



TWEED
SHIRE COUNCIL

Mayor: Cr Warren Polglase

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

Agenda

Planning and Regulations Reports **Ordinary Council Meeting** **Tuesday 16 February 2010**

held at Murwillumbah Cultural & Civic Centre
commencing at 4.30pm

COUNCIL'S CHARTER

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

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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8 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported.

RECOMMENDATION:

That Council notes the January 2010 Variations to Development Standards under State Environmental Planning Policy No 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported where a variation in standards under SEPP1 has occurred: -

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA09/0747	Dwelling and swimming pool	Lot 13 DP 1043036 Terranora Road, Terranora	21/1/2010	Clause 22 – Development near designated roads	1(c) Rural Living	SEPP 1 variation is required due to setback of dwelling from Terranora Road which is a designated road which requires a thirty metre setback. The proposed dwelling setback is 9.60m which is considered to be acceptable due to the size of the allotment, the number of precedents set in the local area and the absence of any impact on Terranora Road or the subject allotment by the reduced building alignment.	The extent of the variation exceeds 10% of the standard.	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

9 [PR-CM] Proposed Review of Tweed Council's Section 149 Certificate Processes – Removal of Current Additional Matters on Section 149(2) Certificates Created through Council Resolutions and Council Practice

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

The extent of the required information to be provided by Councils on Section 149(2) Certificates is prescribed under Schedule 4 of the Environmental Planning and Assessment Regulation 2000.

Despite these statutory requirements, a practice emerged in former Tweed Councils to add certain matters (relating to height under Tweed LEP 2000, aircraft noise, future road corridor, future road widening, and farmland protection) on all Section 149(2) Certificates, by means of a series of Council Resolutions and general operational practice. From discussions with staff it appears that the main motivation of Councillors to require these notations was to ensure that the public were aware of critical redevelopment issues in the Tweed Shire area, and by including this information in Part 2 of the Certificate more people would become aware of these issues, than the conventional alternative of inclusion in the Part 5 certificates, which are generally not mandatory for conveyancing/property transaction processes.

A recent investigation of the validity of the current notation of aircraft noise affectation (relating to the activities of Gold Coast Airport) in this part of Tweed Council's Section 149(2) Certificates has identified major concerns for the entire range of notations created through Council resolution and Council practice.

Legal advice from the firm Sparke Helmore Lawyers gives the opinion that Council does not have the power to place this form of notations on Section 149(2) Certificates however there is reasonable legal scope for Council to re-locate these matters to the Section 149 (5) Certificates.

In light of this advice, it is recommended that Council supports the rescission of the previous resolutions and practices for the inclusion of certain matters (relating to height under Tweed LEP 2000, aircraft noise, future road corridor, future road widening, and farmland protection) on all Section 149(2) Certificates, and to re-locate these notations to the Part 5 Certificates.

RECOMMENDATION:

That: -

- 1. Council endorses the rescission of the following previous resolutions and change in practice relating to a requirement that certain matters be placed on all Section 149(2) Certificates, and to re-locate these notations to the Section 149 (5) Certificates:**

Tweed Council Practice

Height under Tweed Local Environmental Plan 2000

The land is restricted to a 3 Storey height limit under Tweed Local Environmental Plan 2000.

Tweed Council resolutions:

Aircraft Noise

The subject land is not affected by aircraft noise.

Tweed Council resolutions:

Council Meeting, 16 November, 1994, Minute Number C246:

“That Council include a notation on Section 149 Certificates for all properties located in areas affected by aircraft noise in excess of 20 ANEF 2010”.

Council Meeting, 1 March 1995, Minute Number 345:

“2. Council re-confirms that advice be included in Section 149 Certificates that land affected by the 20+ ANEF 2010 contour is so affected, and based upon legal advice received.”

Future Road Corridor

The subject land is not identified as being subject to future road corridor as identified in Tweed Road Contribution Plan No. 4 (as referred to in Section 26 of the EP&A Act 1979).

Future Road Widening

The subject land is not identified as being subject to future road widening as identified in Tweed Road Contribution Plan No. 4 (as referred to in Section 26 of the EP&A Act 1979).

Tweed Council resolution:

**Council Meeting, 22 April, 2008,
(Operations Committee Minute Number O85 and Council Minute No 42):**

“That a notation be included on Section 149 Certificates of properties as affected by the proposed road corridors under the TRCP have their 149 Certificates notated with the following:-

- 1. The subject land is identified as being subject to future road corridor as identified in Tweed Road Contribution Plan no. 4 (as referred to in Section 26 of the EP&A Act 1979).*

Or

2. *The subject land is identified as being subject to future road widening as identified in Tweed Road Contribution Plan no. 4 (as referred to in Section 26 of the EP&A Act 1979)."*

Farmland Protection

The land is identified as Committed Urban Uses and Rural Residential Zones (Farmland Protection Project) on the map referred to in Section 117(2) Direction No. 14 dated 30 September 2005."

Council Resolution:

Council Meeting, 27 March, 2007
(Planning Committee Minute Number P34 and Council Minute No 46):

"That a notation be included in on Section 149(2) Certificates indicating if lands is Farmland of State or Regional Significance as identified on the map referred to in Section 117(2) Direction No. 14 dated 30 September 2005."

2. **ATTACHMENT 1 is CONFIDENTIAL** in accordance with Section 10A(2)(e) and (g):
 - (e) *information that would, if disclosed, prejudice the maintenance of law*
 - (g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege*

REPORT:

The Statutory Requirements of Section 149 Certificates

The extent of the required information to be provided by Councils on Section 149(2) Certificates is prescribed under Schedule 4 of the Environmental Planning and Assessment Regulation 2000.

Section 149(5) of the Environmental Planning and Assessment Act provides as follows:

“A council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it may be aware.”

Most people conducting conveyancing/property transaction activity will generally only purchase the Section 149(2) Certificate. It is therefore generally viewed as having more critical information than the Part 5 Certificate.

Tweed Council’s Approach to Section 149 Certificates

Despite the above statutory requirements, a practice emerged among the Councillors of former Tweed Councils to add the following matters on all Section 149(2) Certificates, following a series of Council Resolutions and general operational practice:

“Additional Information under Section 149(2) as per Tweed Shire Council Resolutions

Height under Tweed Local Environmental Plan 2000

The land is restricted to a 3 Storey height limit under Tweed Local Environmental Plan 2000.

Aircraft Noise

The subject land is not affected by aircraft noise.

Future Road Corridor

The subject land is not identified as being subject to future road corridor as identified in Tweed Road Contribution Plan No. 4 (as referred to in Section 26 of the EP&A Act 1979).

Future Road Widening

The subject land is not identified as being subject to future road widening as identified in Tweed Road Contribution Plan No. 4 (as referred to in Section 26 of the EP&A Act 1979).

Farmland Protection

The land is identified as Committed Urban Uses and Rural Residential Zones (Farmland Protection Project) on the map referred to in Section 117(2) Direction No.

14 dated 30 September 2005."

From discussions with staff it appears that the main motivation of Councillors to require these notations was to ensure that the public were aware of critical redevelopment issues in the Tweed Shire area, and by including this information in Part 2 of the Certificate more people would become aware of these issues, than the conventional alternative of inclusion in the Part 5 certificates, which are generally not mandatory for conveyancing/property transaction processes.

A recent investigation of the validity of the current notation of aircraft noise affectation (relating to the activities of Gold Coast Airport) in this part of Tweed Council's Section 149(2) Certificates has identified major concerns for the entire range of notations created through Council resolution.

Legal advice from the firm Sparke Helmore Lawyers (See Confidential Attachment) gives the opinion that Council does not have the power to place these form of notations on the Section 149(2) Certificate, however there is reasonable legal scope for Council to re-locate these matters to the Section 149 (5) Certificates.

In light of this advice, it is recommended that Council supports the rescission of the previous resolutions and practice for the inclusion of certain matters (relating to height under Tweed LEP 2000, aircraft noise, future road corridor, future road widening, and farmland protection) on all Section 149(2) Certificates, and to re-locate these notations to the Part 5 Certificates.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

As highlighted in the Confidential Attachment, there are significant legal and risk management implications for Council if it does rectify its current Section 149 Certificate advice.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. **Confidential Attachment:** Copy of advice provided by Sparke Helmore Lawyers dated 4 December 2009 in respect of noise information included on Tweed Council's Section 149(2) Certificates (ECM 11668318)
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10 [PR-CM] Beach Location Indicators and Access Signage

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

This report seeks Council's approval for the installation and maintenance of new beach location indicators and access signage to assist emergency service agencies in responding to emergencies. The officers' findings and recommendations are supported by a report prepared by the Tweed Local Emergency Management Committee adopted through the meeting of 10 November 2009.

The estimated initial costs of the supply and installation of these new indicators is \$9,200, with an estimated first year maintenance cost of \$1,840. It is proposed to utilise the account used to collect beach vehicle access permits to fund these works and maintenance.

RECOMMENDATION:

That Council:

- 1. Adopts the Emergency Beach Location Indicator Recommendation Report, to install and maintain beach location indicators on various beaches along the Tweed Coast, prepared by the Tweed Local Emergency Management Committee, and adopted through the meeting of 10 November 2009; and**
- 2. Supports the installation and maintenance of new Emergency Beach Access Signage at various locations as identified in this report to compliment the new beach location indicators.**

REPORT:

In 1996 the Tweed Lions Club supplied and installed 32 pyramid-style numbered beacons along the Tweed beaches. Council permitted the installation of the beacons however did not accept the role of maintaining them. Only a small number of the beacons remain.

Through the Tweed Local Emergency Management Committee (the Committee) emergency service agencies have now raised concerns, with Council, as to the decline in number and quality of the identifiers, as the beacons have greatly assisted in the quick identification of the location of emergency incidents and improving response timeframes.

Following discussions with Council officers to identify areas of responsibilities, the Committee was requested to review the current system and provide recommendations to assist Council. A report was discussed and adopted at the Committee's meeting of 10 November 2009 (Attachment 1)

The report recommends the installation of 46 new beacons at various locations along the Tweed Coast, placing them approximately 600m apart and numbered alpha-numerically, corresponding to beach name. The design of the signs is in accordance with relevant Australian Standards and the cost of supply and installation is approximately \$200 per sign, \$9200 in total. The first year annual maintenance is estimated at \$1840.

In addition Council officers have identified 15 emergency beach access points that will be signed and co-ordinates provided to the relevant emergency services agencies to compliment the identifier system. (Attachment 2)

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

It is proposed to utilise the revenue funds raised by Council's Beach Vehicle Access Permit system to fund the new indicators and signage.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Emergency Beach Location Indicator Recommendation Report – (LEMC) adopted by the Tweed Local Emergency Management Committee at their meeting of 10 November 2009 (ECM 12118338)
 2. Emergency Beach Access Locations (ECM 12118338)
-

11 [PR-CM] Development Application DA09/0566 for a Two (2) Lot Subdivision at Lot 2 DP 701967, No. 611 Cudgen Road, Cudgen

ORIGIN:

Development Assessment

FILE NO: DA09/0566 Pt1

SUMMARY OF REPORT:

The proposed development involves a parcel of land with three (3) land zones: 1(b1) Agricultural Protection in the western portion, 1(b2) Agricultural Protection in the central portion, and 2(a) Low Density Residential in the eastern portion. The applicant is seeking approval to create one (1) additional residential allotment wholly within the area zoned 2(a).

The proposal incorporates a SEPP 1 Objection in relation to the 1(b2) portion of the site being less than the minimum lot size (40ha). The proposal is being reported to Council for determination as a result of the variation being greater than 10% of the development standard.

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

RECOMMENDATION:

That Development Application DA09/0566 for a two (2) lot subdivision at Lot 2 DP 701967, No. 611 Cudgen Road, Cudgen be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No. DWG 07135.1 prepared by Mark Buckman & Co Consulting Surveyors and dated 1 July 2009, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0125]

- 3. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

- 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]

5. 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]

6. 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]

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

[DUR1025]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

8. 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]

9. 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 Councils 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:

Water DSP5:	1 ET @ \$10709 per ET	\$10709
Sewer Kingscliff:	1 ET @ \$5146 per ET	\$5146

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

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

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]

10. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$861 per Trips **\$5597**

(\$782 base rate + \$79 indexation)

S94 Plan No. 4

Sector6_4

(b) West Kingscliff – Drainage:

0.09 HA @ \$42720 per HA **\$3844.80**

(\$2980.1 base rate + \$39739.9 indexation)

DCP Section B4

S94 Plan No. 7

- (c) **Shirewide Library Facilities:**
 - 1 ET @ \$792 per ET \$792
 - (\$792 base rate + \$0 indexation)
 - S94 Plan No. 11
- (d) **Bus Shelters:**
 - 1 ET @ \$60 per ET \$60
 - (\$60 base rate + \$0 indexation)
 - S94 Plan No. 12
- (e) **Eviron Cemetery:**
 - 1 ET @ \$120 per ET \$120
 - (\$101 base rate + \$19 indexation)
 - S94 Plan No. 13
- (f) **Community Facilities (Tweed Coast – North)**
 - 1 ET @ \$581 per ET \$581
 - (\$581 base rate + \$0 indexation)
 - S94 Plan No. 15
- (g) **Extensions to Council Administration Offices
& Technical Support Facilities**
 - 1 ET @ \$1759.9 per ET \$1759.90
 - (\$1759.9 base rate + \$0 indexation)
 - S94 Plan No. 18
- (h) **Cycleways:**
 - 1 ET @ \$447 per ET \$447
 - (\$447 base rate + \$0 indexation)
 - S94 Plan No. 22
- (i) **Regional Open Space (Casual)**
 - 1 ET @ \$1031 per ET \$1031
 - (\$1031 base rate + \$0 indexation)
 - S94 Plan No. 26
- (j) **Regional Open Space (Structured):**
 - 1 ET @ \$3619 per ET \$3619
 - (\$3619 base rate + \$0 indexation)
 - S94 Plan No. 26

[PSC0175]

11. **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]

12. 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]

13. 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]

14. 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]

15. 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) Construction of the future dwelling on Lot 1 is to incorporate appropriate noise attenuation measures to reduce potential traffic noise impact from Cudgen Road. Any future dwelling must also be designed to reduce potential land use conflict from adjoining agricultural uses (ie. orientation of living spaces etc).

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

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision

enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

16. 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]

17. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

18. 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]

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

- (a) Compliance Certificate – Water Reticulation
- (b) Compliance Certificate - Sewerage Reticulation

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]

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

[PSC0925]

21. 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]

22. 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 proposed Lot 1 has been completed.

[PSC1165]

23. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of proposed Lot 1.

[PSC1185]

24. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

- Construction of a new driveway access for proposed Lot 1 in accordance with Council's "Driveway Access to Property – Part 1 – Design Specification".
- Construction of kerb and guttering and associated shoulder bitumen sealing along the full frontage of proposed Lot 1.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.

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

- Road works
- Stormwater drainage

[PSCNS01]

REPORT:

Applicant: Mark Buckman & Company
Owner: Ms CA Prichard and Mr WF Julius
Location: Lot 2 DP 701967 No. 611 Cudgen Road, Cudgen
Zoning: 1(b1) Agricultural Protection; 1(b2) Agricultural Protection and 2(a) Low Density Residential
Cost: N/A

BACKGROUND:

Council is in receipt of a development application for a 2 lot subdivision.

The subject site is legally described as Lot 2 DP701967 and is located at 611 Cudgen Road, Cudgen. The parcel of land is irregular in shape and has an overall area of 17.37 hectares. The majority of the site has been and is currently used for small crops agriculture, being mainly sweet potatoes, potatoes and beans.

The site is partly zoned 1(b1) Agricultural Protection in the western portion, 1(b2) Agricultural Protection in the central portion and 2(a) Low Density Residential in the eastern portion. The proposal is to create one (1) additional residential allotment within the area zoned 2(a), upon which a future dwelling site has been nominated.

The proposed new allotment meets the minimum lot size requirements for the zone, and is unlikely to have any impact upon the potential for agricultural use of the remainder of the site.

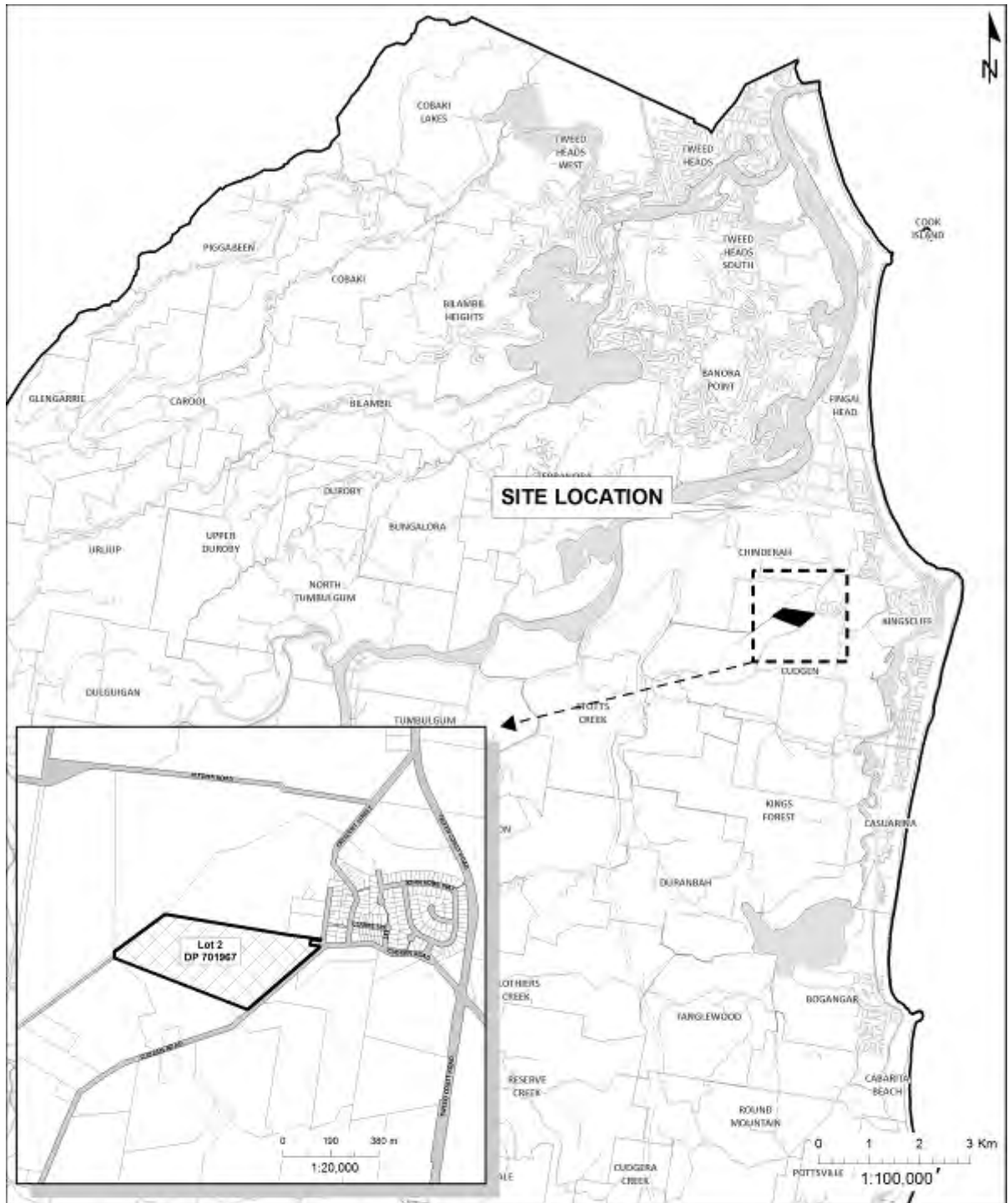
A SEPP 1 Objection has been lodged in relation to the 1(b2) portion of the site being less than the minimum lot size (40ha). As the proposal incorporates a variation greater than 10% of the development standard, the application is being reported to Council for determination. The Director-General's concurrence has been granted for the proposed development.

The applicant has noted that the majority of the parcel was divided between family in 1978, forming Lot 2 DP598073 (17.45ha). In 1984 Lot 1 DP701967 was subdivided from the property for family use, leaving Lot 2 (subject site) as the residue lot.

Improvements on the site include: a one and two storey residential dwelling, approved under Development Consent T4/2622 in June 1983; a rural workers dwelling, approved under Development Consent 86/605 in February 1987; and two farm / machinery sheds.

Council's records indicate that a previous development application for a four lot subdivision over the subject site was refused in February 1992 due to: insufficient information to allow Council to properly and fully consider the application; unsatisfactory subdivision layout; and unsatisfactory access arrangements.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 2 DP 701967
 No.611 Cudgen Road, Cudgen

Filename: f:\nr\planning\med\A&P_B&W SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 4 February, 2010

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Cadastre: 4 February, 2010
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Geospatial System - MGA Zone 56
 Datum - GDA 84

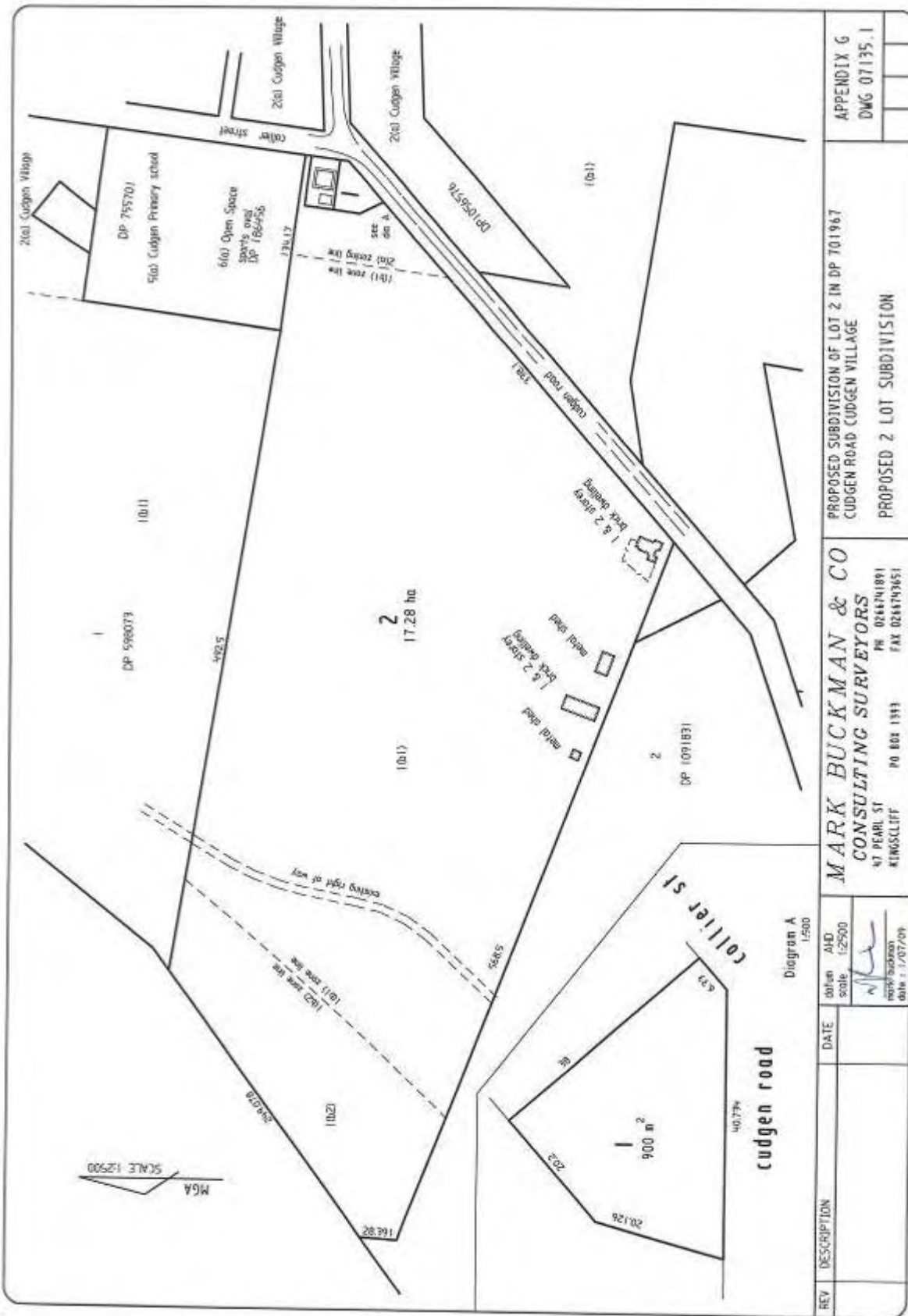
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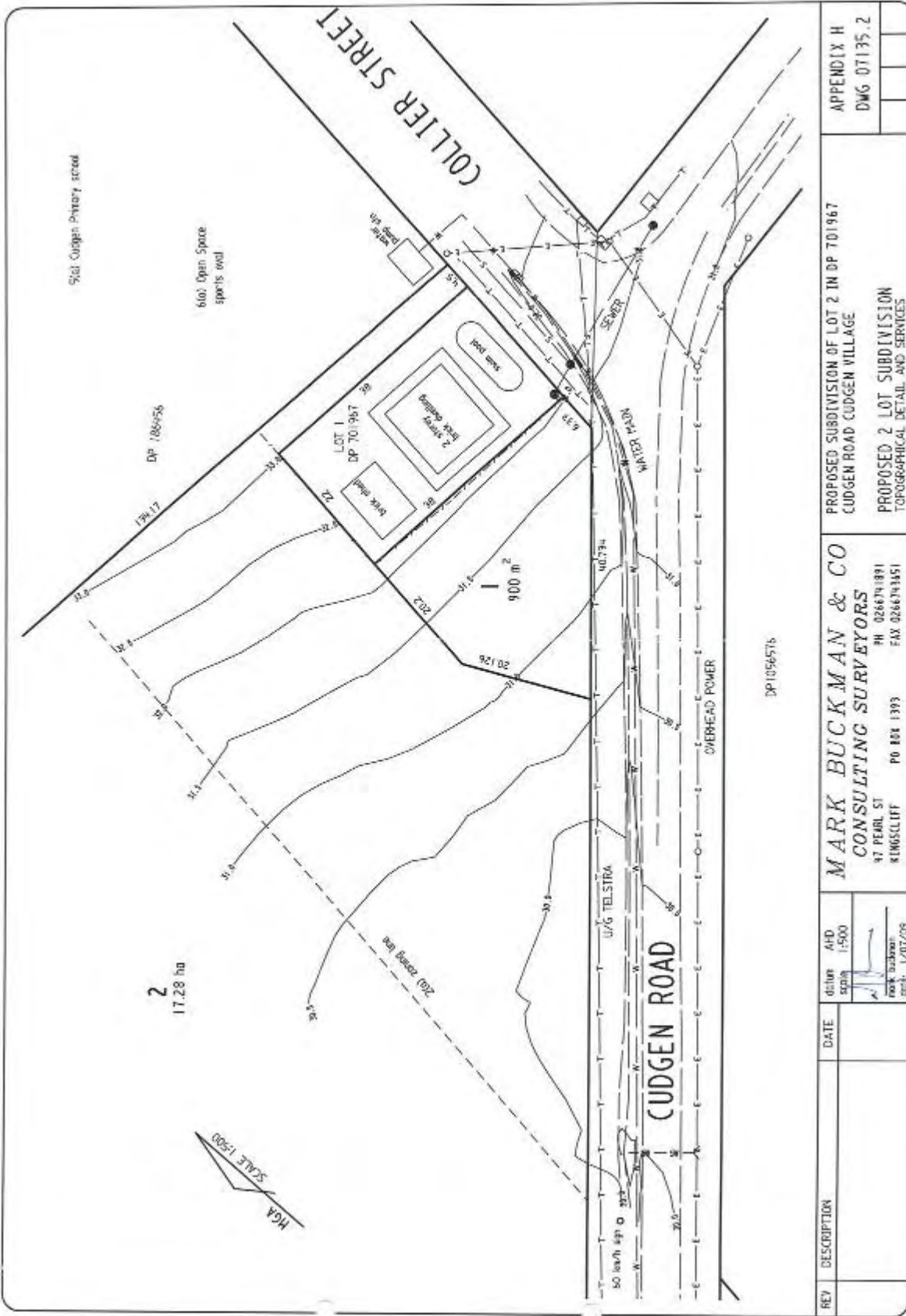
TWEED
 SHIRE COUNCIL

DEVELOPMENT PLANS:



REV	DESCRIPTION	DATE	BY	CHKD	SCALE	DATE
					1:2500	

<p>MARK BUCKMAN & CO CONSULTING SURVEYORS 47 PEARL ST KINGSCLIFF</p>		<p>PH 0244741891 FX 0244743451 PO BOX 1393</p>
<p>PROPOSED SUBDIVISION OF LOT 2 IN DP 101967 CUDGEN ROAD CUDGEN VILLAGE</p>		
<p>PROPOSED 2 LOT SUBDIVISION</p>		
<p>APPENDIX G DWG 07135.1</p>		



REV	DESCRIPTION	DATE	drawn AHD scaled 1:500	 north mark north 1/07/08	MARK BUCKMAN & CO CONSULTING SURVEYORS 47 PEARL ST KINGSCLIFF PO BOX 1399 PH 0266741891 FAX 0266743451	PROPOSED SUBDIVISION OF LOT 2 IN DP 701967 CUDGEN ROAD CUDGEN VILLAGE PROPOSED 2 LOT SUBDIVISION TOPOGRAPHICAL DETAIL AND SERVICES	APPENDIX H DWG 07195.2
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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 proposed development is considered to meet the provisions of Clause 4. Appropriate conditions of consent have been applied in order to maintain an acceptable level of amenity for the area.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Appropriate conditions of consent have been applied, which will ensure that the proposed development will not significantly impact upon the surrounding residences or locality. As such, the proposed development is considered to meet the provisions of Clause 5 of the LEP.

Clause 8 – Consent Considerations

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

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

As noted below, the proposed development is considered to meet the primary objective of the zones by way of incorporating the new allotment entirely within the residential zone, whilst taking into account environmental constraints (i.e. no fragmentation of the existing agricultural land). The proposal generally complies with Clause 8(a).

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

Given that the subject site incorporates an area of land zoned 2(a) for residential purposes, the proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

Clause 11 - Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject site consists of three (3) different zonings, as noted below:

The western and central portions of the site are zoned 1(b) Agricultural Protection under the provisions of the LEP. The objectives of this zone are:

Primary objective

- *to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.*

Secondary objective

- *to allow other development that is compatible with agricultural activities.*

The proposed subdivision does not incorporate any changes to the component of the site zoned 1(b). As such, the agricultural use of the land is protected and the proposal is considered to meet the objectives of the zone. The Department of Planning has also noted that the proposal is consistent with the objectives of the zone.

The easternmost portion of the site is zoned 2(a) Low Density Residential under Tweed LEP 2000. The primary objective of this zone is to:

- *to provide for and maintain a low density residential environment with a predominantly.*

The proposed new allotment (located wholly within the 2(a) zone) meets the minimum lot size and is considered to be consistent with the zone objectives.

Clause 15 - Essential Services

Clause 15 of the TLEP requires the provision of essential services to be available to the proposed new allotment prior to any consent being granted. Council's reticulated potable water supply and piped effluent disposal infrastructure is available to the area. Council's Development Engineer has also noted that electricity and telecommunication services are currently provided to the area. Appropriate conditions of consent have been applied in this regard.

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

Clause 20 of the TLEP relates to minimum lot size requirements in order to prevent the potential for fragmentation of rural land. Clause 20(2) requires the following minimum lot sizes:

- (2) *Consent may only be granted to the subdivision of land:*
 - (a) *within Zone 1 (a), 1 (b2), 7 (a), 7 (d) or 7 (l) if the area of each allotment created is at least 40 hectares, or*
 - (b) *within Zone 1 (b1) if the area of each allotment created is at least 10 hectares.*

As noted above, the subject site incorporates three (3) zones, two of which relate to Clause 20. The proposed Lot 1 is wholly zoned 2(a) Residential and as such, does not apply to this clause. Proposed Lot 2 is 17.28ha in total area, with a small portion of the allotment (to the west) zoned 1(b2). The remaining portion of proposed Lot 2 has been calculated as approximately 15.08ha, which meets the minimum lot size of 10ha for land zoned 1(b1).

The smaller portion of 1(b2) land (approximately 2.2ha) does not meet the minimum 40ha requirement. A SEPP 1 Objection has been submitted and the application was referred to the Department of Planning for the Director-General's concurrence. The Department's comments and the SEPP 1 Objection are detailed later in this report.

Clause 22: Development near designated roads

Clause 22 of the LEP refers to land that has frontage to a designated road or relies on a designated road for its sole means of vehicular access. Cudgen Road is a designated road; therefore, clause 22 applies to this application. The proposed new allotment (Lot 1) is located near the intersection of Cudgen Road and Collier Street and the applicant has submitted a Sight Distance Plan for proposed Lot 1. Council's Development Engineer has noted that adequate sight distance exists, in terms of traffic safety. The existing dwellings on proposed Lot 2 will maintain their existing access point, but will require upgrading to Council's standard requirements.

With regard to the capacity of Cudgen Road, Council's Development Engineer has noted that proposed Lot 1...*'will not generate any significant additional traffic to Cudgen Road and Cudgen area; however, the road network in the area has sufficient capacity to cater for any additional traffic'*. In terms of traffic noise impacting upon a future dwelling for Lot 1, noise attenuation measures can be addressed when the dwelling application is lodged. The proposed development is not considered to reduce the scenic quality of the locality. In light of the above, the proposal is considered to be consistent with the provisions of Clause 22.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP provides for the management of acid sulfate soils. Council's mapping system classifies the majority of the site as Class 5 soils. Council's Environmental Health Unit has noted that any works required for the proposed subdivision (in particular for proposed Lot 1) will not involve major disturbances of the soils.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause requires Council consider the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. The proposed subdivision is unlikely to have any impact upon the surrounding

agricultural land, given that the proposed new allotment is over land already zoned 2(a) Low Density Residential, directly adjacent to an existing dwelling.

It is also noted that in granting concurrence for the proposed subdivision, the Department of Planning was satisfied that the proposal is consistent with the objectives of the zone. As such, the application is considered to meet the provisions of Clause 12.

Clause 43: Residential development

This clause relates to residential development. The proposed subdivision is considered to be consistent with the provisions of clause 43 in that: the proposed density is a reasonable response to the existing land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Further, the road widths are satisfactory for the proposal and a detailed sedimentation and erosion control plan will be applied in relation to the construction.

SEPP No. 1 - Development Standards

The proposed development incorporates a SEPP 1 Objection which relates to the proposal not meeting the minimum 40 hectare allotment size requirement, pursuant to Clause 20(2) of the Tweed Local Environmental Plan 2000.

The parcel of land involved with the proposed subdivision incorporates three (3) zones: 2(a) Low Density Residential; 1(b1) Agricultural Protection; and 1(b2) Agricultural Protection. The Objection relates to the minimum lot size requirement for the 1(b2) component of the site only, as a result of that component having an area of approximately 2.2ha.

The applicant has submitted the following in support of the SEPP 1 objection:

'The subject application seeks a variation to Clause 20(2)(a) of the Tweed LEP 2000 for the subdivision of land zoned 1(b2) that is less than 40 hectares. The strict compliance with the development standard, in this particular case, is considered unreasonable and unnecessary for the following reasons:

- The area of land zoned 1(b2) is currently under the statutory standard;
- The proposed subdivision does not reduce the area of land zoned 1(b1) or 1(b2);
- The proposal does not create an additional dwelling entitlement on the portion of land zoned 1(b2);
- The proposed subdivision does not fragment rural land, rather the proposal seeks to separate the 2(a) urban zoned land from the rural 1(b1) and 1(b2) zoned land, consistent with the aims of the Tweed LEP 2000 and the primary objectives of the zones 2(a), 1(b1) and 1(b2);

- The subdivision will provide additional housing within the existing urban footprint, the proposed allotment is capable of being serviced by essential services and Council's infrastructure such as: water, sewer, stormwater, electricity and telecommunications;
- The proposed subdivision is consistent with the zoning intent of the site, and developed in a coordinated and sustainable manner;
- The proposal will not adversely impact on the continual operation of the agricultural land;
- The proposed subdivision will not adversely impact on the natural or built environments.

Assessment of the applicant's submission:

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

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

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

The objectives of the Clause 20 are:

- *to prevent the potential for fragmentation of ownership of rural land that would:*
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed's water supply quality.*

The proposed development is considered to be consistent with the objectives of Clause 20 in that it will not: result in the fragmentation of the existing agricultural land, as a result of the new allotment being located wholly within the 2(a) residential zone; the ecological or scenic values of the land are maintained; and the proposal will not impact upon Tweed's water supply quality.

The objection is considered to be well founded. As such, strict compliance with the minimum lot size for land zoned 1(b2) is considered unreasonable and unnecessary in this instance.

2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where

strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*; and

The objectives of section 5(a)(i) and (ii) of the EP&A Act 1979 are:

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

The proposal provides for a two (2) lot Torrens title subdivision in an established residential / agricultural area. Connection to utility services is available and the existing agricultural uses of the site will not be compromised by the proposed subdivision. The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the above objectives.

3. It is also important to consider:

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

The Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, noting that the existing lot size of the land zoned 1(b2) is significantly less than the 40ha standard. As such, the proposed non-compliance with clause 20(2) of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this particular case, as only a minor portion of the site (12.67%) is zoned 1(b2) Agricultural Protection and the proposed subdivision will have no impact upon that particular zone or its current use. That is, the 2.2ha area of land zoned 1(b2) will remain unchanged, with the proposed new allotment being located at the opposing end of the site within the 2(a) Low Density Residential land.

The streetscape and amenity of the locality will remain relatively the same, noting that an existing dwelling is located directly adjacent to the proposed new allotment, adjacent to the existing Cudgen Village.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with clause 20(2) of the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

Conclusion

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under clause 20(2) is considered unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support.

SEPP (Rural Lands) 2008

The proposed development is considered to be consistent with the provisions of the Rural Lands SEPP in that the proposed new allotment is located wholly within the existing 2(a) Low Density Residential zone. That is, there is no fragmentation of the agricultural land and no dwelling entitlement will be created on the land zoned 1(b1) or 1(b2).

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

Draft Tweed Local Environmental Plan 2010

Under the Draft LEP 2010, the subject site has a similar zoning to the current LEP 2000 in that the 1(b1) and 1(b2) land is zoned RU1 – Primary Production; and the 2(a) land is zoned R2 – Low Density Residential. The proposed development is considered to be consistent with the objectives of both zones.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the RU1 land currently zoned 1(b1) is identified as Lot Size code AB1, which requires 10ha; the RU1 land currently zoned 1(b2) is identified as Lot Size code AB2, which requires 40ha; and the R2 land currently zoned 2(a) is identified as Lot Size code G, which requires 450m².

Clause 4.6 of the Draft LEP 2010 relates to exceptions to development standards, to allow a degree of flexibility. The proposed subdivision is consistent with clause 4.6 in that: the applicant has lodged a written request that seeks to justify the contravention of the development standard (SEPP1 Objection); Council is satisfied that the written request adequately addresses all matters and that the proposal will be in the public interest; concurrence has been granted; and the subdivision will not result in 2 or more lots of less than the minimum area.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

This DCP aims to set detailed standards for land development in order to minimise the adverse effect of flooding on the community. Council's Development Engineer notes that...*'proposed Lot 1 is not flood liable; however, a small area to the west of Lot 2 is flood liable. As this area is to remain as agricultural land, this does not pose any hazards to the proposed subdivision'*.

A5-Subdivision Manual

This DCP contains Council's guidelines for the preparation of applications for subdivision and aims to facilitate Council's assessment and consideration of such applications. A number of factors are required to be assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). Where applicable, these matters have been discussed below.

Physical Constraints – The proposal is largely only constrained by the shape of the subject site and location of the existing roadway (Cudgen Road).

Environmental Constraints – this section of the DCP relates to issues such as contamination etc, which are discussed in detail later in this report.

Landforming – The subject site is largely flat, with a gentle slope towards Cudgen Road. The applicant has submitted a General Works Layout Plan for a future house pad and driveway on Lot 1. Council's Development Engineer has noted that no significant earthworks will be required.

Stormwater Runoff, Drainage, Waterways & Flooding – The applicant has provided a Stormwater Catchment Plan and Erosion & Sediment Control Layout Plan for proposed Lot 1. Council's Development Engineer has undertaken an assessment in this regard with no objections, subject to conditions of consent.

Lot Layout – The proposal is consistent with the minimum allotment area of 450m² for dwellings within a 2(a) Low density Residential zoning, with the new allotment having an area of 900m². The DCP also requires a minimum building envelope of 10m x 15m for any future dwelling. The submitted engineering plans incorporate a house pad in the order of 15m x 15m, which complies.

Infrastructure – The applicant has submitted a Sewerage and Water Reticulation Plan for proposed Lot 1. Council's Development Engineer has assessed the proposed development against the relevant standards pertaining to road ways, reticulated water, reticulated sewer, electricity and telecommunications. Appropriate conditions of consent have been applied with regard to infrastructure requirements.

In light of the above assessment, the proposed residential allotment (Lot 1) is considered to meet the provisions of Section A5 of Council's Consolidated DCP.

A11-Public Notification of Development Proposals

The proposed development did not require public notification.

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

There are no matters prescribed by the Regulations applicable to the proposed subdivision.

(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

Contamination

The applicant's Statement of Environmental Effects incorporated a Contaminated Soils Statement, which concluded that...*'there was no immediate evidence that the site is contaminated'* and that the...*'proposed future use of Lot 1 as residential would appear suitable under normal development conditions applicable to the lot'*. Council's Environmental Health Unit did not support the contamination documentation and requested a Preliminary Contaminated Land Investigation prepared by a suitably qualified person, including soil sampling for proposed Lot 1.

The applicant submitted a Preliminary Contaminated Land Assessment (HMC Environmental Consulting Pty Ltd, dated November 2009), which included 8 soil samples across proposed Lot 1. The assessment concluded that the...*'subject site is unlikely to be significantly impacted by soil contamination from current and past uses'* and that the subject site is...*'suitable for the proposed subdivision for residential use'*.

Council's Environmental Health Unit undertook an assessment of the contamination report, providing the following conclusion:

'The report indicates that the site is suitable for the intended use. No objection is raised to the use of the UCL as the materials on site are considered largely to be homogenous due to historical tilling of soils on the relatively flat land parcel. The site is considered 'uncontaminated' in accordance with Part 1.2 of the Sampling Design Guidelines DECCW 1995. No objection is raised to the conclusion of the report.'

Farmland Protection

Council's mapping system indicates that the subject site has several classifications. The area of 1(b2) land at the rear of the site is classified as Regionally Significantly Farmland. As the proposed subdivision will make no change to this area, it is unlikely that there will be any impact to this type of farmland. The majority of the site (zoned 1(b1)) is classified as State Significant Farmland. Again, as the proposed subdivision will make no change to this area, it is unlikely that there will be any impact to this type of farmland. The area involving the proposed new allotment is classified as Committed Urban Uses.

In light of the above, the proposed development is not considered likely to have any impact upon the existing farmland on and around the subject site, and referral to the Department of Primary Industry was not considered necessary.

Land Use Conflict

Council's Environmental Health Unit has taken into consideration potential conflict between the residence on the proposed new allotment and the existing agricultural use of the remainder of the site, noting the following:

'The proposed subdivision will result in another small dwelling house allotment on the fringe of Cudgen Village immediately adjacent to active

agricultural activities. Potential exists for conflict between future occupants of the allotment and adjacent farm activities. Whilst similar exposure exists for many existing dwellings within Cudgen Village, creation of proposed lot 1 increases potential for conflict. Design of the future dwelling may incorporate layout and orientation to minimise conflict (e.g. orientation of bedrooms, living areas etc)'.

A condition to this effect is proposed.

(c) Suitability of the site for the development

The proposed development is considered to be suitable for the site, subject to appropriate conditions of consent.

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

Department of Planning

After reviewing the SEPP1 Objection to Clause 20(2) of the LEP, the Department provided the following comments:

'Following consideration of the application, concurrence has been granted to vary the 40 hectare development standard for the 1(b2) Agricultural Protection zone contained in clause 20(2) of Council's planning instrument to create proposed Lot 2 of about 17 hectares.

Concurrence was granted in this instance for the following reasons:

- (a) The proposal is consistent with the objectives of the zone;*
- (b) The existing lot size of the land zoned 1(b2) Agricultural Protection is significantly less than the 40ha standard;*
- (c) The subdivision will not create further dwelling entitlements on that portion of land zoned Rural 1(b2)'.*

(e) Public interest

The proposed development is generally considered to reflect the provisions of all applicable development control plans. Appropriate conditions of consent have been applied in an effort to limit any impact upon the surrounding residences and agricultural landowners.

OPTIONS:

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unsatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The proposed development has been entirely assessed on its merits and for that reason the development does not generate a policy implication for Council.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation to Clause 20 of the Tweed LEP 2000. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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

ORIGIN:

Development Assessment

FILE NO: DA09/0385 Pt1

SUMMARY OF REPORT:

Council at its meeting on 17 November 2009 considered the application for a telecommunications facility (30 metre high monopole and associated infrastructure) at No. 19 Meadow Place, Uki. At this meeting, Council resolved:

“That the application be deferred for presentation at a future Council meeting following the conduct of a public meeting by Optus in the Uki community in order to properly gauge community opinion on this proposal and report the outcome of that meeting to Council.”

Further to Council’s resolution, Optus organised a meeting with the Uki residents on Monday 7 December 2009 held at the Uki Hotel.

Following this meeting, the application was again reported to Council on 15 December 2009 for determination. However, Council resolved:

“That this item be deferred pending effective community consultation by the applicant to determine a more suitable site for the telecommunications tower”.

The applicant was advised of this resolution by letter dated 23 December 2009. Optus responded to this letter on 11 January 2010, stating that they consider the search for alternative sites for a mobile base station in the Uki area to be exhausted, and as such requests that DA09/0385 be determined. A copy of this letter is attached.

The full Council report is now reproduced for Council’s determination.

RECOMMENDATION:

That Development Application DA09/0385 for a telecommunications facility (30 metre high monopole and associated infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place, Uki be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos S8479F, Sheets G1 – G4 prepared by Daly International dated 06/04/2009, except where varied by the conditions of this consent.**

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property. [GEN0135]
4. Access to the site shall be upgraded to provide a bitumen seal from edge of the existing road carriageway of meadow Place to the property boundary. [GENNS01]
5. Erosion and Sediment Control shall be provided and maintained in accordance *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". [GENNS01]
6. The access track from the property boundary at Meadow Place to the Optus Compound shall be upgraded to provide a driveway of minimum standard to allow a 2 wheel drive vehicle access to the compound under all weather conditions. [GENNS01]
7. A Right of Carriageway shall be created over the existing property access road servicing the proposed Optus compound. [GENNS01]
8. An easement for electricity supply (minimum 2m wide) shall be created (as required) over the electricity infrastructure within Lot 17 DP 778719 servicing the proposed Optus compound. [GENNS01]
9. The monopole is to be painted mist green to blend with it's surrounds. [GENNS02]
10. At the commencement of building works and in perpetuity the leased area shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'. [GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. 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]
12. Detailed design drawings for the proposed access road to the monopole site must be submitted for approval by Director Planning and Regulation. The location of native vegetation species must be indicated and named on

the plans and measures to avoid or ameliorate impacts indicated. In particular, avoidance of the average 2m wide root plate for larger Brushbox (*Lophostemon confertus*) trees and avoidance of damage to the Strangler Fig (*Ficus watkinsiana*) roots must be demonstrated.

[PCCNS01]

13. A vegetation management plan must be submitted for approval by Director Planning and Regulation detailing compensatory works as an offset for loss of native species. Such works must include planting of a minimum of 30 native species and Camphor Laurel and other weed species control within a defined area no less than 1 hectare in area.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

14. 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]

15. 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]

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

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and

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

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

[PCW0255]

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

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

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

[DUR0005]

19. 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]

20. 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]

21. 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]

22. 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]

23. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
 - dust during filling operations and also from construction vehicles
 - material removed from the site by wind

[DUR1005]

24. 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.

Any damage to property (including pavement damage) is to be rectified by the Developer to the satisfaction of the General Manager.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

25. 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]

26. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

[POC0805]

USE

27. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

28. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

[USE0225]

30. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.

[USE1035]

- 31. Works must be completed by qualified bush regenerators in accordance with the approved vegetation management plan.**

[USENS01]

REPORT:

Applicant: Optus Mobile Pty Ltd
Owner: Mr D Nelmes and Mrs C Timbs
Location: Lot 17 DP 778719, No. 19 Meadow Place Uki
Zoning: 1(a) Rural
Cost: \$200,000

BACKGROUND:

Council has received an application for the construction of a telecommunication facility at Lot 10 DP 778719, No. 19 Meadow Place Uki. The telecommunication facility will comprise of:

- A 30 metre high monopole with 6 panel antennas mounted on a circular headframe and 2 x 1.2 metre parabolic antennas at 26 metres.
- A prefabricated equipment shelter will be located at the base of the proposed monopole.
- A high security chain wire fence around the proposed compound;
- Ancillary and associated equipment including items such as safety equipment, amplifiers, diplexers, triplexers, mounts, feeders, cable trays, and other associated infrastructure which are all considered to be necessary to facilitate the safe operation of the authorised facilities.

Optus have stated that the purpose of siting a mobile tower in this location is that they have identified the need to improve digital mobile telephone coverage and to introduce the new Optus 3G mobile phone network to the areas of Uki, Dum Dum and rural surrounds.

The proposed site is located approximately 1.1 km north east of Uki Village on an elevated rural property. The subdivision pattern in this vicinity comprises of a mixture of small and large rural holdings used for both farming practices and residential occupation. The closest dwelling house to the facility is approximately 150 metres. The proposed location for the telecommunication facility is located amidst a dense plot of vegetation made up of predominantly camphor laurel trees with a number of native species. Access to the proposed site is achieved firstly via the existing driveway which leads to the existing residence on the property and secondly onto an existing dirt track.

The applicants have stated that the proposed site was preferred as opposed to other locations in the Uki area for the following reasons:

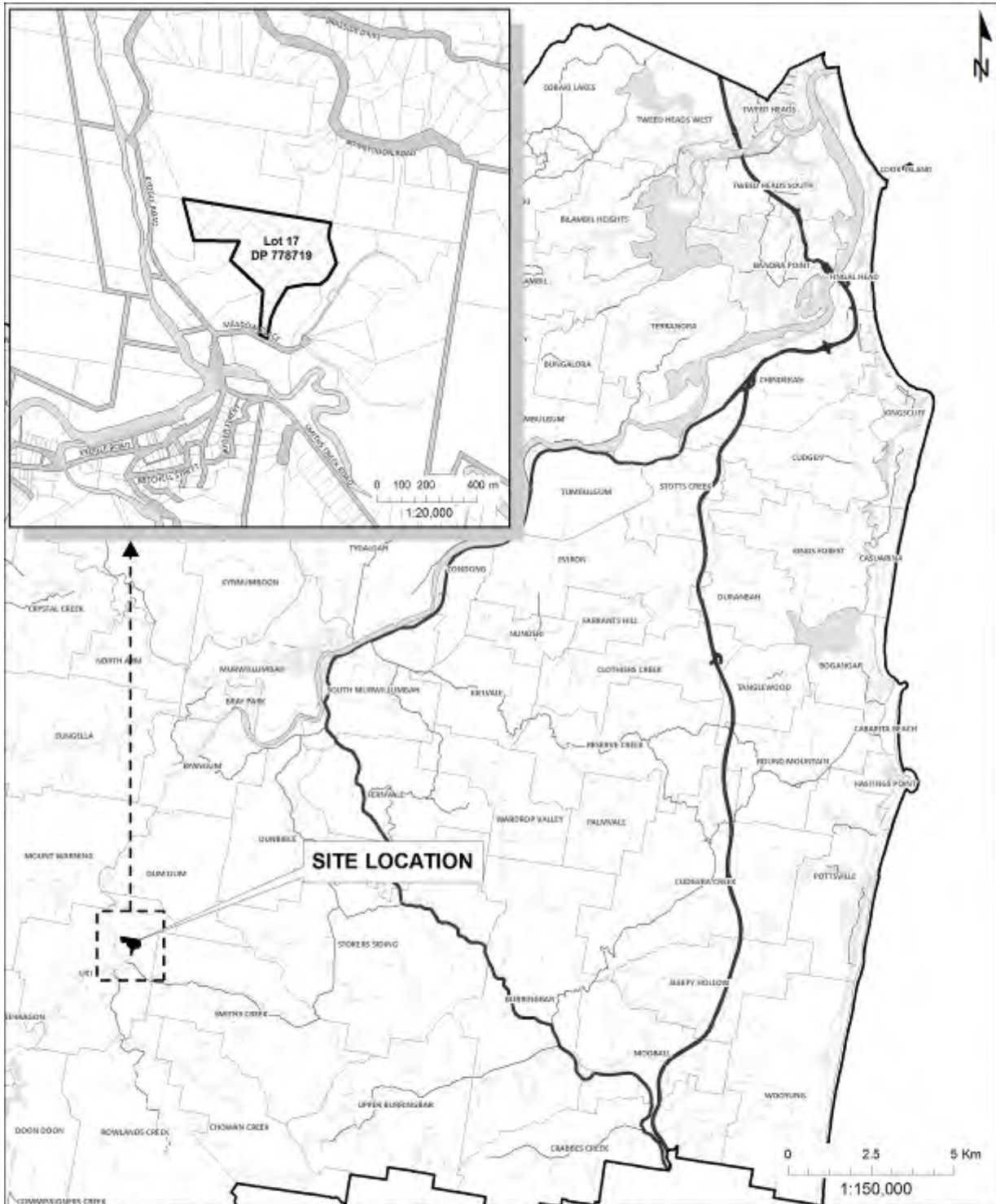
- The elevated position of the site;
- The visual screening the existing tree cover affords;
- The Rural 1(a) zoning as opposed to an environmental protection zoning which incorporates a majority of the high points in Uki;
- The site is readily accessible;
- The availability of power at close range; and
- The lower ecological value of the site;

The application was advertised for a period of fourteen (14) days from Wednesday 22nd July 2009 to Wednesday 5th August 2009. During this period forty (40) submissions were

received comprising of thirty four (34) objections and six (6) submissions in favour of the development. The most common issues raised were regarding the visual impact of the monopole, health concerns from electromagnetic energy generated from the facility and consideration of alternative locations. An assessment of the issues raised is summarised within the body of this report.

Following the assessment against the relevant heads of consideration, Council Officers consider that the proposed telecommunication facility will enhance the telecommunications services in Uki and the broader locality and therefore are recommending approval of the application. It is considered that the location and design of the proposal is suitable without causing any significant adverse impacts on the natural and built environments, the communications facility will also create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

SITE DIAGRAM:



LOCALITY PLAN
Lot 17 DP 778719
No.19 Meadow Place, Uki

Filename: z:\usr\planning\msd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 4 November, 2009

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Call date 4 November 2009
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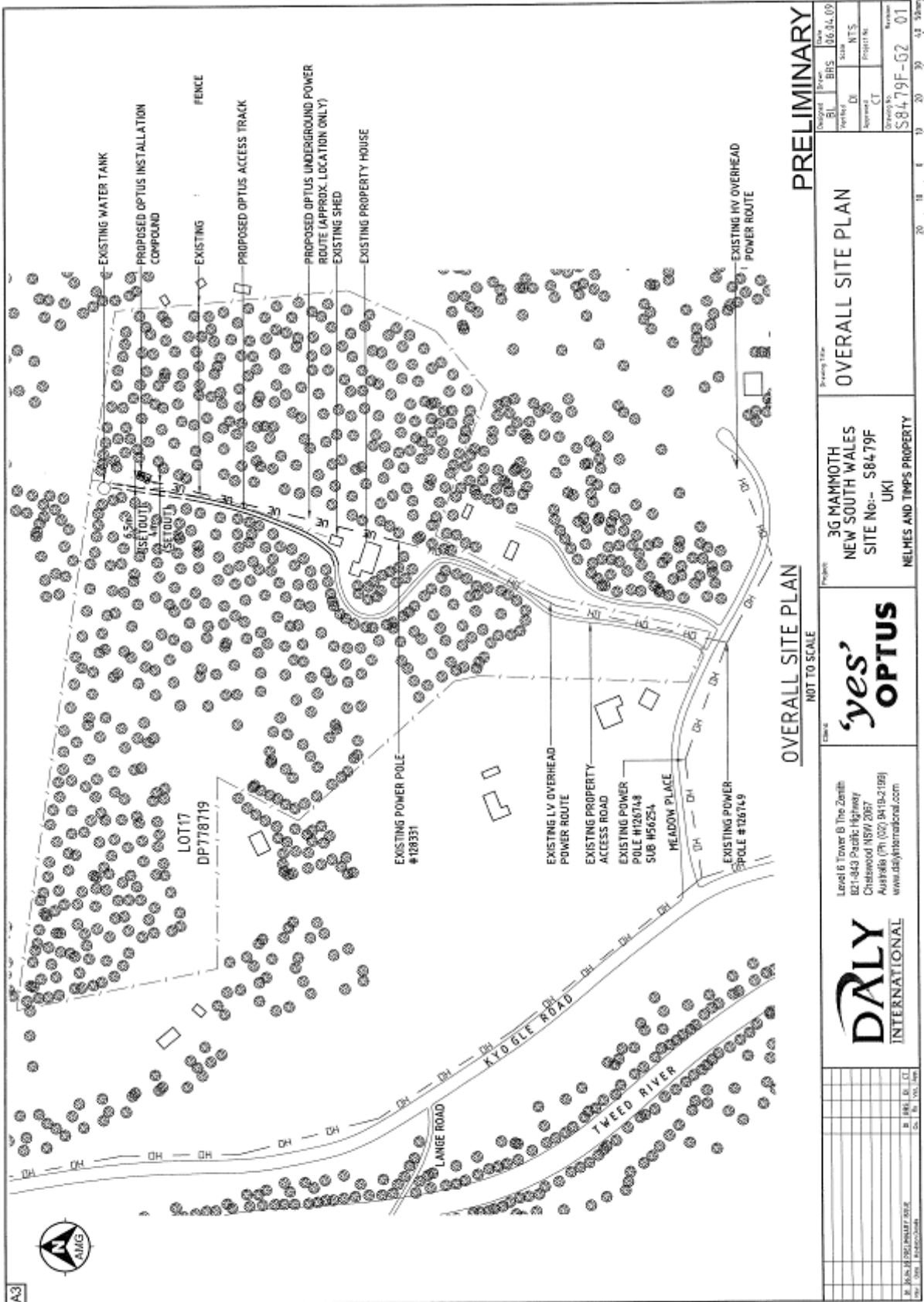
Coordinate System - MGA Zone 56
 Datum - GDA 84

DO NOT SCALE
 COPY ONLY - NOT CONTROLLED

Civic and Cultural Centre
 3 Tamburlurg Road
 Manildra NSW 2484
 PO Box 616
 Manildra NSW 2484
 T: (02) 6670 2400 | 1500 292 872
 F: (02) 6670 2403
 W: www.tweed.nsw.gov.au
 E: planningreforms@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



OVERALL SITE PLAN

NOT TO SCALE

PRELIMINARY

Client	BRS	Date	06/04/09
Project No.	88479F	Scale	NTS
Approved	CT	Project No.	88479F-02_01
Drawn By	S8479F-02_01		

OVERALL SITE PLAN

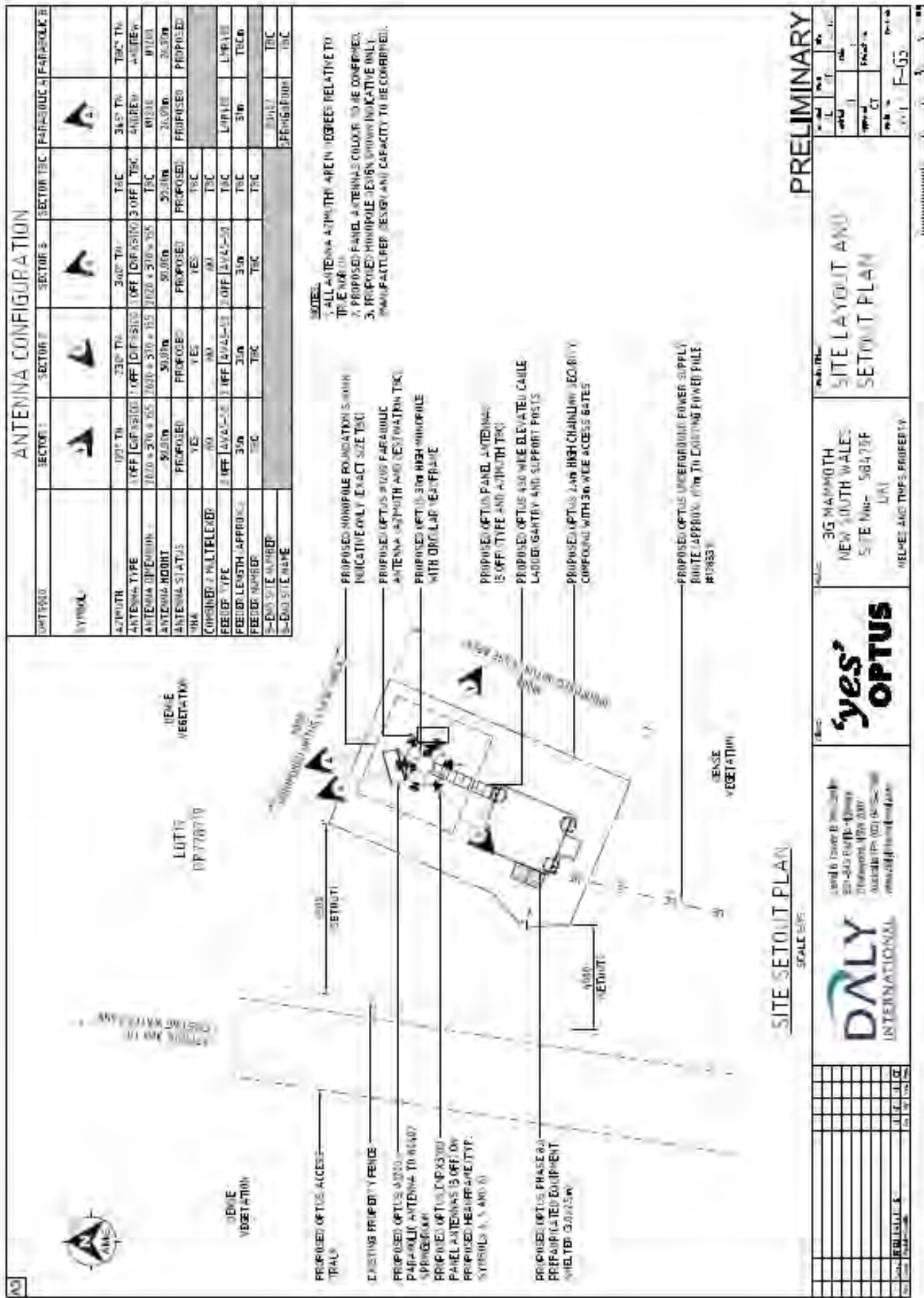
3G MAMMOTH
NEW SOUTH WALES
SITE No:- 58479F
UKI
NELMES AND TEMPS PROPERTY

'yes' OPTUS

DAILY INTERNATIONAL

Level 6 Tower B The Zenith
821-843 Pacific Highway
Cherrybrook NSW 2867
Australia (Ph) (02) 94194109
www.dailyinternational.com

Author	Checked
Drawn	Reviewed
Approved	Date



ANTENNA CONFIGURATION

ANTENNA SYMBOL	SECTOR 1	SECTOR 2	SECTOR 3	SECTOR 4	SECTOR 5	PARABOLIC #	PARABOLIC #
AZIMUTH	0°	75°	300°	TBC	TBC	345°	TBC
ANTENNA TYPE	1 OFF [DIP 3000]	1 OFF [DIP 3000]	3 OFF [DIP 3000]	TBC	TBC	4	TBC
ANTENNA DIMENSION	1000 x 510 x 105	1000 x 510 x 105	1000 x 510 x 105	TBC	TBC	4000	TBC
ANTENNA HEIGHT	50.00m	50.00m	50.00m	TBC	TBC	20.00m	TBC
ANTENNA STATUS	PROPOSED	PROPOSED	PROPOSED	TBC	TBC	PROPOSED	TBC
WPA	YES	YES	YES	TBC	TBC		TBC
COMPILER / MULTILEAF	NO	NO	NO	TBC	TBC		TBC
FEEDER TYPE	1 OFF [DIP 3000]	1 OFF [DIP 3000]	3 OFF [DIP 3000]	TBC	TBC		TBC
FEEDER LENGTH APPROX	35m	35m	35m	TBC	TBC		TBC
FEEDER NUMBER	TBC	TBC	TBC	TBC	TBC		TBC
3-DIM SITE NUMBER							
3-DIM SITE NAME							

NOTES:
 1. ALL ANTENNA AZIMUTH ARE IN DEGREES RELATIVE TO TRUE NORTH
 2. PROPOSED PARABOLIC ANTENNAS COLOR TO BE CONFIRMED.
 3. PROPOSED PARABOLIC DESIGN SHOWS INDICATIVE ONLY. MANUFACTURER DESIGN AND CAPACITY TO BE CONFIRMED.

PRELIMINARY

DATE	16/02/10
SCALE	1:500
PROJECT NO.	F-05
DESIGNED BY	
CHECKED BY	
APPROVED BY	

3G MAMMOTH
 NEW SOUTH WALES
 SITE No: 58470F
 UPL

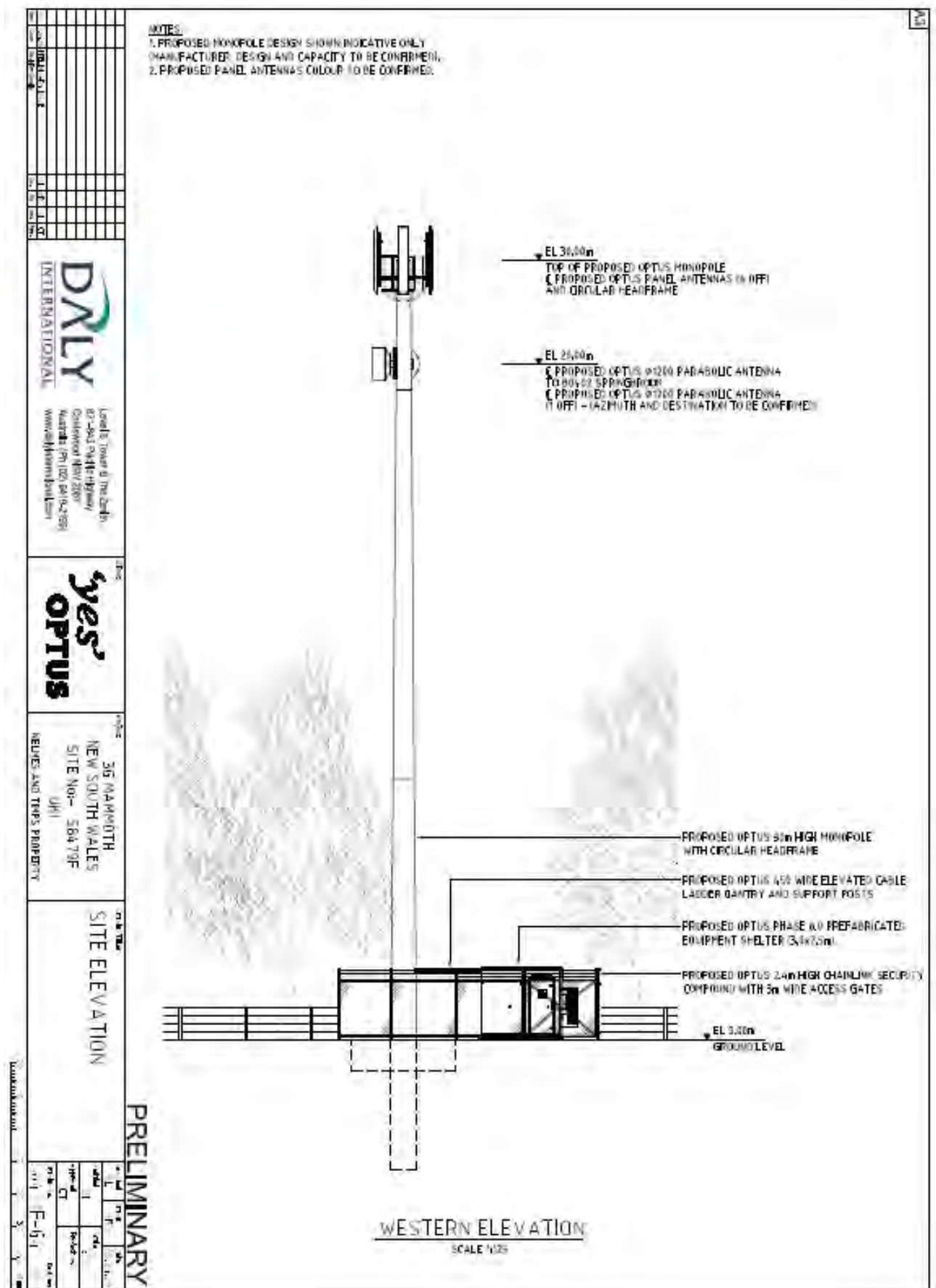
SITE LAYOUT AND
 SETUP PLAN

'yes' OPTUS

DAILY INTERNATIONAL

SCALE 1:500

NO.	REVISION	DATE	BY



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 main objective of Clause 4 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 subject proposal seeks consent for the erection of a telecommunications facility comprising of a 30 metre high monopole and ancillary infrastructure. The proposal involves minor modification to the natural environment in the form of the removal of a small clump of camphor laurel trees. The remaining vegetation including native species will not be touched. It is considered that the proposed development will have minimal impact on the natural environment.

In terms of the developed character of the area the proposal will facilitate better technological availability for people in the area which could potentially enhance economic viability in the area.

The proposed development is therefore considered to be consistent with the aims of this plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is consistent with the four principles of ecological sustainable development by;

- a) not creating irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

Clause 8 Consent considerations

The subject land is zoned 1(a) Rural.

The primary objective of the 1(a) zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilisation purposes and associated development and to protect rural character and amenity.

The proposal is consistent with the primary objective of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

The proposed telecommunication facility is consistent with the secondary objective of the 1(a) zone by allowing development that is not suitable within an urban area due to the greater visual impact it generates and at the same time improving telecommunications in the locality. The proposed telecommunication facility is permissible with consent.

The other aims and objectives of this plan that are relevant have been considered and addressed within this report.

An assessment addressing relevant policies has been undertaken identifying that the development would not create an unacceptable cumulative impact on the community, locality or catchment.

Clause 11 - Zone objectives

Primary objectives

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

Secondary objectives

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

The proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with development consent and is consistent with the objectives of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

Clause 15 - Essential Services

Electricity supply is available from Meadow Place. Power is proposed to be supplied as an extension to this supply. The power supply is proposed to be run underground via a 2 metre easement.

Clause 16 - Height of Building

The proposed equipment shelter is single storey in height, with the associated tower being approximately 41m in height. Under the definition of storey within the Tweed LEP 2000 the tower can not be measured in storeys, however given the

placement of the tower amongst vegetation of a comparable height and scale the proposal is considered consistent with the clause.

Clause 39A – Bushfire Protection

The site is identified as being prone to bush fire. The telecommunication facility is considered to comply with the clause due to the following:

- The development will not create a significant adverse impact on the implementation on bush fire control strategies. The telecommunication facility will assist bush fire control by providing communications.
- The facility will not increase the threat to the lives of residents, visitors or emergency service personnel (the facility does not house residents or visitors).
- The facility will be constructed of non-flammable material.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

Due to the site being heavily vegetated, it is considered that the development will not cause a loss of prime crop or pasture land.

SEPP (Infrastructure) 2007

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

‘Development for the purposes of telecommunications facilities, other than development in clause 114, may be carried out by any person with consent on any land.’

Hence the application is applying for consent to erect the telecommunications tower.

SEPP (Rural Lands) 2008

The land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

The principles are stated and addressed as follows:

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It is considered that the proposed development satisfies the rural planning principles as it will provide development on rural land that will contribute to the broader community needs by improving telecommunications in the locality.

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

N/A

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Vehicular access to the site is proposed via Meadow Place. An existing driveway

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

N/A

(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

Noise

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the lifespan of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated. However, considering the distance to nearby dwellings is approximately 150 metres, no significant impacts are anticipated. If the development is approved appropriate conditions of consent can be utilised to address any subsequent noise issue associated with construction works and the use of the air- conditioning units.

Lighting

The application does not make mention of any security lighting to be used at the facility. It is considered that this issue can be addressed by appropriate conditions of consent.

Contamination

The issue of contamination has been considered in the SEE. The SEE states that the site is heavily vegetated and the site has not been used for any other uses. Council's mapping system shows that there are no cattle dip sites within 200m of the proposed facility. An examination of the available aerial photos and topographical maps for the site also do not indicate that the site was used for any potentially contaminating activity.

Radiofrequency Electro Magnetic Emissions (RF-EME Levels)

The Australian Government and the Australian Communications and Media Authority (ACMA) (Australia's regulator for broadcasting, the internet, radio-communications and telecommunications) published a Factsheet titled Mobile phone base stations and electromagnetic radiation (EME).

The following is an extract from the fact sheet;

*"ACMA has made mandatory EME exposure limits for installations such as broadcast towers and mobile phone base stations. The exposure limits set by ACMA were determined by the **Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)** based on recent scientific findings and the world's best practice. **These limits are many times below a level of exposure to EME that is known to have adverse effects on the human body and are consistent with World Health Organisation guidelines.***

*ACMA has adopted a precautionary approach to the regulation of EME, ensuring that **exposure limits** to emissions from communications transmitters are stringent and **lower** than those levels that have been found to cause adverse health effects.*

Public exposure to emissions from radio-communications transmitters is generally many times less than the exposure limits required by the

standards. ARPANSA conducted audits of base stations between 1997 and 1999, and again in 2003. The results show low EME levels were found in areas accessible to the public."

Radiofrequency Electro Magnetic Emissions (RF- EME) from the operation of the Base Station has been assessed and a report has been provided dated 24/04/09. This Report has been prepared in accordance with the requirements of The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and estimates the maximum cumulative EME levels (% of ACMA mandated exposure limit) produced by the site at ground level at the following distance from the antennas:

Distance from the antennas at 19 Meadow Place	Maximum Cumulative EME Level
0m to 50m	0.0051%
50m to 100m	0.0079%
100m to 200m	0.042%
200m to 300m	0.042%
300m to 400m	0.024%
400m to 500m	0.014%

The values of electromagnetic energy are given as percentages of the permitted limit. The results indicate that the **maximum estimated EME level is 0.042% of the ACMA mandated exposure limit at a distance of 202.67m**. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. Therefore the operation of the Base Station is not expected to give rise to any RF- EME issue for the public.

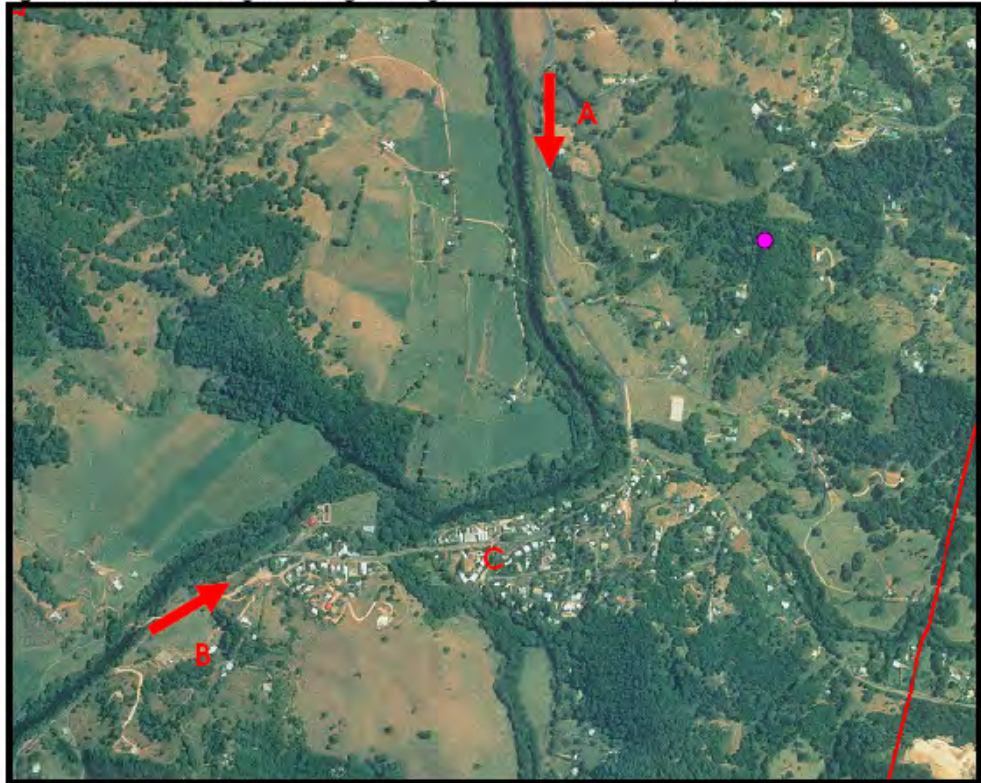
Visual Impact

The proposed monopole is 30 metres in height and located on the top of an existing hill, some level of screening is afforded to the development from existing mature tree species that are located on the hill top. The undulating and winding terrain also assists in mitigating numerous view sheds to the site. The proposed monopole is to be painted mist green as to blend with its surrounds. The monopole structure has a relatively small circumference and the type of headframe is in a compact circular form as to further reduce the visual impact.

The following is a response provided by the applicant regarding the potential impact of the main view sheds of concern with this proposal.

- *Figure 3 below depicts view sheds when exiting and entering Uki village.*

Figure 3. Viewsheds entering and exiting Uki Village. Pink dot denotes the subject site.



Source: <http://imagery.maps.nsw.gov.au/>

- *Entering Uki heading north east along Kyogle Road “B”, the proposed monopole will not be visible.*
- *Entry into Uki heading south along Kyogle Road “A”; the proposed monopole is also unlikely to be detected until just before/driving past 1361 Kyogle road (refer to photo 6 below). The driver’s attention would have to be towards the left of the vehicle to view the proposed monopole. The impact of this view shed will be mitigated by vegetation which will make detection by drivers passing by difficult.*

Photo 6. Photograph taken from 1361 Kyogle road looking north east towards cherry picker and proposed site (proposed site located 140m behind cherry picker). The orange arrow indicates location of cherry picker. Pink arrow indicates compensation (distance & angle) for approximate location.



- *Views from the main centre of the village area “C” (commercial/tourist area). The proposed site location is difficult to detect from the centre of the village because of the elevated terrain at the northern end of the village. It is not anticipated that the monopole would be visible from the central area of Uki Village.*
- *There is minimal to no detrimental effect when heading through Uki village along Kyogle Road due to the double factors of dense mature vegetation and sharply twisting roads/ undulating steep terrain that limits the “panoramic view sheds”. Panoramic view sheds are more common when driving through rural farmland largely cleared of the majority of vegetation combined with gently undulating terrain. The only area where varying degrees of view to the proposed monopole can be gained is at the end of Meadow Place. The figures below identify potentially 4 properties which may have Mount Warning and the proposed monopole in the same view shed.*



From the information submitted above by the applicants, it is conceded that the proposed monopole may have some visual impact in public areas and on some neighbouring private properties as it will not be completely invisible as the facility needs a clear line of sight for transmission. However, the main view sheds of concern's impact is considered to be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

Consideration of Alternative Sites

The applicant provided the following analysis of alternative sites:

"When looking at alternative sites there is a limit as to how far the 3G mobile base station can be located from the targeted coverage area (in this case the township of Uki). Even though 3G coverage from a mobile station may reach many kilometres out from the actual base station the greater the distance from the base station the greater degradation the 3G signal suffers. Signal degradation leads to commonly experienced problems such as dropping out, poor connectivity, etc.

Alternative sites considered - (please refer to Map 1)

A telecommunications facility at this location would have been prominent from the main street of Uki.

Candidate 2 - Lot 2 DP 581366 No. 22-30 Aults Road Uki

Difficulties were encountered in sourcing power to this site. Additionally it was also anticipated that there would be difficulty in getting heavy machinery to the site (for construction) due to the steep gradient of the terrain.

Candidate 3 - Lot 53 DP 755754, Langes Road, Uki

Inability to obtain tenure approval from the property owner.

Candidate 4 - Water Treatment works, end of Old Convent Road, Uki

As per candidate 1.

Candidate 5 - Water Reservoir at end of Grants Road, Uki

Existing layout of area around water reservoir is problematic. There was difficulty in locating an appropriate area for the facility to be erected.

Candidate 6 - Lot 4 DP 43844 1359 Kyogle Road, Byangum NSW

Insufficient space left on property to appropriately accommodate the proposed facility. Furthermore, the existing house is already located in the prime area for any proposed telecommunications facility.

Candidate 7 - Property at end of Sunrise Place, Uki

As per candidate 3.

Candidate 8 - Working Quarry site off Smiths Creek Road, East of Uki

Site was discounted from a radiofrequency perspective because the 3G signal to Uki was blocked by terrain of a greater elevation to the west of the quarry. Basically, the main intended target of the 3G coverage, Uki Village, would have received no coverage from this location. Please see Figure 1 for a 3D illustration. Additionally the quarry is also a working quarry which also makes it difficult to secure an area that will not impede quarry activities now and in the future.

Candidate 9 - Site located around Mt Wollumbin

This site was very difficult to access by heavy machinery due to the steep terrain. It is also probable that the creation of a significant power easement (20m wide) requiring tree removal, would have been needed if this site had been progressed.

Candidate 10 - Lot 17 DP 778719, 19 Meadow Place, Uki

Candidate 10 is situated on elevated terrain outside the main Uki village area. This candidate has many attractive features for telecommunications facility siting including access, power and good vegetation cover.

Following critical evaluation of the above candidates, a preferred nominated candidate is then selected. This selection is based on a number of key issues including radiofrequency coverage; planning/environmental considerations; engineering criteria; and the availability of the site and associated construction costs (as outlined in greater detail in Section 2.2 above).

In this particular instance, the proposed candidate identified as Candidate 10 at Lot 17 DP 778719, 19 Meadow Place, Uki was considered as the optimum outcome to provide Optus 3G mobile and wireless broadband to the Uki area."

Council is satisfied with the applicant's analysis as detailed above and accordingly has recommended approval for the subject site based on appropriate conditions of consent.

Flora and Fauna

The site is mapped under the Tweed Vegetation Management Strategy 2004 as Camphor Laurel dominated vegetation of low ecological significance and low ecological sensitivity. A site visit confirmed that the area upon which the monopole is proposed is mainly cleared and surrounded by Camphor Laurel, declared a Noxious Weed in Tweed Shire in March 2009. Camphor Laurel trees up to 6m as well as 10 rainforest edge species saplings 1 to 2m will require

removal to enable the monopole erection. In addition, some further minor removal of native and exotic vegetation is likely along the proposed access road.

The larger site is mapped as Steep Protected Land in part with slopes over eighteen degrees. Ecological value exists within the occasional large (greater than 40cm diameter at breast height) Brushbox and Strangler Fig trees on the lot at lower elevation and regeneration of native rainforest seedlings is occurring in the vicinity of these trees. Despite the dominance of Camphor Laurel, these regenerating species indicate that the hillside could be rehabilitated to Brushbox Open Forest with a rainforest understorey over a period of time if significant effort were to be expended. Such occurrences are greater than 50m from the proposed monopole site and thus potential fauna using these trees are unlikely to be affected by installation of the tower.

Wildlife Atlas records for the surrounding 5km radius include records of a number of threatened flora and fauna species and the site is likely to provide occasional forage habitat for some of these threatened species such as the Grey-headed Flying Fox, Rose-crowned Fruit Dove and Superb Fruit Dove. However, the habitat is unlikely to provide roost sites for these species such that they could be considered resident on site.

(c) Suitability of the site for the development

The existing vegetation will provide a visual screen to the subject proposal. The elevated nature of the hill top affords the desired level of coverage to the proposed telecommunication tower. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality. The site has been deemed to be suitable for the proposal.

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

The application was advertised for a period of fourteen (14) days from Wednesday 22nd July 2009 to Wednesday 5th August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. In response to the various objecting submissions the following assessment of the common issues raised is summarised below.

Objection	Response
Health concerns from electromagnetic energy generated from the facility	This has been discussed previously in this report.
Devaluation of property prices	The consideration of property prices is not a Section 79C matter for consideration.
Increased Traffic	The facility will be unmanned and service vehicles are expected to attend the facility for maintenance purposes only on average four (4) times per year. Due to

the limited amount of servicing, additional traffic on Meadow Place is not considered an issue.

Alternative sites

Optus has a network of base stations throughout Australia and when an area is identified to have poor network coverage or capacity a new facility has to be located to fit into the existing network. Optus, where practicable will try and locate telecommunications equipment on existing structures or rooftops.

A search of the area has revealed that due to the area being generally rural, there are no existing structures such as water towers that would be suitable to house a telecommunications facility.

In choosing the proposed location for the monopole, the applicants also considered a number of alternative sites, **attached** to this report is a copy of the applicants assessment of Alternative Sites.

Location/site unsuitable

A search of the area has revealed that there are no other telecommunications facilities in the area. In order to reduce the number of facilities in the area Telstra would normally co-locate, but there are no such towers in the area.

Lack of community consultation

It is not a statutory obligation for the applicants to undertake community consultation.

Visual impacts

This has been discussed previously in this report.

(e) Public interest

The submissions that have been received are noted, Council currently has no specific policies in relation to telecommunication tower development. The proposal is a permissible form of development in the 1(a) zone and therefore can be assessed by Council.

The visual impact on the adjoining landowners will be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

The communities concerns in regard to health risks are acknowledged and have been considered. However, current research indicates that the potential for health implications from EME levels is minimal. In this instance Council relies on the relevant standards from ARPANSA and other authorities. Council's Environmental Health Officers deemed the submitted information and reporting on the potential health risks of the monopole to be consistent with outlined Australian standards. The proposed development is consistent with all relevant guidelines and proposed to be conducted in accordance with outlined Australian standards. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality.

OPTIONS:

1. Resolve to adopt the recommendations made and approve the development application.
2. Resolve to refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed telecommunication facility will enhance telecommunications services in the locality. The location and design of the proposal is considered suitable without any significant adverse impacts on the natural and built environments, the communications facility will create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Applicant's assessment of alternative sites (ECM 8404297)
 2. Report prepared by Optus detailing the outcomes and discussion of meeting held 7 December 2009 (ECM 12232987)
 3. Optus' letter of response dated 11 January 2010 (ECM 12231966)
-

13 [PR-CM] Development Application DA09/0504 for a Fruit and Vegetable Shop at Lot 1 DP 240847, Bilambil Road, Bilambil

ORIGIN:

Development Assessment

FILE NO: DA09/0504 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council following a request from Councillor Milne.

The applicant seeks consent for a fruit and vegetable shop. The proposal originally involved the demolition and removal of an unlawful structure with the intention to reinstate it with a demountable shop on brick piers. The structure has been demolished at the time of writing as requested by Council.

It was considered in the public interest for operations to cease immediately in the existing structure given its unlawful use and that there were in particular potential health risks to the operators and general public as identified by Council's Environmental Health officers.

The application was not required to be notified or advertised.

It is considered that the application is suitable for approval, subject to compliance with the imposed conditions of consent.

RECOMMENDATION:

That: -

- A. Development Application DA09/0504 for a fruit and vegetable shop at Lot 1 DP 240847, Bilambil Road, Bilambil be approved subject to deferred commencement 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 12 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 applicant shall provide to Council an on-site sewage management capability assessment report for the existing on-site sewage management system. The report shall incorporate the total potential and actual hydraulic wastewater loading to the existing OSMS and shall provide an assessment of the capability of the existing system (including the effluent disposal area) in accordance with the provisions of AS/NZS 1547/2000 and NSW Environment and Health Protection Guidelines "on-Site Sewage Management for Single Households" 1998 to adequately and sustainably manage the potential and actual wastewater load.

The report shall indicate if the system is able to meet the minimum requirements of the assessment standards or if the system will require upgrading.

- B. Operation of the fruit and vegetable shop is contingent upon written landowner's consent for the proprietor and staff to use WC facilities located in association with the General Store. Such written landowner's consent is to be provided to Council and approved by the General Manager or his delegate.

Should this not occur, the applicant is to demonstrate that a separate WC can be provided in association with the fruit and vegetable shop. This should be demonstrated in the on-site sewer management report.

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 and

Plan No 2 (Sheet 2 of 2), as amended in red, prepared by Chris J Cohen and dated 6 July 2009.

Plan No 1 (Sheet 1 of 2), as amended in red, prepared by Chris J Cohen and dated 30 September, 2009.

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. Disabled access is to be provided in accordance with the Building Code of Australia.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

2.2841 Trips @ \$1829 per Trips **\$4178**

(\$1662 base rate + \$167 indexation)

S94 Plan No. 4

Sector4_4

[PCC0215]

5. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

(a) Design flood level of RL 3.5m AHD.

(b) All building materials used below Council's design flood level must not be susceptible to water damage.

(c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.

(d) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

6. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain,

installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

7. Prior to the issue of a construction certificate, a car parking plan shall be submitted to the satisfaction of the General Manager or delegate that:

(a) provides one car parking space for use in association with the fruit and vegetable shop.

NB: The total number of car parking required on site is six (6) should the development consent for DA08/0897 be activated. This is indicated on the approved plan for that development application.

[PCCNS02]

8. An external colour schedule is to be submitted prior to issue of a Construction Certificate to the satisfaction of the General Manager or delegate.

[PCCNS03]

9. WC facilities shall be provided in accordance with Schedule A.

[PCCNS04]

PRIOR TO COMMENCEMENT OF WORK

10. 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]

11. 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]

- 12. 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]

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

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

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

[PCW0255]

- 14. Prior to the commencement of work on the stormwater system a site inspection is to be arranged with the Principal Certifying Authority to discuss site drainage.

[PCW0995]

- 15. Any alteration to the existing on-site sewage management facilities must be approved to the satisfaction of the General Manager or his delegate.

[PCW1125]

DURING CONSTRUCTION

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

[DUR0005]

17. **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]

18. **The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.**

[DUR0245]

19. **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]

20. **Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:**

(a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.

(b) The chute shall be located in a position approved by the Principal Certifying Authority.

(c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0385]

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

[DUR0395]

22. **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]

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

[DUR0415]

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

[DUR0445]

25. A survey certificate from a Registered Surveyor is to be submitted to the Principal Certifying Authority at slab or footing stage, prior to pouring concrete, to confirm that the building has been sited in accordance with the approved development consent plans.
[DUR0475]
26. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.
[DUR1505]
27. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.
[DUR1545]
28. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.
[DUR1605]
29. The walls immediately behind any basin shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin.
[DUR1625]
30. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. It is to be noted that an access ramp in accordance with AS 1428.1 will need to be constructed to enable persons to access the shop.
[DUR1685]
31. 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]
32. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
[DUR2245]
33. All stormwater from roofed and paved areas are to be connected directly into road drainage pits where available, kerb and gutter drainage canal or inter allotment drainage line where provided.
All drainage systems shall comply with AS 3500.
[DUR2305]
34. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;

- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

35. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR2515]

37. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

38. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

39. Prior to the issue of a construction certificate the applicant shall provide to Council an on-site sewage management capability assessment report for the existing on-site sewage management system. The report shall incorporate the total potential and actual hydraulic wastewater loading to the existing OSMS and shall provide an assessment of the capability of the existing system (including the effluent disposal area) in accordance with the provisions of AS/NZS 1547/2000 and NSW Environment and Health Protection Guidelines "on-Site Sewage Management for Single Households" 1998 to adequately and sustainably manage the potential and actual wastewater load. The report shall indicate if the system is able to meet the minimum requirements of the assessment standards or if the system will require upgrading.

[DURNS01]

40. A roof catchment water supply source shall be provided for use in the premises where a Council reticulated supply is unavailable and fitted

with a first flush device. Installation, water collection and tank maintenance of rainwater or foreign water brought in for drinking purposes or in conjunction with the conduct and operation of the business must comply with NSW Health requirements.

41. Should the on-site sewage management capability assessment report identify that the OSMS is to be upgraded the applicant shall, prior to the issue of a construction certificate, lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

42. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

43. 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]

44. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

45. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

46. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

47. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

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

[POC1055]

49. Any agreement between the owner and applicant allowing use of the WC facilities located in association with the General Store shall be

included as an 88b instrument on the survey plan prior to the issue of a final occupation certificate.

[POCNS01]

USE

50. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

51. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

52. Hours of operation of the business are restricted to the following hours: -

- * 9.00am to 6.30pm - Mondays to Fridays
- * 9.00am to 4.00pm - Saturdays
- * 9.00am to 3.00pm Sundays
- * No operations are to be carried out on Public Holidays
- * All deliveries and pickups relating to the business are to occur within the approved hours

[USE0185]

53. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

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

[USE0875]

55. The premises shall be maintained in a clean and tidy manner.

[USE0965]

56. The maximum number of staff at any one time shall be one (1) unless otherwise approved by the General Manager or delegate.

[USENS01]

57. All produce waste shall be removed from the site daily in accordance with point 4.11 of the Statement of Environmental Effects unless otherwise approved by the General Manager or delegate.

[USENS02]

B. The owner of the site provides further evidence to demonstrate that the extension to the shop into the garage has been carried out lawfully.

REPORT:

Applicant: Riolo's Fresh Fruit & Vegetables
Owner: Mr DI Thompson and Mrs C Thompson
Location: Lot 1 DP 240847 Bilambil Road, Bilambil
Zoning: 2(d) Village
Cost: \$2,500

BACKGROUND:

The proposed development is located on a site that contains an existing General Store, Service Station, Post Office and Dwelling.

A summary of applications lodged over the subject site is as follows:

- B329/72: application for shop and dwelling approved 21/8/1972 – rebuilding of an existing use of shop (post office) and dwelling with use dating back prior to the 1960's. The description states 'a brick veneer residence, post office, service station and shop'. The application included the canopy over the service station driveway, signage on the south-eastern corner of the site and the two underground petrol tanks
- T4/1713: application for the erection of four (4) shops – this application was approved 7/4/1982 did not proceed
- B827/92: application for a carport
- DA08/0897: application for extensions to the existing Post Office and relocation of the existing carport – this application was approved 12/12/2008, however it is unclear as to whether the applicant will proceed. The application was intended to formalise car parking on the site
- There was no consent for the recently demolished fruit and vegetable shop.

In addition, there appears to be an unlawful extension to the 1972 approved shop to double the existing floor area (an increase of approximately 40m²) by changing the use of the double garage associated with the dwelling, thus removing parking options for the dwelling.

There have been ongoing issues in relation to the On-Site Sewage Management System (OSMS), installed with a small grease trap to operate in association with the existing 1972 shop and dwelling. A report dating back to 1987 details how a request to place an additional two-bedroom relocatable home on the subject site adjacent to the general store was refused due to the lack of effluent discharge capacity. In addition, successful legal proceedings were instigated by Council to the (then) landowner in 1987 in relation to discharge of effluent into the creek.

The same OSMS currently operates on the property and is classified as 'high risk'. Approval to operate is due for renewal on 28 July 2010. A system upgrade may be required should additional wastewater loading be generated from any future business or domestic activity.

An inspection of the premises by Council's Environmental Health Unit on 19 March 2009 revealed that it did not comply with the NSW Food Safety Standards, Food Act and Regulation and that it appeared to be an unlawful use of the site.

The applicant was advised in a letter dated 1 May 2009 to either seek to legalise the structure by lodging a development application or alternatively, remove the structure from the site. The current application was lodged 17 August 2009 in response to Council's compliance action.

The Subject Site

The subject land is described as Lot 1 DP 240847 Bilambil Road, Bilambil and has a total area of 2378m². The corner site is irregular in shape with frontage and existing vehicular access to Carool Road and Bilambil Road.

The land is generally cleared and flat within the vicinity of the general store structure and the existing fruit stall except for a mature tree within vicinity of the petrol pumps. However, the eastern half of the site is separated from existing development by a drainage path that undulates towards the eastern boundary. The small waterway is a tributary of Bilambil Creek that crosses underneath Bilambil Road through the eastern portion of the subject site flowing in a north easterly direction along a line of trees.

There is a mixture of residential and commercial uses on the site.

The land is not identified as bushfire prone but is subject to high and low velocity flows in the event of flooding.

Existing improvements include a single storey dwelling, general store, post office, service station, driveway canopy, carport, shipping container and up until recently, an unlawful fruit and vegetable shop. A phone box is located near the petrol pumps.

The site is located in an area generally characterised as a rural village with residential, recreational, community and commercial uses. Adjoining land to the south and south east is utilised for open space and recreational purposes with sporting fields and waterways. A school is located east of the subject site and other land to the west and north-west is zoned for village purposes. Land to the north is zoned Rural.

The Proposed Development

The applicant seeks consent for construction of a 19.034m² fruit and vegetable shop.

The applicant states in supporting documents that:

- The fruit and vegetable store has been in operation for more than 9 years
- There will be two employees – the owner and a junior casual
- Proposed trading hours are from 9am to 6:30pm Monday to Friday, 9am to 4pm Saturday and 9am to 3pm Sunday
- Signage consists of a business identification sign on the front elevation of the shop, internal chalkboards and one external chalkboard to be placed within vicinity of the shop on private land
- Food waste will be composted at the applicant's farm
- Salvaged materials from the recent demolition of the unlawful structure are proposed to be re-used on the applicant's farm.

The applicant recently demolished the unlawful 5m x 4m structure that consisted of steel mesh walls and a tin roof supported by nine (9) wooden poles. It was an open structure

containing two cool rooms, a refrigerator, food preparation area and assorted display shelving. Flooring consisted of large pavers.

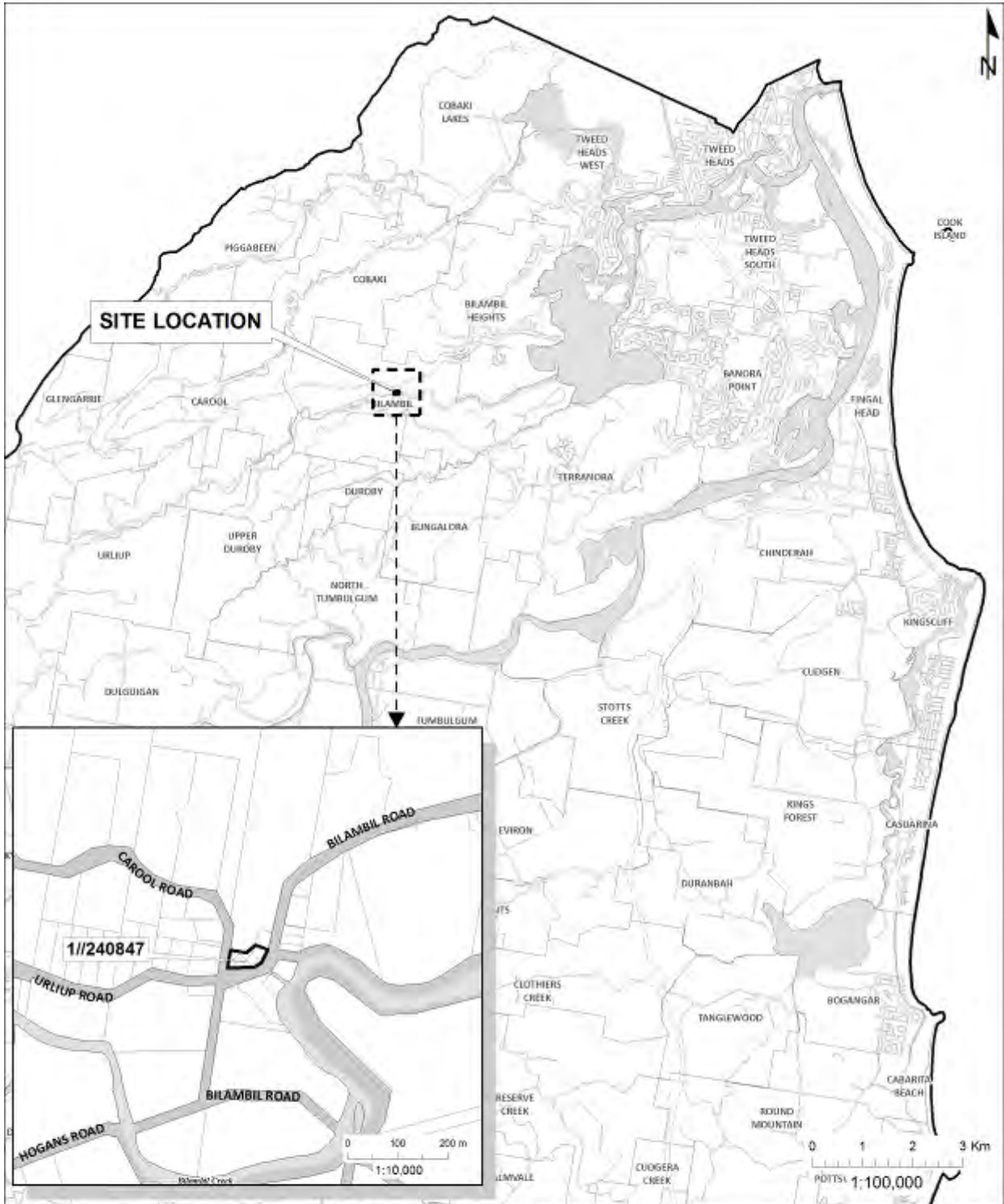
The applicant has previously stated to Council in correspondence that there is no lease arrangement with the landowner for use of the site. It is believed that the applicant has an arrangement with the landowner to use the WC facilities associated with the main store and dwelling. The approved 1972 plan indicates that there is only one WC located in the dwelling itself.

The site plan lodged as part of the application does not reflect reconfiguration of the site in accordance with approved DA08/0897 for extensions to the General Store / Post Office.

Summary

Having regard to the site's characteristics, the site history, intended use, village location, amenity issues and in particular, environmental health requirements, the proposed fruit and vegetable shop is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval, subject to compliance with imposed conditions of consent.

SITE DIAGRAM:



LOCALITY PLAN

Lot 1 DP 240847
Bilambil Road, Bilambil

Filename: z:\env\planning\mxd\A40_B&W_SitePlan.mxd

Author: J.Balchior - Planning Reforms Unit

Date Printed: 28 January, 2010

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Coordinate System - MGA Zone 56
Datum - GDA 96

Cadastre: 28 January, 2010
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal accords with Clause 4 in that it encourages sustainable economic development of the area compatible with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal complies with Clause 5 in that it poses no threat of environmental damage or degradation.

Clause 8 - Zone objectives

It also complies with the objectives outlined in Clause 8 – Consent Considerations as it is consistent with aims and objectives of the plan and zone. An unacceptable cumulative impact within the council area will not result as long as the following is achieved:

- required off-street parking
- adequate disposal of waste water into existing system
- formal access to existing WC facilities
- disabled access, and
- payment of Tweed Road Contribution Plan (TRCP) charges.

Clause 11 - Zone objectives

The proposal is defined as a shop and is permissible in the 2(d) Village zone.

The proposed development complies with Clause 11 - Zone Objectives in that it is an extension of existing commercial development in the 2(d) Village zone. The proposed shop provides the community with the option of purchasing local produce. This is a facility traditionally associated with a rural village and is of such a minimal design and scale that, if constructed according to approved plans and operated in accordance with imposed conditions of consent, will make a positive contribution to the character of the village of Bilambil.

Clause 15 - Essential Services

The subject site has access to a reticulated water system and electricity. There is no access to a reticulated sewer system.

The existing business is connected to the reticulated water supply. However, the proposed shop does not have consent to access the landowner's water connection. As such, a 250 litre rainwater tank (and hot water system) will supply

the shop with adequate potable water for the purpose of a hand basin / food preparation sink, as required by the Environmental Health Unit.

The existing General Store / Post Office / Service Station may rely on use of the WC located in the attached dwelling, as was historically approved in 1972 for staff. As detailed later in this report, the current septic system on site is operating at capacity and is not likely to cope with an additional WC. In addition, it is not clear that the current system will be able to cope with wastewater generated from the proposed shop use.

Accordingly, operation of the proposed shop is contingent upon the capability of an on-site sewage management system to manage the potential and actual wastewater load. Deferred commencement conditions have been recommended so that these issues are dealt with prior to operation of the development consent commencing.

Clause 16 - Height of Building

The subject site is controlled by a three-storey height limitation.

The proposed development comprises the addition of a single-storey demountable shop, and therefore complies with Clause 16.

Clause 17 - Social Impact Assessment

The proposal will provide a minor economic benefit to the community and as such a formal social impact assessment is not required.

Clause 35 - Acid Sulfate Soils

Class 5 Acid Sulfate Soils are located on the subject site. As the proposal does not require any excavation, ASS are not considered to be a constraint for consideration of the application.

Other Specific Clauses

Clause 22 – Development near designated roads

Clause 22 applies to land that has frontage to a designated road and Bilambil Road is a Council designated road. Pursuant to the Clause, Council must be satisfied that the following matters have been addressed prior to granting consent to any development on land to which the clause applies:

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*
- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*
- (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*
- (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*
- (g) *where practicable, access to the land is provided by a road other than the designated road.*

The nature of the development is not considered likely to constitute a traffic hazard or materially reduce the capacity or efficiency of Bilambil Road. The main access and egress points for the site for vehicles are from Carool Road and Bilambil Road via existing driveway access points. The nature of traffic movements into and out of the site is not likely to change with the addition of the fruit and vegetable shop.

The proposed use is not considered to be sensitive to traffic noise and the additional commercial use of the site is not likely to detract from the scenic values of the locality. It can therefore be concluded that the development as proposed satisfies the aims and points of consideration outlined in Clause 22.

Clause 34 - Flooding

The subject site is located on land identified as affected by flooding on Council's GIS Enlighten program with the adopted design flood level for the site being 3.5m AHD. The existing ground level is at approximately RL 3m AHD. The land is also subject to high and low velocity flows of flood waters. The proposed shop is located on brick piers 600mm above ground level which is considered satisfactory. Stock is located on shelves that can easily be removed during a flood event if necessary.

The proposal is for the addition of a fruit and vegetable shop to an existing commercial use on site and as such it is not considered to pose any greater risk of severity of flooding of other land in the vicinity or impact on emergency services. The proposal is compliant with the provisions of DCP Section A3 and subsequently compliant with Clause 34 of the LEP.

Clause 47 – Advertising Signs

Clause 47 relates to signage and aims to regulate the impact of signage throughout the Shire. The proposal involves the use of several blackboards to be chalked up according to the availability of produce.

The blackboards will be located inside the shop with one blackboard being located within close proximity of the shop. A moveable chalkboard no greater than 1.5m² is permissible if it is located on private property. The chalkboard must contain a sign written heading indicating the premises to which it refers.

It would also be acceptable for business identification signage to be located on the front elevation of the proposed shop, as indicated on the approved plan.

The signage is not in a rural zone nor is it listed as prohibited in subclause 4 of Clause 47. The signage is therefore considered compliant with Clause 47 of the LEP.

Clause 31 – Development adjoining waterbodies

The clause applies to land that adjoins the Mean High Water Mark (MHW) of a waterbody. An open drain, which is essentially a drainage channel from Bilambil Creek runs through the subject site immediately to the east of the proposed location of the fruit and vegetable shop. The objectives of this clause include:

- protection and enhancement of scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors
- provision of adequate public access to waterways, and
- minimisation of the impact on development from known biting midge and mosquito breeding areas.

Conditional consent is recommended for this application in consideration that the proposed shop is within close proximity to a waterway and more specifically, because the on-site sewage management system (OSMS) is 'high risk' and at capacity.

As such, operation of the proposed shop is contingent upon the applicant demonstrating that the OSMS can sustainably manage the potential and actual wastewater load. As discussed previously, deferred commencement conditions have been recommended to ensure that the capacity of the OSMS is investigated prior to the operation of a development consent.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B of the NCREP requires Council to consider the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines. The proposed fruit and vegetable shop does not contradict the strategic aims and objectives of these policies, nor does its location allow potential for impacts on public access, beach and open space overshadowing. The proposal is therefore considered to be consistent with the requirements of Clause 32B.

Clause 47 - Principles for Commercial and Industrial Development

Location of a fruit and vegetable shop (commercial premises) in the centre of Bilambil Village is in accordance with the objectives of this clause in that it maintains the integrity of the main business area in Bilambil, zoned for such a purpose. It also strengthens the multi-functionality of the village centre by providing a variety of local shopping options with its location adjacent to a General Store, Post Office and Service Station.

Clause 81: Development adjacent to the ocean or a waterway

The relevant matters for consideration contained in Clause 81 are concerned with the provision of open space and public accessibility to the foreshore adjacent to the ocean or any substantial waterway. The proposal does not impact upon or alter in any way public access to Bilambil Creek.

The proposed works do not impact upon the waterway (subject to satisfying conditions of consent in relation to the operation of an on-site sewer management system) and thus are considered to comply with the relevant provisions of Clause 81 of the NCREP.

SEPP No. 22 - Shops and Commercial Premises

This SEPP comes into force when an application is proposed for a change of use to a lawful shop or commercial premises within a business zone and the consent authority considers it worthy of approval (minimal environmental impact / in keeping with objectives of zone) even though the change of use is prohibited under another environmental planning instrument.

In this case, SEPP 22 is not activated as the proposed fruit and vegetable shop is not a change of use and is not prohibited under another environmental planning instrument.

SEPP No. 64 – Advertising and Signage

There are no specific provisions for ‘chalkboards’ or ‘business identification signs’ within this SEPP. The SEPP deals with ‘Wall Advertisements’ and states that there should only be one per elevation of a building. However, the proposed signs do not fit within this definition.

An assessment against Schedule 1 of the SEPP indicates that the proposed signage is compatible with the village/commercial character of the area, it does not detract from the amenity of any special areas, it does not jeopardise any views or vistas, and is of an appropriate form and scale for the streetscape and the subject building. There are no illumination and no safety hazards as such.

Therefore, the proposal is considered to comply with the provisions of SEPP 64.

SEPP No 71 – Coastal Protection

The subject site is located on lands defined as a sensitive coastal location under SEPP 71 (within proximity of Bilambil Creek). However, the ancillary nature of the proposed shop on a site with an existing commercial use does not trigger a referral to the Department of Planning. The proposed shop is considered to comply with the provisions of SEPP 71.

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

The Shire wide Draft Local Environmental Plan is currently on exhibition. The Draft zone is RU5 – Village. The proposed land use is defined as *Neighbourhood Shops* and is permitted with consent.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Provisions of this DCP are not compromised (in relation to the existing dwelling on site) by the proposed location and operation of the fruit and vegetable shop.

A2-Site Access and Parking Code

The original development application for a shop and dwelling (B329.72) does not make mention of required car spaces for the operation of the General Store, the Post Office, the Service Station and the dwelling. This may have been due to the fact that it was the replacement of an existing use on site.

The subsequent application for four shops (T4/1713) was not acted upon and the site remained as per the 1972 approval. The development consent for four shops requested the minimum of 6 off-street car parking spaces but did not take into account those required for the existing dwelling. In any case, this approval was not activated.

An approved application for extensions to the Post Office within the General Store (DA08/0897) considered formalisation of the existing car park. With a total area of 205.9m², including the extensions, calculations are as follows:

Table 1

Carparking Requirements	Calculations	Proposed Car Parking
General Store 3.5/100m ² 0.5/100m ² (4/100m ²)	Customer = 205.9 /100 x 3.5= 7.2065 Employee = 205.9 / 100 x 0.5 =1.0295 <u>TOTAL</u> = 8.236 [Area 5: Neighbourhood general stores – 40% concession] 8.236 x 0.6 = 4.9416 Therefore, 5 car spaces in total are required: 1 for staff; 4 for customers	11 spaces proposed. 3 spaces located within the front setback and 2 located where cars need to access the petrol pumps were not approved. Therefore, 6 car spaces were approved – 2 for staff and 4 for customers (located in front of the proposed fruit and vegetable shop).

Carparking Requirements	Calculations	Proposed Car Parking
Dwelling House (3 bedrooms)	1 space plus provision for driveway parking of another vehicle	Unclear – no further use of double garage due to unrecorded extension of general shop at some stage in the past into garage area.

The original assessment for DA08/0897 resulted in a requirement for 6 car spaces due to the non-inclusion of the requirement for employee parking in the 40% concession figure. A recalculation of these figures results in a total of 5 car spaces being required.

Should this latest development consent for extensions not be activated, existing on-site requirements for car parking are as follows:

Table 2

Carparking Requirements	Calculations	Proposed Car Parking
General Store 3.5/100m ² 0.5/100m ² (4/100m ²)	Customer = $94 / 100 \times 3.5 = 3.29$ Employee = $94 / 100 \times 0.5 = 0.47$ <u>TOTAL</u> = 3.76 [Area 5: Neighbourhood general stores – 40% concession] $3.76 \times 0.6 = 2.256$ Therefore, 3 car spaces in total are required: 1 for staff; 2 for customers	No formalised parking areas.
Dwelling House (3 bedrooms)	1 space plus provision for driveway parking of another vehicle	Unclear – no further use of double garage due to unrecorded extension of general shop at some stage in the past into garage area.

Car parking required for the proposed development (fruit and vegetable shop) is calculated as follows:

Table 3

Carparking Requirements	Calculations	Proposed Car Parking
Shop 4.4/100m ² 1/100m ² (5.4/100m ²) (associated with Neighbourhood general store)	Customer = 19.034 /100 x 4.4 = 0.8375 Employee = 19.034 / 100 x 1 = 0.1903 <u>TOTAL</u> = 1.0278 [Area 5: Neighbourhood general stores – 40% concession] 1.0278 x 0.6 = 0.6166 Therefore, 1 car space in total is required to cater for staff and customers	No formalised parking areas.
Dwelling House (3 bedrooms)	1 space plus provision for driveway parking of another vehicle	Unclear – no further use of double garage due to unrecorded extension of general shop at some stage in the past into garage area.

As such, there are two options:

1. Should the development consent for DA08/0897 be activated and extensions to the General Store / Post Office be constructed, it would be possible to incorporate the required car parking space for the fruit and vegetable shop, as there is an excess of one (1) car space on the approved plans, according to revised calculations in Table 1. A copy of this latest approved car parking configuration should appear on an amended site plan supplied by the applicant.
2. Should the development consent for DA08/0897 not be activated, the applicant will be required to submit a formal car parking plan indicating a total of four (4) car spaces to service the existing General Store / Post Office and the proposed fruit and vegetable shop according to calculations in Tables 2 and 3.

NB: Further investigation of the (potentially unlawful) extension of the General Store that changed the use of the double garage associated with the dwelling from the 1972 consent may be necessary. This change of use resulted in the loss of two (2) car parking spaces for the dwelling.

A3-Development of Flood Liable Land

The subject site is located on flood prone land with a design flood level of 3.5m AHD. As the proposed shop is ancillary to existing commercial premises and of a small scale, few of the provisions of this Development Control Plan (DCP) are relevant. The proposed shop will be located 600mm above ground level to

comply with environmental health requirements. Stock located on shelving will be able to be easily moved should there be a flood event.

As such the proposal does not impact upon measures already in place to cope with development on flood liable land. The proposal is therefore considered compliant with the provisions of DCP Section A3.

A4-Advertising Signs Code

This plan sets out the maximum signage requirements for business premises, including the different types and sizes of acceptable advertising signage. The proposed 'business identification signage' falls within the category of 'chalkboard' and 'top hamper sign', as defined by the DCP. The DCP states that a chalkboard may have an area not exceeding 1.5m². The top hamper sign is merely a business identification sign which may be of a size to fit between the window and roof of the building, as shown on the relevant plan.

The maximum number of signs per business is five (5) and the maximum area allowable for signage on this site is considerable considering frontages to both Carol Road and Bilambil Road. The proposed signage is modest and considered to be satisfactory.

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

The subject site is located on land to which the Government Coastal Policy applies. The policy contains a strategic approach aiming to protect, rehabilitate and improve the natural environment of areas covered by it. This proposal has been assessed with this in mind, and it is considered that the proposed fruit and vegetable shop does not contravene the objectives of the policy.

Clause 92(b) Applications for demolition

The proposal originally involved demolition of the existing unlawful fruit stall (shed). This was assessed and approved by Council's Building Services Unit as part of this application but conditions are no longer required in this regard as it has been removed due to compliance action.

Clause 93 Fire Safety Considerations

This clause does not apply to the proposed development.

Clause 94 Buildings to be upgraded

This clause does not apply to the proposed development.

(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 fruit and vegetable shop is complimentary to the existing land uses of general store, post office and service station. It represents a mixed but complimentary use of the site with shared access and parking arrangements. In a broader sense, the proposed shop use is suitable within the village context and setting.

Water

The applicant does not have the landowner's consent to use the reticulated water supply. As such, the applicant has elected to use tank water (250 litre) and a hot water system for use in the operation and conduct of the business. Providing this supply is potable it is acceptable and a standard condition is proposed.

Waste

The applicant has advised that any food waste generated will be removed from the site and disposed of on private premises by way of composting.

The disposal of trade waste is discussed below under Effluent Disposal.

(c) Suitability of the site for the development

Surrounding Land Uses/Development

As discussed previously in this report, surrounding land uses encompass that of a small village – residential, recreational, educational, commercial, retail etc. The proposed shop is complimentary and consistent with these uses.

Availability of Utilities & Services

The proposed shop does not have access to reticulated water. This has been discussed above in this report.

The subject site does not have access to reticulated sewer. Constraints in relation to the lack of this connection are discussed below.

Statutory Requirements

The proposed shop is required to provide WC facilities and a disabled access ramp in accordance with the Building Code of Australia and the Anti-discrimination Act. These matters are normally dealt with at Construction Certificate stage. However, it is pertinent to raise these matters at planning assessment stage due to site constraints.

It is unclear as to whether the operator of the fruit and vegetable shop has an arrangement with the landowner to utilise the WC facilities associated with the existing shop and dwelling. Operation of the proposed shop is contingent upon such an arrangement being in place as the addition of an extra WC on site is problematic (see discussion below in relation to effluent disposal). As such, deferred commencement conditions have been recommended in this regard.

A disabled access ramp is not shown on the most recent plans for an elevated shop. The applicant will need to comply with the Anti-discrimination Act in this regard and a condition has been applied.

Effluent Disposal

The property is currently comprised of an occupied residential dwelling that operates as a General Store, Post Office and Fuel Service Station. The property is serviced by an on-site sewage management system (OSMS) comprising an aged ~1600L concrete septic tank with traditional effluent disposal absorption bed (exact size unknown but approximate size is believed to be 60-80m²). A small grease trap is also connected to the septic tank. The OSMS is considered to be undersized when assessed in accordance with AS/NZS 1547/2000 and NSW Environment and Health Protection Guidelines "on-Site Sewage Management for Single Households" 1998.

The existing OSMS was last inspected for approval to operate on 28th July 2008. The system was found to be operating in a satisfactory manner however the system was classified as high risk due to size of septic tank, size and location of the of disposal area and general site constraints such as available suitable land and location to waterway. The approval is due for renewal 28th July 2010.

The owner has previously provided to Council a plan drawing (reference DA08/0897, additions to post office and relocation of carport) nominating a reserve area for effluent disposal should the existing OSMS fail or require upgrading or replacement. While it was acknowledged at the time of assessment of DA08/0897 that the proposal would not increase the potential hydraulic wastewater loading to the existing aged OSMS Council requested the applicant at the time to nominate a reserve disposal area to ensure adequate area was available for future system upgrades should additional wastewater loading be generated from future business or domestic activity.

The current proposal for a fruit and vegetable shop will incorporate a hand-washing basin and a food preparation sink fixtures and possibly a separate toilet should the need arise. This represents an additional wastewater hydraulic loading activity as described above. These fixtures will potentially provide additional hydraulic wastewater loading to the existing high risk OSMS.

Therefore, a deferred commencement condition has been proposed requesting the applicant, prior to operation of the development consent, to:

- provide an on-site sewage management capability assessment report for the existing system indicating if the system is able to meet the minimum requirements of the assessment standards or if the system will require upgrading, and should that system require upgrading.

In addition, a condition is proposed requesting the applicant, prior to issue of construction certificate, to:

- lodge a Section 68 application to install/operate an OSMS, pay the appropriate fee and be issued with an approval.

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

Development Control Plan A11 - Public Notification of Development Proposals did not require the proposal to be advertised or notified for public comment.

(e) Public interest

Subject to the proposed conditions of consent, the proposal generally complies with all the applicable provisions and is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general.

OPTIONS:

1. Resolves to approve the development application in accordance with the recommendation for approval;
2. Resolves to approve the development application in accordance with the recommendation for approval with deferred commencement conditions;

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

There are no policy implications in relation to this development.

CONTRIBUTIONS:

The proposal does not attract developer contributions for reticulated water and sewer connections. The applicant will not be connecting into the current reticulated water supply in order to operate the shop. In addition, reticulated sewer is not available to the site.

However, the proposal attracts contribution to the Tweed Road Contribution Plan at a discounted rate, given the cross-utilisation of shopping on the subject site. The applicant has indicated that payment of the Tweed Road Contribution Plan charges would render the project unviable.

CONCLUSION:

The proposed fruit and vegetable shop is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies subject to compliance with conditions of consent. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au 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] Unauthorised Fence Lot 156 DP 628026 Creek Street, Hastings Point**

ORIGIN:

Development Assessment

FILE NO: PF1431/190

SUMMARY OF REPORT:

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

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

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

RECOMMENDATION:

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

REPORT:

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

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

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

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

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

The following provisions apply -

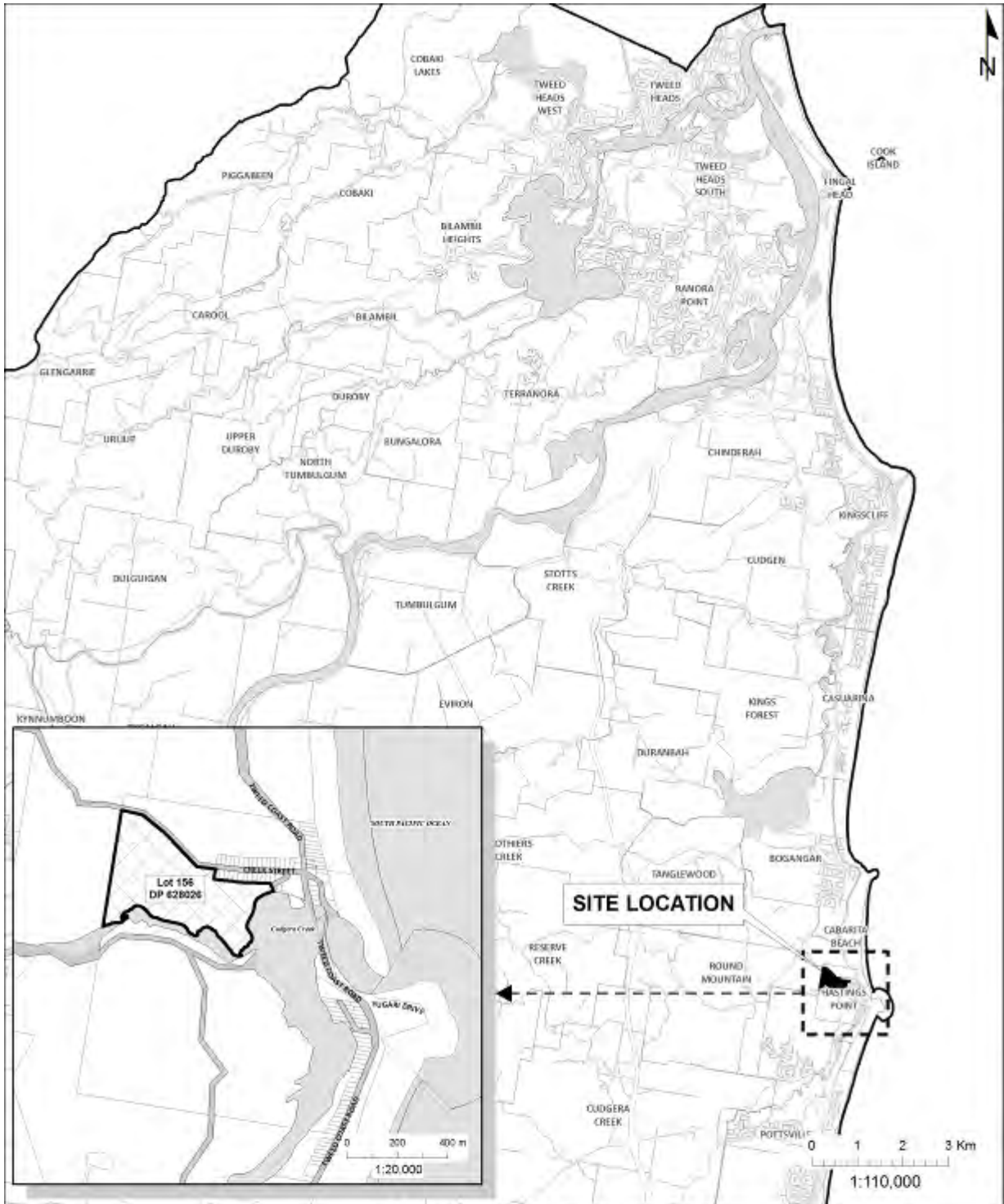
Tweed Development Control Plan Section A10 Exempt and Complying Development has a section setting out the circumstances that exempt fences from needing approval however section A10.2.2 (e) states that the exempt provisions do not apply to land zoned 7(a).

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

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

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

SITE DIAGRAM:



LOCALITY PLAN
 Lot 156 DP 628026
 Creek Street, Hastings Point

Filename: z:\usr\planning\msd\A4P_BBW_SitePlan.mxd

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 28 January 2010

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TWEED
 SHIRE COUNCIL

PHOTOS:









OPTIONS

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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

15 [PR-CM] Proposed Amendments to Tweed DCP Notification Requirements for DAs Affecting Caravan Parks and Manufactured Home Estates

ORIGIN:

Development Assessment

FILE NO: GT1/DCP/A11

SUMMARY OF REPORT:

At its meeting of 15 December 2009, in response to a Notice of Motion brought forward by Councillor Skinner, Council resolved the following-

“That a report be brought forward to Council from the Director Planning and Regulation which identifies appropriate amendments to Section A11 of Tweed Development Control Plan 2008 which will facilitate a more pro-active requirement for Council to advertise and directly notify the owners and residents of all Caravan Parks and Manufactured Home Estates and the like in the Tweed Shire of incoming development applications.”

In response to this resolution, Council officers have prepared this report to seek Council's endorsement to commence a process for the amendment of Section A11 of Tweed Development Control Plan (DCP) 2008, to require additional notification of residents of Caravan Parks and Manufactured Home Estates that are likely to be impacted by development applications

RECOMMENDATION:

That: -

- 1. Council endorses the public exhibition of an amendment to Clause A11.2.1 of Section A11 of Tweed Development Control Plan 2008 for a period of 28 days, in accordance with the Environmental Planning Assessment Act and Regulation, through the insertion of the following:**

Caravan Parks and Manufactured Home Estates

Permanent occupiers of caravan park and manufactured home estates sites are to be notified in the same way as landowners are notified as set out in clause A11.2.1 Who is to be Notified? (affected owners). In this regard notification letters are to be sent to the site manager who will be requested to distribute the letters to the site occupiers. The site manager will also be requested to display a notification letter on a noticeboard where available;

and

2. **A report be submitted back to Council following the public exhibition of the proposed DCP amendment.**

REPORT:

Council Resolution

At its meeting of 15 December 2009, in response to a Notice of Motion brought forward by Councillor Skinner, Council resolved the following -

“That a report be brought forward to Council from the Director Planning and Regulation which identifies appropriate amendments to Section A11 of Tweed Development Control Plan 2008 which will facilitate a more pro-active requirement for Council to advertise and directly notify the owners and residents of all Caravan Parks and Manufactured Home Estates and the like in the Tweed Shire of incoming development applications.”

Current Notification Procedures

The Tweed DCP Section A11 contains the following provisions regarding notification-

A11.2.1 Who is to be Notified? (affected owners)

For applications for development listed in Table 1. The Council will cause notice of an application to be sent to:-

- (a) all persons who, according to Council property rating records, own land immediately adjoining the application site;*
- (b) owners of any land that the Council or delegated staff consider may be detrimentally affected by the application having regard to the following criteria:*
 - (i) the views to, from, and across/over the land;*
 - (ii) overshadowing;*
 - (iii) privacy;*
 - (iv) noise;*
 - (v) the visual quality of the building in relation to the streetscape and neighbouring properties;*
 - (vi) the scale of the proposed buildings;*
 - (vii) the likely effect on the drainage of adjoining sites;*
 - (viii) the siting of the proposed building in relation to the application site boundaries;*
 - (ix) hours of use;*
 - (x) nature of use;*
 - (xi) light spillage or reflection;*
 - (xii) means of access to or provision of private parking on the application site;*
 - (xiii) any covenant or easement benefiting the adjoining or neighbouring land or the Council;*
 - (xiv) the height, materials and position of fences erected on the boundary;*
 - (xv) traffic generation;*
 - (xvi) particular circumstances of the application; and*
- (c) any community group or government agency which may be affected by or have a legitimate interest in the application.*

Currently only adjoining owners and other landowners who may be detrimentally affected in accordance with the above criteria are notified. Whilst Council does not have the names of caravan or MHE site occupiers on a data base, it does hold site maps and site numbers for residents of Caravan Parks and Manufactured Home Estates. These maps could be used to identify the sites that should be notified in accordance with (a) and (b) above.

The letters could be addressed to the site occupier and sent to the site manager to distribute to pigeon holes or equivalent. Additionally the notification letter can be sent to the site manager to post on a notice board where available.

Required amendments to DCP

Under part A11.2.6 *Which other persons are to be Notified?* of the DCP a section could be added regarding notification of occupiers or caravan park and manufactured home estate sites in accordance with the criteria contained in part A11.2.1 (a) and (b)

The section could read-

Caravan Parks and Manufactured Home Estates

Permanent occupiers of caravan park and manufactured home estates sites are to be notified in the same way as landowners are notified as set out in clause A11.2.1 Who is to be Notified? (affected owners). In this regard notification letters are to be sent to the site manager who will be requested to distribute the letters to the site occupiers. The site manager will also be requested to display a notification letter on a noticeboard where available.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Additional resources will be used to prepare notification letters.

POLICY IMPLICATIONS:

The proposal represents a change in policy but is warranted given the long term tenure of the occupants of permanent caravan parks and manufactured home estates. It is not desirable to extend the additional notification to other occupiers as it is not possible to identify addresses, deliver mail effectively and justify notifying a large proportion of short term occupants in rented accommodation.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

16 [PR-CM] Works Undertaken Without Approval - Lot 25 DP 870463 No. 19 Waterlily Close, Nunderi

ORIGIN:

Development Assessment

FILE NO: DA08/0293 Pt2

SUMMARY OF REPORT:

Complaints from adjacent landowners were received by Council throughout November 2009 regarding works being undertaken at Lot 25 DP 870463, No.19 Waterlily Close, Nunderi. Council refused a six lot subdivision of the site on 22 October 2009. This reports details events and other relevant information regarding the site and the issues raised.

RECOMMENDATION:

That: -

- 1. No further action be undertaken (other than recommendations 2 and 3) in relation to the issues discussed in this report.**
- 2. The owners of Lot 25 DP 870463 be advised in writing not to undertake any further works without approvals or consents in place where required.**
- 3. A copy of this report be sent to the adjacent landowners.**
- 4. ATTACHMENTS 1 to 4 are CONFIDENTIAL in accordance with Section 10A(2)(a) as it contains personnel matters concerning particular individuals (other than councillors).**

REPORT:

Council refused DA08/0293 for a 6 lot subdivision at Waterlily Close at its meeting of 20 October 2009. Throughout November Council received complaints from adjacent residents regarding works being carried out at the subject site. Details regarding Council's response is provided below.

1. Council's Officer attended the site on 12 November 2009. The Council file note regarding this visit is provided at **attachment 1**.
2. A letter was sent on 13 November 2009 to the landowners requesting information regarding the work being undertaken. **This letter is provided at attachment 2**.
3. A letter was received from the landowner's solicitor on 18 November 2009 requesting particulars of the works. **This letter is provided at attachment 3**.
4. Council's Officer telephoned the landowners solicitor to arrange a meeting. Meeting arranged for 23 November 2009.
5. Telephone call from the landowner's solicitor on 23 November 2009 cancelling meeting and requesting that Council's Officer discuss works with Council's Maintenance Engineer.
6. Advice received from Council's Maintenance Engineer regarding maintenance of a Council drain and possible relocation of a headwall in the north-west part of the site.
7. A letter was received on 26 November 2009 from the landowner's solicitor providing their explanation of the works and inviting an inspection with Council's Maintenance Engineer. **This letter is provided at attachment 4**.
8. Site inspection arranged with Council's Maintenance Engineer however a misunderstanding regarding the inspection resulted in the landowners not being present initially. However the landowners were contacted and an inspection was carried out with them and Council's Officer on 3 December 2009.

The Works

Gumtree Close Drain

Council has an easement over the north-west part of the subject site (Lot 25) to drain water. Following representations by adjoining landowners regarding overland discharge Council arranged with the owners of the subject site to clean the overland flow path. Photographs 1, 2 and 3 show this work. This work has been carried out satisfactorily with no further issues.

Gumtree Close Driveway

A compacted gravel driveway has been constructed within Lot 25 in the north-west part of the site. The driveway is approximately 15 metres long and 2.5 metres wide. Photograph 4 shows the driveway.

Subsoil Drains

Subsoil pipes have been laid in the central northern part of the site. The pipes have been laid to relieve two relatively small sodden areas. The subsoil pipes drain to the main central open channel drain traversing the site. Photographs 5 and 6 show the area of work.

Surface Drains

A shallow v-drain and an open flat swale drain have been constructed in the north-east of the site to direct overland flow into the existing dam. Photographs 7 and 8 show these drains.

It has been raised that the shallow v-drain in photograph 7 is not within the boundary of lot 25. This issue can be resolved via survey and it is not considered a Council matter.

Purpose of Works

The Gumtree Close driveway and the drainage works in the north east of the site correlate with house sites that were nominated in the subdivision application for proposed lots 3 and 4. However it could also be argued that the works are to improve existing conditions on a rural smallholding. Providing an internal hard stand access and minor drainage works can be considered incidental to the rural use of the site. It should be noted that cattle are currently run on the subject site.

The landowners have indicated they will pursue further applications for subdivision. The works that have been undertaken are unlikely to help or hinder any future proposed development and subsequent assessment.

Other Issues

The landowners are permitted to maintain existing drains. The drains are not permitted to be widened, deepened or lengthened without development consent. The site inspection carried out on 3 December 2009 did not reveal any work on the existing drains that would require approval from Council.

Planning Provisions

There could be an argument put forward that the driveway has breached the exempt provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP) which exempts driveways from approval under the following circumstances-

2.27 Specified development

*The construction or installation of a **driveway associated with access to an open hard stand space, a carport or garage** is development specified for this code if it is not constructed or installed on or in, or in relation to, a heritage item or a draft heritage item in a heritage conservation area or a draft heritage conservation area or on land in a foreshore area.*

2.28 Development standards

The standards specified for that development are that the development must:

- (a) be for domestic purposes only, and
- (b) be constructed so that any surface water is disposed of without causing a nuisance to adjoining owners, and
- (c) not require cut or fill more than 600mm below or above ground level (existing), and
- (d) not be wider than the open hard stand space, carport or garage with which it is associated, and
- (e) be constructed in accordance with Australian Standard AS 2890.1—1993, *Parking facilities—Off-street car parking*, and
- (f) be constructed in accordance with the relevant road authority's policy and specifications on vehicle and driveway crossings, and
- (g) have the consent of the relevant road authority under the Roads Act 1993 for each opening of a public road required for the development.

The driveway is clearly not associated with access to an open hard stand space, a carport or garage.

The drainage works could fall under the exempt provisions of the SEPP for earthworks and retaining walls however the subject site is flood prone and some of the works are probably within 900mm of a boundary. The exempted earthworks provisions are as follows-

2.29 Specified development

Earthworks and the construction or installation of a retaining wall is development specified for this code if it is not carried out, constructed or installed on or in, or in relation to, a heritage item or a draft heritage item or on a flood control lot.

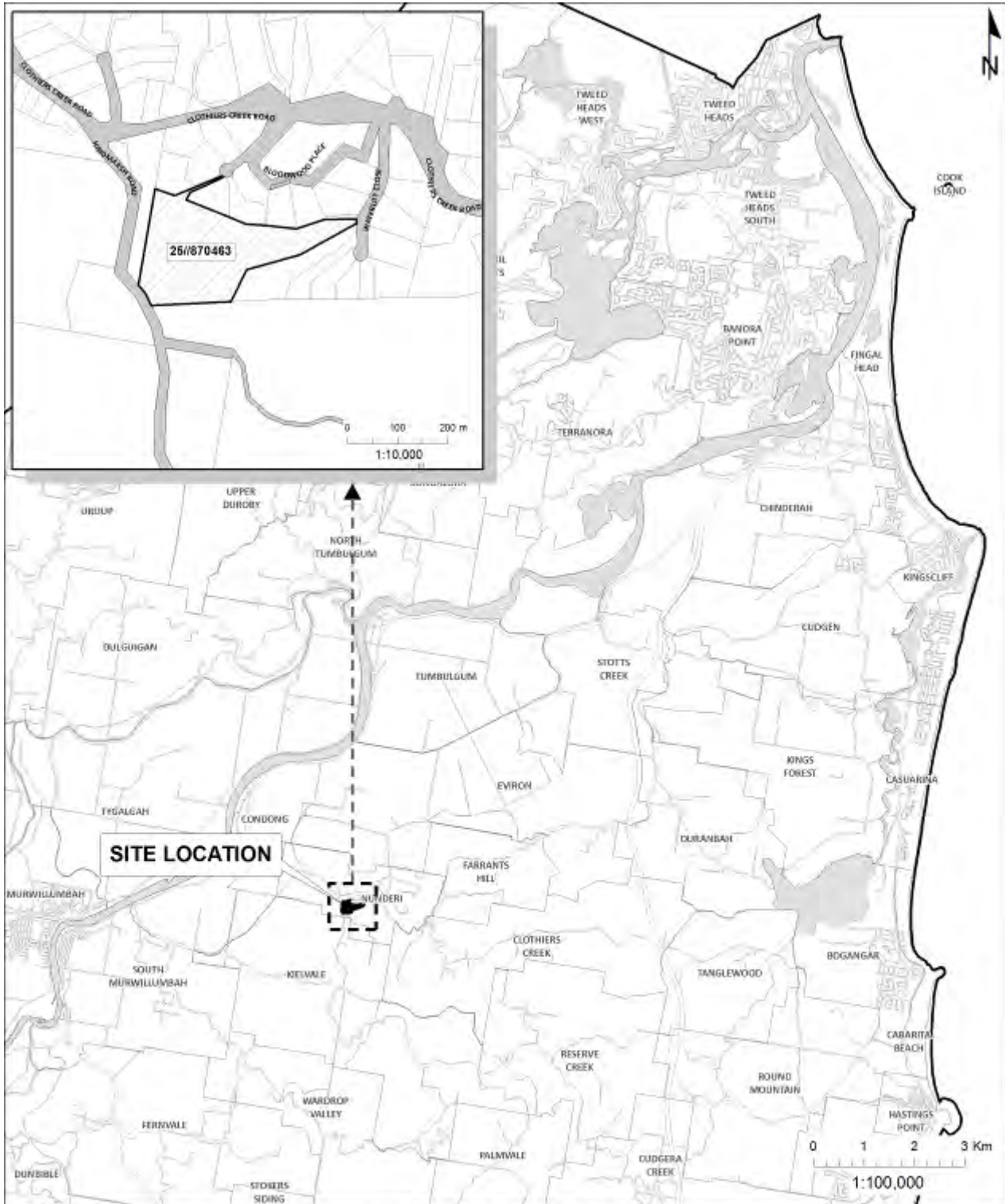
2.30 Development standards

The standards specified for that development are that the development must:

- (a) be for domestic purposes only, and
- (b) be located at least 900mm from each lot boundary, and
- (c) if a retaining wall:
 - (i) be not higher than 600mm (including the height of any batters) above ground level (existing), and
 - (ii) if it is on a sloping site and stepped to accommodate the fall in the land—be not higher than 800mm above ground level (existing) at each step, and
 - (iii) have adequate drainage lines behind it, and
- (d) not require cut or fill more than 600mm below or above ground level (existing), and
- (e) not redirect the flow of surface water onto an adjoining property, and
- (f) cause surface water to be disposed of without causing a nuisance to adjoining owners, and
- (g) be located at least 1m from any registered easement, sewer main or water main, and
- (h) if the fill is more than 150mm deep—not occupy more than 50% of the landscaped area, and
- (i) if it is carried out, constructed or installed in a heritage conservation area or a draft heritage conservation area—be located in the rear yard, and
- (j) be located at least 50m from a waterbody (natural).

It is considered that the works are minor and pursuing punitive action in this instance is not warranted. The landowners have given a verbal undertaking not to undertake anymore works of this nature. It should be noted that the landowners are permitted to maintain the site and associated infrastructure.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 25 DP 870463
 No.19 Waterlily Close, Nunderi

Filename: z:\vesr\planning\vwrd\A4P_B&W SitePlan.mxd

Author: J.Batchelor / Planning Reforms Unit

Date Printed: 19 January, 2010

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Coordinate System - MGA Zone 56
 Datum - GDA 94

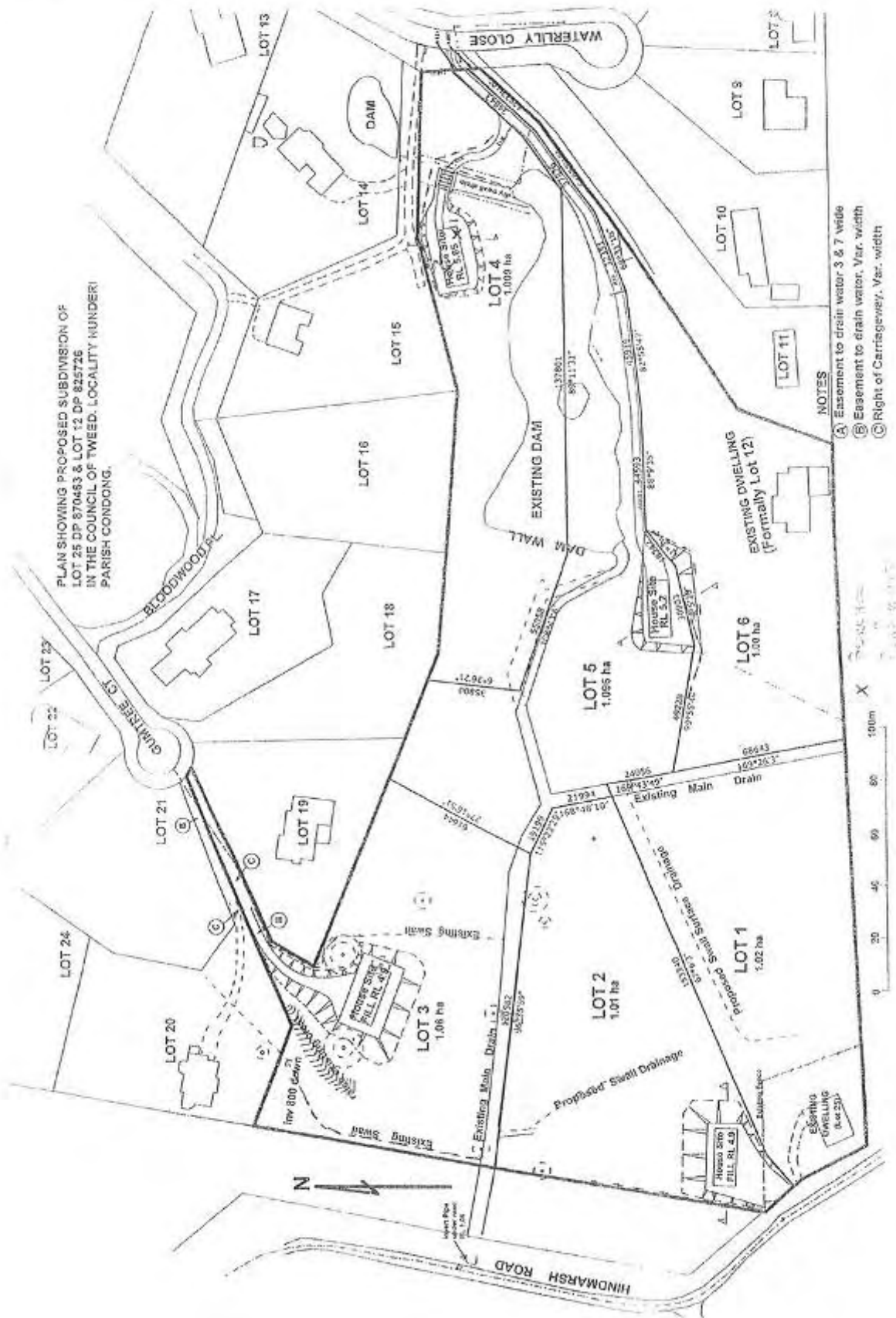
Cadastre: 19 January, 2010
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DEVELOPMENT PLAN:





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LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. **Confidential Attachment:** Council file note regarding a site visit on 12 November 2009 (ECM 11662878)
 2. **Confidential Attachment:** Letter sent to the landowner on 13 November 2009 requesting information regarding the work being undertaken (ECM 11662878)
 3. **Confidential Attachment:** Letter received from the landowner's solicitor on 18 November 2009 requesting particulars of the works (ECM 11662878)
 4. **Confidential Attachment:** Letter received on 26 November 2009 from the landowner's solicitor providing their explanation of the works and inviting an inspection with Council's Maintenance Engineer (ECM 11662878)
-

17 [PR-CM] Development Codes for Cobaki Lakes Concept Plan and Kings Forest Concept Plan– Residential Community Development - Council Submission to the Department of Planning

ORIGIN:

Development Assessment

FILE NO: GT1/51 Pt10 and GT1/52 Pt12

SUMMARY OF REPORT:

The Department of Planning is currently assessing Part 3A Major Project applications for Concept Plans for residential subdivision at Cobaki Lakes (MP06_0316) and Kings Forest (MP06_0318). Both Concept Plans include residential subdivision, town centre, neighbourhood centre, schools, lakes, environmental protection and open space areas. Each development will result in creating a maximum of 5,500 (Cobaki Lakes) and 4,500 (Kings Forest) new residential dwellings, comprising varied housing forms with an expected future population of approximately 10,000 (Kings Forest) and 12,000 (Cobaki lakes).

Both developments propose to introduce new, small lot housing into the Tweed Shire, as well as increase the amount of development which can be assessed as exempt and complying. This approach has led to the production of a Development Code (for both Kings Forest and Cobaki Lakes). The Development Codes have both been on public exhibition and Council has been invited to provide comment.

Council Officers have undertaken a review of each Development Code (referred to hereafter as the 'code/s') and compiled a detailed response to the Department of Planning (refer Draft letter attached). The purpose of this report is to provide a summary of comments, as well as to seek Council's endorsement of the attached draft comments to the Department of Planning. It is noted that both codes are virtually identical and as such, comments relate to both Kings Forest and Cobaki Lakes, unless otherwise stated.

As previously identified to Council, both the Cobaki Lakes and Kings Forest developments are an important component of Council's broader strategic plans to provide a significant proportion of new housing and employment opportunities over the next 10 to 20 years. The Council officers have been working closely with the applicant and the Department of Planning to achieve a high quality and sustainable form of development on both sites.

The codes include provisions for exempt and complying development, as well as development controls for all other development including subdivision. They have been designed to address a wide range of issues so they can generally be used as a 'stand alone document' for development in Cobaki and Kings Forest. That is, it is proposed that the codes over-ride many components of Council's Development Control Plan (DCP), many State Environmental Planning Policies (SEPPs) and certain aspects of Council's Local Environmental Plan (LEP). In doing so, they encompass variations to Council's standards which allow for small lot housing as well as other general modifications to standard development controls.

Council officers are supportive of the proposed increased capacity for exempt and complying development, in line with current State planning trends. Further, Council officers have no objection to the use of the codes as a tool to allow for smaller lot housing (if approved by the Minister) and development not contemplated by the DCP.

Notwithstanding, Council officers consider that all other existing standard development and engineering controls (particularly the DCP Section A1 - Residential and Tourist Code and Section A5 - Subdivision Manual) should not be overridden by the codes and should apply to future development in Kings Forest and Cobaki Lakes. Whilst it is accepted that the codes may specify limited variance to Council's controls where appropriately justified, there is concern with the proposed unnecessary and unjustified variances to existing standard controls.

As part of the recommendation, Council officers are also seeking Council's support to write to the Department of Planning, seeking an extension for Council comment on a Part 3A project application for the central lakes precinct of the Cobaki Lakes Concept Plan until 17 March, 2010.

RECOMMENDATION:

That: -

- 1. Council endorses the forwarding of a draft submission to the Department of Planning on the Development Codes for Cobaki Lakes and Kings Forest, as attached to this report.**
- 2. The General Manager writes to the Department of Planning and request an extension of time for lodgement of a submission on the current project application for the central lakes at Cobaki Lakes, until 17 March 2010**
- 3. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

REPORT:

Applicant: Leda Manorstead Pty Ltd
Owner: Leda Manorstead Pty Ltd
Cobaki Lakes Location: Lot 1 DP570076, Lot 2 DP566529, Lot 1 DP562222, Lot 1 DP570077, Lot 1 DP823679, Lot 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 & 305 DP755740 at Cobaki lakes Estate, Tweed Heads
Kings Forest Location: Lot 76, 272, 323 and 326 DP 755701; Lot 6 DP 875446; Lot 2 DP 819015; Lot 40 DP7482; Lot 38A & 38B DP 13727; Lot 1 DP 129737; Lot 1 DP 781633; Lot 7 DP 875447; Duranbah Road, Kings Forest; Lot 1 DP706497 Melaleuca Road, Kings Forest; Lot 37A DP 13727 Cudgen Road, Cudgen
Cobaki Lakes Zoning: 2(c) Urban Expansion, 2(e) Residential Tourist, 6(b) Recreation, 7(d) Environmental Protection (Scenic Escarpments) and 7(l) Environmental Protection (Habitat).
Kings Forest Zoning: 2(c) Urban Expansion, 5(a) Special Use, 7(a) Environmental Protection (Wetlands & Littoral Rainforest) and 7(l) Environmental Protection (Habitat)
Cost: N/A

BACKGROUND:

In February 2009, Council reviewed the Concept Plan and supporting Environmental Assessment of each area and provided detailed submissions to the Department of Planning.

In October 2009, Council reviewed the Preferred Project Report (PPR) for Kings Forest and provided a submission to the Department of Planning.

In January 2010, Council reviewed the PPR for Cobaki Lakes and provided another submission to the Department of Planning.

The Environmental Assessment accompanying each Concept Plan application made reference to the codes, as tools to provide detailed controls for small lot housing, as well as allow for exempt and complying development. The codes were only made available with the PPR, which was not publicly exhibited.

Council submissions to the Department of Planning argued that the codes should be publicly exhibited, to allow for community comment on the major changes including: modified housing types and residential controls; modified neighbourhood design controls and increased types of complying and exempt development.

The Kings Forest Development Code was on exhibition between 7 December 2009 to 1 February 2010.

The Cobaki Lakes Development Code is on exhibition between 13 January 2010 to 26 February 2010.

DEVELOPMENT CODES

Both codes include the following structure:

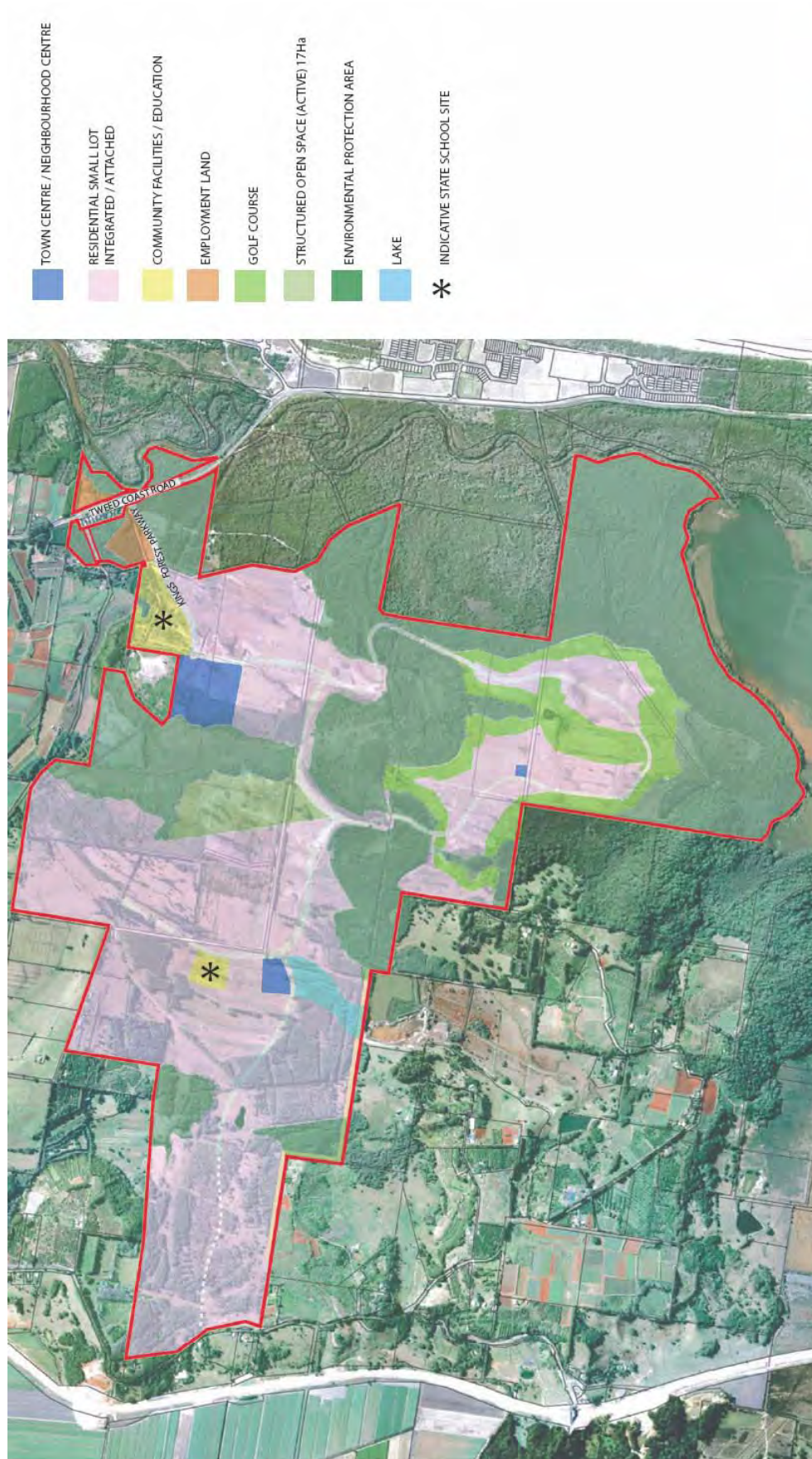
- Section 1 – Administrative provisions of the code
- Part A
Section 2 – Exempt and complying development controls
- Part B
Section 3 – Controls for Residential development (not exempt or complying)
Section 4 – Controls for the Town and Neighbourhood Centres
Section 5 – Subdivision Controls
- Glossary

The codes require that housing types are nominated on lots at the subdivision stage, and that various housing types (on nominated lots) are complying development, not requiring an approval from Council. This applies to soho, terraces, zero lot dwellings, traditional detached dwellings, plex and mews.

The codes also specify exempt development and associated provisions.

Planning and subdivision controls are provided for all other development in Part B. Whilst reference is made in part, to Council's DCP, the Codes are for the most part, designed to over-ride other planning and engineering controls and instruments.

KINGS FOREST CONCEPT PLAN



MPS
Architects
1 300 368000
OCTOBER 2009
MPS 2142 SK-102g
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CONCEPT PLAN KINGS FOREST

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PROJECT 28 PTY LTD

COBAKI LAKES CONCEPT PLAN

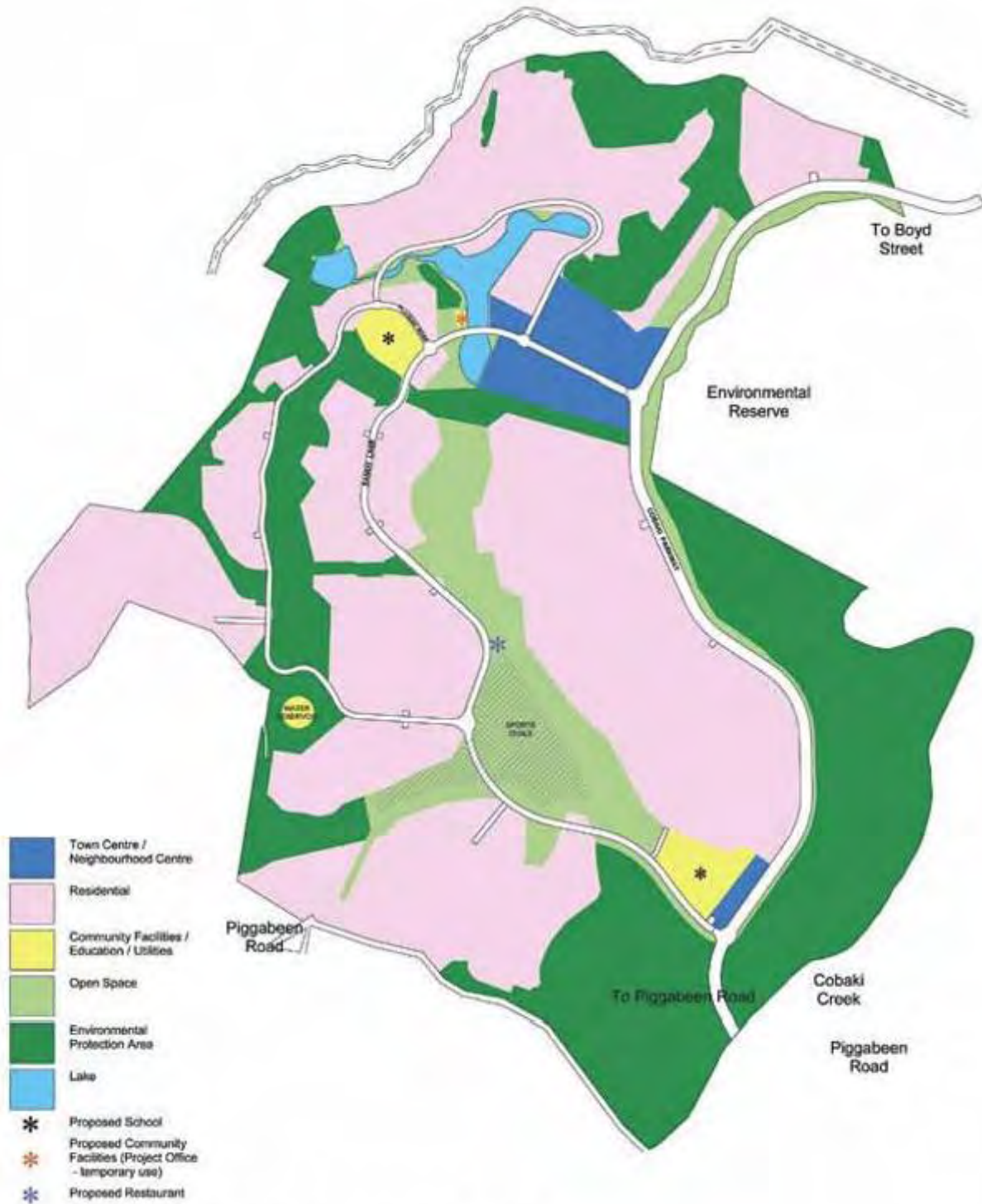


Figure 2 - Concept Plan (prepared by The Design Forum Pty Ltd)

COMMENTS ON THE DEVELOPMENT CODES

Planning - Summary

The main planning issues are summarised as follows:

- It is not considered appropriate that the codes propose to over-ride the SEPP (Exempt and Complying Development). To reduce duplication and minimise future inconsistencies, it is considered that Part A should be limited to exempt and complying provisions for housing types not contemplated in the SEPP Housing Code. That is, exempt and complying provisions in the codes should be limited to detached dwellings on lots less than 450m², mews, plex, zero-lot, terrace and soho development. Other modifications to the SEPP controls proposed in Part A are not supported (such as the ability to undertake earthworks within 6 metres of a waterbody).
- It is considered that Council's DCP should not be over-ridden by the codes. Part B of the Codes (which provide controls for all development that is not complying or exempt) contain significant variations to Council's subdivision and housing controls. It also omits important criteria and objectives for assessment which currently existing in the DCP (eg. Section A7 of the DCP dealing with Child Care Centres and criteria on provision of passive open space in Section A5).
- Further to above, the codes propose to replace Section A1 (Residential and Tourist Development) and Section A5 (Subdivision Manual) of the DCP. This is a major concern for Council officers as these sections of the DCP include best practice planning, engineering and urban design principles. It is considered that Part B should be limited to controls for housing types not contemplated by Section A1 of the DCP and to limited variations where appropriately justified.
- The codes need to ensure that out-of-sequence development does not occur.
- Code objectives and visions should promote employment opportunities within each community for their residents.
- The process for establishing complying development needs to be modified and clarified.
- The process for lodging development applications for both buildings and subdivisions needs to be clarified, particularly for subdivision as it includes additional components (Design Guidelines, Plan of Development, Development Lots and Nominated Lots). Far greater clarity is required to explain the interaction between the precinct plan, staging plan, Plan of Development, Development Lots, Nominated lots, Design Guidelines and Design Review Panels, in order to assist authorities and applicants.
- The codes need to clarify how other planning instruments will apply (ie. SEPP (Affordable Housing), SEPP (Remediation of Contaminated Lands), SEPP (Major Projects) SEPP 65 – Design Quality of Residential Flat Buildings etc).
- The Codes indicate that trading can occur between precincts. This is a concern as no density targets have been set for each precinct and no administration process involving tallying approvals or complying housing is proposed.
- Modifications to the Design Review Panel process are recommended, to ensure good quality outcomes and performance monitoring.
- It is recommended that a review clause is incorporated into the codes to allow for review of each document as required.
- Additional objectives are recommended for the residential and town/neighbourhood centre domains.

- The codes should ensure that subdivision design and layout result in a connected street network as required by best practice urban design and Section A5 (Subdivision Manual) of the DCP.
- It is recommended that nominated lots indicate the maximum yield in dwellings and bedrooms to allow payment of contributions at the subdivision stage.

Aboriginal Cultural Heritage

- Both the Cobaki and Kings Forest sites have pre-acknowledged and potential items and landscapes which could require further investigation of Aboriginal Cultural Heritage. It is considered that the Codes should contain appropriate controls which highlight the need for any preliminary investigations and subsequent detailed examination of these issues.

Buildings Services

- The NSW Housing Code was developed to provide one set of controls for housing across the state to simplify the process and provide consistency. The proposed code will complicate the system and undermine this intent.
- Plan of Development requirements relating to each site may be lost over time if they are only provided on the 88B instrument.

Infrastructure Engineer Summary

- The code refers to Council's Engineering Design and Landscape Specifications however these have limited statutory weight without the parent section of the DCP (A5 – Subdivision Manual). The codes should contain only site specific controls. Section A1 and A5 of the DCP should be the primary development controls for development of both Cobaki and Kings Forest. Similar to comments above in 'Planning', it is reasonable for the codes to provide additional controls for small lot subdivision design, infrastructure servicing, and subsequent residential / commercial development, however the codes need not control engineering aspects such as road design, stormwater management or open space, which are adequately covered by DCP Section A5 (Subdivision Manual).
- It is recommended that the exempt and complying part of the codes is deleted and the SEPP apply to avoid unnecessary duplication.
- Council's Subdivision Manual (DCP – A5) and referenced Specifications have been compiled and updated with development industry consultation and public exhibition over many years, and have been implemented over a wide range of conditions. As Council ultimately inherits the subdivision assets, it is imperative that these assets meet the standards necessary to ensure their effective and efficient operation and maintenance for their full life cycle, to avoid unduly burdening ratepayers. The codes should list those areas where departures for small lot subdivision, environmental sustainability, good town planning or other matters are justified and supported by Council (as the authority responsible for the ongoing ownership and maintenance of public infrastructure throughout Cobaki Lakes and Kings Forest) and the Department of Planning (as the consent authority for the Concept Plan).
- No variation to section A3 (Flood Liable Land) or Council's Flood Risk management Policy is supported, these documents should not be duplicated in the codes but should apply to all development in Kings Forest and Cobaki Lakes.

- Council requires a permeable street network with a high level of connectivity between neighbourhoods. At the same time, the road network should discourage through traffic from external catchments in local streets. The codes are ambiguous on this design aspect and could be interpreted to discourage network connectivity.
- The codes adopt excessive landforming standards for residential / mixed use land.
- Services should be provided in accordance with the verge allocations specified in Design Specification D1, except in special circumstances (such as small lot housing) that need to be nominated by the applicant.
- Fibre telecommunications services need to be provided to each allotment in a separate conduit / pit system, which may affect other service allocations.
- Public infrastructure (including stormwater infrastructure) located in private land must be within an easement.
- Longer cul-de-sac lengths proposed are not supported as the applicant has not provided a landforming concept.
- Implementation of Water Sensitive Urban Design is supported.
- There are concerns with the street network sections.
- On-going negotiations are occurring with the applicant to resolve the abovementioned concerns.

Development Engineering Summary

- As above, the codes do not incorporate Council's DCP A5 (Subdivision Manual) as the technical standard for subdivision and development of Kings Forest or Cobaki Lakes. Subdivision and road standards have been included in the codes with a large proportion of the proposed engineering standards at a much lower standard than Council's minimum standards. This applies to road widths, footpaths, cycleways and lot sizes.
- The codes have a number of contradictions which will create confusion and conflict between Council or the certifier and the developer. This will result in enforcement problems.
- Council's standards (in terms of road widths etc.) are preferred over AMCORD (which is quoted in the codes) as Council's standards are more up-to-date and provide for better functioning roads (wider) with less traffic issues, also allowing for footpaths and cycleways.
- The codes provide road cross sections which do not appear to provide for footpaths or cycleways. All residential streets should be provided with a footpath and appropriate cycleways.

Water and Sewer Summary

- The codes allow sewers on private land without easements. This is not acceptable and sewer mains need to be in public road reserve or in easements.
- Additional clauses are required to ensure that foundations for development and any structures are well clear of pipes.
- The proposed method for early payment of s64 charges is unacceptable as it does not cater for complying development that would increase the loading of the systems beyond one equivalent tenement (1ET).
- Concerns are raised with the proposed exempt and complying controls which will impact upon maintenance or structural integrity of sewer pipes, particularly if the codes allow services without easement.

- The codes should include the requirement for mandatory rainwater tanks to maximise rainwater reuse.
- There is concern with the proposal to subsequently subdivide mews to torrens title. Special provisions would be required to ensure that sewers are provided to each lot, or provisions put in place for adjoining properties to have pipes in the neighbouring properties. Likewise, provision would be required for water meters to be located on property not serviced by that meter and for the private pipes to traverse the adjoining property. Shared services are not considered acceptable unless a body corporate is responsible for common maintenance issues.

Environmental Health and Building Summary

- Recommendations are made to the exempt and complying controls (Part A), particularly that they make reference to other relevant Acts (the Food Act and the Local Government Act), Australian Standards and the SEPP (Remediation of Contaminated Lands).
- It is also recommended that various controls in Part A ensure residential amenity is protected.

Community Services Summary

- The codes should address affordable housing.
- The codes should allow for provision of service or facilities to meet the stated objectives for 'self-contained' neighbourhood.
- The code should provide for a connective grid subdivision pattern and provide objectives for transport other than car use. Direct cycle routes should be provided with pedestrian use a priority in the design, to promote more sustainable design and healthy, active living.
- The codes should nominate provision of community and social services.

SUBMISSIONS:

During the exhibition period Council received four submissions in regards to Kings Forest (including letters on behalf of the Cabarita Beach /Bogangar Residents Association and the Kingscliff Ratepayer and Progress Associations) and one submission in regards to Cobaki Lakes.

The issues raised in these submissions include:

- These developments are too dense;
- These developments are not environmentally friendly;
- These developments can not be supported by the current infrastructure (transport, hospitals, water, protection of waterways, sewerage, employment, and education);
- Kings Forest as proposed will not ensure the survival of wildlife;
- Kings Forest exhibition occurred over a busy Christmas period.

- The proposal at Kings Forest seeks to override the LEP which was undertaken with many years of consultation;
- There has been no consultation with the public in the preparation of the Kings Forest Code;
- Reduced allotment sizes at Kings Forest are not supported;
- Utilising Queensland road standards at Kings forest is not supported;
- There is insufficient information regarding sewerage and stormwater issues at Kings Forest;
- The proposed Kings Forest development will create strong social issues including lack of privacy between small blocks, lack of employment opportunities, lack of services, lack of sporting facilities, and insufficient access to beach parking given increased population;
- The proposed road widths at Kings Forest are too narrow;
- The proposed contribution cap of \$20,000 is insufficient for long term maintenance;
- The separate Development Code as applied for would not be in the best interest of the residents of Kings Forest nor the wider community.

These submissions will be forwarded to the Department of Planning on behalf of the submitters.

PROJECT APPLICATION – COBAKI LAKES

On the 12 January 2010, Council received a copy of a project application for Cobaki Lakes, lodged pursuant to Part 3A of the Act. The Minister for Planning is the approval authority for the project application.

The Cobaki Lakes project application seeks approval for:

- Subdivision of the central lake corridor and environmental protection parcels;
- Earthworks (cut and fill) including creation of a lake, wetlands and riparian drainage corridor;
- Landscaping of the central open space parkland areas;
- Revegetation and rehabilitation of environmental protection bushland areas, freshwater wetlands and the riparian corridor;
- Revegetation and rehabilitation of saltmarsh areas;
- Construction of access paths and bridges; and
- Construction of the lake edge landscape treatments including wetland edges, stonewalls, boardwalks, promenades, handrailing and road bridge.

Unlike the concept plan, project applications (where approved) allow for construction and development to occur.

The project application for the lakes is on exhibition from 13 January 2010 to 26 February 2010. This is the same timeframe that the Cobaki Lakes Development Code is on exhibition.

In accordance with the memo to Councillors from the Director of Planning and Regulation, dated 15 September 2009 (relating to resourcing issues associated with assessment of Part 3A matters), detailed assessment of the project application will only be undertaken in so far as it relates to impacts on Council's infrastructure and assets.

The project application includes large open space and environmental assessment areas proposed to be dedicated to Council. It also includes stormwater management systems which will impact on future Council infrastructure. A detailed assessment of these components is therefore required.

Given that the project application has been publicly exhibited at the same time as the Development Codes, Council officers requested an extension of the submission period until after the March Council meeting. The Department of Planning have refused the officer request for an extension and it is recommended that Council resolve to again, request an extension as resourcing limitations have not enabled a detailed assessment of the project application prior to the February Council meeting.

OPTIONS:

1. That Council endorses the key themes in the attached draft submission to the Department of Planning on the Concept Plan for Cobaki Lakes and Kings Forest.
2. That Council proposes an alternative draft submission to the Department of Planning on the Concept Plan for Cobaki Lakes.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Refer to confidential attachment.

POLICY IMPLICATIONS:

The codes have significant impact on future policy applicable to Kings Forest and Cobaki.

CONCLUSION:

Council has the opportunity to make a submission to the Department of Planning on the proposed Development Codes for Cobaki Lakes and Kings Forest.

Various internal experts have assessed the codes and provided comments. These are summarised above and collated into the attached draft submission.

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft submission to the Department of Planning on the Development Codes for Cobaki Lakes Concept Plan and Kings Forest Concept Plan – Residential Community Development (ECM 12389685)
 2. **Confidential Attachment:** legal advice and Council's response to that advice (ECM 12325111)
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18 [PR-CM] Development Application DA06/1035.05 for an Amendment to Development Consent DA06/1035 for a Self Storage Facility at Lot 2 DP 863736, No. 942 Cudgera Creek Road, Cudgera Creek

ORIGIN:

Development Assessment

FILE NO: DA06/1035 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application to modify development consent DA06/1035, pursuant to section 96 of the *Environmental Planning and Assessment Act, 1979*. The application proposes the deletion of condition number 8, which is provided below:

8. *The storage sheds are to be dismantled and removed within two (2) years of the gazettal of any industrial zoned land within a five (5) kilometre radius of the subject site. At that time, this consent is to be surrendered in accordance with Sections 80A 1(b) and 6 of the Environmental Planning and Assessment Act 1979 (as amended).*

[GENNS02]

It is considered that the proposed deletion of condition number 8 would change the development from a temporary land use to a permanent land use contrary to the intent of the original Council approval which was based on a broader strategic evaluation of this region. It is therefore recommended that this Section 96 application be refused.

Councillor Milne requested the application be put forward before the Council.

RECOMMENDATION:

That Development Application DA06/1035.05 for an amendment to Development Consent DA06/1035 for a self storage facility at Lot 2 DP 863736, No. 942 Cudgera Creek Road, Cudgera Creek be refused due to the proposed development being inconsistent with:

- the Far North Coast Regional Strategy 2006,
- the Tweed Urban and Employment Land Release Strategy 2009,
- Council's resolution in 2006 to rezone the land identified under the Far North Coast Regional Strategy 2006; and
- the Draft Local Environmental Plan 2010

REPORT:

Applicant: Mr M Sauer and Mrs K Sauer
Owner: Mrs MC Everingham and Mr NJ Everingham
Location: Lot 2 DP 863736, No. 942 Cudgera Creek Road, Cudgera Creek
Zoning: 1(a) Rural
Cost: N/A

BACKGROUND:

Council received an application for storage units on the 8 September 2006.

The application was approved subject to conditions (most notably condition number 8) by Council's Planning Committee on the 2 October 2007.

The development is defined, in pursuance of the provisions of schedule 1, *Tweed Local Environmental Plan 2000*, as a *storage facility*. The proposed storage facility on the subject site zoned 1(a) Rural is a clause 8(2) matter under the Tweed LEP 2000.

The proposed facility involved the construction of four (4) single storey self storage buildings with a total GFA of 1768m².

The Council report of 2 October 2007 identified the following issues:

- *Compliance with provisions of Clause 8(2);*
- *Implications on Council's plans for future industrial estate in the vicinity;*
- *Compatibility of proposed use with the objectives of the 1(a) Rural zone;*
- *SEPP No.1 Objection in relation to Clause 24 of the Tweed LEP pertaining to setbacks from designated roads;*
- *Issues raised in two (2) letters of objection received during the public exhibition period; and*
- *Flooding considerations.*

The Council report of 2 October 2007 describes the site as, *within a rural location which is characterised by rural housing on various sized allotments and agricultural pursuits (primarily grazing).*

During the assessment of the development application (DA06/1035), advice from the then Planning Reforms Coordinator highlighted (Memorandum of Advice Planning Reform Coordinator 26 March 2007):

- the proposed self storage facility would generally be better accommodated within an industrial zoned land rather within a rural context and that its location is in close proximity to a proposed future industrial area,
- whether the proposal would establish a precedent presumably for applications of similar nature in other locations within the Tweed,
- the impact of the proposal on the future development of the industrial land, and
- the need to adequately demonstrate that demand existed.

The then Coordinator of Planning Reforms highlighted that there is demand for industrial/commercial and trade uses in the Pottsville locality and that the timing of a future industrial site would be approximately three years. In response, it was recommended that consideration be given to temporary approval of the development for three years or a condition be imposed to enable Council to re-assess the subject land use in light of the establishment of a future industrial estate in the vicinity.

The Far North Coast Regional Strategy (FNCRS) 2006, identified land on the eastern side of the Pacific Highway (approximately within 1km of the subject site), south of Cudgera Creek Road, fronting Pottsville Mooball Road and Kudgerie Avenue, adjacent to the Black Rocks Quarry, for employment (industrial) purposes but, does not include any proposal on the subject land. In 2006 Council resolved to rezone that land for industrial purposes and a rezoning application was submitted in September 2008. This application is likely to proceed to public exhibition during 2010.

In March 2009, Council adopted the Tweed Urban and Employment Land Release Strategy, which shows an expansion of the employment (industrial) land identified under the FNCRS (approximately within 600m of the subject site), but, still does not include any proposal on the subject land (see figure 1 below).

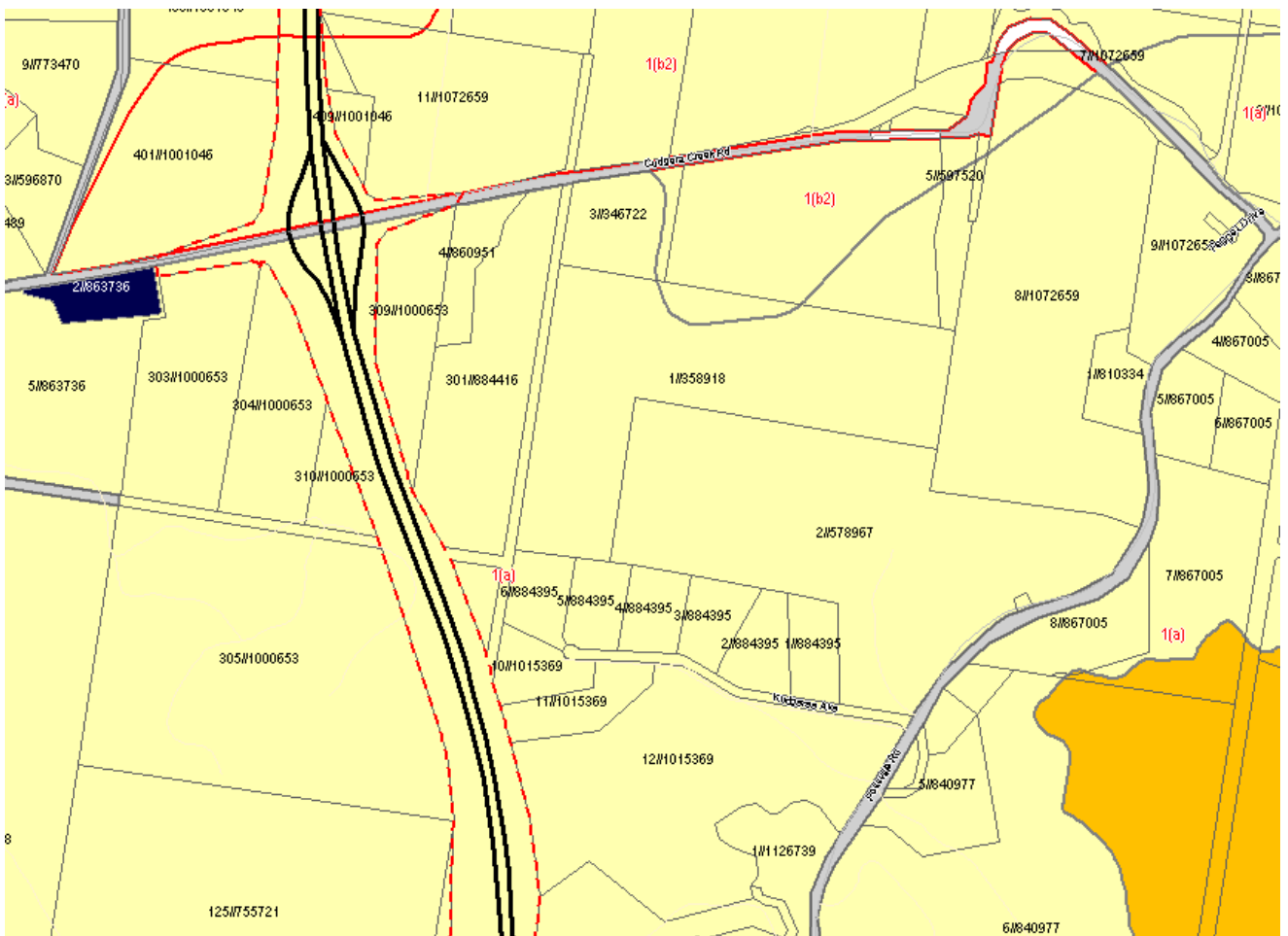


Figure 1 Subject site highlighted in Blue in relation to the nominated employment lands located on the eastern or right hand side of the Pacific Highway

The use of planning principles such as, the consolidation or containment of areas, is essential for the viability and proper functioning of commercial or industrial trade parks and for limiting impacts on surrounding areas. It is better planning practice to co-locate services

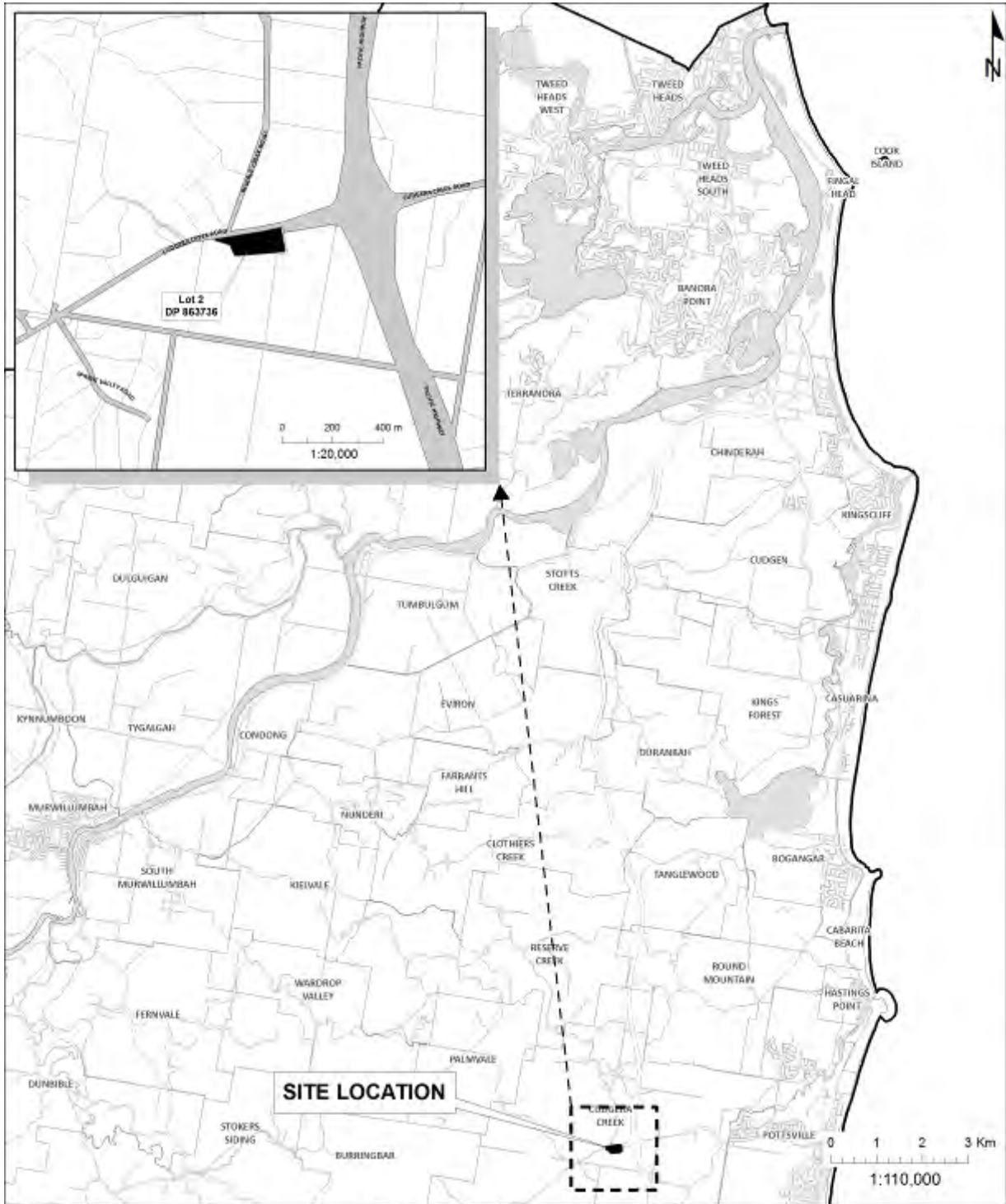
in a single location rather than to allow the dispersion of uses across a broader area, particularly where there is or may cause encroachment into non-urban areas. In review of Council's records it appears evident that advice from the Planning Reforms Unit that the competition that could arise between the existing and proposed future development could cause undesirable outcomes on one or both sites.

Council and the applicant appear to have accepted that the development should be provided in the locality in which it is proposed and that no other appropriate land was available at that time, with both parties accepting, that because of the 2006 resolution to rezone land (in very close proximity to this site), which was consistent with the FNCRS, there would be suitable land available for this purpose in the short to medium term; noting, the then Planning Reform Unit Coordinator's advice indicated a 3 year time period and that the applicant had accepted a condition limiting the duration of the consent.

In the Council report of 2 October 2007 the Planning Officer states that: *The applicant is aware of this arrangement and has indicated that they would be agreeable to such a condition and consider relocating the business to any newly created industrial land once it has been constructed. Limiting the consent in this way will ensure that the viability of any new industrial land is maintained and reduce the likelihood of a pseudo-industrial estate being created on the surrounding rural land.*

It is pertinent to note, that after review of Council's records, there appears to be no correspondence from the applicant that either accepts or objects to the implementation of such a condition with the effect of limiting the duration of the consent either before or after the approval of the development, nor is there any sign of an objection to condition 8 in relation to the lodgement of the construction certificate.

SITE DIAGRAM:



LOCALITY PLAN
Lot 2 DP 863736
No.942 Cudgera Creek Road, Cudgera Creek

<p>Filename: z:\env\planning\mso\A4P_B&W_SitePlan.mxd Author: J Batheleur - Planning Reforms Unit Date Printed: 4 February, 2010</p>	<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any construction a 'Total before you Dig' enquiry must be made by calling 1480. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>  Cadastre: 4 February, 2010 © Dept. of Lands & Tweed Shire Council Coordinate System - MGA Zone 56 Datum - GDA 94 DO NOT SCALE COPY DATA - NOT DRAWING </p>	<p> Civic and Cultural Centre 3 Turakina Road Murwillumbah NSW 2484 PO Box 616 Murwillumbah NSW 2484 T: (02) 6670 2400 / 1300 292 672 F: (02) 6670 2483 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au </p>	<p>  TWEED SHIRE COUNCIL </p>
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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 8 (2) Consent Considerations

Clause 8(2) states:

(2) *The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*

(a) *the development is necessary for any one of the following reasons:*

(i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*

(ii) *it meets an identified urgent community need,*

(iii) *it comprises a major employment generator, and*

(b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*

(c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*

(d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

An assessment of the proposed development against the provisions of clause 8(2) identifies that the proposed storage units is not necessary for any one of the following reasons:

(i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*

In 2006 Council resolved to rezone the land identified in the *Far North Coast Regional Strategy*, in 2008 Council received an application for rezoning of the subject land, which is likely to proceed to public exhibition in 2010 and in 2009 Council adopted the *Tweed Urban and Employment Land Release Strategy*.

(ii) *it meets an identified urgent community need,*

In 2006 Council resolved to rezone the land identified in the *Far North Coast Regional Strategy*, in 2008 Council received an application for rezoning of the

subject land, which is likely to proceed to public exhibition in 2010 and in 2009 Council adopted the *Tweed Urban and Employment Land Release Strategy*. If the nominated employment land is rezoned, this land will satisfy the community need.

(iii) it comprises a major employment generator, and

The development employs staff at the existing storage units. Notwithstanding this, the proposal is not considered a major employment generator.

(b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and

In 2006 Council resolved to rezone the employment land identified in the *Far North Coast Regional Strategy*. In 2008 Council received an application for rezoning of the subject land, which is likely to proceed to public exhibition in 2010 and in 2009 Council adopted the *Tweed Urban and Employment Land Release Strategy* which correlates with the *Far North Coast Regional Strategy*. The nominated employment land, proposed rezoned land (if approved) will provide other appropriate sites within a reasonable proximity to the subject site.

(c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and

The proposed development is not consistent in scale with the rural character of the immediate area.

(d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

The proposed development is inconsistent with clause 4(d) of the Tweed LEP; *(d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.* *Far North Coast Regional Strategy* and the *Tweed Urban and Employment Land Release Strategy* have identified more suitable land for industrial land uses within the Pottsville area. The proposed development allows for dispersion of uses across a broader area, particularly where there is or may cause encroachment into non-urban areas impacting on the existing rural character.

The proposed development does not satisfy clause 8(2) of the Tweed LEP 2000 and is therefore not supported.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The subject site is identified as being regionally significant farmland. The proposed application has not addressed this clause.

Far North Coast Regional Strategy (December 2006)

The Far North Coast Regional Strategy identified employment land within the Pottsville locality which does not include the subject site. The proposal is considered to be in-consistent with the policy and undermines the policies purpose of managing the region's expected high growth rate in a sustainable manner ensuring adequate land is available and appropriately located to sustainably accommodate the employment and environmental needs of the region's population over the next 25 years.

Tweed Urban and Employment Land Release Strategy 2009

The Far North Coast Regional Strategy (issued in December 2006) required Tweed Shire Council to prepare a Local Growth Management Strategy prior to rezoning further land for urban, commercial and industrial uses.

The Tweed Urban and Employment Land Release Strategy 2009, was adopted by Council on the 17 March 2009.

The Tweed Urban and Employment Land Release Strategy 2009, identifies the same employment land as the (FNCRS) called West Pottsville Area 7, with a net developable area of 86ha being the largest of all identified employment localities within the Tweed. The subject site is not located within nominated employment lands locality for Pottsville (Tweed Urban and Employment Land Release Strategy 2009).

The proposed development is considered to be inconsistent with the Tweed Urban and Employment Land Release Strategy 2009.

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

Draft Local Environmental Plan 2010 (On exhibition from 27 January 2010 - 31 March 2010)

The Draft Local Environmental Plan 2010 identifies the subject land as being zoned RU 2 – Rural Landscape, which prohibits the proposed land use. Approving the proposed development would knowingly create a prohibited land use in accordance with the Draft LEP 2010. The proposed development is considered to be inconsistent with the Draft Local Environmental Plan 2010.

Draft Pottsville Locality Based Development Code

The Far North Coast Regional Strategy (FNCRS) was adopted by the NSW State Government in December 2006. In March 2009, Tweed Shire Council adopted the Tweed Urban and Employment Land Release Strategy 2009 (Tweed UELRS) (see figure 2 below). The strategies are of significance for the Pottsville locality as 4 release areas within the Pottsville locality were identified, 3 being for urban purposes and 1 for employment. Of the 4 release areas identified, 2 are already identified within the FNCRS, being Dunloe Park and the Pottsville Employment Land, both of which are also identified in the Tweed UELRS.



Figure 2 Proposed Pottsville Employment Lands

The FNCRS identifies a short term area (dark grey), this is supported by a greater potential release area identified within the Tweed UELRS to be considered for longer term expansion (light grey).

The Draft Pottsville Locality Based Development Code states that; *'Employment lands in the West Pottsville area will require the submission of a Planning Proposal to substantiate rezoning and indicate development types for the subject land. Any Planning Proposal should be prepared in accordance with Department of Planning Requirements, and the content consistent with the provisions of the FNCRS and Tweed UELRS.'*

As identified in figure 1 above, the subject site is not identified with the potential release area for employment land. The policy also recommends that any application for employment lands requires a Planning Proposal.

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

A11-Public Notification of Development Proposals

The application was notified for a period of fourteen days from Monday 9 November 2009 to Monday 23 November 2009. One submission of support was received during the submission period a petition generated by the applicant was submitted with 36 signatures of support from neighbours. One submission of objection was received after the submission period the details of the objection are addressed in section (d) below.

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

The proposed permanency of the storage units are likely to create an adverse impact on the rural character of the area, the natural environment, and the future

or potential impacts on either the future planning for the locality or any new urban/industrial land in the locality.

(c) Suitability of the site for the development

The proposed development is considered unsuitable for the subject site given the nearby industrial land proposed.

The proposed development creates dispersion of uses across a broader area, with further encroachment into non-urban areas. It is considered that the self storage facility would generally be better accommodated within an industrial zoned land rather within the rural context, also, that the sites location is within 600m to a proposed future industrial area.

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

ISSUE
Permanency of the development will change the rural area forever.
Inconsistent with clause 8(2) of the Tweed LEP 2000.
Fragmentation of rural land to accommodate small industrial business and the destruction of rural character and amenity.
Other industrial sites within the Pottsville area.
Increased traffic due to the proposal.
Loss of amenity.
Safety – traffic, vandalism, anti-social behaviour
The development should be advertised so the wider Pottsville community opinion is heard.

The issues raised are considered to contain merit and would be more appropriately addressed through a Planning Proposal or an amendment to the Local Environmental Plan.

(e) Public interest

Impacts arising from inconsistency with planning policies is not in the public's interest.

OPTIONS:

1. Approve the application subject to the deletion of condition number 8.
2. Refuse the application and provide reasons for refusal.
3. Refuse the deletion of condition number 8 but extend the operation of the development consent for 5 years from the date of the amended consent, during which, the applicant is to lodge and have gazetted a planning proposal (rezoning) of the subject site.
4. Refuse the deletion of condition number 8 but extend the operation of the development consent for 5 years from the date of the amended consent, during which, the applicant is to seek an amendment to the relevant schedule of the Tweed Local Environmental Plan to include the current land use permissible on the subject land.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right of appeal in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

In reference to the:

- Far North Coast Regional Strategy 2006,
- the Tweed Urban and Employment Land Release Strategy 2009,
- Council's resolution in 2006 to rezone the employment land identified under the FNCRS 2006,
- the rezoning application lodged in 2008 and
- the Draft Local Environmental Plan 2010 which prohibits the proposed land use,

The proposed development is considered unsuitable for the subject site.

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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19 [PR-CM] Development Application DA08/0909 for a Monopole (Telecommunications Facility) at Lot 956 DP 864092, Cudgera Avenue, Pottsville

ORIGIN:

Development Assessment

FILE NO: DA08/0909 Pt2

SUMMARY OF REPORT:

The subject application seeks consent for the construction of a telecommunications tower for Optus 3G coverage in the form of a monopole 30m in height and associated antennae, equipment shelter, bollards and chain-link security fence, adjacent to the existing temporary water reservoir within Lot 956 DP 864092. The site is accessed by a private road off Bottlebrush Drive at Koala Beach, Pottsville. The proposed site for the monopole tower currently contains a temporary water reservoir tank, security fencing and cleared gravelled surface.

The site has an area of 1823sq.m and is zoned 5(a) Water Supply, however, the area adjoins and is surrounded by a large parcel of land set aside for conservation of threatened fauna species and as compensation for loss of habitat elsewhere in Koala Beach, zoned 7(l) Environmental Protection (Habitat) (Figure 1). Koala Beach and the particular site chosen are considered to be unsuitable for the proposal due to environmental constraints.

Koala Beach was designed to support the preservation and management of native flora and fauna. The erection of a mobile phone tower in what is regarded as the nature reserve section of the estate is inconsistent with the underlying principle of this unique estate.

It is therefore recommended that the application be refused.

RECOMMENDATION:

That Development Application DA08/0909 for a monopole (telecommunications facility) at Lot 956 DP 864092, Cudgera Avenue, Pottsville be refused for the following reasons: -

- 1. The proposal does not meet the aims of the Tweed Local Environmental Plan 2000 (TLEP) to enhance ecological integrity, as required by clause 4.**
- 2. The proposal is inconsistent with clause 5 of the TLEP, which seeks to ensure ecologically sustainable development.**

3. **The proposal does not comply with clause 28 of the TLEP, relating to development on land adjacent to Zone 7(I) Environmental Protection Habitat.**
4. **The proposal is considered to be contrary to the aims and objectives of Council's DCP Section B10-Koala Beach.**
5. **The proposed development is not considered to meet the requirements of 79C of the Environment, Planning and Assessment Act as it is likely to result in unacceptable environmental impact and the site is considered unsuitable.**
6. **The proposed development is not considered to be in the public interest.**
7. **The proposed development is contrary to the Draft Tweed Local Environmental Plan 2010.**
8. **The proposal is inconsistent with the NSW Coastal Policy and does not meet clause 92 of the Environment and Planning Regulations.**

REPORT:

Applicant: Ms P Kovacs – Daly International
Owner: Tweed Shire Council
Location: Lot 956 DP 864092, Cudgera Avenue, Pottsville
Zoning: 7(l) Environmental Protection (Habitat)
Cost: \$200,000

BACKGROUND:

The subject application seeks consent for the construction of monopole (telecommunications facility) and associated infrastructure, to provide improved 3G capacity in the village. The Optus proposal comprises the following:

- One (1) 30m high monopole (maximum height including antennas is 30.50m);
- Three (3) Optus panel antennas (each 2.7m long) pole mounted on a circular headframe at Centre Line 29.5m;
- 1 x 1.2m parabolic antenna at Centre Line 27m;
- 1 x 0.6m parabolic antenna at Centre Line 27m;
- 1 x 1.2m parabolic antenna at Centre Line 26m will be positioned near the base of the monopole;
- Equipment Shelter; and
- High chain link security fencing around the proposed compound plus additional bollards around the monopole.

The complex will take up an area of approximately 8.4m x 7.9m (66.3m²).

THE SITE:

The subject site is legally described as Lot 956 DP 864092 located at Cudgera Avenue Pottsville. The site has an area of 1823sq.m and is zoned 5(a) Water Supply and is surrounded by land that is zoned 7(l) Environmental Protection (Habitat).

The proposed site for the monopole tower currently contains a temporary water reservoir tank, security fencing and cleared gravelled surface and gravelled access from Bottlebrush Crescent (the proposed structures are proposed adjacent to the existing water towers).

The site and surrounding land is mapped as containing Koala habitat (Secondary Habitat Class B) and threatened fauna and flora. The site is covered under the Koala Beach Management Plan.

Nine “critical habitat areas” have been identified within Koala Beach. In terms of the proposal, three such areas (Figure 2) occur in close proximity to the proposed development.

The particular site chosen for the proposal is roughly in the middle of three areas of habitat set aside for conservation of the threatened species Glossy Black Cockatoo (*Calyptorhynchus lathami*), Common Blossom Bat (*Syconycteris australis*) and Little Bent-wing Bat (*Miniopterus australis*) (see Figure 2), and as compensation for loss of habitat elsewhere on the site (Koala Beach Estate).

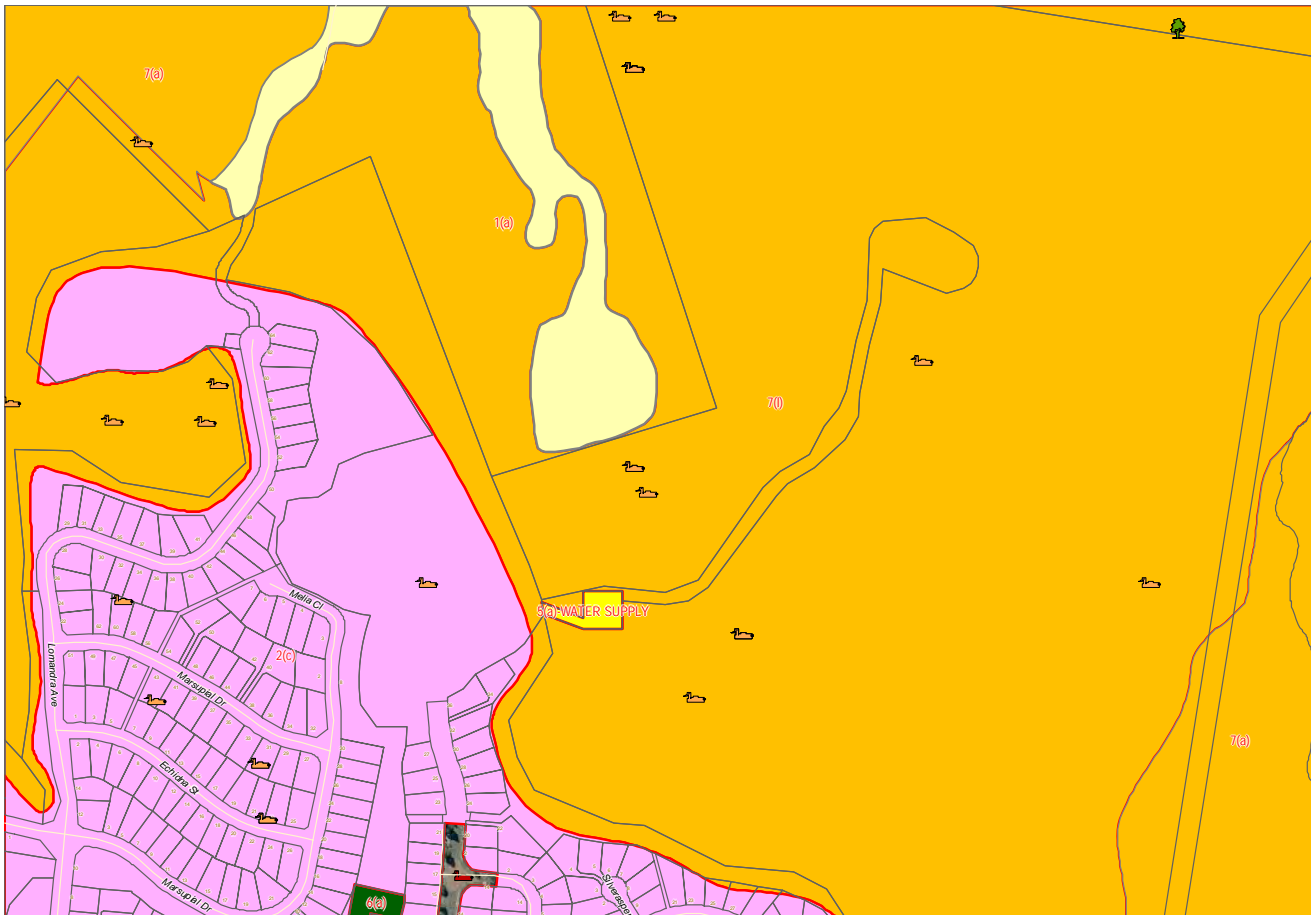


Figure 1: Site zoning in the vicinity of the subject lot, zoned 5(a) Water Supply and shown yellow, with surrounds 7(l) habitat shown amber. The approximate area set aside as reserve for Blossom Bat and Glossy Black Cockatoo habitat outlined in red can be seen to be primarily zoned 2(a) residential (pink). “Ducks” indicate NPWS Wildlife Atlas records of threatened species in the vicinity. Some rural 1(a) zoned land remains to the north, proposed to be rezoned to E2 Environmental conservation in draft LEP 2010.

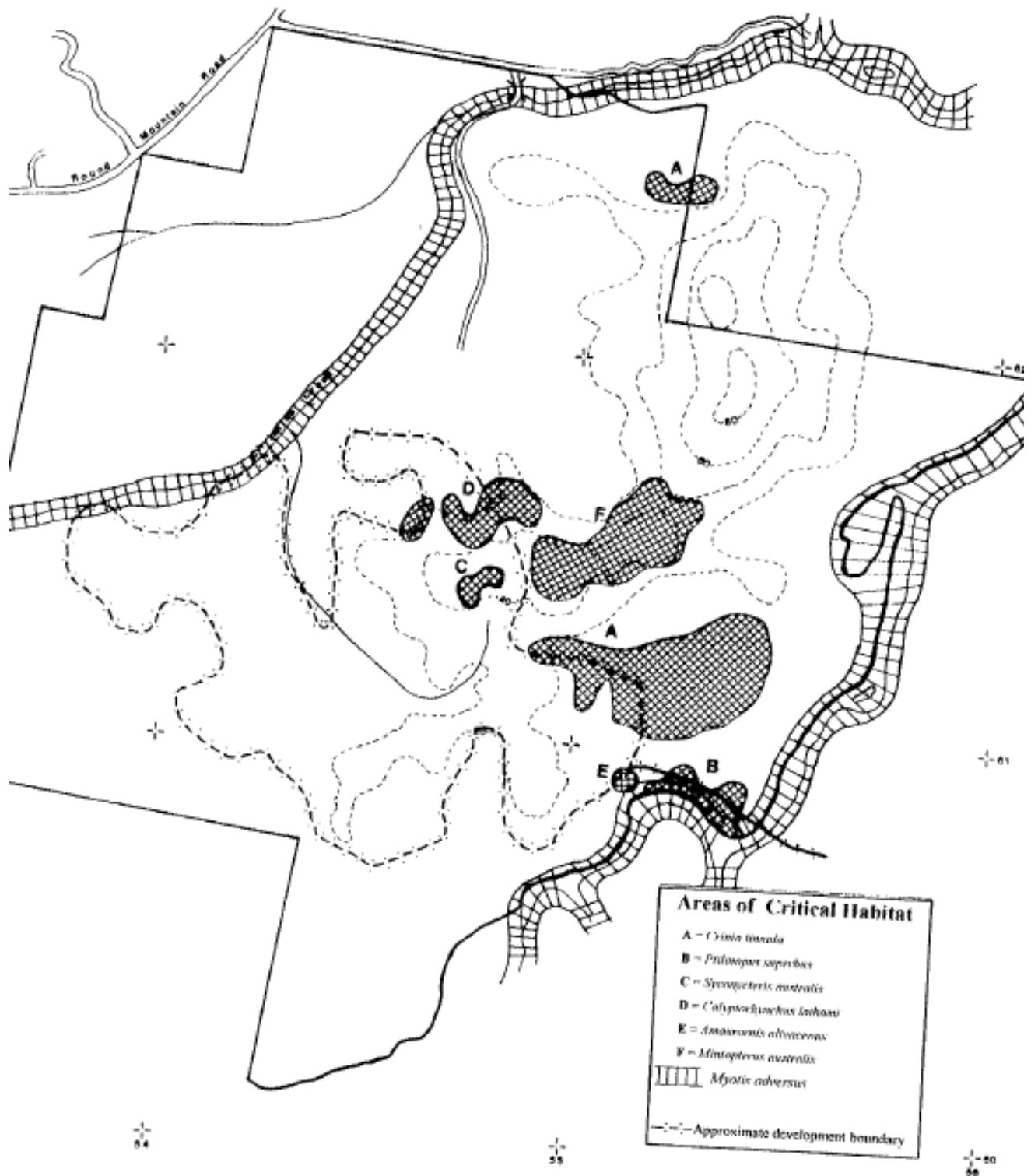


Figure 2: An extract from the original Fauna Impact Statement for the Koala Beach estate (then known as Searanch (Australian Koala Foundation, 1995)). The monopoly is proposed roughly in the centre of the area indicated by C (Blossom Bat habitat), D (Glossy Black Cockatoo habitat) and F (Little Bent-wing Bat habitat) on the map.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 956 DP 864092
 Cudgera Avenue, Pottsville

Filename: z:\asn\planning\mxd\AAP_B&W SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development has been assessed by Council's Ecologist. The proposed development is considered to create unacceptable adverse impact on the natural environment, contravening paragraph a) and d) of clause 4, which are provided below:

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

Clause 5 - Ecologically Sustainable Development

As described in this report the proposed development is considered to create unacceptable adverse impact on the natural environment, contravening clause 5.

Clause 8 - Zone objectives

Zone 5 (a) Special Uses

Zone objectives

Primary objective

- *to identify land which is developed or is proposed to be developed, generally by public bodies, for community facilities and services, roads, railways, utilities and similar things.*

Secondary objective

- *to provide flexibility in the development of the land, particularly if it is not yet or is no longer required for the relevant special use.*

The proposed development is considered to comply with the objectives of the zone, as the development is could be defined as 'services' or 'utilities and similar things', providing greater network coverage for the locality.

Clause 15 - Essential Services

The proposed development does not require the provision of water, sewerage and drainage/stormwater.

Clause 16 - Height of Building

The site is identified on Council's Building Heights Map as being affected by a three (3) storey height limit. The proposed monopole structure has a total height of 30 metres (note: as per definition pursuant to Tweed LEP 2000, the monopole structure cannot be measured by storeys as there is no space between two floors).

Note: The subject application has submitted a SEPP 1 objection in regards to the LEP requirement for height. A SEPP 1 objection is not required in this instance as the structure is not classified as a "storey" and therefore a SEPP 1 is not applicable.

Clause 17 - Social Impact Assessment

Section A13 of Council DCP, identifies the types of developments that require a social impact assessment, the proposed telecommunication tower is not identified as an item requiring social impact assessment. However the proposal did receive numerous submissions from the community objecting to the proposal in particular the proposed location. The issues raised in the submissions are addressed later in this report.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as containing Class 5 ASS. The proposed monopole tower is unlikely to lower the water table as the site and location of the facility is elevated. Council's Environmental Health Officers reviewed the application in relation to ASS and raised no objection. No further investigation is required in relation to ASS.

Other Specific Clauses

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

(1) Objective

- *to protect wildlife habitat from the adverse impacts of development.*
- (2) *Unless it is exempt development, a person must not clear vegetation from, drain, excavate or fill land within Zone 7 (I) except with development consent.*
- (3) *The consent authority must not grant consent to development on or adjacent to land within Zone 7 (I) unless it has taken into consideration:*
- (a) *the likely effects of the development on the flora and fauna found in the locality, and*
 - (b) *the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and*

- (c) *a plan of management showing how any adverse effects arising from the development are to be mitigated.*

The proposed development has been assessed by Council's Ecologist I (refer comments below). The proposed development is considered to create unacceptable adverse impact on the natural environment, contravening the clause.

Clause 39A Bushfire protection

The proposed development is not considered to create a significant adverse bushfire risk to warrant conditions or refusal.

The subject site is identified as being prone to bushfire. The application was referred to the NSW Rural Fire Service for comment, pursuant to s79BA Environmental Planning and Assessment Act 1979. The NSW Rural Fire Services raises no concerns or special considerations in relation to bushfire matters for the proposed development.

Clause 54 Tree preservation order

The subject site is affected by Tree Preservation Order 1990. The subject application states that the removal of a Eucalyptus sapling approximately 1m in height within the subject site is required.

The policy prohibits the 'ringbarking, topping, lopping, removing, poisoning, injury or wilful destruction of trees of thirty centimetres (30cm) or more girth (circumference) measured at forty-five centimetres (45cm) above ground, three meters (3m) or more in height or any other tree or trees as specified in the schedule to this order'. As the subject tree is not equal to or larger than the standards identified within the policy the subject tree is not protected. In addition, clause 2 sub-clause (c) states that, the 'Order does not apply to trees, within a building site or within eight meters (8m) of an existing or proposed building, or foundations, that has been approved by Council'.

The application also states that the applicant is willing to relocate the subject tree adjacent to the proposed facility a few metres away. This could be conditioned, if considered necessary.

The surrounding land is affected by Tree Preservation Order 2004. The subject application states that no vegetation is to be removed on surrounding land. This would need to be conditioned in any approval of the proposal.

State Environmental Planning Policies

STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

The proposed development is not exempt or complying development.

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

Clauses 114, 115 and 116 identify that the proposed development requires development consent.

STATE ENVIRONMENTAL PLANNING POLICY (MAJOR DEVELOPMENT)
2005

The proposed development does not require approval under Part 3A of the Act. Tweed Shire Council is the consent authority.

STATE ENVIRONMENTAL PLANNING POLICY NO 71--COASTAL
PROTECTION

The subject site is located within the coastal zone. The proposed development is not significant coastal development, the concurrence from the Minister or Director General is not required.

An assessment against clause 8 – *Matters for consideration*, identified that the proposed development negates sub-clause (g), by not conserving animals and their habitats, an extract of the sub-clause is provided below:

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

SEPP No. 44 - Koala Habitat Protection

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) *by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and*
- (b) *by encouraging the identification of areas of core koala habitat, and*
- (c) *by encouraging the inclusion of areas of core koala habitat in environment protection zones.*

The subject site is identified within the area being affected by a Plan of Management (POM) relating to Koala habitat. The application proposes the removal a one metre high eucalyptus sapling, however this is not a mature tree that provides vegetation for koalas. The applicant has stated they are prepared to relocate the subject tree if required. This can be conditioned if considered appropriate.

NORTH COAST REGIONAL ENVIRONMENTAL PLAN

Clause 32B: Coastal Lands

The proposed development is considered not to negate the clause by: not impeding public access to the foreshore, not creating overshadowing of beaches or adjacent public open space before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

Clause 36C: Conservation areas of state & regional significance

The site is not identified as being a conservation area of state or regional significance in accordance with this clause.

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

The subject land is in zone E2 – Environmental Conservation in the Draft Tweed Local Environmental Plan 2010, currently on exhibition.

A proposed telecommunication facility is prohibited in this zone.

The site use is suggested to change in the future as the present water reservoir was always intended as a temporary use. Additional water reservoirs (as mentioned in the application), should they proceed, would be undertaken on the basis of restoring this temporary reservoir site to provide additional habitat. Restoration and rehabilitation would be precluded or severely hampered by this proposal.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposed land use is not identified within the policy, therefore a strict development standard is not available to use. The applicant states that *the proposed facility is an unmanned facility that would require maintenance checks approximately 3-4 times per year or as required in the event of an electricity failure or other similar event. Routine maintenance would require one vehicle per visit and parking would be available close to the subject site for this purpose. Other maintenance would occur on an as-needed basis.*

It is apparent from the proposed plans that the site could accommodate adequate onsite parking either within the existing access track or within the existing property boundary.

A11-Public Notification of Development Proposals

The application was advertised for a period of fourteen (14) days from Wednesday 6 August 2008 to Wednesday 20 August 2008 (public holidays excluded).

Fifty-two submissions were received with regard to the application, with the majority citing concerns with human health and environmental value/health, thus there is strong opposition to this site for a mobile phone tower. The issues raised within the submissions are listed within the body of the report below.

B10-Koala Beach

Koala Beach locality is subject to, Tweed DCP Section B10 – Koala Beach which has the following primary aims and objectives:

- to “ensure that the natural features, environmental attributes and identified sensitive habitat areas on the land are not adversely affected by future development and ensure a habitat-friendly residential estate.”
- “to establish community understanding, empathy and support amongst prospective home-owners and residents and involvement in future management of sustainable habitats for Koalas and native wildlife.”
- to “protect all Koala habitats and identified habitats of other significant or endangered species on the site as indicated in the Fauna Impact Statement and Koala Management Plan.”

The proposal is inconsistent with the primary aims and objectives of Section B10 Koala Beach, as discussed further below.

Development has been carefully planned around avoidance of land regarded as habitat critical to the essential behaviour patterns of various threatened species. In excess of 300 hectares of land arising from the Koala Beach estate has been set aside for conservation purposes and forms important corridor connections with Cudgen Nature Reserve, together forming a large area of contiguous and largely protected habitat of very high conservation value. Residents forgo the privilege of cat and dog ownership in recognition of the biodiversity value of the estate and uniquely, all landowners pay an additional environmental levy equating to more than \$100 per property in order that restoration and monitoring may be undertaken on the site.

The funds raised by this levy are used by the Koala Beach Wildlife Habitat Management Committee to fund environmental works and monitoring on the estate. The Committee is responsible for overseeing the implementation of wildlife management, habitat protection and restoration on the Koala Beach estate. The activities and views of the Committee are reported to all residents in a newsletter delivered after each Committee meeting (every 2 months) and any resident may attend Committee meetings. Through this consultation and education process, residents have come to an understanding of the surrounding conservation lands as analogous (equivalent) to a Nature Reserve, set aside for conservation and protected from development.

The policy provides for direction for planning, development and management of Koala Beach. Section B10.2.4 *Koala Management Plan* identifies that tree species such as Tallowwood, Forest Red Gum, Swamp Mahogany and Small-fruited Grey Gum are generally Koala primary browse trees and home range trees. The application states the removal of an approximate 1 metre high eucalyptus tree, and welcome a condition to have the subject tree transplanted metres from its original position.

Section B10.3.6 *Landscape and Environmental Protection* objectives are: to ensure that the natural landscape values of the site are recognised in future development and to avoid undue adverse impact on areas of habitat or environmental significance within or adjacent to the site. The proposed development seeks construction approval for the erection of a telecommunications facility on land surrounded by identified as environmental protection.

The subject site is considered unsuitable for the proposed land use, given the surrounding environmental habitat.

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

Clause 92(a) Government Coastal Policy

Clause 92 What additional matters must a consent authority take into consideration in determining a development application?

Clause 92 of the Environmental Planning and Assessment Regulations 2000 requires that the following matters be considered by the consent authority in determining a development application;

- The Government Coastal Policy
- AS 2601

"AS 2601" means the document entitled Australian Standard *AS 2601—1991: The Demolition of Structures*, published by Standards Australia, and as in force at 1 July 1993.

"Government Coastal Policy" means the publication entitled *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*

The NSW Coastal Policy provides a strategic policy framework to guide decision making for future development of the NSW coast and to balance and co-ordinate management of the coast's unique physical, ecological, cultural and economic attributes. The Coastal Policy responds to the fundamental challenge of management in the coastal zone which is to provide for population growth and economic development without putting the natural, cultural, and heritage values of the coastal environment at risk.

The proposed development is in conflict with the management of ecological values within the NSW coast.

93 Fire safety considerations

N/A

94 Consent authority may require buildings to be upgraded

N/A

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

The proposed development is considered to create an unacceptable environmental impact. The Koala Beach Estate has been considered as a whole and development allowed on the basis of conservation and dedication of remaining land for the preservation of habitat.

Council's Ecologist reviewed the development application and all supporting documentation submitted by the applicant such as: Section 5A - *Significant effect on threatened species, populations or ecological communities, or their habitats assessment/7 Part Test* and peer reviewed scientific literature (which formed the bases of the 7 Part test). The following extract is from Council's Ecologist in relation to the uniqueness of Koala Beach and its high biodiversity values:

Ecological Site Value

1. Koala Beach generally

Koala Beach contains a mosaic of habitat types from heath and wetland to sclerophyll and rainforest vegetation as well as an important connection and wildlife corridor. The area is correspondingly high in species richness (high diversity of flora and fauna species) and contributes significantly to the high biodiversity values of northern NSW. Over three hundred species of native animals, including at least 40 threatened species, are known or otherwise likely to occur on the Koala Beach lands. Survey work by Phillips et al (1995) formed the basis of an understanding of the biodiversity values of the 'Searanch' (now Koala Beach) site, and was specifically used to inform a Fauna Impact Statement (FIS) relating to proposed development of the site at that time. The survey, undertaken over a six month time frame, reported high biodiversity values as evidenced by the presence of the following suite of threatened species:

*Wallum Sedge Frog (Litoria olongburensis)
Rose-crowned Fruit Dove (Ptilinopus regina)
Glossy Black Cockatoo (Calyptorhynchus lathami)
Bush Hen (Amaurornis olivaceus)
Koala (Phascolartus cinereus)
Common Planigale (Planigale maculata)
Grey-headed Flying Fox (Pteropus poliocephalus)
Common Blossom Bat (Synconycteris australis)
Large footed Myotis (Myotis macropus)
Little Bent-wing Bat (Miniopterus australis)
Yellow-bellied Sheathtail Bat (Saccolaimus flaviventris)*

Additional threatened fauna species recorded from the Koala Beach lands during subsequent monitoring events include:

*Powerful Owl (Ninox strenua) (recorded by Hannah & Lewis, 2007)
Osprey (Pandion haliaeaus) (recorded flying overhead by Phillips, 2009)
Wompoo Fruit-dove (Ptilinopus magnificus) (Fitzgerald, 2007)
Bush Stone-curlew (Burhinus grallarius) (which has established a breeding population post development with reasonably regular sightings as well as recorded nesting and successful breeding in successive years in at least one residential yard) (author observation 2007 to 2009).*

Whilst the development footprint is reasonably small, disturbance impacts are likely to be high during construction and ongoing due to maintenance provisions. Co-location of other carriers once the tower is in place is likely to lead to ongoing disturbance on shy and cryptic species adversely affected by such impacts. EME

effects are still to be quantified but enough peer-reviewed scientific evidence exists to conclude that some impact at a population level is likely on species of small body weight that reside mainly at higher levels in tree canopies. Three such threatened species are known to reside within or repeatedly use habitat in the immediate area of the proposed development being the: Glossy Black Cockatoo (*Calyptorhynchus lathamii*), Common Blossom Bat (*Syconycteris australis*) and Little Bent-wing Bat (*Miniopteris australis*).

The Glossy Black Cockatoo is one of the rarest and most threatened of Australia's cockatoos according to the draft *Glossy Black Cockatoo Conservation Guidelines for South-eastern Queensland and Far North-eastern New South Wales* (2009),

(c) Suitability of the site for the development

The subject site is considered unsuitable for the proposed land use given the significance of the environmentally protected land surrounding the subject site and the potential irreversible adverse impact to threatened flora and fauna species surrounding the subject site.

The site is also considered to be unsuitable given its future zoning intent for Environmental Conservation.

Council's Ecologist provided the following statement in relation to the Glossy Black Cockatoos, Little Bentwing-bats and Blossom Bat:

Glossy Black Cockatoos

A specific Plan of Management for Glossy Black Cockatoos is in force for the Koala Beach estate and this plan relies on the reservation of this site as the most important within the Koala Beach lands. The site was considered of such importance that residential development did not proceed here despite residential zoning and a higher elevation affording significant views. No such replacement habitat is available for the Glossy Black Cockatoos to move into should disturbance impacts result in avoidance of this site.

Glossy Black-cockatoos require specific habitat elements not widely found yet all present at Koala Beach, have a small population size more vulnerable to stochastic events, have a naturally low fecundity producing only one young every one or two years and have shown vulnerability to disturbance during previous construction activity in the vicinity. The critical status of Glossy Blacks is indicated through the formation of the Glossy Black Conservancy consisting of relevant natural resource management staff members of Councils in SE Qld and Northern NSW, and the production of draft guidelines aimed at avoiding species extinction.

Placing the tower in one of the rare areas in the shire where the endangered Glossy Black Cockatoo is known to feed and return to in successive years and where all three required habitat elements required for successful survival and breeding are present in close proximity is not appropriate. Glossy Blacks are commonly observed feeding at the site and regular monitoring suggests that the local population is vulnerable to development impacts both within and outside of

the estate. Construction, maintenance and possible EME impacts will not enhance conditions for this species. The response of this otherwise shy species to disturbance within or adjacent to habitat otherwise considered critical to the species essential behavioural patterns is unknown.

Blossom Bats

The Common Blossom Bat (Synconycteris australis) is a small Flying-fox, weighing approximately 19 grams and having a body length of only 60mm. It is a nectar/pollen specialist. Blossom Bats favoured habitat on the Koala Beach site and elsewhere within Tweed Shire focuses on the use of Coast Banksia (Banksia integrifolia) which occurs as a band adjacent the proposed tower site. Unlike the larger Flying-foxes, Blossom Bats usually roost alone, either within rainforest or Swamp Sclerophyll forest and show fidelity to particular favoured forage sites. Construction, maintenance and possible EME impacts will not enhance conditions for this species in this important area.

Little Bent wing bat

Little Bentwing-bats are small chocolate brown insectivorous bats with a body length of about 45 mm that use echo-location to locate and catch prey whilst flying. The FIS stated "a high level of activity by the species was detected in a restricted area around a ridge immediately to the east of that area proposed as residential development and this area must otherwise be considered as critical to the essential behaviour patterns of the species". The area encompassing the habitat for this species is contained within the larger habitat lands zoned for environmental protection. Phillips et al (2009) found an inverse relationship within the literature between body size and EME susceptibility. Should insect prey avoid this area, it will become largely unavailable for this threatened micro-bat.

Conclusion

Disturbance impacts of an initial short-term but high level, coupled with additional such short-term impacts as other co-locate, in combination with ongoing disturbance for maintenance and repairs and air-conditioning units is not considered acceptable for a site that contains endangered and vulnerable species sensitive to disturbance and at threat from development in other parts of the coast, particularly when the area was specifically reserved from the residential development for which it is zoned.

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

Fifty-two submissions were received with regard to the application, with the majority citing concerns with human health and environmental value/health, thus there is strong opposition to this site for a mobile phone tower.

The following table lists the issues raised in the objections.

Development inappropriate to the community.
Health risk associated with the tower (This concern is raised in ten of the submissions received).
Existing restrictions on the Koala beach area i.e building requirements, fence height restrictions, tree protection and prohibition of keeping of domestic pets, are fairly strict therefore why is this a suitable location for the Optus monopole.
Eye sore (aesthetically offensive).
Environmentally damaging.
Construction work will mean that trades people will bring dogs into Koala beach during the construction period.
Out of character with environmental principles that underpin Koala Beach.
Proposed location is adjacent to Glossy Black Cockatoo and Queensland Blossom bat reserve. Impacts of EME on flora and fauna is uncertain. (This was raised in 8 submissions).
Impinge on natural beauty of the landscape.
Reduce property values.(This was raised in 4 submissions)
Time frame of notification not adequate.
Confusion of location of the proposed tower.
Unsafe and harmful electromagnetic field.
Proposed tower too close to residential dwelling houses. (This was raised in 4 submissions)
Visual impact (This was raised within 4 submissions)
Against Natural Justice.
Unique estate
Approval of the tower will lead to more unsuitable forms of development being approved. Setting a dangerous precedent.
Residents pay an environmental levy; the proposal is against the intent of the Koala Beach community and the Objectives of having such items as an environmental levy.
Proposed within a wildlife sanctuary.
Against covenants/ principle of the Estate (This was raised in 9 of the submissions).
Damage to flora and fauna caused by the construction
Cumulative degradation when combined with the necessary clearing for the new reservoir.
Tree clearing as outlined within the SEE is incorrect.

The site is not isolated as stated within the SEE.
Noise of air conditioner utilised during lifespan of project. Impact upon fauna. (This was raised in 3 submissions)
Increased risk of lightening strike and therefore increased fire hazard.
Prevent rehabilitation of the water reservoir site

Table 1.0 Issues raised in submissions

As discussed in the report, some of the issues raised in the submissions contain merit and are generally agreed with.

(e) Public interest

The proposed development is considered to negate the public's interest given the significance of the environmentally protected land surrounding the subject site and the potential irreversible adverse impact to endangered flora and fauna.

OPTIONS:

1. Refuse the application.
2. Approve the application in principle, providing appropriate reasons, and to bring forward a further report to the next Council meeting with recommended conditions of consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right to appeal in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed telecommunication tower located within Koala Beach is considered to create an un-acceptable impact on threatened flora and fauna species surrounding the proposed development.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

20 [PR-CM] Development Application DA09/0814 for Dwelling Additions at Lot 1 DP 781535, No. 10 Dobbys Crescent, Terranora

ORIGIN:

Building & Environmental Health

FILE NO: DA09/0814 Pt1

SUMMARY OF REPORT:

An application has been lodged to carry out alterations and additions to an existing two storey dwelling on the subject allotment.

The additions comprise the extension of an existing rear deck, extension of the kitchen and new deck adjacent to kitchen, facing towards the site's Terranora Road frontage.

The allotment, whilst fronting Dobbys Crescent, also has frontage to Terranora Road (along its north western boundary) which is a designated road requiring a thirty metre building alignment under the provisions of part 5, clause 24 of the Tweed Local Environment Plan (LEP) 2000.

The Applicant has submitted an objection under the provisions of State Environmental Planning Policy (SEPP) 1 as the proposed extensions of the existing dwelling will only be set back 19.938m to Terranora Road, an approximate 33% variation to 30 metre designated road setback requirement.

Given that the proposed SEPP1 variation exceeds 10% of the standard this application has been referred to Council for determination in accordance with previous directions of the NSW Department of Planning. It is considered that the proposed SEPP 1 variation is worthy of support, given the current conditions of Terranora Road and its prevailing predominant small lot, residential development.

The proposal also generally complies with the requirements of Council's Tweed Development Control Plan – Section A1, and the areas of minor non-compliance are supported.

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

RECOMMENDATION:

That: -

- A. Council assumes the concurrence of the Director-General of the Department of Planning for the approval of the SEPP 1 objection to vary the thirty metre building setback requirement.**

- B. Development Application DA09/0814 for alterations and additions to the existing dwelling house at Lot 1 DP 781535, No. 10 Dobbys Crescent, Terranora be approved subject to the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos LSO155 sheet numbers 1A, 2B, 3A, 4A, 5A, 6A, 7A & 9A prepared by Luke Stephens Building Design and dated Nov. 09, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

- 3. Approval is given subject to the location of, protection of and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 4. The footings are to be designed by a practising Structural Engineer and details shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.**

[PCC0945]

PRIOR TO COMMENCEMENT OF WORK

- 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, where required, to the satisfaction of the Principal Certifying Authority.
9. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including

inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

12. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

13. 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]

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

[DUR0395]

15. 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]

16. 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]

17. 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]

18. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

19. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

20. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

21. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

22. Prior to the issue of an occupation certificate for the dwelling additions smoke alarms shall be installed in the existing dwelling in accordance with Part 3.7.2 of the Building Code of Australia. A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power is to be submitted to Principal Certifying Authority and Tweed Shire Council.

[POCNS01]

REPORT:

Applicant: Mr L Cooper and Mrs D Cooper
Owner: Mr LP Cooper and Mrs D Cooper
Location: Lot 1 DP 781535 NO. 10 Dobbys Crescent, Terranora
Zoning: 1(c) Rural Living
Cost: \$35,000

BACKGROUND:

A development application has been received to carry out alterations and additions to an existing two storey dwelling on the subject allotment.

The land is zoned 1(c) Rural Living under Tweed Local Environmental Plan 2000, is located on the southern side of Terranora Road, slopes moderately from Dobbys Crescent down to Terranora Road and contains an existing two storey brick dwelling with metal roof, in-ground swimming pool and a freestanding double carport in front of the dwelling within the six metre building alignment to Dobbys Crescent.

The extent of the works include:-

- Extension of existing rear deck at the back of the dwelling by up to 3.60m,
- Extension of the kitchen on to an existing deck and construction of a new small deck adjacent to the kitchen.
- Removal of existing doors to rear & sides of existing lounge room to incorporate this area as part of the extended roofed deck.

The allotment has a depth of between 45.795m and 49.115m and encompasses an area of 1134m².

Under the provisions of part 5, clause 24 of the Tweed LEP 2000 the proposed dwelling is required to observe a minimum building alignment of thirty (30) metres to the designated road, Terranora Road.

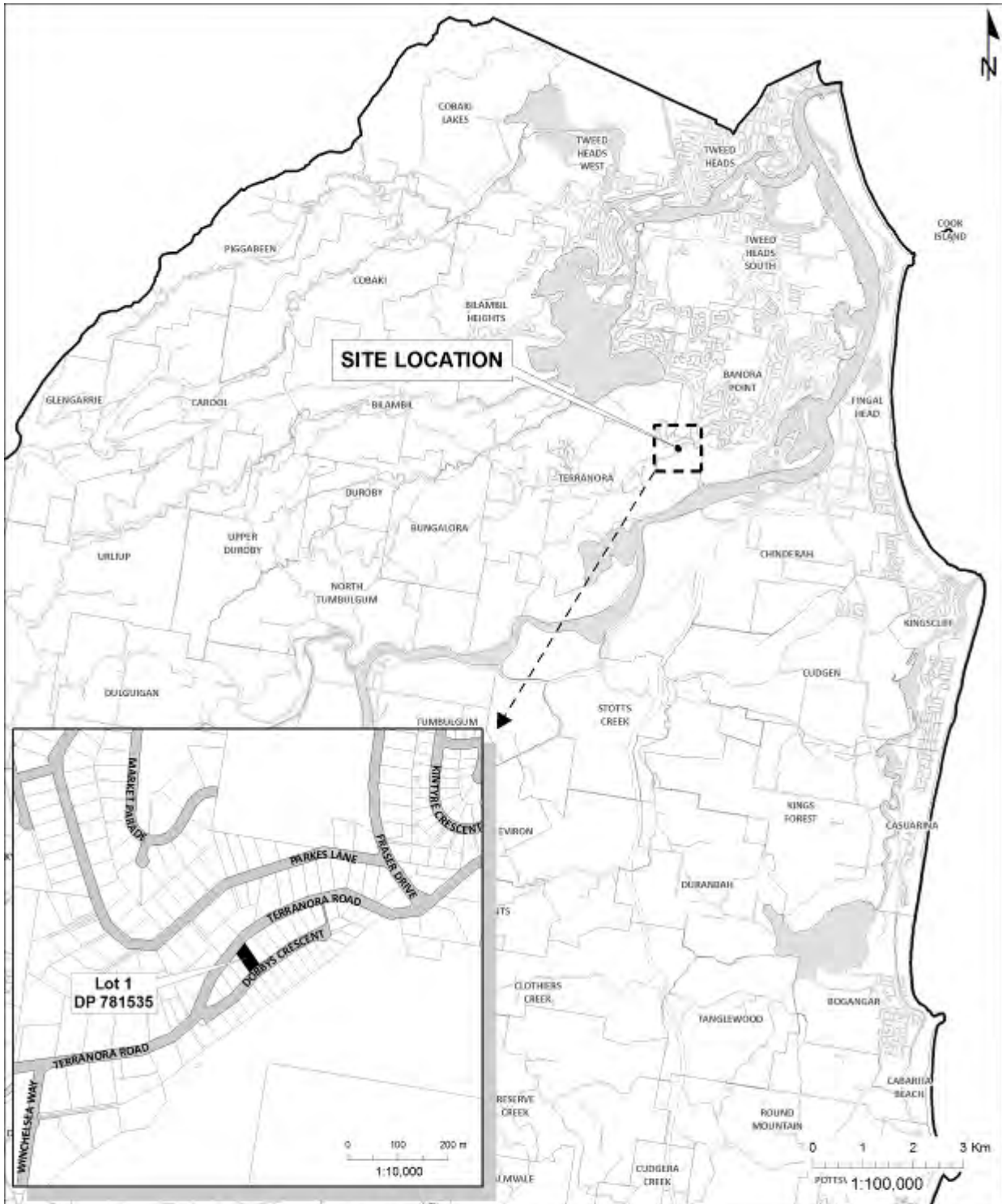
The new deck is proposed to be setback 19.938m from Terranora Road.

Due to the depth of the allotment, compliance with a thirty metre building alignment is not practical as it would result in an unusable building envelope being available.

The Applicant has lodged an objection to this requirement under the provisions of State Environmental Planning Policy No.1 (SEPP 1) to consider a reduced building alignment of 19.938m to the Terranora Road frontage of the site.

The SEPP 1 objection is considered below in this report.

SITE DIAGRAM:



LOCALITY PLAN
Lot 1 DP 781535
No.10 Dobbys Crescent, Terranora

Filename: z:\asn\planning\mxd\A49_185W SitePlan.mxd

Author: J. Batchelor - Planning Beliefs Unit

Date Printed: 25 January, 2010

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all responses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a "dig" before you dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.



Coordinate System - MGA Zone 56
 Datum - GDA 84

Cadastre: 20 January, 2010
 © Dept. of Lands & Tweed Shire Council

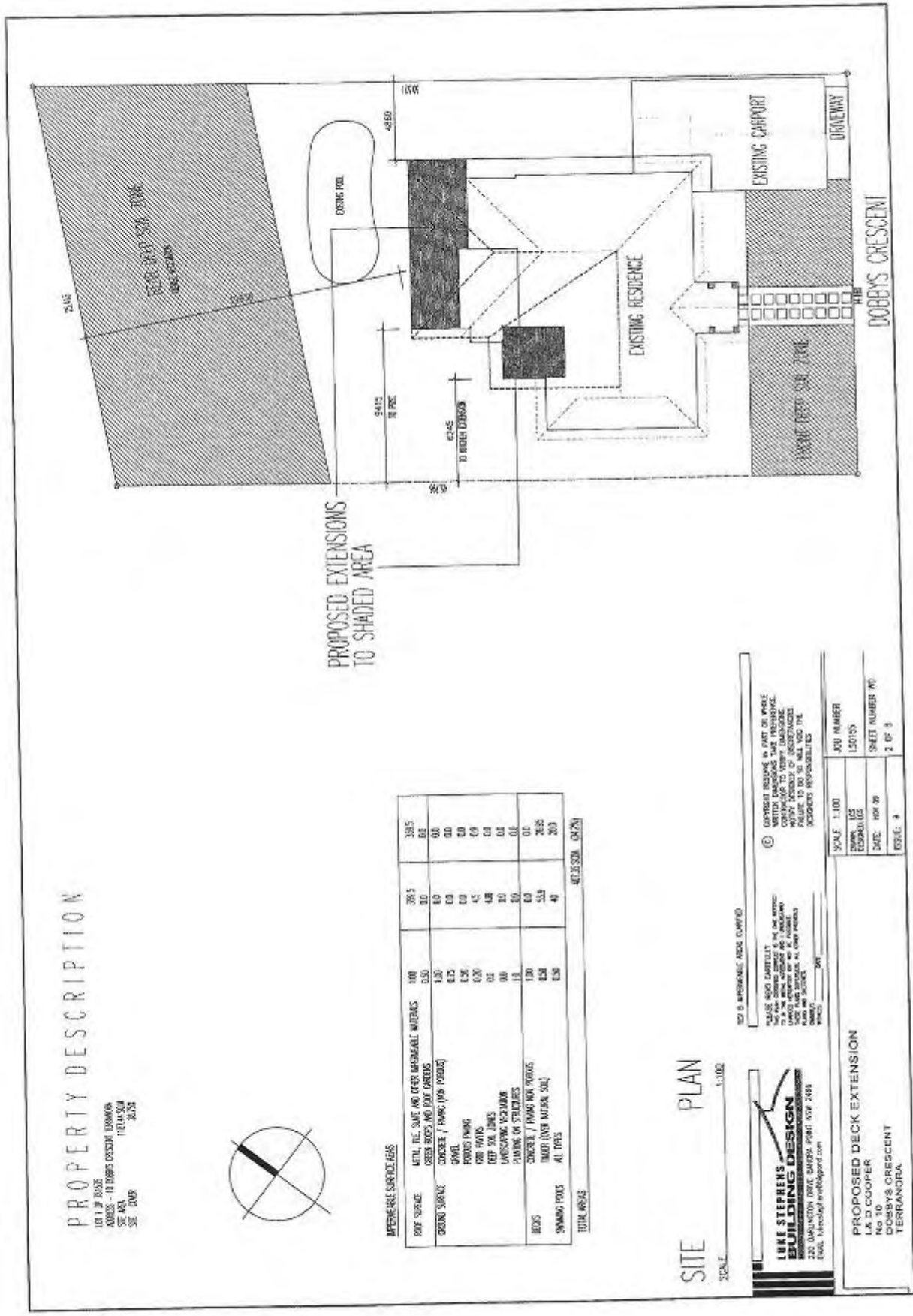
DO NOT SCALE
 COPY OVER - NOT DRAWING

Civic and Cultural Centre
 3 Tambourine Road
 Manildra NSW 2464
 PO Box 810
 Manildra NSW 2464
 E: (02) 6670 2400 / 1300 202 872
 F: (02) 6670 2483
 W: www.tweed.nsw.gov.au
 E: planning@tweed.nsw.gov.au



DEVELOPMENT PLANS:





PROPERTY DESCRIPTION

LOT 11 OF 1032E
 ADDRESS - 10 DOBBYS CRESCENT, TERLANGORA
 NSW 2895
 DATE 03/08



MATERIALS SCHEDULE

ITEM	QTY	UNIT	DESCRIPTION	EST. QTY	EST. PRICE	EST. VALUE
ROOF SPACE	100	M ²	CONCRETE / FORM (100 POUNDS)	285.5	0.2	57.10
GROUND COVER	0.50	M ²	CONCRETE / FORM (100 POUNDS)	0.0	0.0	0.00
FORMS FINISH	0.75	M ²	CONCRETE / FORM (100 POUNDS)	0.0	0.0	0.00
DECK JOISTS	0.20	M ²	CONCRETE / FORM (100 POUNDS)	4.5	0.9	4.05
LANDSCAPE VEGETATION	0.0	M ²	CONCRETE / FORM (100 POUNDS)	0.0	0.0	0.00
PAVING OF STAIRS	1.0	M ²	CONCRETE / FORM (100 POUNDS)	0.0	0.0	0.00
REDS	1.00	M ²	CONCRETE / FORM (100 POUNDS)	0.0	0.0	0.00
SWIMMING POOL	0.50	M ²	CONCRETE / FORM (100 POUNDS)	0.0	0.0	0.00
TOTAL	0.50	M ²	CONCRETE / FORM (100 POUNDS)	4.5	0.9	4.05

SITE PLAN

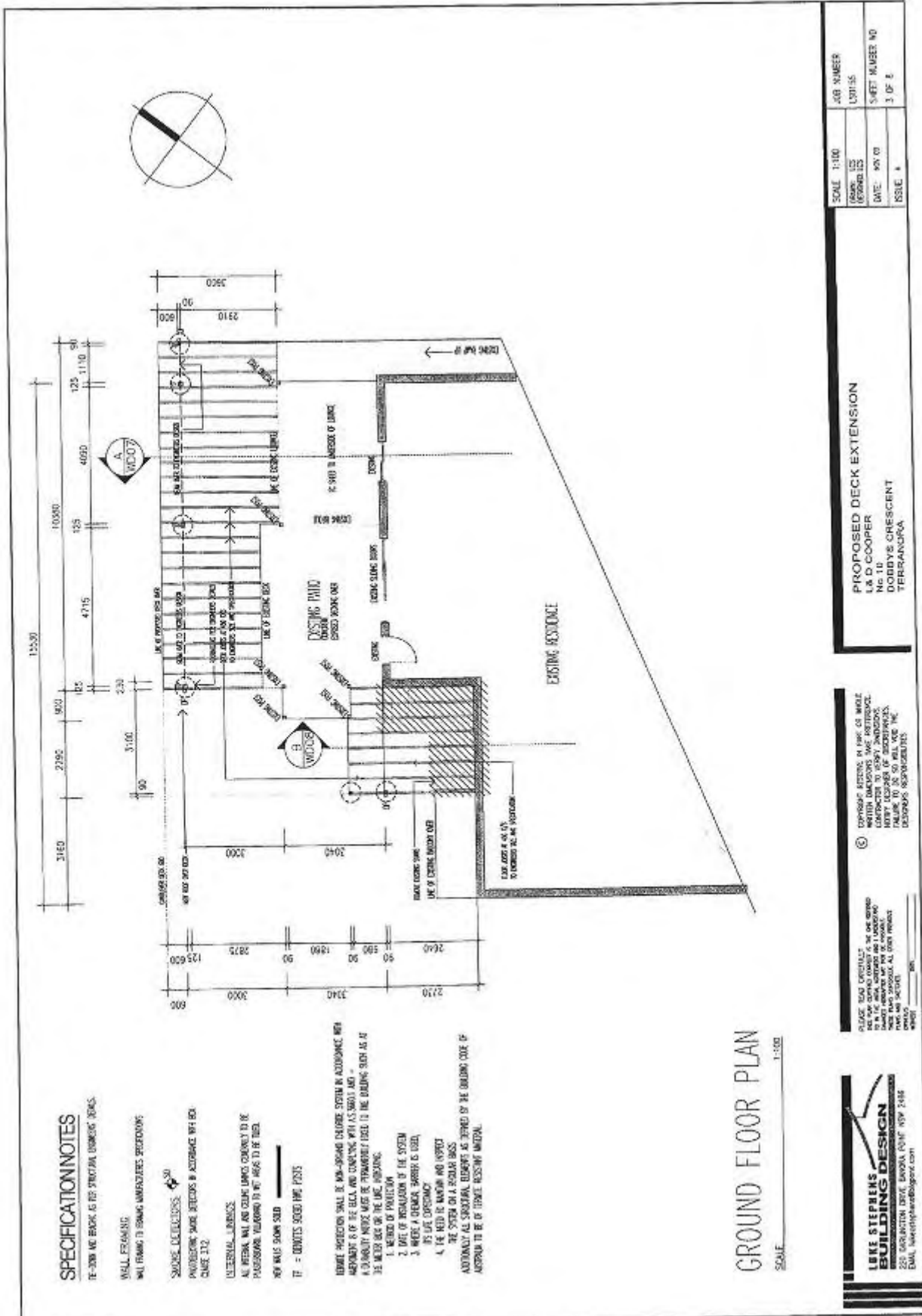
SCALE 1:100

LUNE STEPHENS BUILDING DESIGN
 222 WASHINGTON DRIVE, SARGOLD, NSW 2888
 Email: lunestephens@lunestephens.com

SCALE 1:100
 DRAWN BY LSC
 CHECKED BY LSC
 DATE: 08/09
 TOTAL: 4

PROPOSED DECK EXTENSION
 L.S. D. COOPER
 No 10
 DOBBYS CRESCENT
 TERLANGORA

SCALE 1:100
 DRAWN BY LSC
 CHECKED BY LSC
 DATE: 08/09
 TOTAL: 4



SPECIFICATION NOTES

- 1. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.
- 2. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.
- 3. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.
- 4. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.
- 5. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.
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- 9. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.
- 10. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.

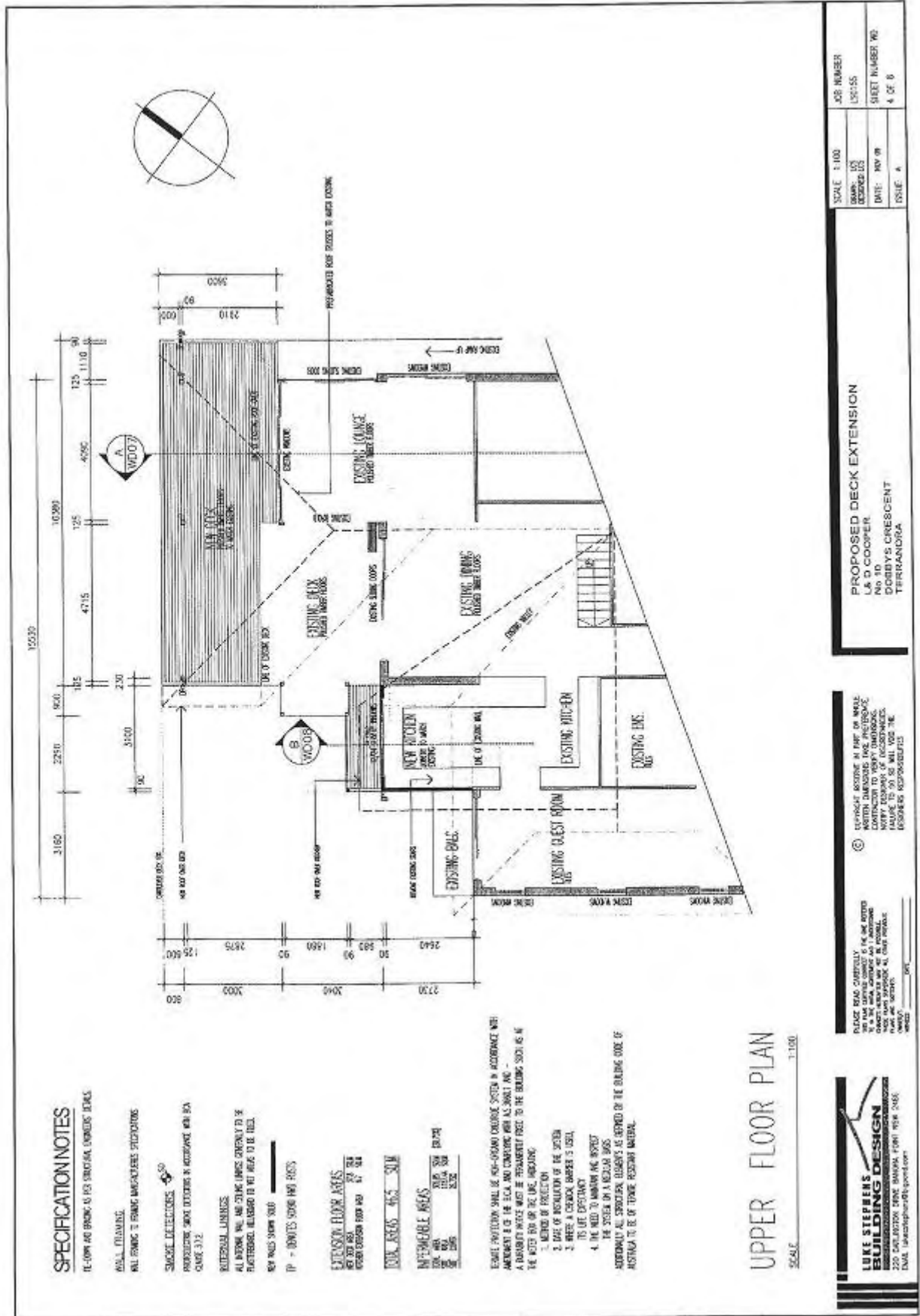
REMARK: PROVISION SHALL BE MADE FOR A CHIMNEY SYSTEM IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES. A CHIMNEY SHALL BE PROVIDED FOR THE REMOVAL OF FUELS FROM THE BUILDING SUCH AS AT THE FOLLOWING LOCATIONS:

1. KITCHEN
2. BATH
3. WHERE A CHIMNEY SYSTEM IS USED
4. THE BUILDING SHALL BE PROVIDED WITH A CHIMNEY SYSTEM IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS REFERRED TO IN THESE NOTES.

ADDITIONALLY ALL STRUCTURAL MEMBERS AS SHOWN ON THE BUILDING CODE OF PRACTICE TO BE OF THICKNESS RESISTING MATERIAL.

GROUND FLOOR PLAN
SCALE: 1:100

<p>PROPOSED DECK EXTENSION L & D COOPER No 110 DOBBERYS CRESCENT TERRANURA</p>	SCALE: 1:100	JOB NUMBER: L201155
	DATE: 06/07/09	SHEET NUMBER: 40
	ISSUE: 1	3 OF 2
	<p>PLEASE READ CAREFULLY: THIS PLAN IS THE PROPERTY OF L & D COOPER. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED. IT IS NOT TO BE REPRODUCED OR USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF L & D COOPER.</p>	



SPECIFICATION NOTES

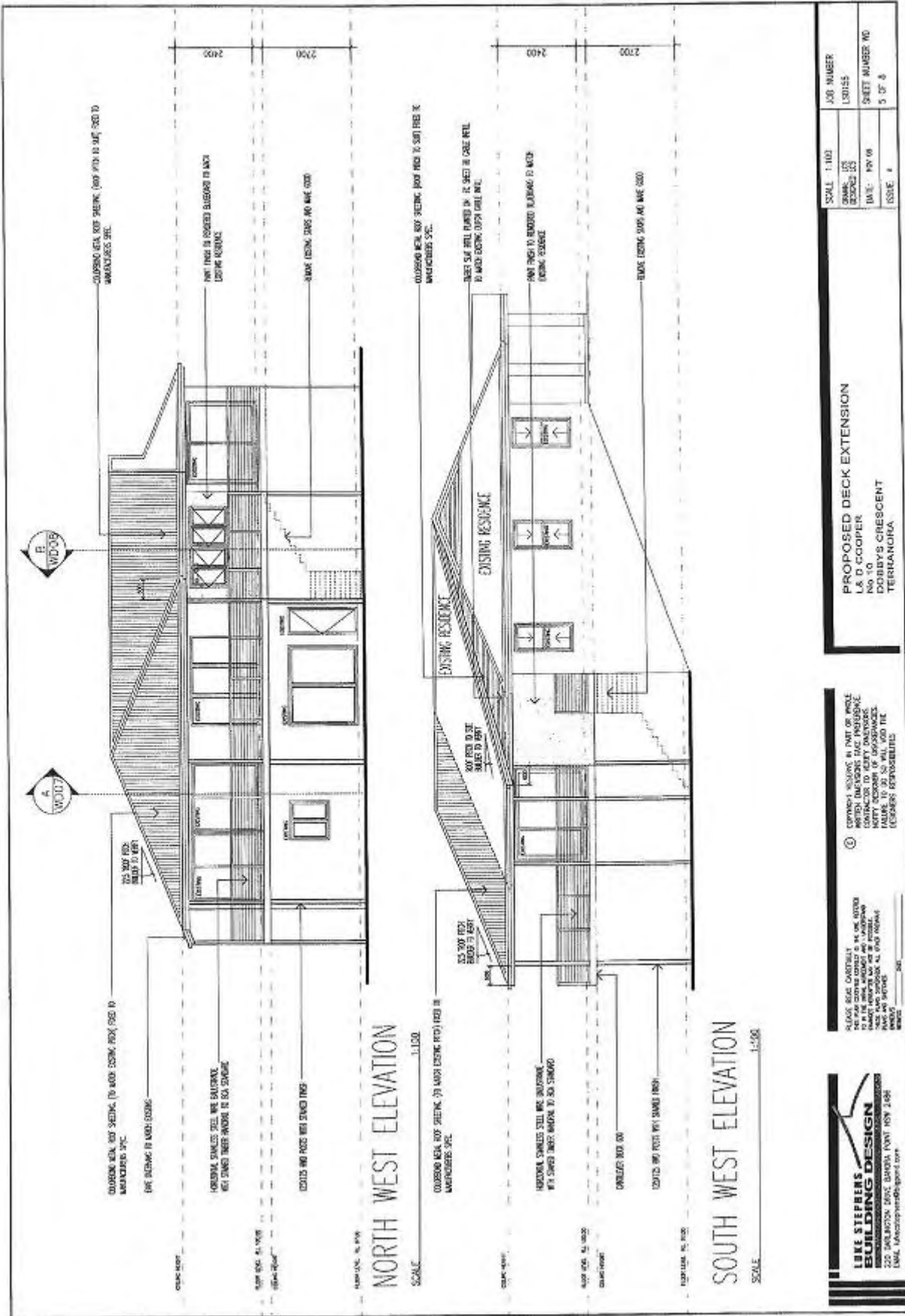
- 1. ALL WORK TO BE DONE TO THE SATISFACTION OF THE LOCAL AUTHORITY.
- 2. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
- 3. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
- 4. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
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- 8. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
- 9. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
- 10. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.

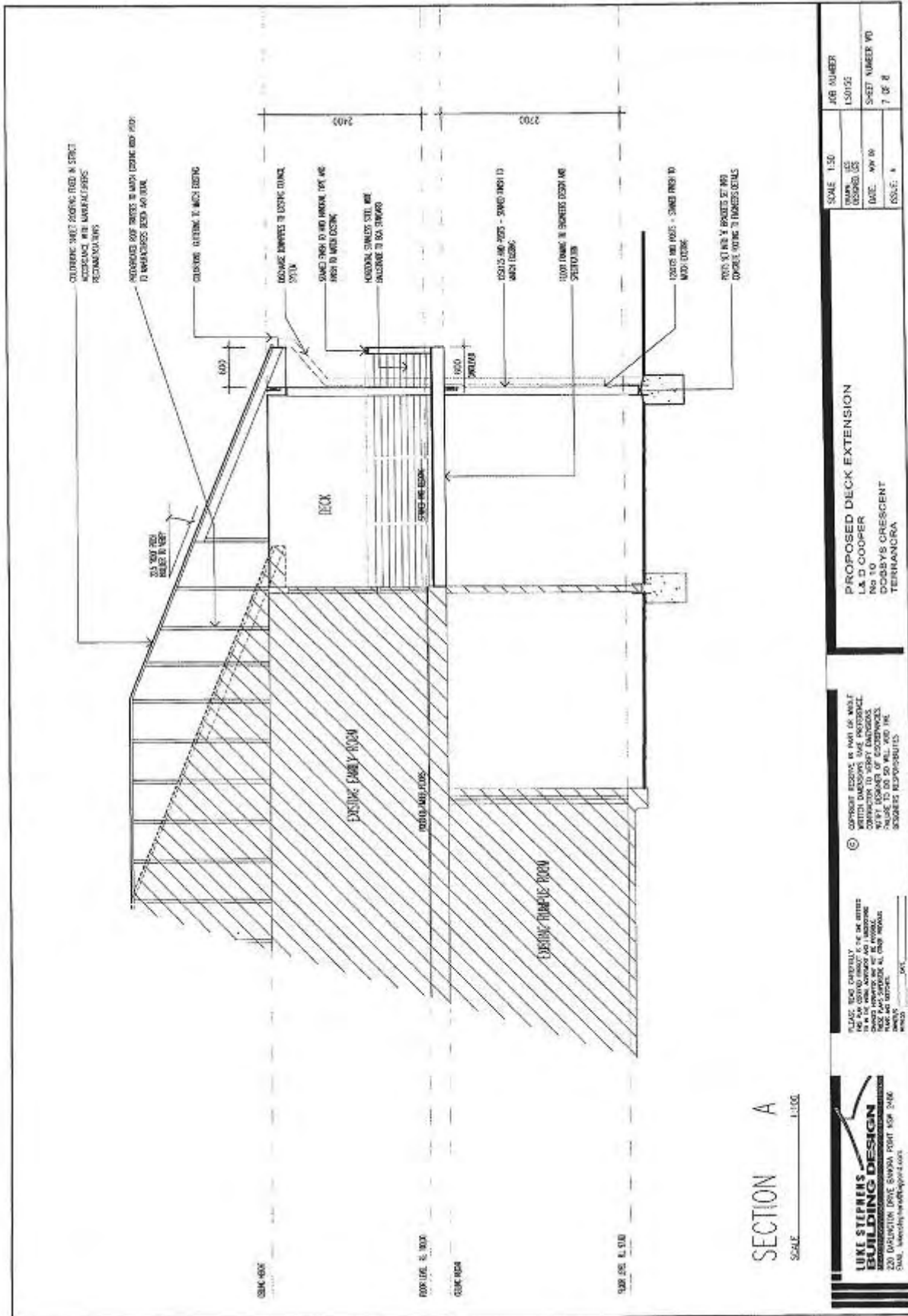
EXISTING POSITION SHALL BE NON-GRAND DIVORCE SYSTEM IN ACCORDANCE WITH
 AMENDMENT 8 OF THE ECA AND COMPARE WITH AS SHOWN AND -
 A DEFERRED PRICE MUST BE PRESENTED PRIOR TO THE BUILDING SUCH AS IN
 THE NOTES FOR THE USE, INCLUDING:

1. METHOD OF PROTECTION
2. DATE OF INSTALLATION OF THE SYSTEM
3. WHERE A CHECKED BARBER IS USED
4. THE METHOD TO MAINTAIN THE WORK

THE SYSTEM OR A RECALCULATED SYSTEM IS REQUIRED BY THE BUILDING CODE OF
 AUSTRALIA TO BE OF THOSE DESIGNATED MATERIALS.

UPPER FLOOR PLAN
 SCALE: 1:100





SECTION A
SCALE 1/16" = 1'-0"

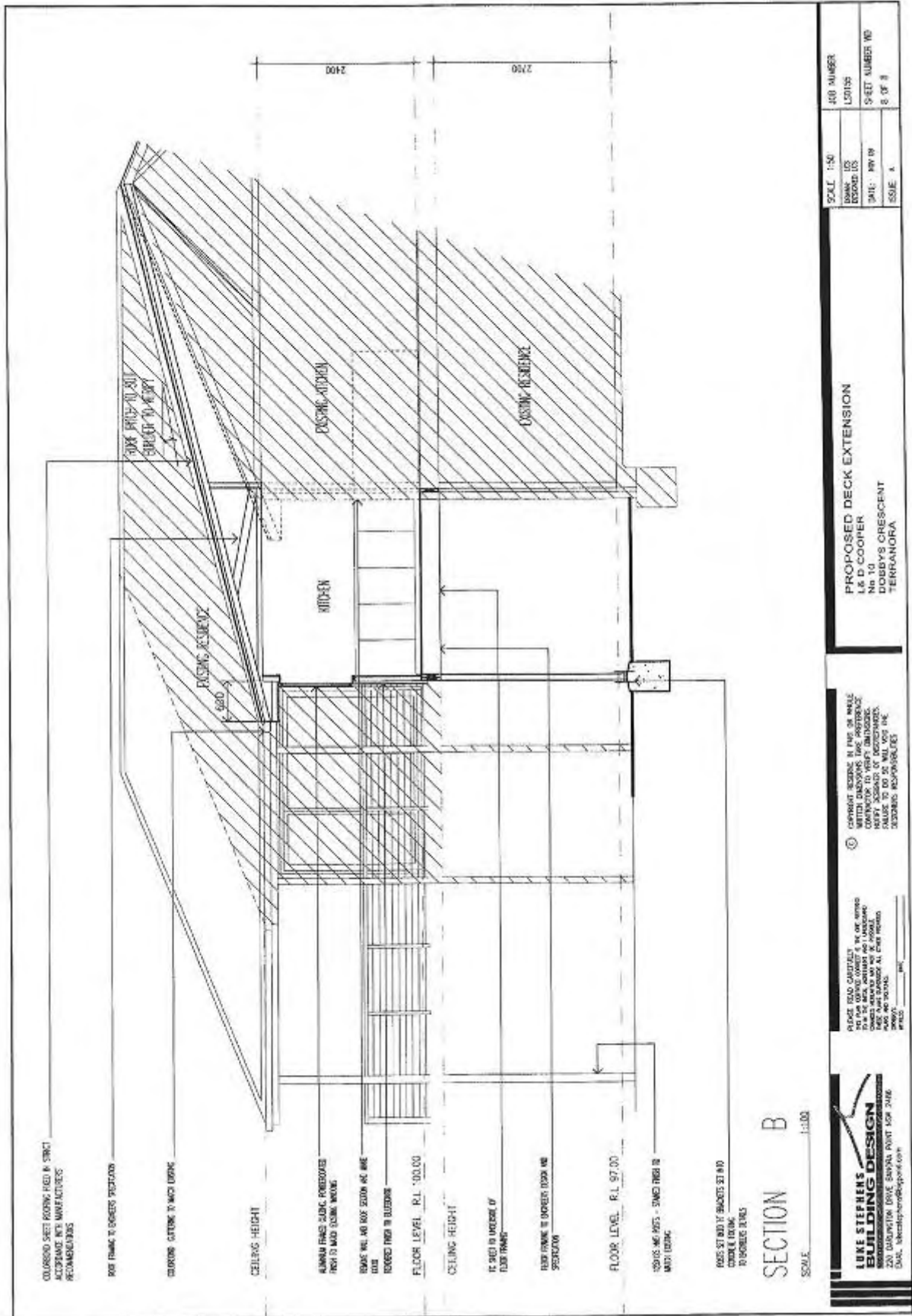
SCALE	1/16" = 1'-0"	JOB NUMBER	150152
DRAWN BY	REDAWNS	CHECKED BY	REDAWNS
DATE	09/09/09	SHEET NUMBER	7 OF 8
ISSUE	A		

PROPOSED DECK EXTENSION
L.A. O COOPER
No. 10
DOBBSYS CRESCENT
TERRANCONA

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LUKE STEPHENS BUILDING DESIGN
200 WASHINGTON DRIVE, SUITE 200, PORT RICHIE, PA 15127
Phone: 412.386.1111 Fax: 412.386.1112
www.lukestephensbuildingdesign.com



(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 proposal satisfies the objectives of this plan.

Clause 8 - Zone objectives

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

Clause 15 - Essential Services

All required essential services are available and adequate.

Clause 16 - Height of Building

The height of the dwelling will be unchanged and the additions will observe the same height as the existing dwelling.

Clause 17 - Social Impact Assessment

It is considered to be unlikely that the approval of the proposal will result in any negative social impact issues.

Clause 24 – Designated Roads

Terranora Road is a designated road under Tweed LEP 2000 which requires a thirty metre building alignment. The proposal does not satisfy this requirement and a SEPP 1 objection has been lodged in this regard.

The SEPP 1 objection is supported and is discussed below.

Clause 35 - Acid Sulfate Soils

The subject site is not affected by acid sulphate soils.

Other Specific Clauses

N/A

State Environmental Planning Policies

A SEPP 1 objection has been lodged against the requirement under clause 24 of the Tweed LEP 2000 for the dwelling to observe a thirty (30) metre building alignment to Terranora Road, which is a designated road.

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

“The proposed dwelling additions will be located a minimum of 19.9m from the alignment of Terranora Road and therefore the development does not comply with the 30m setback requirement. It is submitted that the development standard requiring a 30m setback is unreasonable and unnecessary in the circumstances of this case for the following reasons:-

- *There are other structures located along Terranora Road that also encroach within the 30m setback from the designated road.*
- *The existing house and swimming pool are also within the 30m setback with the pool being set back approx. 14m.*
- *The kitchen extension will improve the functionality of the house.*
- *The deck will allow an observation area of the swimming pool.*
- *It is unlikely that the structure would significantly compromise traffic safety along Terranora Road*
- *No additional vehicular accesses are proposed. The existing access arrangements will be retained.*

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

The continuing validity of the designated road classification and the related LEP building setback requirements for residential developments along Terranora Road are questionable.

The LEP's designated road provisions were introduced a number of years ago with the primary aim of reducing the environmental and safety impacts of properties adjoining major, high speed roads throughout the Tweed Shire.

As identified in a report to Council's Meeting of 18 August, 2009, prior to the opening of the Yelgun to Chinderah Motorway, Terranora Road was used as a bypass in the event of flooding of the (then) Pacific Highway (now Tweed Valley Way), and for that reason it was classified a Regional Road. With the opening of the Motorway, Terranora Road no longer fulfils this role and accordingly the State Government has recently advised Council that it has removed its Regional Road classification, and will now become a local road, under the sole maintenance and funding responsibility of Tweed Council.

The speed limits and general, steep, winding conditions of Terranora Road raise further doubts as to the validity of the designated road classification.

With the advent of increased, smaller lot, residential development in the properties fronting Terranora Road in recent years, Council has consistently acknowledged that the 30 metre front building setback along the greater part of

Terranora Road is unrealistic, and has therefore approved development applications at the more conventional Tweed DCP A1 front setbacks of 6 metres. As highlighted in a further section, the introduction of new controls under the Infrastructure SEPP and Draft Local Environmental Plan 2010 will necessitate a review of the designated road requirements.

Therefore, in terms of the subject proposal, the imposition of the 30m setback requirement to Terranora Road is considered to be unreasonable.

The depth of the allotment varies from 45.795m to 49.115m and therefore enforcing a thirty (30) metre setback to Terranora Road would result in the majority of the allotment being effectively sterilised from development.

Other dwellings in the general area with similar zoning, which have a boundary adjoining Terranora Road have previously been granted SEPP 1 objections for setbacks of less than thirty (30) metres.

The floor level of the deck will be substantially above Terranora Road and therefore it is considered that traffic using Terranora Road will not be impacted on by the proposed development in relation to sight lines or other distractions nor will traffic have an adverse impact on the additions.

The objectives of part 5 (Roads) clauses 22, 23, and 24 of the Tweed LEP and a response to each objective is as follows :-

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 from Dobbys Crescent.

- **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 additions to a residential dwelling, which have been designed to compliment the architectural style of the dwelling and will be consistent with the rural residential character of the area.

This subdivision was approved to permit the construction of single dwellings and due to the physical limitations of the allotments it is 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 additions will be set back 19.938 metres from Terranora Road with an open roofed verandah being the closest part of the dwelling to the roadway.

Due to the slope of the allotment and the level of the allotment above Terranora Road the additions will be at a level considerably above Terranora Road which will lessen the impact of traffic noise on the proposed additions.

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.

SEPP (North Coast Regional Environmental Plan) 1988

SEPP No 71 – Coastal Protection

The proposal will satisfy the objectives of this instrument.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX assessment of the proposed works has not been carried out as the nominated cost of works is below the mandatory threshold where such assessment is required.

SEPP – (Infrastructure) 2007

The SEPP provides no prescriptive controls on setbacks to classified roads, but clause 101 of the SEPP – Infrastructure requires the following consideration:

101 Development with frontage to classified road

(1) The objectives of this clause are:

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Current traffic volumes using Terranora Road would not be sufficient for this road to be considered a 'busy road' under the above clause, and therefore is not relevant to this development.

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

The Draft Tweed Local Environmental Plan 2010 is currently on public exhibition and the proposal has been considered under this document in relation to development near designated roads.

In the drafting of Council's Draft LEP, the DOP advised that it would not allow the current LEP 2000 infrastructure mapping (classified and designated roads, potential future dams, future road corridors etc.) The draft LEP therefore does not contain any specific controls on designated roads.

To address this situation, Council's Planning Reform Unit is currently considering the preparation of an Infrastructure DCP to fill the void in assessment of these issues.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposal satisfies the controls in relation to this DCP.

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

Clause 92(a) Government Coastal Policy

The allotment is located within the boundaries of the policy and satisfies the intent of the policy.

Clause 92(b) Application for demolition

There is no demolition proposed as part of this development.

Clause 93 Fire Safety Considerations

This clause is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

The proposal is for alterations and additions to an existing residential building. A condition of consent will be imposed requiring a smoke detection system to be installed in the dwelling in accordance with the provisions of part 3.7.2 of the Building Code of Australia.

(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 allotment is located in a rural residential subdivision which contains a variety of dwelling types.

The proposal is considered to be consistent with the existing and future character of the area.

Access, Transport and Traffic

Vehicular access to the allotment is existing and will not be affected by the proposal.

Flora and Fauna

The site does not contain any fauna or flora of any significance and the proposed development will not affect any existing landscaping.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The allotment has existing dwellings on either side and is consistent with the local area.

Topography

The allotment slopes moderately downhill to the rear, no major earthworks or level changes area proposed as part of the development.

Site Orientation

The proposed building works have a northerly aspect which satisfies the objectives of DCP A1 in relation to the orientation of external living areas.

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

There have been no submissions made in relation to this application.

(e) Public interest

There is 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 legal challenge in the Land & Environment Court.

POLICY IMPLICATIONS:

Approval of this application is considered to be unlikely to undermine the enforcement of 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 carry out alterations and additions to an existing dwelling within the thirty metre building alignment to Terranora Road is reasonable for conditional approval.

The SEPP 1 objection to reduce the statutory building alignment to Terranora Road 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.

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21 [PR-CM] Planning Reform Unit Work Program - Mixed Redevelopment Proposal - "Innovation at Wardrop"

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt10

SUMMARY OF REPORT:

This report seeks Council's consideration of a planning concept submitted by Darryl Anderson Consulting Pty Ltd (on behalf of property owners J. and L. Dickinson and D. and M. Anthony) for a 475 hectare multi-functional mixed-use development on land eastward of the Murwillumbah township, generally extending south of the existing Wardrop Valley industrial trade park (Tweed Central), bounded by Wardrop Valley Road and Tweed Valley Way.

The proponents' submission is very conceptual at this stage, and consequently this report is limited to providing a high level strategic response, without any examination of the indicative layout, arrangement of and proposed mix of land-uses, or the probabilities or likelihood of the concept in attracting professional, research, educational, entertainment, and export industries.

This report provides an overview of the current long-term strategic planning adopted for the Tweed through the Far North Coast Regional Strategy 2006 and the Tweed Urban and Employment Lands Strategy 2009, and how the residential and employment projections under these policies are being achieved.

In concluding, this report acknowledges that the planning concept as provided has many of the key elements that Council is seeking to achieve in new masterplanned estates and that there are location advantages with this site. However, the key strategic consideration relates to the timing of the proposal in the light of all the other significant development proposal's currently in progress and the level of their responsiveness to meeting the long-term employment and residential needs of the Tweed. This reports concludes that the planning proposal is premature, and in responding to the proponents request for Council's in principle support, it is recommended that Council does not support the proposal, rather the proponent would be better advised to resubmit their proposal on either the five or ten year review of the Tweed Urban and Employment Land Strategy.

The latter option above would provide Council with greater certainty in relation to the progress of the key current and identified masterplanned communities and employment areas, including; Kings Forest, Cobaki Lakes, Dunloe Park, Bilambil Heights, Area E, Mooball, Pottsville Employment Lands, Chinderah East employment land, Wardrop Valley east employment land, and Boyds Bay Garden site employment land, and will enable a more accurate evaluation of how these

developments are meeting the targets and projections set under the strategic policies referred to above.

RECOMMENDATION:

That Council resolves not to advance any further planning assessment of the planning concept submitted by Darryl Anderson Consulting Pty Ltd (on behalf of property owners J and L Dickinson and D and M Anthony) for a 475 hectare multi-functional mixed-use development on land eastward of the Murwillumbah township, generally extending south of the existing Wardrop Valley industrial trade park (Tweed Central), bounded by Wardrop Valley Road and Tweed Valley Way, and referred to as “Innovation at Wardrop”, as identified in this report, on the grounds that the timing of the proposal is not consistent with the long-term strategic planning for the Tweed and that any such proposal would be better considered at either the five or ten year review of the Tweed Urban and Employment Land Strategy 2009.

REPORT:

Following a presentation by Darryl Anderson Consulting Pty Ltd, on behalf of J and L Dickinson and D and M Anthony, on 13 October 2009, Council received a planning concept for a 475 hectare multi-functional mixed-use development on land eastward of the Murwillumbah township, generally extending south of the existing Wardrop Valley industrial trade park (Tweed Central), bounded by Wardrop Valley Road and Tweed Valley Way.

The proposal purports to achieve all of the desirable elements sought in new Greenfield masterplanned developments and does so through a discussion of the prevailing economic factors in the Tweed, including; the increasing median age of the Tweed population, a decreasing workforce participation rate relative to population increase, lack of diversity within the industry and commerce sector, lack of export related industries, combined with an extensive list of positive attributes that the proposal will yield, including:

- Employment opportunities critically needed for Murwillumbah.
- Increasing lifestyle benefits related to reduced travel times.
- Decreased car emissions (reduction in car dependence) by enabling healthy and active communities with opportunity to walk or cycle to work.
- Efficient use of land to minimise sprawl.
- Better utilise existing and planned infrastructure.
- Assist Tweed in achieving employment self containment.
- Provision of a significant proportion of the employment lands required to support economic diversification.
- A range of employment opportunities, specifically export driven jobs.
- Key precincts and facilities focused on research and development, education, recreation and entertainment.
- A range of job opportunities offered will assist in retaining the region's youth, and attract young families to the region.
- Influence a sustainable demographic change in Tweed.
- Catchment management approach to maintaining and improving water quality and the control and minimisation of air pollutant emissions.
- Energy and water efficient building design.

It is generally well accepted that the current demographic projections / profile of Tweed is not set to improve the Tweed's economic or job opportunities position and that diversification in commerce and industry needs to occur. Attracting new industry to the Tweed will require a change in the way new communities are planned and their locations. It will require multi-functional mixed-use developments like that in this planning proposal, in particular it will require a variety of affordable commercial and industry lots sizes accompanied with the range of facilities and uses found in most modern business parks. These typically comprise residential and retail shopping and entertainments facilities, which are vital both in attracting high end business, research and tertiary education, and the significant level of investment commitment required to achieve high quality urban places.

The planning proposal recognises the critical importance of providing highly desirable urban residential environments to support and attract the level of business opportunities proposed. It does not however identify with detail and certainty how this would be managed, but, it is generally well accepted and noted from developments of this kind that the residential, retail and other urban services is required up-front in order to provide the catalyst and attraction for business. In its early stages, which may be anywhere from 5-15 years or longer depending on future market and population trends, the development would be more like a

satellite residential community. It would be in direct competition with and could jeopardise the efficient and sustainable development of the emerging Greenfield masterplanned communities, such as, Kings Forest, Cobaki Lakes, Dunloe Park, Bilambil Heights, and Area E, as well as, potentially undermining and queue jumping the significant future 370 hectare Kielvale residential investigation area (Area 1 – TUELRs).

It is not foreseeable that the employment generating component would occur any earlier than suggested above, as was the case with the Nor West Business Park Estate (Baulkham Shire Council), referenced as a case study in planning proposal, and its impact on the Tweed economy and demographic profile, as presented in the proposal, is consequentially questionable.

This proposal does however present itself as potentially suitable for further investigation in the long-term, 20+ years, and would be best investigated and identified in Council's long-term strategic planning.

The use of the subject lands for urban purposes was raised as part of the community consultation for the Tweed Urban and Employment Lands Strategy, which concluded in the identification of a much smaller urban investigation footprint based on the constraint mapping analysis carried out at that time.

Tweed's significant growth pattern and potential is set to continue for the foreseeable future and the management of providing areas for a sustainable future are critical both in terms of meeting the projected employment and residential needs as it is ensuring that land is not under utilised resulting from its oversupply and comparative affordability with competing areas, such as, South East Queensland.

There is no single development that can turn the tide on Tweed's demographic and economic profile in isolation; it requires a coordinated approach to land management and use through properly considered long-term strategies.

Far North Coast Regional Strategy

The Far North Coast Regional Strategy sets the overarching strategic direction for development and growth within the region. It strategizes for settlement growth and increased living and employment opportunities, making a target for the population of the region to increase by 60,00 persons by 2031. For Tweed, this equates to 19,100 new dwellings. Whilst all encompassing, the relevant guiding principles are:

- *Contain areas for potential future development within the Town and Village Growth Boundaries;*
- *Encourage growth of non coastal towns and villages by identifying potential lands for new housing and industry to boost local economies without compromising environmental values or quality of life;*
- *Require that any development proposals for Greenfield sites west of the Coastal Area and outside the Town and Village Growth Boundary be subject to satisfying the sustainability criteria (contained within Appendix 1).*

Land identified within the FNCRS town and village growth boundary is reported to be sufficient to accommodate the regions urban housing and employment needs until 2031 and it is anticipated that these areas will accommodate a range of housing, tourism, industry, business, infrastructure, community facilities and urban and open spaces.

The strategy identifies no Proposed Future Urban Release Areas for the wider Murwillumbah area. As part of implementation, monitoring and review, the Department has collected Housing and Land statistics from local Council's on land availability. The data demonstrates that as at 07/08 financial year end, there was 70ha of zoned (undeveloped) industrial land in the Murwillumbah area. From 07-08 financial year end, a 5 year forecast estimated 32ha of residential zoned land availability, with an additional 92ha of zoned land becoming available in years 6-10 and beyond. This demonstrates an adequate supply of undeveloped zoned residential and employment land to accommodate growth in the wider Murwillumbah area.

The subject proposal is at conceptual stage, as such, a full assessment against the sustainability criteria included within Appendix 1 has not been undertaken. The proposal is accompanied by a brief assessment against these criteria. Extensive assessment against these criteria would be required to determine if the proposal had merit, however insufficient information is available. Sustainability criteria are:

1. Infrastructure Provision – utilities, transport, communication;
2. Access – road, public transport, access to networks and activity centres
3. Housing Diversity – housing choice, geographic market spread
4. Employment Lands- maintain and improve, meets subregional projections;
5. Avoidance of Risk – flooding, slope, erosion, bushfire, landuse conflict;
6. Natural Resources – efficient, suitable use of land, water demand, energy infrastructure;
7. Environmental Protection – biodiversity, air quality, heritage, waterway health;
8. Quality and Equity of Services – health, education, legal, cultural, community development government services.

Whilst in concept, the proposal may address many of these aspects in theory, there is an adequate supply of existing zoned land in the wider Murwillumbah area which should be brought forward or excluded in the first instance to ensure the most sustainable use of land. The provisions of the TUELRs demonstrates Tweed Council's Strategic framework for release of urban and employment land over the next 5 -15 years.

Tweed Urban and Employment Land Strategy 2009

The Tweed Economic Development Corporation, as referenced in the planning proposal, estimates that Tweed needs to create 25,000 jobs by 2031 while the Far North Coast Regional Strategy (FNCRS) forecasts a required 17,000 jobs over the same period.

Of note is that historically Tweed's economy has recorded a strong reliance in the primary (resource-based) sector, including agricultural commodities of sugar cane, dairy products, bananas and vegetable growing, however the agricultural sector in the region is in general decline. Tweed Economic Development Corporation (Tweed Rural Land Use Study 2002) identified that traditional agriculture in the Tweed was declining at a rate of 7.4% per annum.

Tweed is overrepresented in population-servicing industries, typically characterised by low value adding, low productivity and limited opportunities to move up the value chain and underrepresented in goods-producing industries and knowledge-based services industries, which are typically high value-adding activities, offer considerable scope for productivity increases and moving up the value-chain.

As knowledge-intensive industries continue to increase in importance in global trade, the key to securing long-term economic security is to attract and retain these industries. The provision of employment land based on the 'business park' mixed-use model is one mechanism for achieving this.

The Tweed Urban and Employment Land Strategy (TUELRS) 2009 was prepared in part on an economic analysis prepared by Council's consultant, AEC Group. Using the preferred employment based methodology, which considers the employment capacity and demographic trends of the Tweed, there is a projected demand for between 110 and 250 hectares of industrial land over a 25 year period to 2031. At the upper end of this range it equates to about 10 hectares of industrial land each year, which is significantly higher than historic take-up rates and is more reflective of the spatial requirements of specific economic development opportunities and initiatives.

The TUELRS projected employment land demand is comparatively higher than those of the Department of Planning under the Far North Coast Regional Strategy which estimates the need for an additional 156 hectares of industrial and 76 hectares of commercial land across the region (based on the historical take-up rate at the regional level), but, is significantly lower than the projections under the Northern Rivers Regional Industry & Economic Plan at 720ha and the Tweed Economic Development Corporation's (TEDC) estimates (based on typical employment lands to population ratios for South East Queensland) of 400ha (short-term) and 800ha (long-term), over the same period.

A further discussion of the land demand methodology, which is beyond the requirements of this report, is provided on page 68-80 of the TUELRS.

The purpose of the TUELRS was to ensure that a 25 year replenishing supply of both employment and residential land was catered for and to facilitate best practice masterplanned business/residential mixed communities in a coordinated way that is linked to the population demand projections over 25 years.

It was estimated at the time of preparing the TUELRS that about 231 hectares(ha) of zoned industrial land existed, of which about 138ha remained vacant. Allowing for a discount to account of physical infrastructure (roads and the like) this would amount to about 102ha (10 years supply) of developable land. The TUELRS identifies several investigation areas comprising of about 236ha (24 years supply), including west Pottsville which in-part is the subject of a current rezoning application, and the Boyds Bay Garden site which Council resolved in October 2009 to bring forward for rezoning purposes. In addition, a further short-term site at Wardrop Valley comprising of about 60ha (gross), west Pottsville comprising of about 144ha (gross), and Chinderah east comprising of about 44ha (gross), have also been identified comprising a combined area of about 290ha (gross) in the short-term (0-10 years), which may equate to about 10-14 years supply based on the land demand per employment methodology.

The planning proposal includes the provision of 106ha (presumed to be gross) of employment land. Of this, 60ha is identified as short-term potential under the TUELRS and 63ha as long-term, providing 123ha (gross) of employment land. The proposal comprises about the same when combining the employment, education and research and development precincts. There are similarities in the siting of this land in both the TUELRS and the proposal, this is due to the identified constraints for providing employment land which generally needs to be flat.

The additional lands identified in the proposal for residential, tourism, golf course, in particular, where investigated during the preparation of the TUELRs for urban purposes however, based on the constraint mapping analysis it was not considered preferential over other identified lands. Notwithstanding that the subject land is heavily constrained by its topography among other factors, the TUELRs utilised a ranking system for land selection. This means that although land is not identified in the Strategy it should not be precluded from long-term future investigation, particularly as one of the key limitations to preparing a release strategy is the Department of Planning's requirement to provide a nexus between future urban land supply and projected population demand, which in five or ten years time will need to be readjusted if a 25 year replenishing land supply is to be maintained.

The TUELRs is based on a sound methodology and is subject to review every five years. There are significant land developments in progress and several significant land investigation areas identified for the short-term. This proposal is not consistent with the TUELRs and has the potential to adversely impact on the sustainable growth of other areas in the Tweed. It would be better practice to pursue higher order technology business parks through the masterplanned process adopted under this strategy. This is particularly important because the kind of development proposed by Innovation at Wardrop and being sought through the TUELRs does not exist in the Tweed and is likely to present significant and varied challenges.

To ensure that the desired outcomes can be delivered through Council's planning processes there needs to be appropriate resources and time to effectively manage a project of this scale, and procedures to facilitate coordination of the proposal from the concept to ground between the proponent and the Council would need to be established. This cannot occur in an environment where the quantum of projects overstretches Council's resources or where previous approaches to designing large scale developments continues to be carried on in isolation of the Council and other relevant organisations and community groups.

The ability to improve Council's planning practices to respond to the challenges of providing world class sustainable urban communities that meet the economic, housing and social needs of the Tweed is available under the TUELRs, without the need to bring forward additional large scale developments, which might otherwise provide those services, of the already identified investigation lands, at some future time.

General Infrastructure Demand

The conceptual proposal was circulated to Council's specialist staff for comment. Comments from Council's Strategic and Assets Engineer, water and sewer are provided below.

Magnitude of the Development

From the documentation, it appears that the development will provide housing for 4830 persons and some 129 hectares of various employment lands. On the basis of an assumed development density of 15 ET/ha for employment lands and in the absence of any better information, 129 ha equates to 1935 ET. Whilst this may be on the high side, it is based on published guidelines. This equates to approximately 10500 equivalent persons which will have major implications for the development of the water supply and sewerage infrastructure.

Water Supply:

A development of this magnitude will require service storage of at least 5 ML and hence needs to provide a reservoir site and conveyancing mains to this reservoir. Depending upon the site, a water pump station may also be required. The reservoir should be located to provide adequate pressure to the highest dwellings without over-pressurising the lowest portions of the reticulation system. It may be that the reservoir site should allow space for a future duplication of the reservoir. It may be that detailed analysis may show a need for a higher level zone for which an elevated tank and associated pumps would be required.

A detailed water supply strategy study will be required and should be prepared in consultation with Council's Water Unit.

It should also be noted that this development would be dependent upon Council obtaining approvals for upgrades to Council's water supply including increase in the dam capacity or alternate supplies to ensure that the safe yield is not exceeded.

Sewerage:

The proposed development would exceed the capacity of the Murwillumbah Wastewater Treatment Plant. The current plant has a design population of 16000 ep. The average dry weather flow to the plant is currently equivalent to approximately 11000 ep. The waste stream from the new water treatment plant is expected to be equivalent of 1250 ep and there is currently development in progress in West Murwillumbah and Barnby Street area that will increase the loading by another 1000 – 1500 ep. The Urban Release Strategy has also identified additional areas to the west of Murwillumbah and urban infill that consume the balance of the available capacity.

It is noted that the Urban Release Strategy has also nominated a significant area to the east of Kielvale village as future urban land. At this stage, there has been no definitive planning for the sewerage of this area but it is likely that a new wastewater treatment plant will be required for that Urban Release area.

Accordingly, it is considered that if this proposal does proceed, the preferred option would be to consider the staged development of a wastewater treatment plant that would service both areas and could receive the discharge from some existing development (e.g. the recently developed Industry Central estate).

The proposal would require a new conveyancing system as well as the new treatment plant. Development of a new plant in proximity to the development would give a much greater opportunity to implement non-potable reuse of recycled water through a "third pipe reticulation system". This would also include the need for additional reservoirs and pump stations.

A sewerage strategy study developed in consultation with Tweed Shire Council for the servicing of this proposal will be required.

Flooding

The Wardrop Valley / Fernvale floodplain provides an important flood storage area. In 2005, Council's Floodplain Management Committee considered a proposal to rezone a large portion of flood prone land adjacent to the Wardrop Valley Industrial Estate to allow for

expansion of the Estate. The flood study accompanying that proposal demonstrated that cumulative encroachment of development and filling of the Wardrop Valley / Fernvale floodplain will result in increased flood levels in residential and industrial areas of South Murwillumbah, and increases the likelihood of the Murwillumbah town levee being overtopped. As such, the Committee recommended that "Council opposes any rezoning of the South Murwillumbah/Fernvale flood plain upstream of the airport involving a net decrease in the volume of flood storage". Council endorsed the Committee's recommendation at its meeting of 30 November 2005.

The proponents of the "Innovation Wardrop" proposal have recognised this restriction, and have nominated most of the flood prone land for low impact, generally flood compatible development, such as a golf course, sporting facilities and open space. Where filling of flood storage areas is required, the proponents have nominated a "flood credit area", which is an outcrop of high land that would be excavated to result in no net loss of flood storage. This is generally consistent with Council's adopted approach.

On the basis of this "high level" assessment, and subject to proper hydraulic assessment of the proposal for local and regional flooding, it is possible that a development of the land for a mixed-use business and residential development, as proposed, could be achievable.

Traffic

The existing road network (Fernvale Road and Wardrop Valley Road) may not be adequate to cater for the proposal in terms of alignments and carriageway widths, however, alignments and grades would need to comply with Council's relevant design standards.

It is not possible to determine any level of compliance or to pin-point specific areas of potential issue on the general terms of the proposal and further detail would be required, particularly in regard to the proposed major road network and the feasibility of constructing it. New major accesses are proposed from the west (opposite Colin Street, South Murwillumbah and 'somewhere' to the northeast along Reserve Creek Road, and notable constraints likely arising from the proposal may include:

- a. major access flood immunity and required filling
- b. alignment and grade complying with TSC's Development Design Specification D1
- c. parts of the proposed major accesses being Crown road reserve requiring agreement from the Department of Lands
- d. the major intersection proposed opposite Colin Street not being dedicated road reserve as it requires crossing of railway land and therefore requires railway authority concurrence
- e. no information being provided for the major access to the northeast and expected traffic volumes. (e.g. existing constructed Lundberg Drive may not be capable of sustaining the proposed traffic volumes and may require road widening).
- f. no information being provided for the treatment of proposed major road intersections with Tweed Valley Way and feasibility in constructing any required traffic control infrastructure.

In general terms the proposal may be achievable however, much greater level of detail on traffic analysis and traffic feasibility would be needed.

Conclusion

The proposal correctly identifies that there is a need for more jobs and greater employment opportunity in the Tweed. It correctly approaches the response to employment, social and climate change factors by bring together in a mosaic of key precincts a range of business, recreational and housing that can provide greater opportunity for lifestyle choices, improved business access to a localised employment pool, reductions in car dependence, and development opportunities that can capitalise on sustainable practices.

Despite the many benefits that this proposal may bring it is not sufficient in strategic terms to overcome or dispense with the fact that this can occur in the developments that are currently in progress and those that are identified in the long-term planning strategies for the region and Tweed in particular.

In general terms, noting that it is not possible to undertake a detailed suitability assessment of the proposal on the level of information provided, that a high level of generality it must be concluded that the proposal is premature, that is, it is a matter of timing. Based on strategic policy and current project proposals there is no demonstrated demand nexus for this proposal.

As referred to in this report there is already sufficient employment land identified under the TUELRs, and in recognition of the various changes that can occur in the economy, the population, within the region, resulting from climate change among others, there is recurring review period to allow for consideration of and amendment based on these factors. In addition to the 247 ha (net) of employment land under that strategy there are also several major developments in the pipe-line that, in isolation of smaller and infill development, could provide for upward of 35,000 people, and thus meeting the projected populations over the next 25 years (see Figure 1 below)

The proponent is seeking a commitment from the Council in respect of the proposal, however, it is considered inappropriate to attempt to 'lock-in' the Council on a decision about the future of the subject land where they clearly fall outside of the Council's adopted strategies.

The better practice is for the proponent to submit their proposal at an appropriate time, this would typically be the review of a major long-term strategic policy such as the TUELRs, which is scheduled every five years with the first review likely to occur in 2014.

Figure 1 – Estimated Population Growth

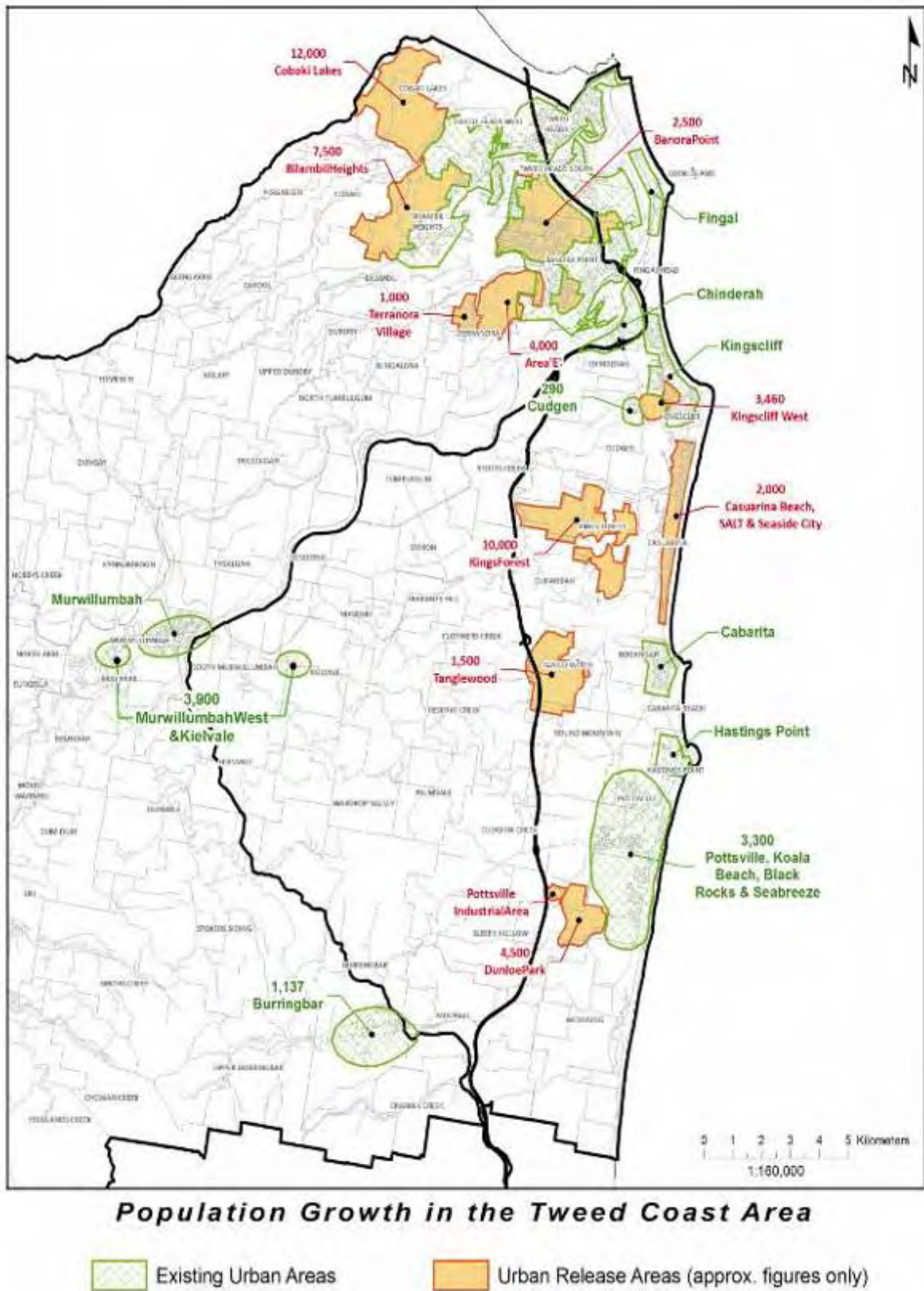


Figure 2 - 2007 Aerial Photography Wardrop Valley



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to permit the further investigation of the land by the proponent with the view to a rezoning proposal or concept plan being submitted within the next 5 years it will have significant impacts on the resourcing of Planning Reforms Unit.

POLICY IMPLICATIONS:

Any proposal to further consider the proposal will impact on Council's long-term strategic planning for the Tweed.

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. A copy of the submission made by Darryl Anderson Consulting Pty Ltd (on behalf of property owners J. and L. Dickinson and D. and M. Anthony) for a 475 hectare multi-functional mixed-use development on land eastward of the Murwillumbah township, generally extending south of the existing Wardrop Valley industrial trade park (Tweed Central), bounded by Wardrop Valley Road and Tweed Valley Way (ECM 12388677)
-

22 [PR-CM] Planning Reform Unit Work Program - Strategic Planning Fees

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt10

SUMMARY OF REPORT:

At the Council Meeting of 17 November 2009 the Council endorsed a new fee and process structure for ensuring that costs associated with reporting and investigation of 'betterment' proposals and 'scoping' exercises are recoverable from a proponent and not borne by the community through Council. In accordance with this resolution, the proposed fee and process structure was publicly exhibited, and no submissions were received.

It is therefore recommended that Council gives final approval of this new structure.

RECOMMENDATION:

That Council adopts the following fees and charges schedule relating to requests to review strategic planning policies:

Fees and Charges

Request for review of strategic planning policy outside of review period	
Item	Fees & Charges
General administration fee	\$500
Review process fee	\$500 + \$95 per hour per reviewer beyond 4hrs Plus, all additional printing costs
Council appointed and managed consultancy	The cost is to be determined by a Council invitation and submission process and agreed to by applicant + 25% administration fee.
Other costs	The applicant is liable to all additional costs in relation to the reprinting of an amended strategy and in addition is also liable for the partial cost of the current printing charge relating to the printing of the current policy, which shall be based on the number of un-sold copies remaining

REPORT:

At the Council Meeting of 17 November 2009 the Council endorsed a new fee and process structure for ensuring that costs associated with reporting and investigation of ‘betterment’ proposals and ‘scoping’ exercises are recoverable from a proponent and not borne by the community through Council. In relation to the proposed fees the resolution states:

“RESOLVED that: -

1. Council supports the fees and charges schedule identified within Table 1 (Option 1) to this report relating to requests to review strategic planning policies:

Table 1 – Fees and Charges

Request for review of strategic planning policy outside of review period	
Item	Fees & Charges
General administration fee	\$500
Review process fee	\$500 + \$95 per hour per reviewer beyond 4hrs Plus, all additional printing costs
Council appointed and managed consultancy	The cost is to be determined by a Council invitation and submission process and agreed to by applicant + 25% administration fee.
Other costs	The applicant is liable to all additional costs in relation to the reprinting of an amended strategy and in addition is also liable for the partial cost of the current printing charge relating to the printing of the current policy, which shall be based on the number of un-sold copies remaining

2. The fees and charges identified within Table 1 (Option 1) of this report relating to requests to review strategic planning policies be exhibited in accordance with Section 610F of the Local Government Act, 1993, and”

The draft Fees and Charges were publicly exhibited in accordance with the Act from the 2nd to 30 December 2009, during which no public submissions were received. As such the proposed schedule can now be incorporated in to Council Fees and Charges 2009/2010.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Adoption of a fee structure associated with the request to review strategic planning policies will limit otherwise potential substantial resource impacts.

POLICY IMPLICATIONS:

This report seeks a clear direction on managing requests to review adopted strategic planning policies in a way that limits the impact on Council’s resources by way of an appropriate and relevant fees and charges schedule.

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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