered to be worthy of approval as per the recommended modified conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council report relating to DA09/0006 (ECM 25121073)
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19 [PR-CM] Development Application DA10/0480 for the Demolition of Existing Dwellings and Construction of a Function Centre at Lots 9 and 10 Section 4 DP 2974; Nos. 9 and 11 River Street, South Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA10/0480 Pt1

SUMMARY OF REPORT:

Development Application DA10/0480 is for a proposed function centre to be located at 9 - 11 River Street, South Murwillumbah. The Function Centre is to be a two storey development consisting of ground level parking and entry, and upper floor Function Areas incorporating a commercial kitchen, bar, dining areas, office, associated facilities and storage. The application is being reported to Council at the request of Councillor Youngblutt.

The applicant proposes to provide ten (10) car parking spaces on site and to construct an additional ten (10) car parking spaces and a delivery area on the Stafford Street Road Reserve to the south.

The proposed hours of operation for the development are:

- Monday – Thursday 9.30am – 9.30pm
- Friday 9.30 am – 11.00pm
- Saturday 8.00am – 12.00am (midnight)
- Sunday 8.00am – 9.30pm

It is considered that the proposed function centre arrangement will unreasonably impact upon the amenity of the adjoining residential dwellings, cannot adequately provide on-site car parking to cater for the proposal and there are issues with stormwater management for the site which have not been addressed, and it is therefore recommended that the application be refused.

RECOMMENDATION:

That Development Application DA10/0480 for the demolition of existing dwellings and construction of a function centre at Lots 9 and 10 Section 4 DP 2974; Nos. 9 and 11 River Street, South Murwillumbah be refused for the following reasons:

- 1. The application does not comply with the 3(c) Commerce & Trade zone objectives (within Tweed LEP 2000), as approval of a Function Centre would jeopardise the viability and function of the Murwillumbah business centre as adequate car parking cannot be supplied.**

- 2. The application has failed to satisfy Clause 8(1) of the Tweed LEP 2000 specifically Clause 8(1)(c). The development will have an adverse cumulative impact in the shire created by lack of car parking spaces.**
- 3. The application is not considered satisfactory with regard to parking and access. Adequate car parking has not been provided in accordance with Tweed Shire Council Development Control Plan Section A2 - Site Access and Parking Code.**
- 4. The proposed function centre will have significant noise impacts on adjacent residential land uses. The proposed development exceeds the adopted noise criteria.**
- 5. The applicant has not satisfactorily addressed the volume of stormwater being discharged from the site. An adequate stormwater management plan has not been proposed for the subject site.**

REPORT:

Applicant: Mr C Dudgeon
Owner: Mr CI Dudgeon and Mrs RJ Dudgeon
Location: Lots 9 and 10 Section 4 DP 2974 Nos. 9 and 11 River Street, South Murwillumbah
Zoning: 3(c) Commerce and Trade
Cost: \$960,000

BACKGROUND:

The proposed function centre was submitted to Council on 20 of July 2010 with sections of the report also referring to a restaurant. The application was submitted as a Function Centre of two storeys consisting of ground level parking and entry, and upper floor Function Areas incorporating a commercial kitchen, bar, dining areas, office, associated facilities and storage.

The building contains large timber decks orientated to the River at the rear and to the River Street frontage.

The building is to be constructed using a variety of building materials – including a rendered painted block work, decorative stonework, weatherboard and metal roofing.

The applicant proposes parking for ten (10) vehicles on site with an additional ten (10) vehicle parking spaces to be constructed on the Stafford Street Road Reserve.

On 17 September 2010 an email was sent to the applicant in regards to the acoustic issues and comments received from Council's Environmental and Health Section. It was advised that the health section could not support the application and were recommending refusal of the proposal as a result of the acoustic issues on the site and its proximity to residencies. The acoustic report submitted concluded that there will be noise outside the recommended levels. There were concerns that the management of the noise issues would not be adhered to.

The applicant had discussions with the Environmental Health officer and believed that they could address the acoustic issues. As such an Information request was sent to the applicant on 30 September 2010 outlining the concerns of the development in regards to the acoustic report submitted and the development proposed.

Additional information was request from the applicant on 18 October 2010 in regards to the car parking configuration and shortfall and stormwater issues. As a result of this additional information a meeting was held with the applicant on 19 October 2010 to discuss the information requested.

A number of issues were raised in regards to the car parking. Questions were raised about the number of car parking spaces provided and the applicants' argument that the on-street car parking should be included in the calculations. It was determined that a more comprehensive traffic report would be needed before any proper assessment can be given and that existing on-street car parking cannot be utilised as credits for the proposal.

The applicant states that for the function centre component there will be 100 seats and 7 staff. As such the development requires a total of 34 car parking spaces to cater for the Function Centre component of the proposed.

It has been calculated that there is approximately 228m² of dining area and 7 staff at peak times. Therefore the development requires 40 car parking spaces for a restaurant component to be fully compliant.

The applicant has proposed 10 on site car parking spaces with an additional 10 to be constructed in Council's Stafford Street road reserve.

After discussions with internal sections within Council and the applicant it was considered that the issues surrounding car parking, acoustics and stormwater could not be overcome and as such it was requested that the applicant either withdraw the application or proceed with the assessment with the current information provided.

SITE DIAGRAM:



Locality Plan

Lots 9 and 10 Section 4 DP 2974;
No. 11 River Street, South Murwillumbah

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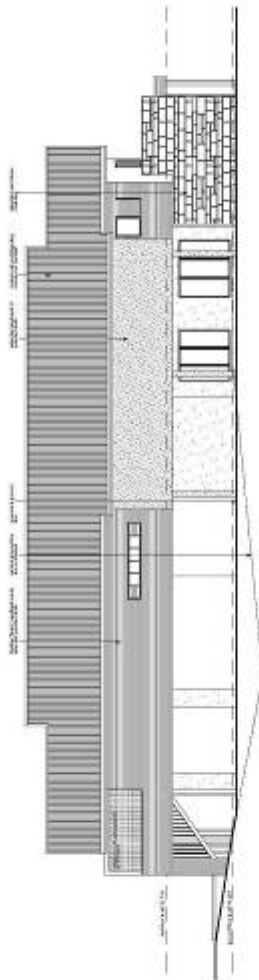
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Map Data: Spatial Information Services
Map Data Source: State of New South Wales
Map Data: State of New South Wales
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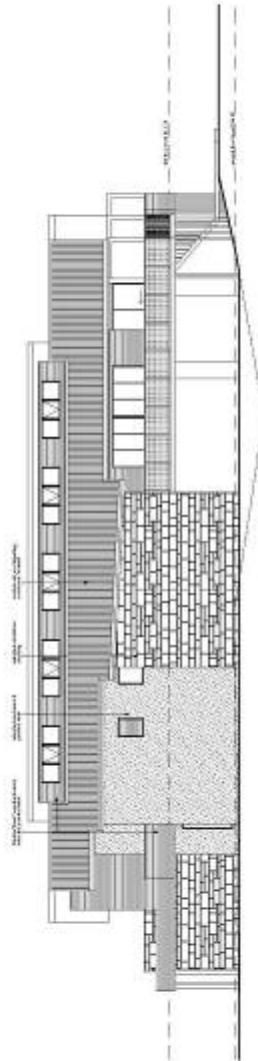
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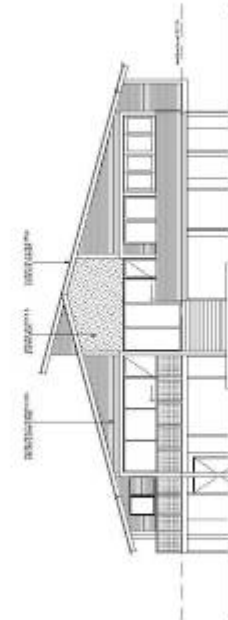
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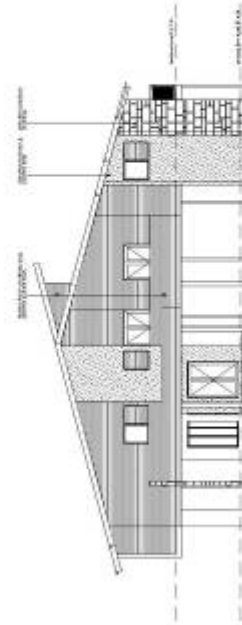
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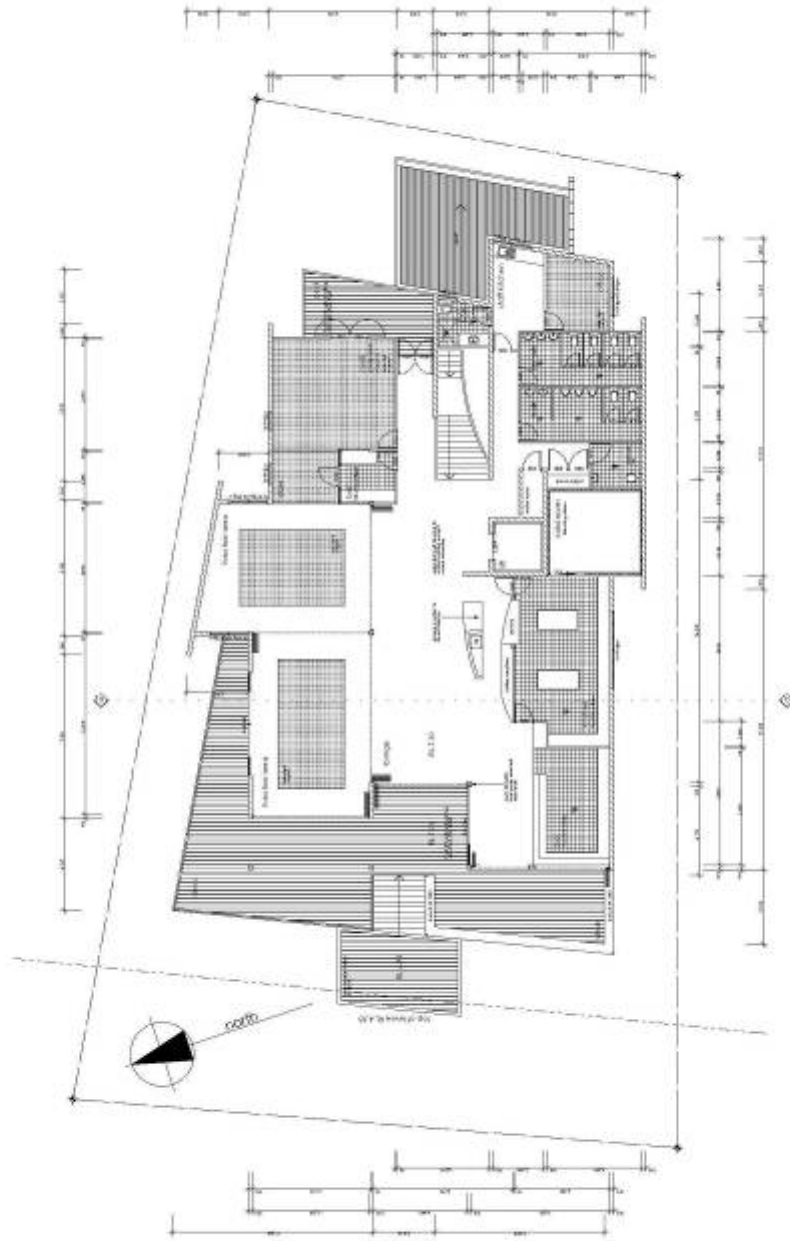
west elevation



east elevation

Andrew Reynolds Architect 118/119 Lonsdale Street Melbourne VIC 3000 Tel: (03) 9247 3000 Fax: (03) 9247 3001 www.andrewreynolds.com.au	Client: The University of Melbourne Project: Student Services Centre Phase: Architectural Design Scale: 1:50 Date: 14/12/2010	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	Project: Student Services Centre Phase: Architectural Design Scale: 1:50 Date: 14/12/2010 Architect: Andrew Reynolds Architect 118/119 Lonsdale Street Melbourne VIC 3000 Tel: (03) 9247 3000 Fax: (03) 9247 3001 www.andrewreynolds.com.au
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andrew reynolds 1213/1214 14 Street Maitland NSW 2320 08 4392 7400 08 4392 7401 www.andrewreynolds.com.au © Andrew Reynolds 2010		1.01 1.02 1.03 1.04 1.05 1.06 1.07 1.08 1.09 1.10 1.11 1.12 1.13 1.14 1.15 1.16 1.17 1.18 1.19 1.20 1.21 1.22 1.23 1.24 1.25 1.26 1.27 1.28 1.29 1.30 1.31 1.32 1.33 1.34 1.35 1.36 1.37 1.38 1.39 1.40 1.41 1.42 1.43 1.44 1.45 1.46 1.47 1.48 1.49 1.50		Council Development 1.01 1.02 1.03 1.04 1.05 1.06 1.07 1.08 1.09 1.10 1.11 1.12 1.13 1.14 1.15 1.16 1.17 1.18 1.19 1.20 1.21 1.22 1.23 1.24 1.25 1.26 1.27 1.28 1.29 1.30 1.31 1.32 1.33 1.34 1.35 1.36 1.37 1.38 1.39 1.40 1.41 1.42 1.43 1.44 1.45 1.46 1.47 1.48 1.49 1.50		1.01 1.02 1.03 1.04 1.05 1.06 1.07 1.08 1.09 1.10 1.11 1.12 1.13 1.14 1.15 1.16 1.17 1.18 1.19 1.20 1.21 1.22 1.23 1.24 1.25 1.26 1.27 1.28 1.29 1.30 1.31 1.32 1.33 1.34 1.35 1.36 1.37 1.38 1.39 1.40 1.41 1.42 1.43 1.44 1.45 1.46 1.47 1.48 1.49 1.50	
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first floor 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

The proposed development is considered not to be consistent with the aims of the Tweed Local Environmental Plan (Tweed LEP). The proposed development is not considered to be consistent with the vision of the shire *“to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.”* The proposed development is for a function centre development in a commercial zone which adjoins residential land. It is considered that the proposed is not compatible with the area’s residential amenity qualities and as such does not comply with the development standards contained within the Tweed LEP.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the Tweed LEP relates to ecologically sustainable development. The Tweed LEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.*

The proposal is consistent with the aims and the ecological sustainable development principles outlined within the plan.

Clause 8 (1) - Consent consideration

Clause 8 (1) 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.*

Clause 8(1)(c) Cumulative Impact: The proposed development if approved would be considered to create an adverse cumulative impact in the Shire. The Tweed Shire currently has a sufficient number of properties which is of a more appropriate size that is zoned for commercial purposes that would accommodate this type of development. By approving this application would encourage other non conforming applications to be lodged. Therefore, the proposed development if approved would establish an adverse cumulative impact in the Shire.

Clause 11 - Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 3(c) Commerce and Trade under the provisions of the LEP. The primary objective is to:

- *to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres*

Secondary objectives:

- *to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *to allow for other development that is compatible with the primary function of the zone.*

The subject site is zoned 3(c) Commerce and Trade. A Function Centre is permissible in the zone with consent.

The proposed development does not meet the primary objectives of the zone as the proposed development cannot cater for the car parking demand created and would jeopardise the viability of the business centre. It is therefore recommended that the proposed be refused.

Clause 13 - Development of Uncoloured Land on the Zone Maps

The Stafford Street Road Reserve is unzoned. The proposed development includes constructing a car park within the road reserve to form part of the development of the function centre on the adjacent site. The function centre is permissible within the 3(c) zone, and hence, the carparking within Stafford Street is compatible with development permissible in the adjacent zone. It is therefore considered that the proposed complies with this clause.

Clause 15 - Essential Services

The subject site is currently serviced by way of existing stormwater management, electricity, sewer and water connections.

Clause 16 - Height of Building

The subject site possesses a statutory height limit of three (3) storeys. The proposal incorporates eight dwellings of two (2) storeys. Therefore the proposed height is in accordance with the provisions of Clause 16 of the Tweed LEP.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The applicant has provided an assessment in this regard. The applicant concludes that there will be positive impacts through the creation of employment. It is however considered that the proposal will reduce the existing residential amenity. It is therefore considered that there will be negative social impacts in the locality and it is therefore recommended that the proposal be refused.

Clause 34 - Flooding

The design flood level of the site is 7.1m AHD. The proposed finished floor level of the function centre is 7.1m AHD.

According to the Flooding DCP the proposed ground floor use is compliant with the Flood Policy as it is not for a habitable use. Building materials and electrical wiring below the floor level would be designed to withstand possible submergence in water, in accordance with Council's standard requirements.

Clause 35 - Acid Sulfate Soils

The site is nominated as containing Class 4 Acid Sulfate Soils according to Council's Acid Sulfate Soils maps. Class 4 soils indicate that Acid Sulfate Soils may be disturbed if works extend greater than 2.0m below natural ground level.

The development is generally located at existing ground level, and above (filling required). The only works required below the existing ground level are footings, drainage and service provision. Works are not anticipated to extend beyond 2.0m below the existing ground level and hence are not anticipated to disturb acid sulfate soils.

Other Specific Clauses

There are no other applicable clauses.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

There are no particular matters for consideration under the North Coast Regional Environmental Plan relating to the construction of a function centre within the Murwillumbah township.

SEPP No. 55 - Remediation of Land

This Policy provides that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development. The applicant has provided an assessment against section 3.4.1 of the Policy which outlines that the site is unlikely to be contaminated. It is therefore considered that the proposal complies with the provisions of SEPP No. 55.

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

The Tweed Local Environmental Plan 2010 was on public exhibition from 27th January 2010 until 30 April 2010. In this Draft LEP the site is within the B5 – Business Development Zone. Within the B5 zone a Function Centre is prohibited. It is therefore considered that the Draft LEP 2010 envisages that a function centre within the Business Development Zone is not an appropriate use of the site.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Council's DCP Section A2 contains different requirements for car parking dependent upon the proposed use within a development. The applicant has identified that he wants the proposal to operate as a Function Centre. The DCP contains varying requirements for car parking for these uses.

For a function centre the following rates apply:

Customer Car Parking	Staff Car Parking	Delivery, Service Vehicle parking	Bicycle parking
0.3 spaces to each seat	0.5/staff	1 HRV	1/20 seats up to a maximum of 10 spaces

The applicant states that for the function centre component there will be 100 seats and 7 staff. As such the development requires a total of 34 car parking spaces to cater for the Function Centre component of the proposed.

The proposed development is for a Function Centre however the applicant identified within the Statement of Environmental Effects that the building could also be utilised for a restaurant. As such the following rates apply for a restaurant:

Customer Car Parking	Staff Car Parking	Delivery, Service Vehicle parking	Bicycle parking
1/7m ² dining area	1/staff peak	1 HRV	1/5 car park

	operating time		
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It has been calculated that there is approximately 228m² of dining area and 7 staff at peak times. Therefore the development requires 40 car parking spaces for a restaurant component.

The applicant has provided a total of 10 undercover car parking spaces will be provided on-site at Ground Level. It is proposed that a further 10 on-street car parking spaces will be provided within the Stafford Street road reserve adjacent to the site frontage.

Vehicular access to the proposed ground level undercover car parking will be via an entry-only driveway in River Street and an exit-only driveway in Stafford Street.

The information provided was assessed by Council Engineer's who indicated that the applicant was required to provide all car parking spaces on the subject site or provide adequate arguments for alternate solutions. Options were discussed in a meeting held with relevant internal Council officers and the applicant and it was determined that there were no reasons for not being able to provide all the car parking on site. Council officers determined that the proposed Function Centre was out of scale for the size of the site and that car parking for the site should not include street car parking spaces.

As a result of the car parking shortfall and the options being submitted to Council not being appropriate for the proposal, it was requested that the application be withdrawn or the proposed would be assessed with the information provided. As such the proposed development is being recommended for refusal based on the lack of car parking to cater for the proposal.

A3-Development of Flood Liable Land

Council's DCP Section A3 nominates that the Design Flood Level for the site is 7.1 metres AHD. The development will have a floor level of 7.1m which is equal to the 1 in 100 year flood level. According to the DCP the proposed ground floor use is compliant with the Flood Policy as it is not for a habitable use. Building materials and electrical wiring below the floor level would be designed to withstand possible submergence in water, in accordance with Council's standard requirements.

A4-Advertising Signs Code

The subject application does not seek approval for any specific advertising signage. A 'Building Identification Sign' will be erected on the eastern facade of the development and a smaller sign 'building identification sign' will be erected on the western facade. This can be conditioned should the application be approved.

A11-Public Notification of Development Proposals

The notification and advertising of Development Proposals is determined by Council's DCP Section A11. The proposed development was notified for a period of 14 days from 9 August to 23 August 2010. From this period there were three submissions received, being 2 objections to the proposal and 1 in favour of the submission. The main points of the objections were car parking which would be adjoining the residential allotment on Stafford Street and noise generated from the proposed use. The support for the proposal was that it would help revitalise the area. Further consideration of the submissions received is outlined later in this report.

A13-Socio Economic Impact Assessment

The applicant has provided an assessment in this regard. The applicant concludes that there will be positive impacts through the creation of employment. It is however considered that the proposal will reduce the existing residential amenity. It is therefore considered that there will be negative social impacts in the locality and it is therefore recommended that the proposal be refused.

B22 - Murwillumbah Town Centre

DCP Section B22 applies to the Murwillumbah Town Centre, which includes the subject site. The DCP was adopted by Tweed Shire Council on 13 May 2008 and came into effect on 04 June 2008. However, the section of the DCP that relates to the subject site has been deferred at this stage. As such, the provisions of the DCP which relate to the subject site are not applicable to the development proposal.

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

Clause 92(a) Government Coastal Policy

Not applicable.

Clause 92(b) Applications for demolition

The applicant supplied a demolition works plan. Council's Building Services Unit has provided Conditions of consent should the application be approved.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

(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 was assessed by Council's Environmental Health Services Unit who has provided the following assessment in regards to the acoustic issues with the subject proposal in the locality.

Noise – Considering the proposed hours of operation, proposed use of the development and location of surrounding residential dwellings significant noise impacts are anticipated. Residential dwellings are located within 25m to the south, north, east and 170m across the Tweed River to the west. Two objections have been submitted from adjacent residents raising significant noise concerns.

An Environmental Noise Impact Report has been prepared by CRG Traffic & Acoustics Pty Ltd dated 24 May 2010 (crgref:10163a report). The report indicates that potential noise impacts may arise from patron activity, amplified music and mechanical plant. It is proposed to provide background music through an internal sound system during the day and evening, solo & duo artists on Sundays and DJ's during weddings on Saturday between 8pm and 11:00pm.

The following limitations of the report were highlighted and have been further addressed in correspondence received from CRG Traffic & Acoustics Pty Ltd dated 12 October 2010. The report and further correspondence submitted does not adequately demonstrate that noise impacts can be controlled below the adopted noise criteria.

- The report demonstrates that car door closure is anticipated to exceed the noise criteria for evening periods from on-site parking. The report does not consider potential noise impacts from off-site car parking and parking on Council's road reserve. This is considered particularly important due to limited on-site parking compared to the potential patron capacity of the proposal.*

Further Information Submitted – *Correspondence from CRG Traffic & Acoustics Pty Ltd dated 12 October 2010 indicates that noise levels from car parking activities are predicted to exceed the adopted noise criteria during evening time periods (6pm – 10pm). This is assuming that a carport structure (noise barrier) is constructed on the road reserve to mitigate noise impacts. Council's development assessment Engineers have advised that the structures are not permitted on Council owned and managed land. Without the construction of the noise barrier further significant noise impacts are anticipated during evening time periods.*

Furthermore an assessment of car parking activities during night time periods (10pm to 7am) for the extended operating hours on Friday and Saturday have not been undertaken. Noise impacts during the night time period are anticipated to significantly exceed the adopted noise criteria and have significant noise impacts.

- *The report has based modelling on car speeds of 5km/hr. This activity can not be adequately managed by facility management. It is considered likely that cars will move faster than the adopted speed during on-site and off-site parking creating significant noise impacts during evening and night time periods.*

Further Information Submitted – Correspondence from CRG Traffic & Acoustics Pty Ltd dated 12 October 2010 indicates that off-site traffic movements (51dBA) will exceed the adopted noise criteria for evening time periods (47dBA) and night time periods (39dBA).

- *The report indicates that patrons utilising the western and eastern decks are predicted to exceed the adopted noise criteria if boisterous behaviour is observed during evening and night time periods. To mitigate noise from the small eastern deck it is proposed to exclude patrons during evening and night time periods. It is proposed to mitigate noise from the larger western deck by controlling patron behaviour. Considering the nature of the development and the sale of alcohol the behaviour control will be difficult and it is anticipated that significant noise impact will arise.*

Further Information Submitted - Correspondence from CRG Traffic & Acoustics Pty Ltd dated 12 October 2010 indicates that noise impacts from boisterous behaviour will be managed by complying with conditions of the required liquor licence. Even with the strict control of behaviour the adopted noise criteria is predicted to be exceeded.

- *The report indicates that amplified music will be below the adopted noise criteria assuming that this activity is undertaken within the function areas with all windows and doors closed. Considering the nature of the development and likelihood of utilisation of the large western deck during functions it is unlikely that all doors and windows will remain closed. This is further reinforced by the Statement of Environmental Effects which states that "large verandas at the rear of the site will ensure that an active element is provided to the riverfront". The views of the river and the climate experienced within the Tweed will encourage the use of the deck during the use of amplified music and therefore significant noise impacts are anticipated.*

Further Information Submitted - Correspondence from CRG Traffic & Acoustics Pty Ltd dated 12 October 2010 includes amended plans replacing the bi-fold doors leading out to the eastern deck with fixed glass and a sound lock door. This amendment is considered adequate to reduce potential noise impacts from amplified music.

It is considered that the proposed function centre will have significant noise impacts on adjacent residential land uses even with the proposed mitigation and management measures. The proposed mitigation and management measure are considered either impossible or very difficult to manage and will impose a significant compliance burden on Tweed shire Council and the NSW Officer of Liquor, Gaming and Racing who administer liquor licences.

A significant compliance burden has been placed on the Tweed Shire Council and the Office of Liquor, Gaming and Racing from other similar premises immediately adjacent to residential dwellings within the Tweed Shire Council."

Considering the above information the development application is not supported by Council's Environmental Health Unit. As such the proposed application is recommended for refusal.

Access, Transport and Traffic

Access, transport and traffic have been discussed under the Development Control Plan Section A2 above. Due to the lack of sufficient car parking to cater for the proposed development the proposal is recommended for refusal.

Stormwater

An information request was sent out on 18 October 2010 with 13 items relating to the stormwater issues on site. The proposed building straddles a drainage flow path where the toe of the flood levee meets the natural surface and a pipe connects this runoff to Council's drainage system in Stafford St at the side boundary of No 11 River St. The DAP minutes for this development recognise and state that "Any proposal to alter the gully would need to be supported by an engineering design". No such design was provided as negotiations between Council and the applicant resulted in no clear stormwater management that could be implemented.

Council's Development Engineer has provided the following comments:

"The applicant has not provided a satisfactory address of stormwater management for the developed site. Issues of concern are:

- The submitted proposal incorrectly proposed to discharge stormwater to the north, on to private lands, in lieu of the legal point of discharge which is to the south, to Stafford Street.*
- The applicant has not satisfactorily addressed the volume of stormwater being discharged from the site, and whether this volume exceeds that allowable pursuant to TSC Development Design Specification D7: Water Quality. Council have not been approached to consider variations, including options for retaining stormwater on site, via implementation of On-Site Stormwater Detention.*
- The capacity of the existing receiving stormwater system in Stafford Street has not been investigated, to determine if unattenuated site discharge can be accommodated. It is likely that some upgrading of the existing system would be necessary - however this raises a significant issue that may require enlargement of the existing stormwater line as it discharges through the existing flood levee directly into the Tweed River.*

- *The proposal would block an existing drainage depression towards the rear of the site, severely affecting upstream properties adjoining to the north, and likely to cause localised flooding problems - even in small rain events.*
- *The applicant has been provided opportunity to address the above-mentioned concerns, but to date has not submitted any further information.”*

On the basis of the abovementioned assessment from Council's Development Engineer it is recommended that the application be refused.

(c) Suitability of the site for the development

Surrounding Landuses/Development

As stated previously it is considered that the scale and type of development will create negative impacts on the surrounding residential amenity. The issues relating to car parking, acoustics and stormwater cannot be overcome with the development in its current form. It is therefore recommended that the application be refused.

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

Integrated Referrals

The development application was referred to the Department of Environment, Climate Change and Water as the proposal includes works within 40m of a waterway. The Department responded on 2 September 2010 with no further assessment by the NSW Office of Water is necessary. It is therefore considered that the proposed development is consistent with the Water Management Act 2000.

Public Submission

The application was an exhibition for fourteen (14) days commencing Monday 9 August 2010. From this period there were two (2) submissions against the proposal and one (1) in support of the application. All of the issues raised by the objections are noted below:

Issue	Comment	Assessment
Car Parking along Stafford Street	<i>The proposed function room/convention centre would not only reduce access to the rear of my property but will in effect bring the car park to within 3-4 metres of my home with cars parking all along the northern border of my home and all headlights leaving the premises will be directly shone at my home up until 12.30am on weekends.</i>	It was considered that the proposed car parking along Stafford Street was unacceptable as it would result in a negative impact on the residential amenity of the adjoining dwelling. It is therefore recommended that the proposal be refused.

Issue	Comment	Assessment
Noise from people leaving	<i>The noise of people leaving and car doors slamming into the early hours would make my home neither liveable or rentable.</i>	It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. It is therefore recommended that the proposal be refused.
Noise from the use	<p><i>Great care has been taken to supply noise assessment reports but these reports while stating some current noise levels in the area fail to give any definite facts as to noise generated by the proposal and in fact state that no car park survey has been undertaken, they then go on to say the main onus of noise control will be on the staff to maintain customers boisterous activity.</i></p> <p><i>Noise from DJ's and performers emanating from the premises will not and cannot be controlled so as not to interfere with the surrounding residents peace.</i></p>	It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. It is therefore recommended that the proposal be refused.
Stafford Street car park	<i>We believe that the development of that part of Stafford St as a car park will block or at least restrict access to our property and also impede access of emergency vehicles should the need arise. There is no access for repairs and maintenance to be carried out on the rear of several of the buildings to the south of the development other than via the levee bank.</i>	This issue should not be taken into consideration as access to the site is maintained from the River Street Frontage. Access to the rear of the site is not a town planning issue and as such does not warrant refusal.

Issue	Comment	Assessment
Car Parking	<p><i>The capacity of the restaurant/function centre is greater than the number of car spaces provided in the proposal. Despite the observations of the Traffic Report that there is ample on street parking, during significant events such as church services, funerals, building an maintenance in the vicinity, residents currently have difficulty with parking outside their homes. This situation will only be exacerbated by the development.</i></p>	<p>It is considered that the number of car parking spaces provided for the proposal is not sufficient to cater for the development. As such the proposed development is recommended for refusal.</p>
Noise	<p><i>In the Acoustic Report that noise from amplified music is "a prediction only and will need to be tested onsite at construction completion." By the time construction is completed it may well be too late to modify the sound impacts.</i></p> <p><i>We are also concerned about boisterous and antisocial behaviour of patrons. The levee bank gives unrestricted access to dwellings to the south and intoxicated persons are not going to know or care that this is private property where residents want to go about their lives in peace. Staff at the venue may be able to influence patrons while they are on the premises but once they leave there are no controls.</i></p>	<p>It was considered that the proposed function centre would result in an unacceptable level of noise and would result in a negative impact on the residential amenity of the adjoining dwelling. It is therefore recommended that the proposal be refused.</p>

(e) Public interest

This application is not considered to be in the public interest. Approval of this development would undermine the importance of the South Murwillumbah area, create a dangerous precedent for Clause 8(1) of the Tweed LEP 2000 and not result in a good planning outcome. For these reasons the application is recommended for refusal.

OPTIONS:

1. Refuse this application.
2. Grant in-principle approval and require a further report to Council providing recommended conditions of development consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination by Council the applicant has a right to appeal to the NSW Land & Environment Court.

POLICY IMPLICATIONS:

Should this application be approved it will set a dangerous precedent for interpretation of Clause 8(1) of the Tweed LEP 2000. Additionally any approval that does not provide adequate car parking spaces to cater for the proposal would compromise the integrity of Council's Development Control Plan Section A2.

CONCLUSION:

The proposal before Council is not considered to be a satisfactory use for the site. The site constraints and zoning of the land make it imperative that whatever development occurs on the site will create an attractive design that will function efficiently and obviously be economically successful. The proposed design does not address these constraints effectively despite Council's requests for further information. The proposed use and design is not considered satisfactory thus warranting refusal of the 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 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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20 [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 November 2010 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported where a variation in standards under SEPP1 has occurred.

DA No.	DA10/0441
Description of Development:	addition of a granny flat and carport
Property Address:	Lot 3 DP 597561 No. 8 McLeod Street, CONDONG
Date Granted:	22/11/2010
Development Standard to be Varied:	Clause 51A - Multi Dwelling Housing Densities in Zone 2a
Zoning:	2(a) Low Density Residential
Justification:	Variation to development standard within Clause 51A (2) of the LEP 2000. Total GFA of single dwelling and proposed granny flat is 116sqm. Low density and appearance of structures as one dwelling maintained.
Extent:	Undersized allotment = 833.6sqm. 7.4% to the development standard of 900sqm.
Authority:	Tweed Shire Council

DA No.	DA10/0451
Description of Development:	two (2) lot subdivision
Property Address:	Lot 2 DP 562104 No. 42-44 Terrace Street, CHINDERAH
Date Granted:	18/11/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural, 7(a) Env Prot (Wetlands & Littoral Rainforests)
Justification:	The proposal does not involve any change of use, does not involve any physical works (other than connection to reticulated sewer) and will not create any additional dwelling entitlements.
Extent:	1(a) zoned land with a variance greater than 10% of the 40ha minimum.
Authority:	Tweed Shire Council

DA No.	DA10/0644
Description of Development:	Boundary adjustment (3 lots into 2)
Property Address:	Lot 7 DP 830659, Lot 100 DP 1057117 & Lot 57 DP 755701 Tweed Valley Way, Chinderah
Date Granted:	2/11/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(b2) Agricultural Protection, 3(d) Waterfront Enterprise
Justification:	The proposed boundary adjustment results in the creation of two allotments (from 3), of which the area of one allotment (26.01ha) will be less than the development standard of 40ha within the 1(b2) zone. Considering that the current configuration involves 3 undersized allotments, this is a beneficial outcome.
Extent:	Proposed Lot 17 will have a total area of 26.01ha which is a 35% variation from the development standard of 40ha.
Authority:	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (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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21 [PR-CM] Consideration of Pursuit of Costs - Land and Environment Court Matter - Tweed Shire Council ats Those Best Placed Pty Ltd

ORIGIN:

Building and Environmental Health

FILE NO: DA08/0966 Pt2

SUMMARY OF REPORT:

On 20 July 2010 a report was presented to Council seeking approval to pursue costs incurred by Council in relation to defending Class 4 proceedings instigated by Those Best Placed whereby Council resolved that:

- 1. Council, in respect of the Class 4 Land and Environment Court proceedings – Tweed Shire Council ats Those Best Placed Pty Ltd – No. 49 Upper Crystal Creek Road, Crystal Creek, instruct its solicitors HWL Ebsworth to pursue the applicants for the costs incurred by Council in defending this action.*

The matter was appealed by the applicant, Those Best Placed, and the application for leave to appeal was dismissed with costs. Defending this appeal has resulted in additional legal costs being incurred by Council in defending the matter and therefore on this basis it is recommended that Council support the recommendation and pursue costs against the applicants.

RECOMMENDATION:

That Council instruct its legal representatives HWL Ebsworth to pursue the proprietors of Those Best Placed, Andrew Crowther and Sandra Schultz, for the costs incurred against Council for defending the matter.

REPORT:

BACKGROUND

A report was submitted to Council's meeting of 20 July 2010 on this matter. A relevant extract from that report, and the associated resolution is provided below:

"SUMMARY:

On 27 May 2010, Justice Biscoe presented his judgement that the Class 4 matter in the NSW Land and Environment Court, Those Best Placed Pty Ltd v Tweed Shire Council be summarily dismissed. The judgement arose from an order moved by Tweed Council's legal representatives, HWL Ebsworth, seeking that the above proceedings be summarily dismissed on the ground that no reasonable cause of action was disclosed by the applicant.

The Class 4 action was initiated by the owners of property No. 49 Upper Crystal Creek Road, Crystal Creek, primarily in respect of Council officer actions taken in refusing a development application (DA08/0966) for the construction of a shed, including a bathroom and toilet, on the land. Other more broader questions of Council conduct were identified in the LEC action relating to Council's related assessment of the provision of an onsite sewerage management system on the site.

On the basis of this judgement, it is recommended that Council endorse the pursuit of costs against the Class 4 applicants to cover the sizeable costs incurred by Council in defending the LEC action."

RESOLUTION:

As a result of the above resolution, Council's legal representative acting in the matter, HWL Ebsworth, was instructed to proceed with costs action in relation to the order from the court. A letter was forwarded to Those Best Placed advising of the order that the applicants, Those Best Placed Pty Ltd and Sandra Schultz pay Council's costs in the proceedings. At that point in time the total costs owing were approximately \$53,585.00. Prior to this letter an appeal was lodged with the Court of Appeal in relation to the order from Justice Biscoe. This matter was listed for mention on 23 August 2010 and Council's solicitor attended. The matter was stood over until 13 September 2010 to allow any Notice of Motion to be lodged.

On 13 September 2010 the matter went before the Court of Appeal however the Registrar of the Court ordered that Those Best Placed pay security of costs into the Supreme Court in the sum of \$7,000 within 28 days and that the company pay Council's costs of the motion of security. On 16 November 2010 the matter was again heard in the Court of Appeal where the applicant, Those Best Placed, had sought leave to appeal the decision of Justice Biscoe. Leave of appeal was dismissed with costs (a copy of that judgement is attached to the report). Following that decision, Council's solicitors were instructed to obtain from the court the \$7,000.00 paid as security of costs. Council's solicitor has also requested Council's instructions in relation to pursuing the shortfall in costs and costs in court. In reply to the request from HWL Ebsworth to those Best Placed to release the \$7,000.00 security deposit from the Court of Appeal. A response was received from Mr Andrew Crowther. A copy of that response is attached to this report.

To date Council has incurred legal costs of approximately \$74,000.00 in defending this matter, a matter of which is considered to be no fault of council or its processes. The action which was initiated by Those Best Placed Pty Ltd was primarily based on the refusal of a development application whereby the applicant refused to provide certain information to assist council officers with the assessment. On this basis it is recommended that Council support the recommendation to pursue the costs incurred in defending the matter.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Clear legal advice on this matter has been provided by way of the Court of Appeal judgement, and it is therefore considered appropriate in this instance for Council to endorse the pursuit of costs against the applicants.

POLICY IMPLICATIONS:

Nil.

OPTIONS:

That Council:

1. Instruct its solicitors to pursue costs related to this matter; or
2. Instruct its solicitors not to pursue costs related to this matter.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. New South Wales Court of Appeal Judgement – Those Best Placed Pty Ltd v Tweed Shire Council [2010] NSWCA 309 (ECM 25252574)
 2. Copy of letter to Council from Andrew Crowther, Managing Director, Those Best Placed Pty Ltd, dated 29 November 2010 (ECM 25057391)
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22 [PR-CM] On-site Sewage Management - Kielvale

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

In July 2010 Council was informed of the activities of officers of Council's Building and Environmental Health Unit in implementing Council's On-site Sewage Management Strategy. Auditing has commenced in the small village area of Kielvale. Many of the systems within Kielvale will not comply with current standards and are constrained by existing structures, land-forming and allotment size. Complaints have been received to Council raising concerns as to the inadequate management of these systems. This report provides an overview of the considerations and actions that officers of Council may undertake to ensure they are operated and adequately maintained to meet relevant standards to protect public health, the environment and community living.

RECOMMENDATION:

That the report on on-site sewerage management – Kielvale be received and noted.

REPORT:

In July 2010 Council was informed of the activities of officers of Council's Building and Environmental Health Unit in implementing Council's On-site Sewage Management Strategy. The report provided details of the activities undertaken in issuing of approvals for the installation of on-site sewage management systems, the issuing of approvals to operate on-site sewage management systems and the monitoring of such systems to ensure they are operated and adequately maintained to meet relevant standards to protect public health, the environment and community living.

Council's On-site Sewage Management Strategy is also a guide for landholders and provides guidance to Council officers in assessing and monitoring systems.

The monitoring process being undertaken throughout the Shire is revealing that there is a general lack of knowledge by operators of on-site sewage management systems in operating and maintaining their systems including the maintenance of their land application areas (LAA). As part of the process, therefore, officers also have a significant role in educating operators to improve the level of knowledge and required actions needed to minimise adverse impacts on the environment and maintain an acceptable level of public health protection.

Extracted from the Strategy:

“Owners Responsibilities

1. *Owners must seek approval to operate all of the on-site sewage management systems on their property by making an Application for an Approval to Operate and submitting it to Council.*
2. *Owners are responsible for the operation of their on-site sewage management system and must manage their system safely. Homeowners should maintain their on-site sewage management system so that wastewater or continual moisture does not appear on the surface of the ground (approved effluent for irrigation excepted), the system does not create an odour nuisance, the sewage does not back up into the residence or leak from the tank, pipework or drainage area.*
3. *Owners must ensure that wastewater does not leave the property other than as may be approved by Council and is not discharged onto any land other than the designated effluent application area.*
4. *Owners must ensure that wastewater is not discharged into any watercourse (permanent or intermittent), road or stormwater drain.*
5. *Owners must operate their on-site sewage management systems in accordance with the conditions of the approval to operate or a written request from Council.*
6. *Owners must understand and follow the manufacturers instructions for the proper care and use of their system.*

7. *Owners of aerated on-site sewage management systems must ensure that maintenance and service contracts are current and operational, ensuring the system is visited by a service provider every 3 months.*
8. *Absentee owners should ensure that occupants are provided with the necessary information and support to successfully operate and maintain their sewage management system.*
9. *Owners must provide relevant information to Council when requested.”*

Auditing has commenced in the small village area of Kielvale. Most of the property owners do not hold a current approval to operate their on-site sewage management system. The auditing program for Kielvale was brought forward due to concerns raised by some surrounding landholders due to the discharge of wastewaters outside of allotment boundaries of which the wastewater was generated. Many of the systems within Kielvale will not comply with current standards and are constrained by existing structures, land-forming and allotment size.

Where systems are showing signs of failure commonly used methods of upgrading sewage management systems include refitting the on-site sewage system with new inlet and outlet square junctions (baffles), creating an alternative LAA, upgrading or extending the existing disposal area, or the use of another type of system. Replacement of the entire system may be required where the original one is inadequate, improperly constructed or installed, or where the system does not respond to corrective actions.

A system failure is often associated with the LAA. The most common reason for failure of the disposal area is overload combined with failure to desludge the septic tank when required. Failure to desludge the septic tank when necessary can result in blockages within the LAA from sludge accumulation. One repair option involves construction of a completely new LAA, or a second LAA, which allows sewage to be directed to either LAA. The second LAA is a backup and is used while the first LAA is rested and allowed to recover naturally through biological activity. Disposal areas can then continue to be alternated every six months to extend the operating life of the system, and improve the overall performance of the system.

A storage tank and pump can also be installed after the septic tank to more evenly distribute the sewage to the LAA. More even distribution of the sewage over the entire disposal area will extend the operating life of the LAA. This option may result in improved performance without any other repair work.

The installation of diversion drains to divert storm water around the LAA, and the planting of vegetation with high water and nutrient uptake rates down slope of the LAAs will all assist LAAs to operate successfully.

Where an initial inspection carried out as a result of an application for approval to operate reveals a defective sewage management system, Council will notify the owner or nominated agent in writing and advise the following:

- date, time and nature of the inspection;
- upgrading and/or maintenance works required;
- time period for completion of works;

- the results of any sampling or testing (including an explanation of any technical terms);
- name and contact details of inspecting Officer; and
- operational and maintenance guides on the care and use of an on-site sewage management system.

If replacement or alteration of the system or any part of the system is required Council may recommend in the notification that the owner engage a competent person to prepare an application for submission to Council to seek approval to alter the existing system.

Notwithstanding the above, if inspection reveals that a significant risk of pollution is or may occur then Council will issue an Order requiring work to be undertaken. If particularly significant pollution is occurring Council will commence legal action immediately.

If no contact is made with Council prior to the expiry of the initial notification period, an attempt will be made to make direct contact with the owner to ascertain why no contact has been made. If no response is received an Order will then be sent to the owner.

Council has a duty of care to ensure that systems do not pose a risk to the environment, public health or impact on community amenity. System owners are required to maintain and operate their systems so that they do not pose a risk to the environment, public health or impact on community amenity.

During all inspections of sewage management systems, Council Officers will discuss with owners options and time frames for repair, operation or maintenance of defective or failing sewage management systems. Council Officers will attempt to establish a compliance period suitable for the landowner if the risk to the environment, public health or community amenity is able to be satisfactorily limited. It can be assumed that in some circumstances this negotiation will not be sufficient and some owners will not be financially capable of carrying out the required repairs.

In these situations, which will each be assessed on their merit, Council may agree that until sale of the property, significant change in occupancy, or change in financial status occurs and enables sufficient finances to be raised to fully address the required works, only such measures and upgrading that are needed to bring a system to manageable standards are carried out.

When sale of the property, significant change in occupancy, or change in financial status does occur, the appropriate repairs will be required.

It is recommended this report be received and noted.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

This report is in accordance with the On-site Sewage Management Strategy.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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