



**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 Regulation Reports

### **Ordinary Council Meeting**

### **Tuesday 16 March 2010**

held at Murwillumbah Cultural & Civic Centre  
commencing at 4.30pm

### **COUNCIL'S CHARTER**

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

Tweed Shire Council has the following charter:

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

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**Items for Consideration of Council:**

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## REPORTS FROM THE ACTING DIRECTOR PLANNING AND REGULATION

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

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

#### MATTERS FOR CONSIDERATION

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

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1056 Pt1**

**SUMMARY OF REPORT:**

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

The SEPP No. 1 variation relates to Clause 18(3) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to the erection of a rural worker's dwelling on land zoned 1(a) where the allotment of land has a minimum area of 40 hectares. Lot 1 DP 803636 has a total area of 2.04 hectares and is zoned exclusively 1(a). The subject site has an active cropping area of 6500m<sup>2</sup> (0.65ha).

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

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

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

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

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

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

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

#### **RECOMMENDATION:**

**That: -**

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



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

**REPORT:**

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

**BACKGROUND:**

The Subject Site

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

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

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

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

Council mapping indicates that an area of approximately 6500m<sup>2</sup> (0.65ha) is actively used for cropping, which is 31.8% of the total site area.

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

The Proposed Development

The applicant seeks consent for the conversion of an existing 360m<sup>2</sup> farm shed to three bedroom rural worker's dwelling. The proposed development involves:

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

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

Access to the rural workers dwelling will be by way of an unsealed driveway running along the length of the western property boundary from the Sanderson Place frontage. Car parking provision has been made available in an 8m x 12m garage (96m<sup>2</sup>) within the existing farm shed.

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

The applicant states that:

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

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

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

## History

### *Title Details*

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

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

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

*Applications*

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

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

*B435/89 (dwelling and pool)*

This development application was lodged 23 March 1989 at the same time as subdivision, and approved 23 August 1989. It included a 540.3m<sup>2</sup> four-bedroom, single dwelling to be constructed of brick veneer with colorbond roofing. This main dwelling is located at the northern end of the subject site with frontage to Tomewin Road.

*DA06/0827 (farm shed)*

This development application was lodged 27 July 2006 for a 360m<sup>2</sup> farm shed to be used for 'processing small crops, storage of farm consumables, maintenance of farm plant and general farm shed usage'.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The application was approved 23 December 2008.

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

This application was lodged 26 September 2008.

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

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

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

Compliance Matters

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

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

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

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

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

Council's Environmental Health Unit has indicated that:

- Adequate information to assess possible soil contamination has not been supplied, and
- The On-Site Sewer Management system is currently inadequate and requires upgrading, with an increase in effluent disposal area to 465m<sup>2</sup>.

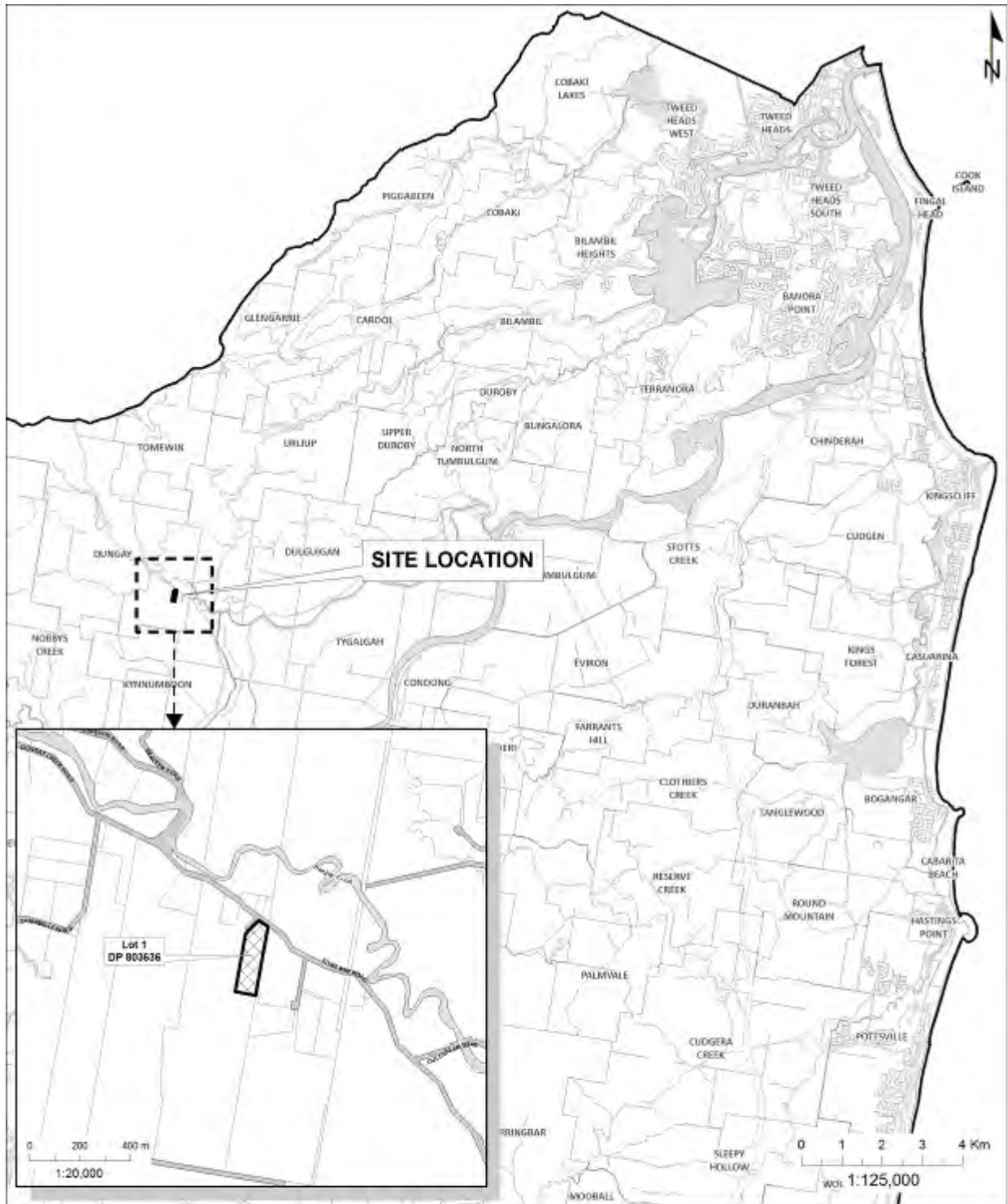
### Public Submissions

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

### Conclusion

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

**SITE DIAGRAM:**



**LOCALITY PLAN**

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

Filename: z:\jason\planning\msd\449\_B&W\_SitePlan.mxd

Author: J Batchelor - Planning (Reforms Unit)

Date Printed: 24 February 2010

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness, or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only; it should not be used for survey or construction purposes, and prior to any excavations, a "Dig before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.



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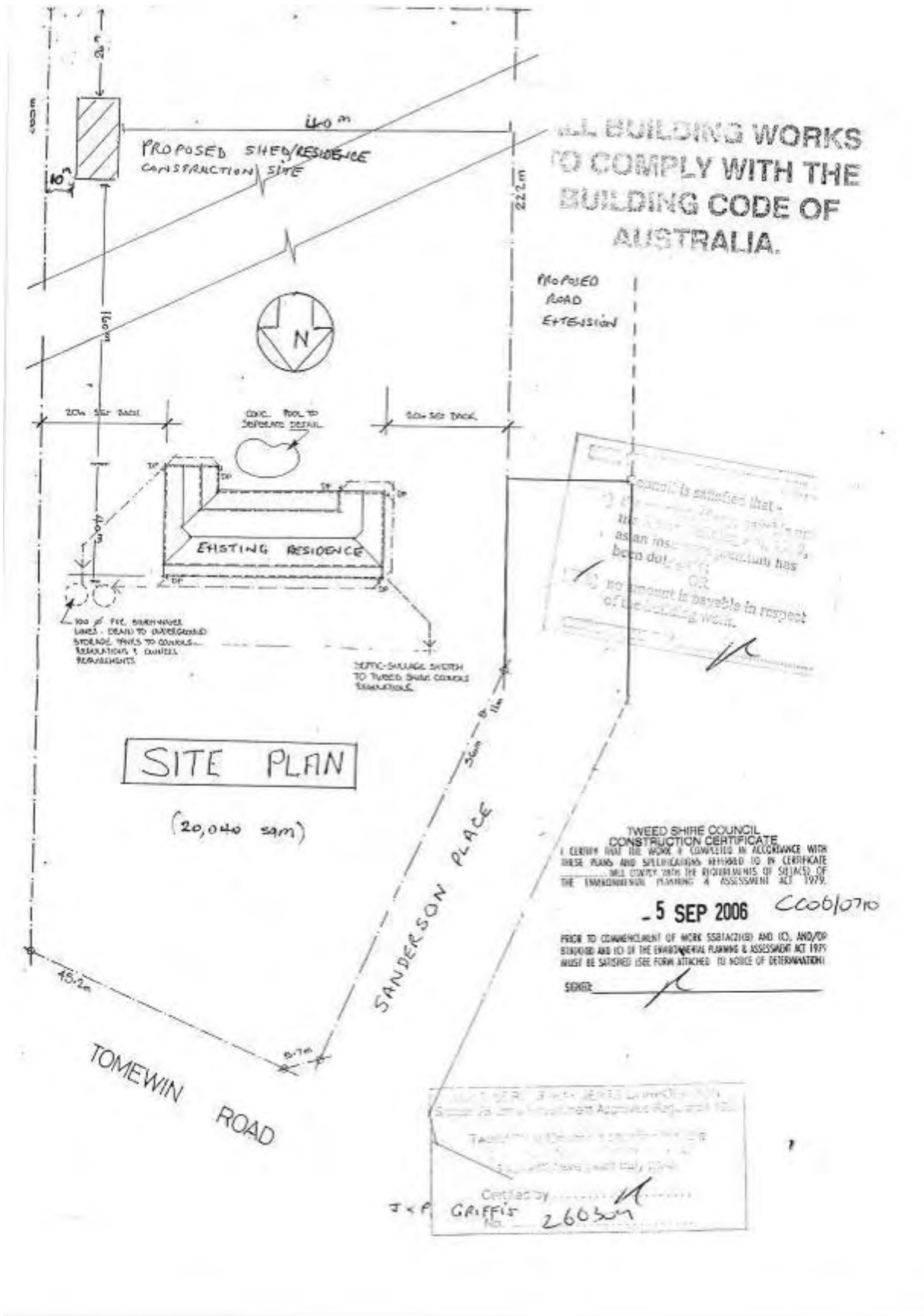
Coordinate System - MGA Zone 56  
Datum - GDA94

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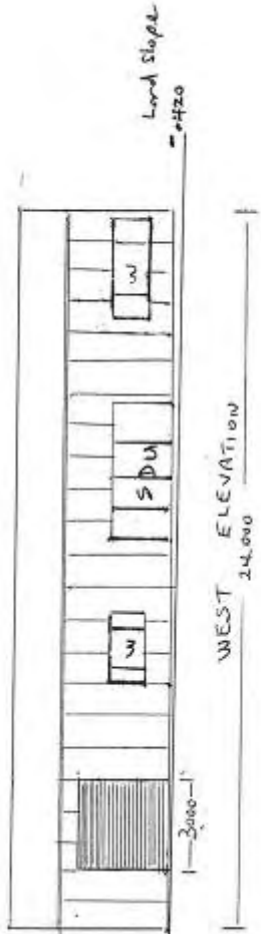
**DEVELOPMENT PLANS:**



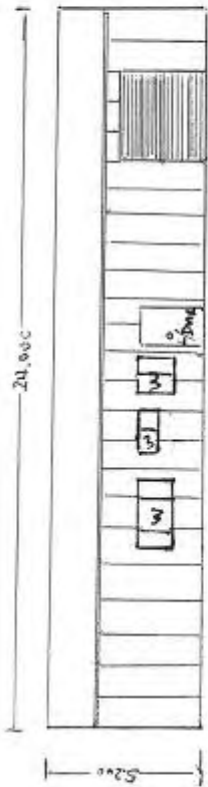


PROPOSED SHED/RESIDENCE 15000 x 24000

1-08-08



Roof a Walls Coloured "Deep Ocean" } High  
 Door ✓ "Classic Cream" } full



EAST ELEVATION

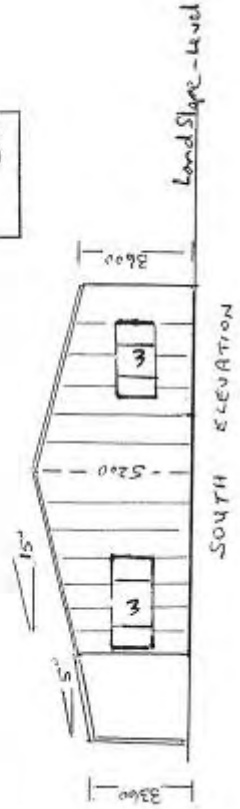
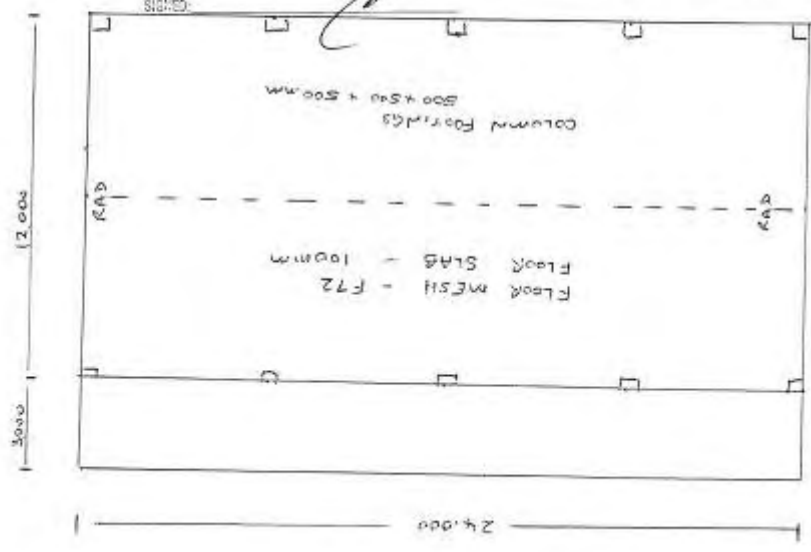
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PLANNING AND BUILDING DEPARTMENT  
 BUILDING DEPARTMENT  
 CITY OF MELBOURNE  
 5 SEP 2008

**BUILDERS COPY**

NOTE TO COMMENCEMENT OF WORK (S24(2)(D) AND (E), AND (R) REMAIN IN FORCE UNTIL THE COMMERCIAL PLANNING & ASSESSMENT ACT 1989 HAS BEEN SATISFIED (SEE FORM 7 ATTACHED TO NOTICE OF DETERMINATION)



SOUTH ELEVATION



NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION



WEST ELEVATION

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

One of the aims of the plan is:

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

Council Assessment

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

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

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 – Consent Considerations

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

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

### Council Assessment

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

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

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

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

### Clause 11 - Zoning

The subject land is zoned 1(a) Rural.

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

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

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

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

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

### Council Assessment

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

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

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

#### Clause 15 - Essential Services

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

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

#### Clause 16 - Height of Building

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

#### Clause 17 - Social Impact Assessment

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

#### Clause 35 - Acid Sulfate Soils

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

#### Specific Clauses

##### Clause 18 – Rural workers dwellings

The objective of Clause 18 is as follows:

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

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

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

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

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

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

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

#### Clause 22 – Development near designated roads

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

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

#### Clause 24 – Set backs to designated roads

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

### Clause 34 - Flooding

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

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

### Clause 39 – Remediation of Contaminated Land

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

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

### **State Environmental Planning Policies**

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

##### Clause 12: Impact on agricultural activities

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

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

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

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

##### Clause 43: Residential development

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

Considerations within this clause relate to satisfactory:

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



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

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

#### SEPP No. 1 - Development Standards

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

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

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

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

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

#### Applicant Assessment

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

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

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

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

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

*In summary, the proposal:*

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

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

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

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

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

The applicant's submission is not supported.

- Further fragmentation of farmland and reduction in the agricultural use of the land may occur through the need to establish a replacement farm shed of similar size on the property and retain a 'residential' land use buffer around the existing farm shed for the rural worker's family
- Pressure to subdivide the property in the future may be real. There are similar dwellings on the market in the Tweed region used as primary residences on rural properties
- Profit from agricultural pursuits on the property may be higher if the business were run by one owner/operator, rather than having to employ a rural worker and pay a wage
- Current farming operations cannot be sustained primarily because the owner is physically unable to work the land
- Suitable rental accommodation is available in the regional townships in close proximity to the subject site. Planning controls should not be compromised as a mechanism for the provision of affordable housing to rural workers
- Planning controls permit attached dual occupancies on 1(a) Rural land. Given that the main dwelling is large, at 540m<sup>2</sup>, this is a viable option available to the applicant
- There are no planning mechanisms to revert the rural worker's dwelling back to farm shed use should the property be sold.

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

The objects specified within Section 5(a)(i) and (ii) relate to the proper management, development and conservation of natural and artificial resources, including agricultural land and the promotion and co-ordination of the orderly and economic use and development of land.

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

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

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

4. **It is also important to consider:**

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

The proposed non-compliance with Clause 18(3) of the Tweed LEP 2000 is considered to raise matters of significance for State and regional planning.

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

The Tweed LEP 2000:

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

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

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

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

#### SEPP No. 55 - Remediation of Land

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

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

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

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

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

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

#### SEPP (Rural Lands) 2008

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

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

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

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

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

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

### 3 Permitted with consent

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

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

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

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

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

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

7.3 Erection of rural workers' dwellings [local]

(1) The objectives of this clause are:

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

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

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

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

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



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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

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

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

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

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

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

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

*Orient living areas to employ passive solar design principles.*

A2-Site Access and Parking Code

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

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

A3-Development of Flood Liable Land

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

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

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

There are no additional matters that affect this application.

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

Cumulative Impacts

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

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

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

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

Surrounding Land uses/Development

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

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

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

Farmland of State or Regional Significance

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

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

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

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

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

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

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

#### Effluent Disposal

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

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

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

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

#### **(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

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

**POLICY IMPLICATIONS:**

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

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

**CONTRIBUTIONS:**

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

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

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

**CONCLUSION:**

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

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

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0468 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

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

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

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

**RECOMMENDATION:**

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

**GENERAL**

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

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

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0125]

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

[GEN0135]

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

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

[GEN0155]

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

[GEN0195]

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

[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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



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

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

[PCC0275]

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

[PCC0285]

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

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

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

#### **URBAN ROAD**

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

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

**OTHER**

- (a) Relocation of existing Sewer Rising Main. A consequence of this relocation is the overall length of the rising main will be extended, and this may have an effect on the pump(s) in the pump station. The applicant is required to address the performance of the existing pump(s) in light of the altered operating conditions, as part of the construction certificate application.
- (b) The existing Sewer Gravity Main must be reconstructed for the extent of the proposed exposure. This will require:
- Construction of two (2) new manholes - one at each end of the exposed section of sewer main, and removal of existing manhole 'XA/7' within the proposed stormwater channel.
  - The sewer main between the two new above-mentioned manholes is to be reconstructed in ductile iron and laid on concrete supports in accordance with Council standards. The design of the concrete supports must factor in the stormwater depths and velocities that will be experienced within the channel.
  - During reconstruction of the existing sewer infrastructure, the existing sewer service to other residents in the area must remain unhindered.
- (c) Provision of service connections to both lots, including sewer junctions, water main connections, telecommunication and electrical connections.
- (d) Cut and fill earthworks including relocation of the existing drainage channel, shall be designed in general accordance with Newton Denny Chappelle Engineering Services Plan (Ref No. 06191\_JUL09\_PLANS Sheet C1, July 2009), except where varied by the conditions of consent.
- (e) The earthworks plan shall make adequate provision for all existing drainage services discharging onto the subject land, including piped and overland flow systems, and remain freely draining to the realigned "open earth drain". Drainage easements benefiting Tweed Shire Council shall be created where any extensions of public drainage lines are required to satisfy this condition.
- (f) A minimum flood storage volume of 11,500m<sup>3</sup> shall be provided below RL3.2m AHD (subject to verification as draft plans nominate RL 3.1m AHD), and the construction certificate shall be accompanied by plans and calculations demonstrating compliance with this condition.
- Note: the relocated channel is required to be covered by a Drainage Easement extending to RL 3.5m AHD (per later condition of consent). All batters within the Drainage Easement are to be no steeper than 4(h):1(v).
- (g) Where batter heights exceed 0.5m, the top of the cut batters shall be set back a minimum of 0.9m from the property boundary.

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

[PCC0875]

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

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

[PCW0005]

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

[PCW0025]

- 13. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

[PCW0375]

- 14. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

15. Civil work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
    - (i) the consent authority, or
    - (ii) an accredited certifier, and
  - (b) the person having the benefit of the development consent:
    - (i) has appointed a principal certifying authority,
    - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
      - C4: Accredited Certifier – Stormwater management facilities construction compliance
      - C6: Accredited Certifier – Subdivision road and drainage construction complianceThe SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and
    - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
    - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
  - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

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

[PCW0835]

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

[PCW0985]

## **DURING CONSTRUCTION**

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

[DUR2405]

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

[DUR0005]

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

**Monday to Saturday from 7.00am to 6.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

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

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

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

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

[DUR0215]

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

[DUR0745]

23. **During filling operations,**

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

**and upon completion,**

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

[DUR0755]

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

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

[DUR0795]

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

[DUR0815]

26. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

27. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

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

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

[DUR1005]

29. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

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

[DUR1025]

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

- (a) Roofed;

**(b) Provided with a sealed floor; and**

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

[DUR1635]

- 32. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**

[DUR1795]

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

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

[DUR1805]

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

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

[DUR1825]

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

[DUR1855]

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

[DUR1865]

37. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate.

[DUR1875]

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

**Roadworks**

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

**Water Reticulation, Sewer Reticulation, Drainage**

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

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

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

[DUR1895]



39. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.
- [DUR1955]
40. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
- [DUR2015]
41. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.
- [DUR2185]
42. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.
- Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.
- This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.
- [DUR2375]
43. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.
- [DUR2425]
44. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.
- [DUR2435]
45. Lot 1 and part of Lot 2 shall be filled to the design flood level of RL 5.1m AHD.
- [DURNS01]
46. All works shall comply with the recommendations of the Noise Impact Assessment, Tim Fitzroy and Associates, October 2009. Works shall not be permitted to unreasonably impact the amenity of any residential or public school premise.
- [DURNS02]

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

[DURNS03]

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

[DURNS04]

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

[DURNS05]

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

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

[PSC0005]

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

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

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

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

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

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

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

[PSC0165]

**52. Section 94 Contributions**

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

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

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

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

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

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

**6.5 Trips @ \$1166 per Trips \$7579**

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

**S94 Plan No. 4**

**Sector9\_4**

**Heavy Haulage Component**

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

**\\$Unit** the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.5

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

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

[PSC0175]

**53. Section 94 Contributions**

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

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

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

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

**Heavy Haulage Component**

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

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

where:

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

and:

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

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

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

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

[PCC0225/PSC0185]

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

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

[PSC0215]

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

The submission shall include copies of all undertaken test results.

[PSC0395]

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

[PSC0725]

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

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

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

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

[PSC0735]

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

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

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

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

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

[PSC0785]

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

[PSC0825]

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

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

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

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

[PSC0835]

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

[PSC0855]

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

The following information must accompany an application:

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

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

[PSC0885]

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

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

**Note:**

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

[PSC0915]

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

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

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

[PSC1065]



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

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

[PSC1115]

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

[PSC1165]

67. Electricity

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

- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

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

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

[PSC1185]

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

[PSCNS01]

**REPORT:**

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

**BACKGROUND:**

History

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

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

The Subject Site

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

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

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

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

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

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

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

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

### The Proposed Development

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

- a residential zoned allotment of 2130m<sup>2</sup> (proposed lot 1), and
- a residue allotment, primarily containing rural zoned land, of 2.639 hectares.

The proposed development includes:

- realignment of the stormwater drainage channel further to the east along the property boundary to enhance the developable area of the site
- use of fill so gained (6,600m<sup>3</sup>) on proposed lot 2
- importation of 18,200m<sup>3</sup> of fill for use on lot 1 and part of lot 2 so as to achieve a minimum 5.1m AHD, being the flood level for this area and the height of the existing levee bank.

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

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

#### *Stage 1*

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

#### *Stage 2*

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

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

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

The primary objectives of the earthworks are:

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

It is proposed to relocate the open drain to the eastern portion of the site which will generate approximately 6,600m<sup>3</sup> of cut, to be filled. The development will require the importation of 18,200m<sup>3</sup> of general fill to achieve flood height compliance of RL 5.1m AHD for proposed Lot 1. To achieve a useable filled platform on proposed Lot 2, it will be partly filled to RL 5.1m AHD with finished batters ranging from 2.8% at the southern end of the site to 33% at the northern end of the site.

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

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

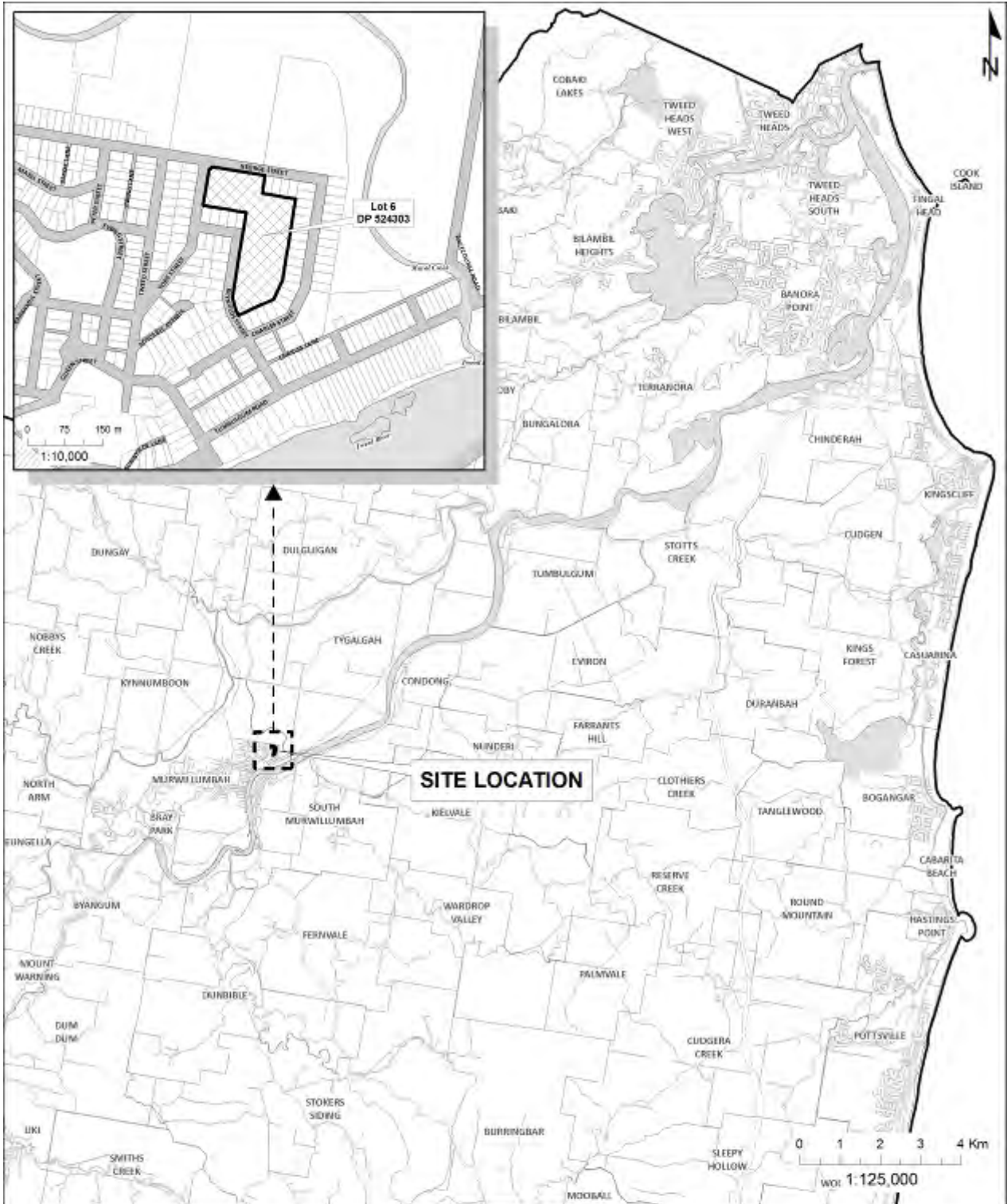
#### Public Submissions

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

#### Summary

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

**SITE DIAGRAM:**



**LOCALITY PLAN**

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

Filename: z:\esr\planning\mxd\A4P\_B&W\_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 February, 2010

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Coordinate System - MGA Zone 56  
Datum - GDA 94

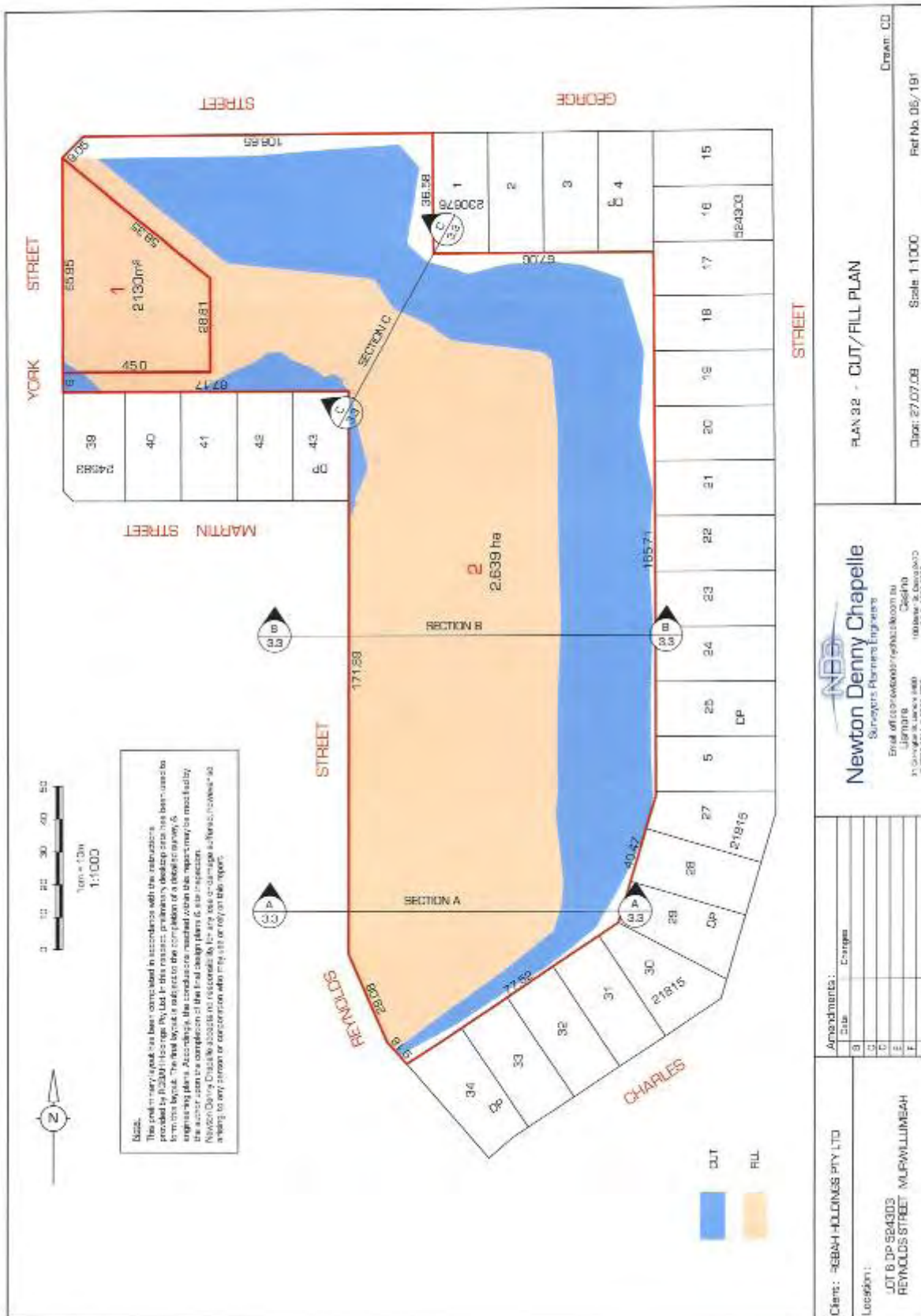
Cadastre: 24 February, 2010  
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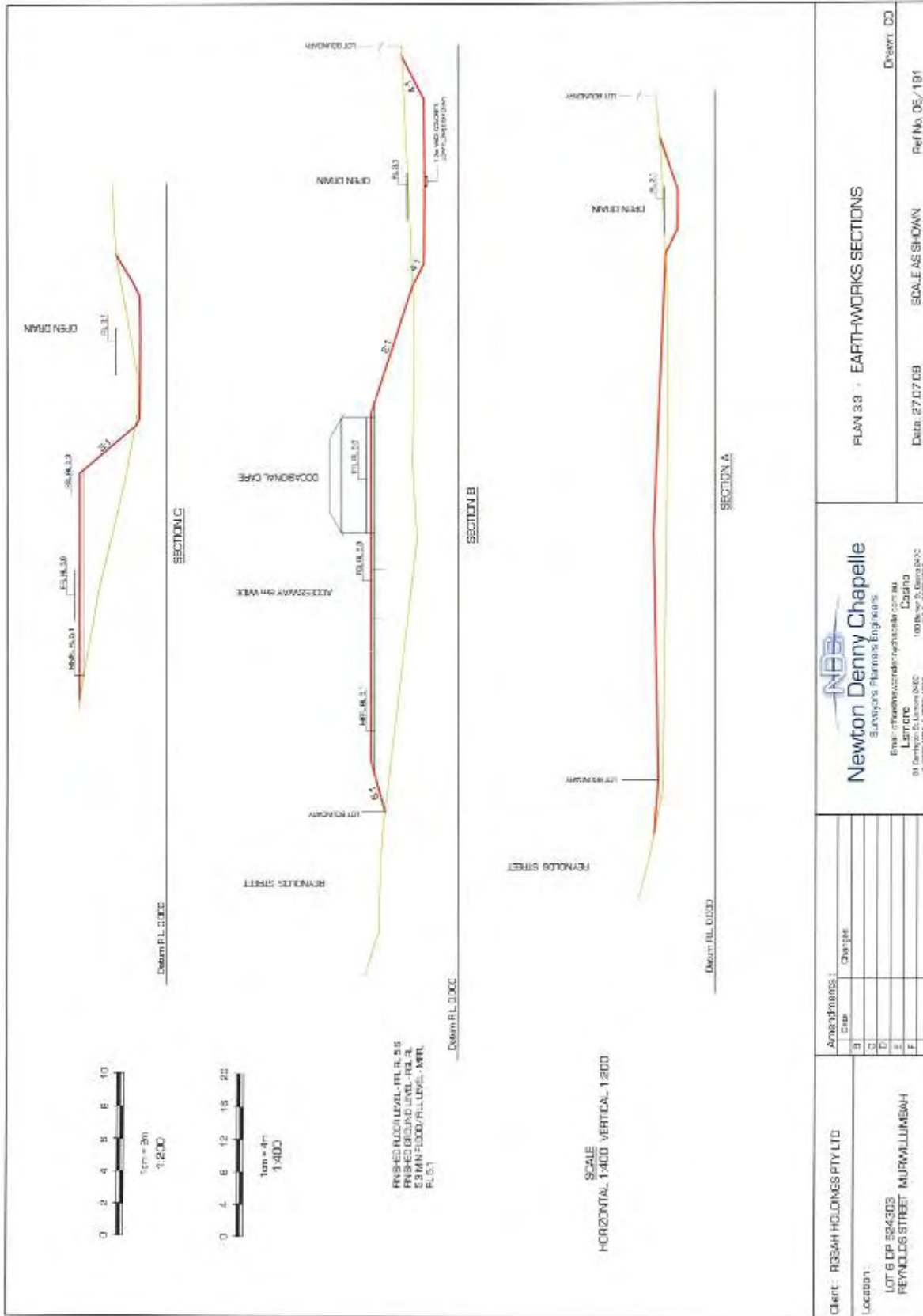


**DEVELOPMENT PLANS:**



Client: SBAH HOLDINGS PTY LTD	Amendments: Changes	<b>Newton Denny Chapel</b> Surveyors Planners Engineers Email: <a href="mailto:info@newdenny.com.au">info@newdenny.com.au</a> 112-114 York Street, Caspito Lightburn, QLD 4272 Phone: 07 5523 4862 Fax: 07 5523 4862	PLAN 32 - CUT/FILL PLAN	Drawn: CD
Location: LOT 8 DP 584303 REYNOLDS STREET MURWILLUMBEAH	A B C D E F		Date: 27.07.09 Scale: 1:1000 Ref No: 05/191	





Client: RISSAH HOLDINGS PTY LTD	Drawn: C3
Location: LOT 6 DP 584303 REYNOLDS STREET MURWILLUMBAH	Date: 27.07.09
	Scale: AS SHOWN
	PLAN 3.9 - EARTHWORKS SECTIONS
 <b>Newton Denny Chapelle</b> Surveyors Planners Engineers Email: <a href="mailto:info@ndc.com.au">info@ndc.com.au</a> Website: <a href="http://www.ndc.com.au">www.ndc.com.au</a> 81 Dandenong Street, Dandenong VIC 3175 Phone: (03) 9595 9595 Fax: (03) 9595 9596	
APPROVED: _____ Date: _____ Charge: _____	Ref No: 05/191



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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 – Consent Considerations

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

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

Clause 11: Zoning

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

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

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

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

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

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

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

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

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

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

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

#### Clause 15 - Essential Services

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

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

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The site exhibits Class 3 and 5 Acid Sulfate Soils.

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

Other Specific Clauses

Clause 19 – Subdivision (General)

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

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

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

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

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

### Clause 31 – Development Adjoining Waterbodies

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

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

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

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

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

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

### Clause 34 – Flooding

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

Modelling shows that 11,500m<sup>3</sup> of storage is required within the realigned drain to provide adequate storage for various duration Q100 storm events, including safety factors. The storage volume will be provided below RL 3.2m AHD, as residential properties in Charles St are at a minimum of approximately RL 3.5m AHD. This approach was reviewed by Council's Water Unit in consideration that the earthworks may impact on existing infrastructure traversing the site.

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

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

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

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

#### Clause 39 – Remediation of Contaminated Land

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

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

#### Clause 54 – Tree Preservation Order

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

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

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

#### Clause 57 – Protection of Existing Dwelling Entitlement

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

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

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

## **State Environmental Planning Policies**

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

#### **Clause 12: Impact on agricultural activities**

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

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

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

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

#### **Clause 43: Residential development**

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

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

#### **SEPP No. 1 - Development Standards**

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

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

*Consent may only be granted to the subdivision of land:*

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

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

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

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

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

**Assessment of the applicant’s submission:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



SEPP No. 55 - Remediation of Land

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

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

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

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

SEPP (Rural Lands) 2008

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

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

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

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

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

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

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

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

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

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

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

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

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

### **5.3      *Development near zone boundaries [optional]***

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

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

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

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

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

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

A3-Development of Flood Liable Land

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

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

A5-Subdivision Manual

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

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

Clause 92(a) Government Coastal Policy

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

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

Access, Transport and Traffic

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

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

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

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

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

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

### Flora and Fauna

No threatened species were recorded on the subject site.

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

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

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

### Drainage

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

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

Drain realignment will improve drainage through the site but on-site detention will remain an important factor because 11,500m<sup>3</sup> of flood storage within the realigned and widened drain is required to satisfy Engineering conditions, should the development proceed.

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

Several easements are required to accommodate the proposed development:

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

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

### Noise and Vibration

#### *Traffic*

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

#### *Construction*

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

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

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

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

Surrounding Land uses/Development

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

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

Effluent Disposal

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

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

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

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

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

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

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA09/0722 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

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

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

**RECOMMENDATION:**

**That: -**

- A. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA09/0722 for a dwelling swimming pool & spa at Lot 31 DP 1030322, Collins Lane Casuarina be approved subject to the following conditions: -**

## GENERAL

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

[GEN0015]

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

[GEN0115]

## PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

## 4. Stormwater

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

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

[PCC1135]

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

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

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

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

[PCC1145]

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

[PCCNS01]

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

[PCCNS02]

**PRIOR TO COMMENCEMENT OF WORK**

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:

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

[PCW0215]

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

[PCW0225]

10. Residential building work:

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

\* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

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

[PCW0235]

11. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

- (a) a standard flushing toilet connected to a public sewer, or  
(b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

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

[PCW0255]

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

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

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

[PCW0985]

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

[PCW1005]

#### **DURING CONSTRUCTION**

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

**Monday to Saturday from 7.00am to 6.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

[DUR0445]

22. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

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

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

[DUR1005]

24. Zone Boundary

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

[DUR1035]

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

[DUR1055]

26. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR1945]

28. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 & AS 1926.3 -2003. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

29. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9. [DUR2085]
30. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition. [DUR2185]
31. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building. [DUR2485]
32. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
  - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR2495]
33. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
34. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
35. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50°C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]



36. Sewer connections within the 7(f) zone are to comply with the following:-
- (a) Two inspection shafts shall be provided to each lot. The first shall be provided immediately adjacent to the connection point provided by the developer. The second inspection shaft at 0.5 metres inside the 2(e) zone boundary on each property. Inspection shafts are to be finished at surface level with a standard bolted trap screw cap and concrete surround.
  - (b) Pipe work size for all lots under this approval are to have a 100mm diameter sewer.

[[DUR2695]

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

[DUR2705]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0205]

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

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

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

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

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

[POC0265]

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

[POC0435]

## USE

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

[USE0175]

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

[USE0505]

### 43. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

**REPORT:**

**Applicant:** Croft Developments

**Owner:** Mrs KS Tyson

**Location:** Lot 31 DP 1030322 Collins Lane, Casuarina

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

**Cost:** \$500,000

**BACKGROUND:**

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

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

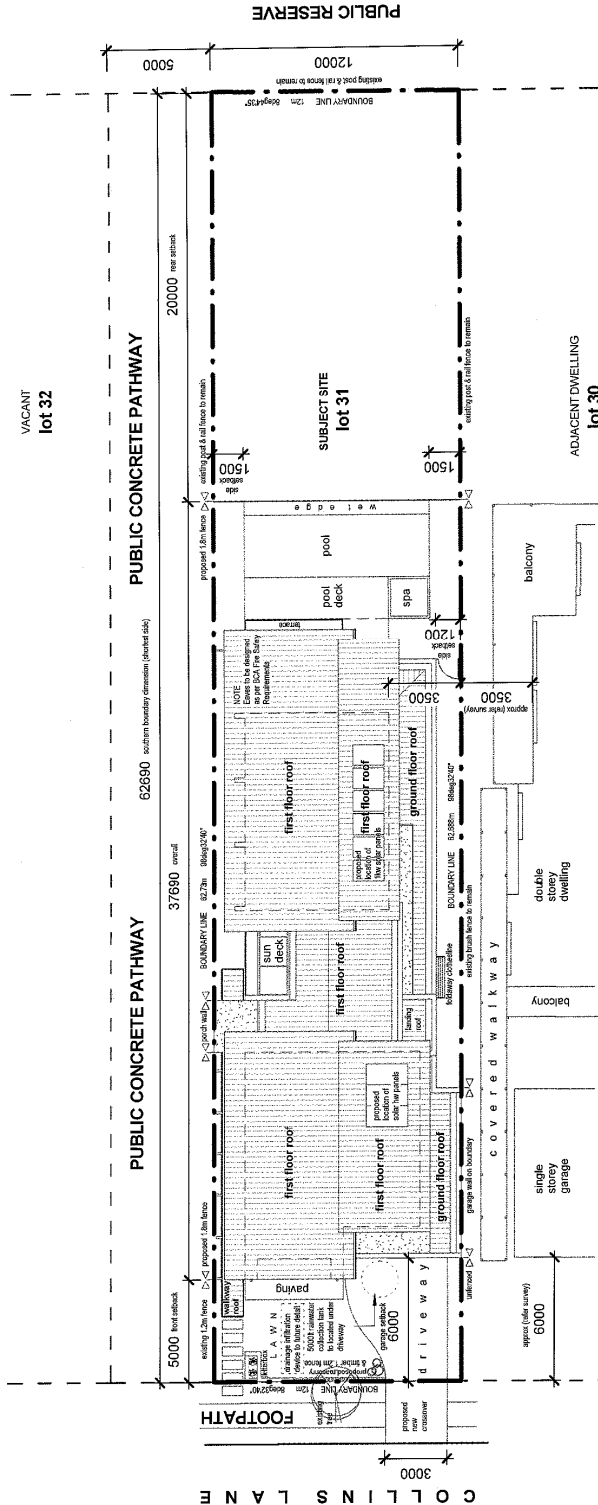
**SITE DIAGRAM:**



**LOCALITY PLAN**  
 Lot 31 DP 1030322  
 Collins Lane, Casuarina

Filename: z:\esr\planning\mxd\A4P_B&W_SitePlan.mxd Author: J.Batchelor - Planning Reforms Unit Date Printed: 02 March, 2010	GDA Coordinate System - MGA Zone 56 Datum - GDA 84 © Dept. of Lands & Tweed Shire Council Cadastre: 02 March, 2010 DO NOT SCALE COPY OVER - NOT DRAWN	Civic and Cultural Centre 3 Tumbulgam Road Murwillumbah NSW 2484 PO Box 616 Murwillumbah NSW 2484 T: (02) 6670 2400   1300 292 670 F: (02) 6670 2483 W: www.tweed.nsw.gov.au E: shire.reforms@tweed.nsw.gov.au
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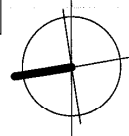
DEVELOPMENT PLANS:



<b>SITE AREA</b>	752.5m <sup>2</sup>
<b>BUILDING AREAS</b>	
ground floor	230m <sup>2</sup>
garage	50m <sup>2</sup>
porch	5m <sup>2</sup>
TOTAL	315m <sup>2</sup>
<b>IMPERVIOUS AREAS</b>	
roof	180m <sup>2</sup>
balcony	31m <sup>2</sup>
deck	32m <sup>2</sup>
terrace	32m <sup>2</sup>
TOTAL	235m <sup>2</sup>
<b>TOTAL</b>	550m <sup>2</sup>
<b>FSR AREAS</b>	
ground floor	216m <sup>2</sup>
first floor	152m <sup>2</sup>
TOTAL	378m <sup>2</sup> (50%)
<b>IMPERVIOUS AREAS</b>	
roof	322m <sup>2</sup>
deck non porous	10m <sup>2</sup>
paving non porous	37m <sup>2</sup>
TOTAL	429m <sup>2</sup> (57%)

**design response**

1:200

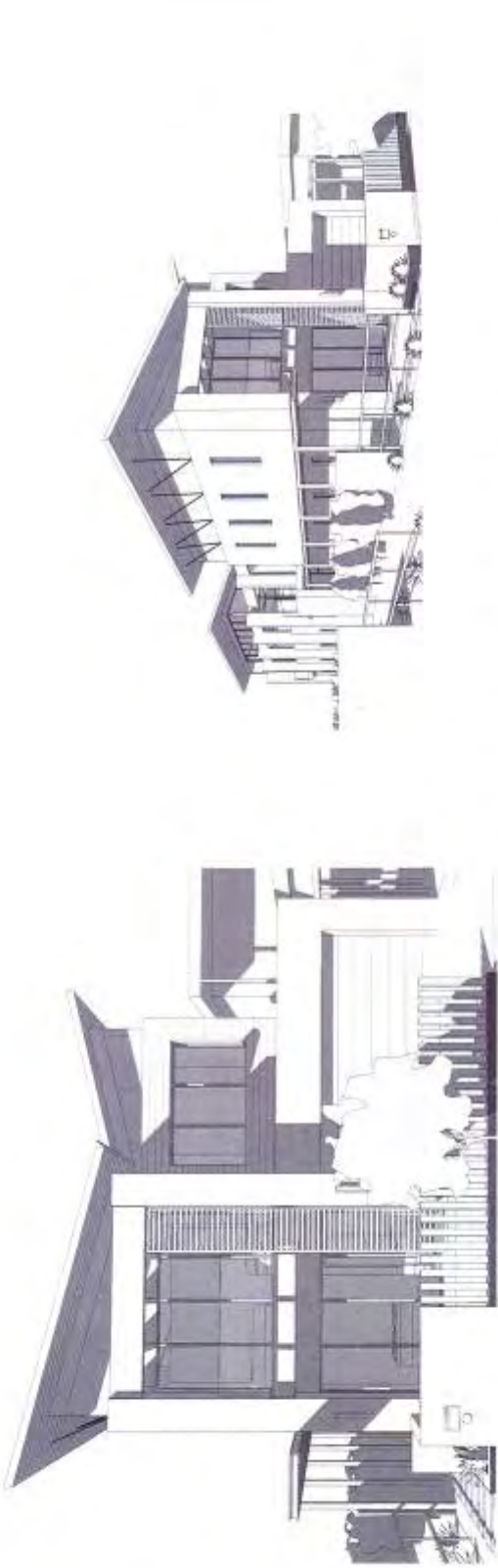


TP04

Rev A



PROJECT proposed new dwelling  
 ADDRESS lot 31 collins lane casuarina nsw  
 CLIENT graeme croft  
 DRAWING design response  
 SCALE 1:200 @ A3  
 DATE 05/11/2009  
 Drawn by: AM



**l o t 3 1 c o l l i n s l a n e c a s u a r i n a**

- CONTENTS**
- TP01 contents & perspectives
  - TP02 site survey
  - TP03 site photos
  - TP04 design response & areas
  - TP05 proposed ground floor plan
  - TP06 proposed first floor plan
  - TP07 front & rear elevations
  - TP08 side elevations
  - TP09 sections
  - TP10 shadow diagrams
  - TP11 window & door schedule



<b>PROJECT</b> proposed new dwelling	<b>ADDRESS</b> lot 31 collins lane casuarina NSW	<b>CLIENT</b> grainne croft	<b>DRAWING</b> contents & perspectives	<b>SCALE</b> nls @ A3	<b>DATE</b> 05/11/2009	<b>Rev A</b> Rev A	<b>TP01</b>
			1 of 11				



JACK STEINBERGER  
ARCHITECTS  
100/102  
STURGEON  
ST  
SYDNEY  
NSW 2008  
www.jacksteinberger.com.au




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



2. Looking southeast from Collins Lane towards adjacent dwelling



3. Panoramic view of subject site from northern boundary

looking south towards adjacent dwelling

looking southeast towards beach

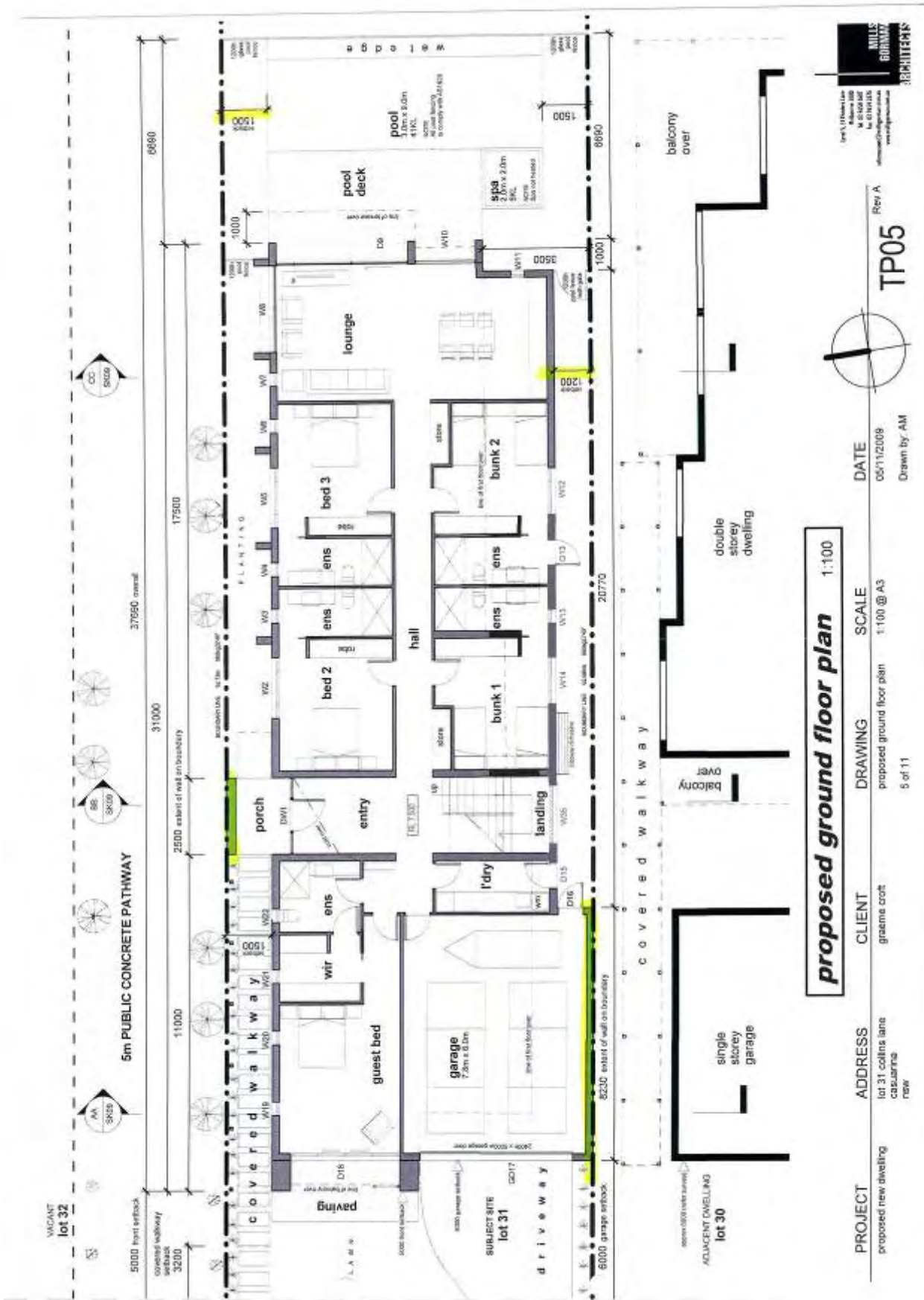
looking southwest towards street

**site photos**  
145-1, 145-2, 145-3, 145-4, 145-5, 145-6, 145-7, 145-8, 145-9, 145-10, 145-11, 145-12, 145-13, 145-14, 145-15, 145-16, 145-17, 145-18, 145-19, 145-20, 145-21, 145-22, 145-23, 145-24, 145-25, 145-26, 145-27, 145-28, 145-29, 145-30, 145-31, 145-32, 145-33, 145-34, 145-35, 145-36, 145-37, 145-38, 145-39, 145-40, 145-41, 145-42, 145-43, 145-44, 145-45, 145-46, 145-47, 145-48, 145-49, 145-50, 145-51, 145-52, 145-53, 145-54, 145-55, 145-56, 145-57, 145-58, 145-59, 145-60, 145-61, 145-62, 145-63, 145-64, 145-65, 145-66, 145-67, 145-68, 145-69, 145-70, 145-71, 145-72, 145-73, 145-74, 145-75, 145-76, 145-77, 145-78, 145-79, 145-80, 145-81, 145-82, 145-83, 145-84, 145-85, 145-86, 145-87, 145-88, 145-89, 145-90, 145-91, 145-92, 145-93, 145-94, 145-95, 145-96, 145-97, 145-98, 145-99, 145-100

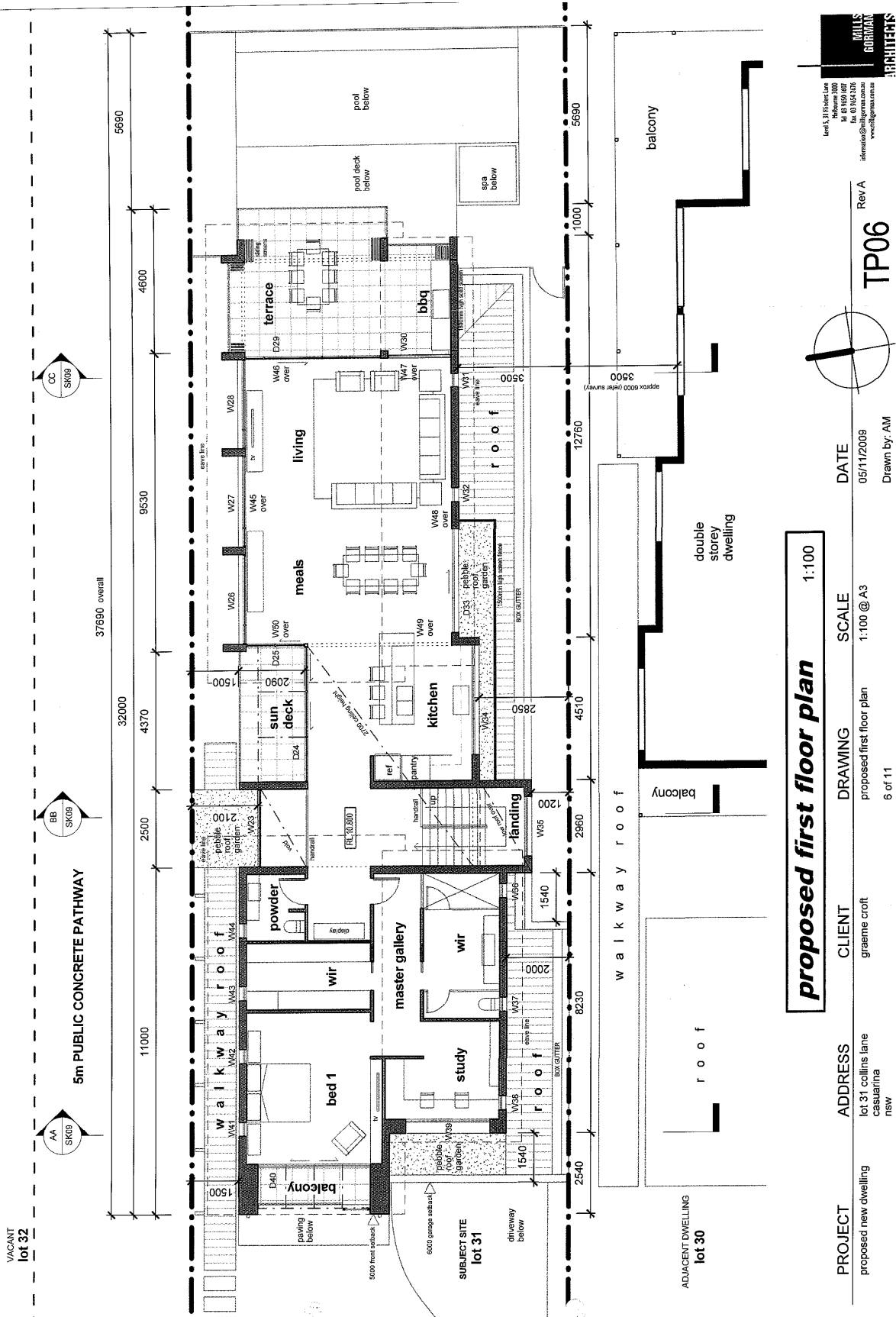
lot 31 collins lane  
CROSSING  
182W

TP03 Rev A

MILLS  
GURNAY  
ARCHITECTS



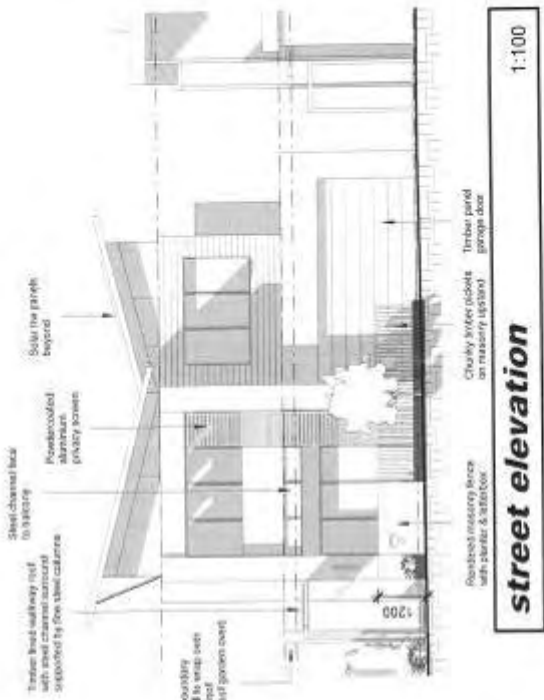




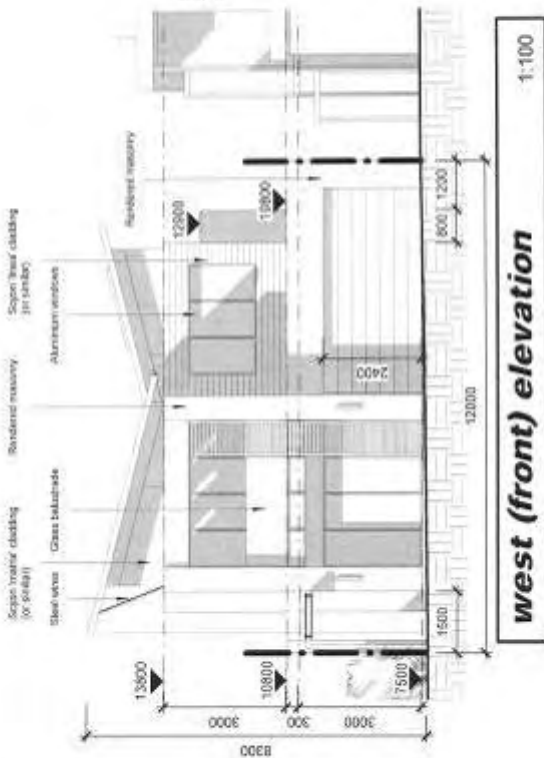
**proposed first floor plan** 1:100

<b>PROJECT</b>	proposed new dwelling	<b>CLIENT</b>	grame croft	<b>DRAWING</b>	proposed first floor plan	<b>DATE</b>	05/11/2009
<b>ADDRESS</b>	lot 31 collins lane casuarina new	<b>SCALE</b>	1:100 @ A3	<b>RevA</b>	TP06	<b>Drawn by:</b>	AM

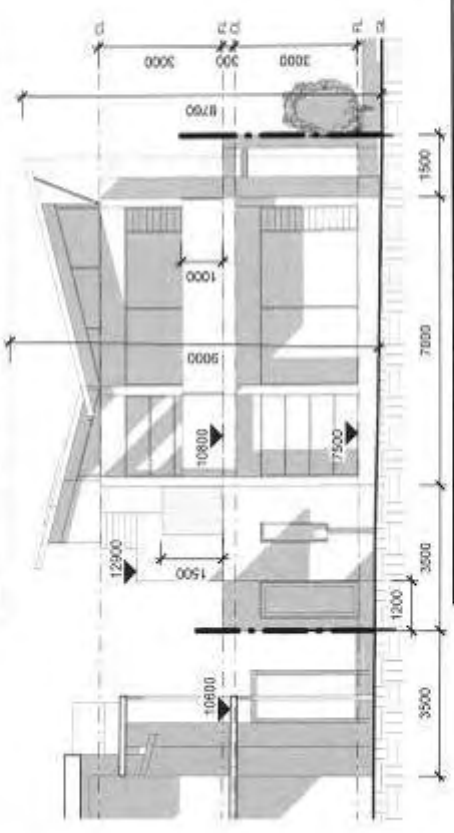
Lewis J. Millis (Lic)
   
 Tel: 08 9469 4407
   
 Fax: 08 9464 4276
   
 info@mgarch.com.au
   
 www.mgarch.com.au



**west (front) elevation** 1:100



**east (rear) elevation** 1:100



**street elevation** 1:100

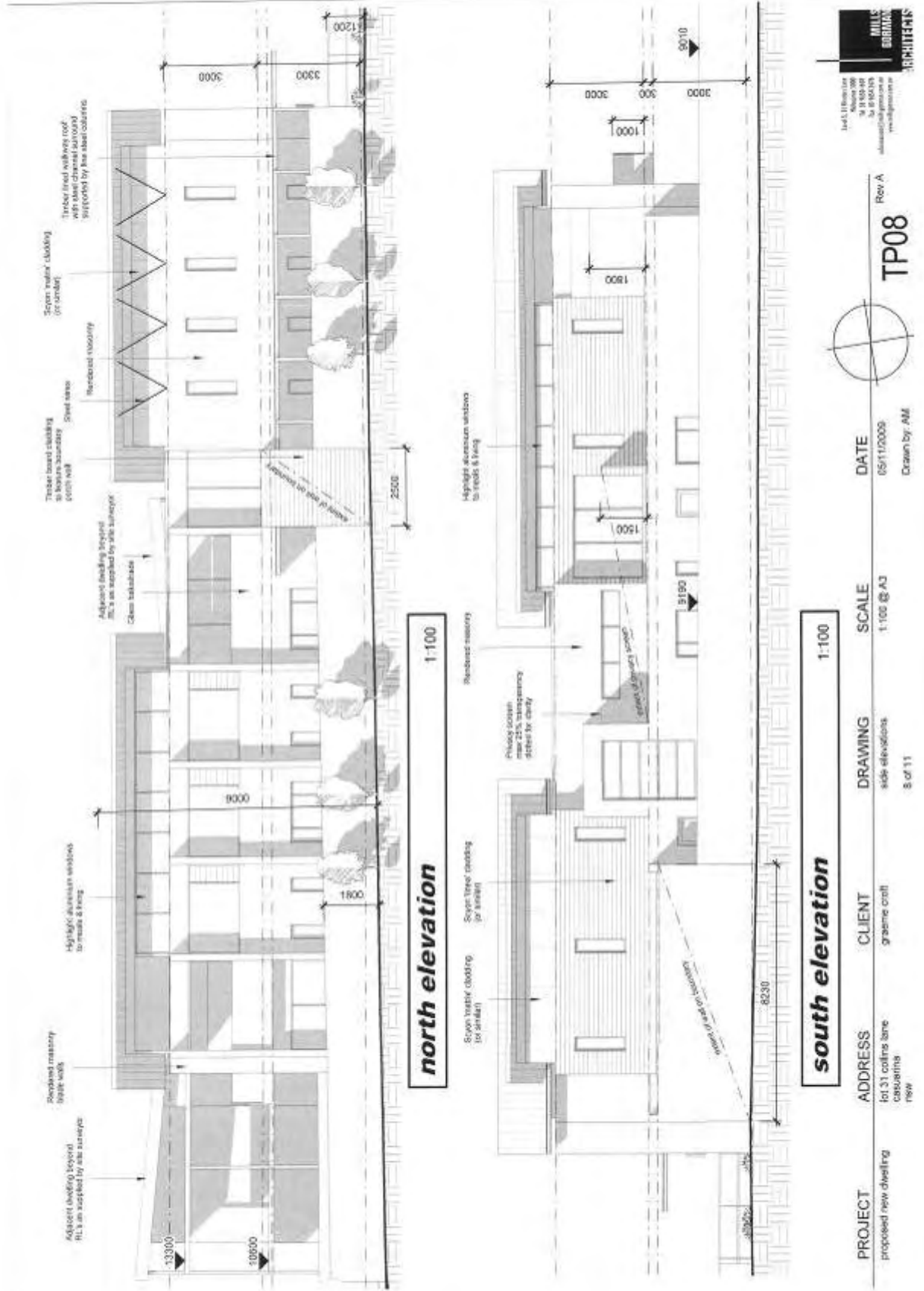


DATE 05/11/2009  
 Drawn by: AM

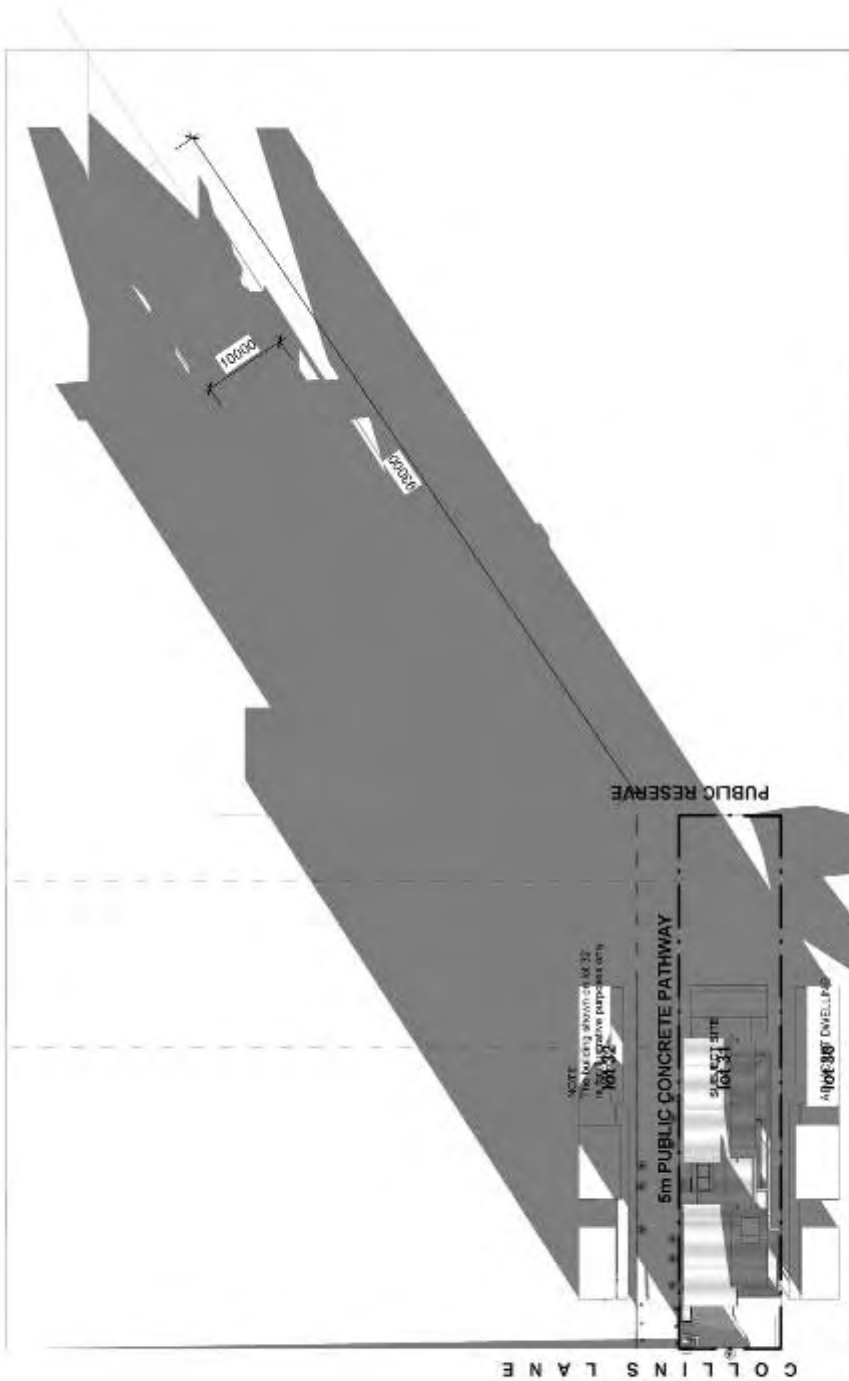
PROJECT proposed new dwelling  
 ADDRESS lot 31 collins lane casuarina NSW  
 CLIENT groome craft  
 DRAWING front & rear elevations  
 SCALE 1:100 @ A3  
 DRAWING 7 of 11

TP07 Rev A

ARCHITECTS  
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SHADOW DIAGRAMS:



NOTE  
Shadows as per  
Summer Solstice  
21.12 Brisbane

**7pm summer shadow diagram** 1:500

SHADOW DIAGRAMS SHEET LIST

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



Rev B  
**TP10g**

DATE 05/11/2008  
Drawn by: AM

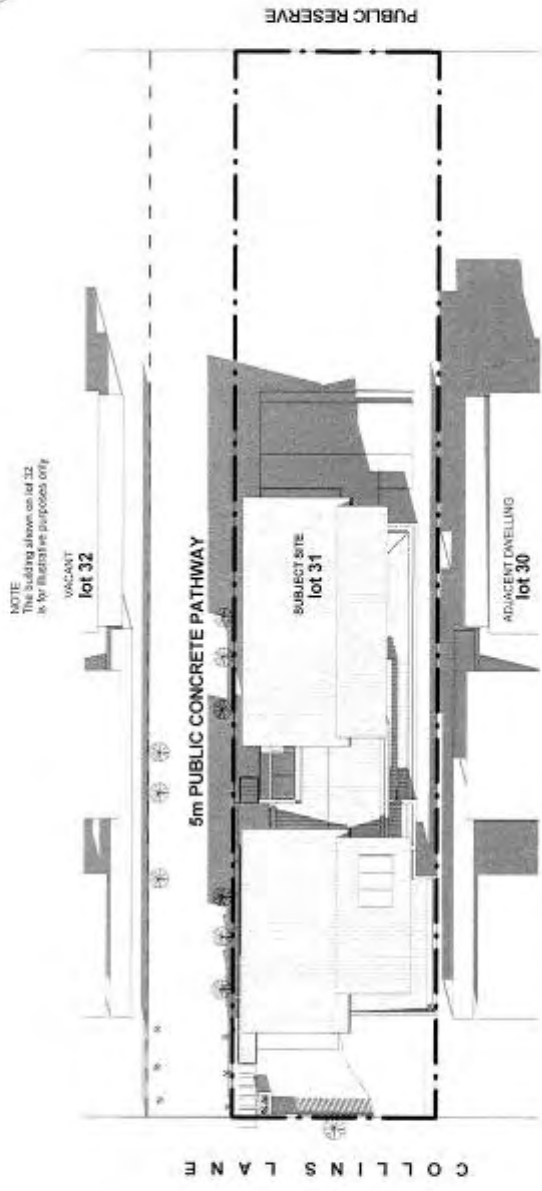
SCALE 1:250 @ A3

DRAWING shadow diagrams  
10 of 11

CLIENT grames craft

ADDRESS lot 31 collins lane  
casuarina  
new

PROJECT proposed new dwelling



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

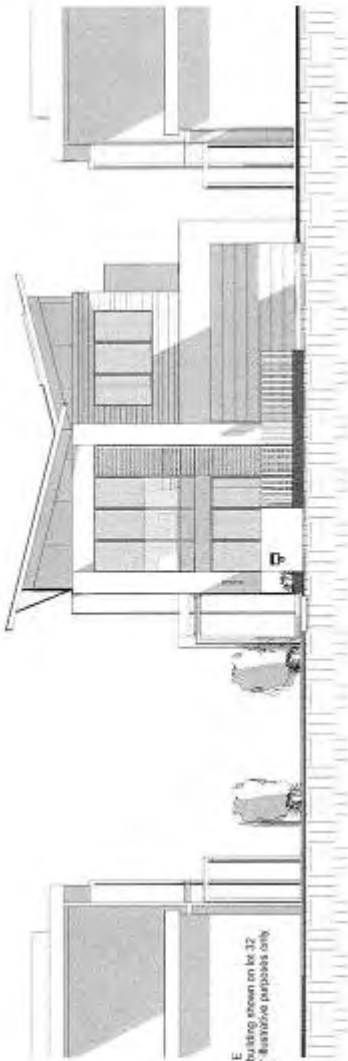
- SHADOW DIAGRAMS SHEET LIST
- 10. Site model used for studies
  - 10a. 9am spring
  - 10b. 12pm spring
  - 10c. 3pm spring
  - 10d. 9am summer
  - 10e. 12pm summer
  - 10f. 3pm summer
  - 10g. 7pm summer
  - 10h. 9am winter
  - 10i. 12pm winter
  - 10j. 3pm winter

NOTE  
Shadows as per  
Summer Solstice  
21.12 Brisbane

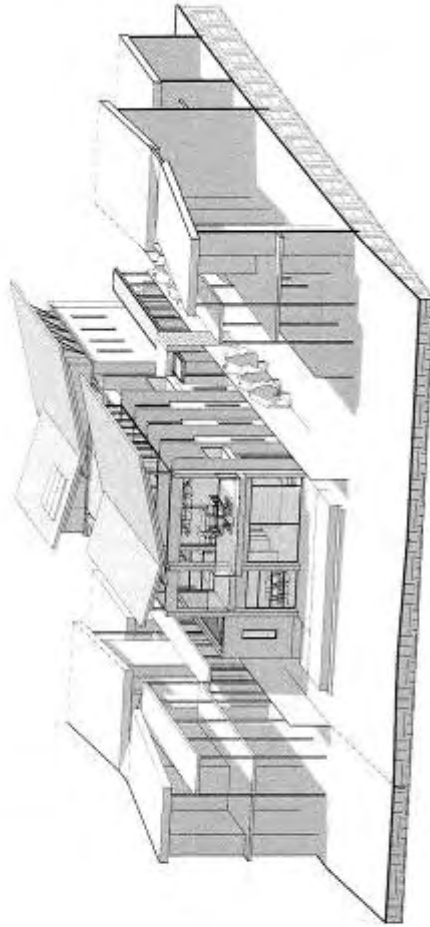
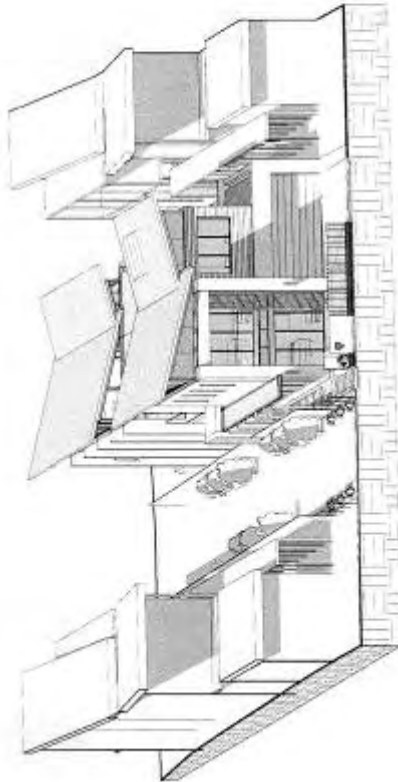
**3pm summer shadow diagram** 1:250



PROJECT	proposed new dwelling	CLIENT	greaves craft	DRAWING	shadow diagrams	SCALE	1:250 @ A3	DATE	05/11/2009	Rev A
ADDRESS	lot 31 collins lane casuarina new				10 of 11					
										TP10f
										Drawn By: AM



NOTE  
 All shading shown on lot 32  
 is for illustrative purposes only.



**shadow model (12pm spring)** nts

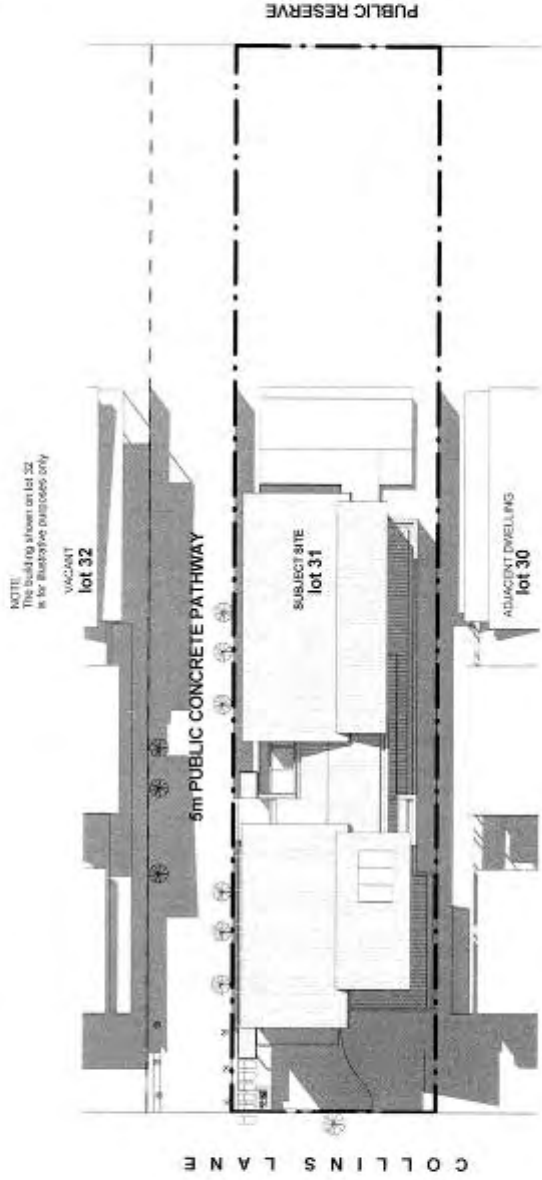
SHADOW DIAGRAMS SHEET LIST

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

NOTE  
 Shadows as per  
 Spring Equinox  
 21.09 Brisbane



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

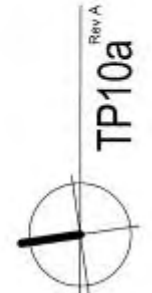


NOTE:  
The building shown on lot 32  
is for illustrative purposes only

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

NOTE  
Shadows as per  
Spring Equinox  
Spring Equinox  
21.09 Brisbane

**9am spring shadow diagram** 1:250



DATE 06/11/2009  
Drawn by: AM

SCALE 1:250 @ A3

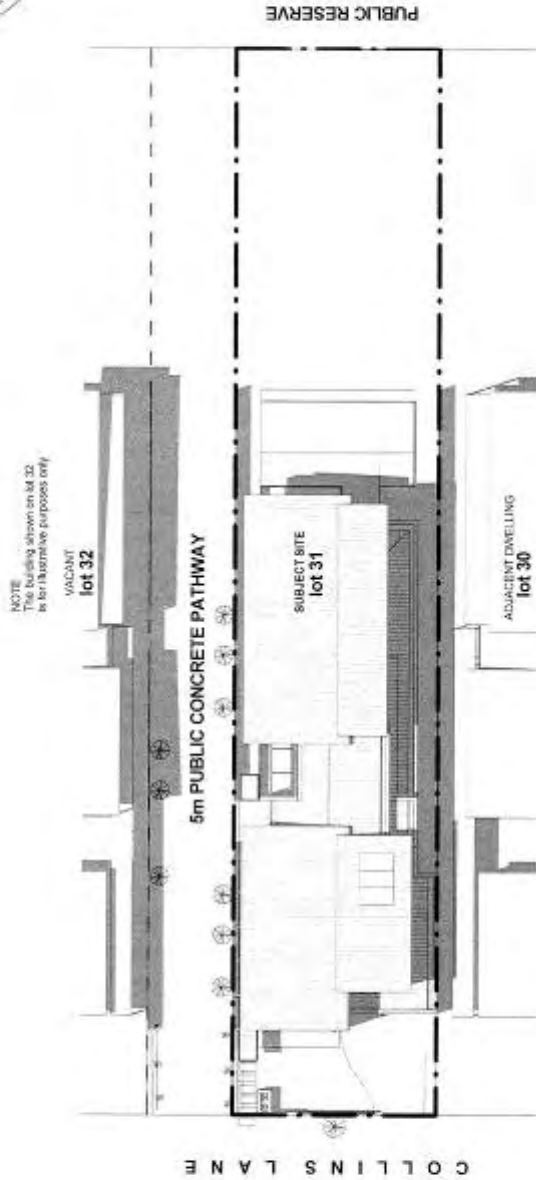
DRAWING shadow diagrams  
10 of 11

CLIENT greene croft

ADDRESS lot 31 collins lane  
casuarina  
new

PROJECT proposed new dwelling

Rev A  
**TP10a**



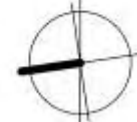
NOTE  
The building shown on lot 32  
is for illustrative purposes only

NOTE  
Shadows as per  
Spring Equinox  
21.06 Brisbane

**12pm spring shadow diagram** 1:250

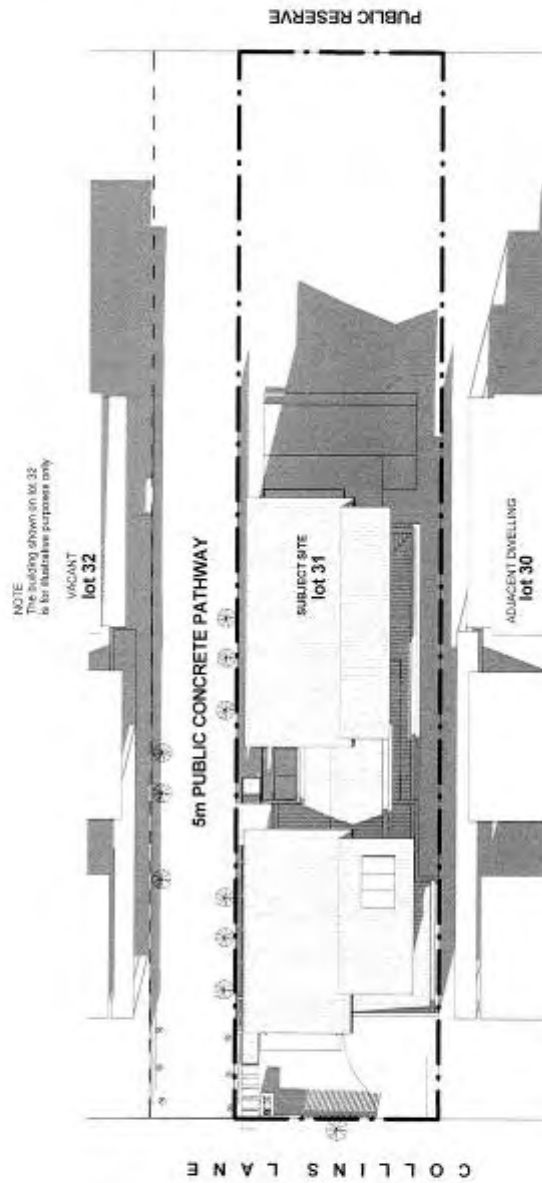
SHADOW DIAGRAMS SHEET LIST

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



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



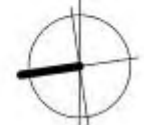


NOTE  
The building shown on lot 32  
is for illustrative purposes only

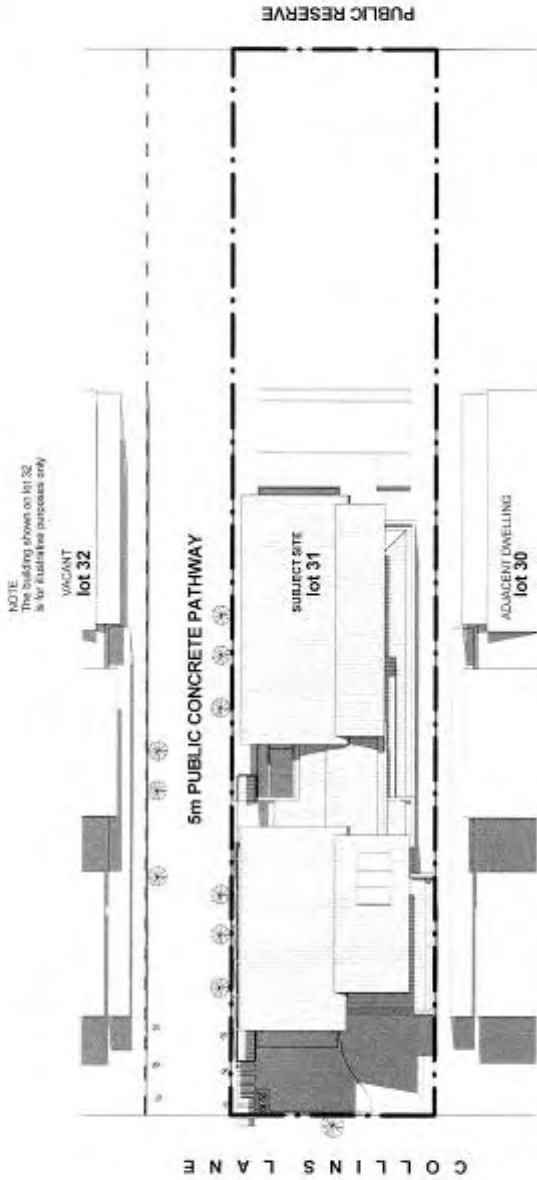
- SHADOW DIAGRAMS SHEET LIST
- 10. Site model used for studies
  - 10a. 9am spring
  - 10b. 12pm spring
  - 10c. 3pm spring
  - 10d. 9am summer
  - 10e. 12pm summer
  - 10f. 3pm summer
  - 10g. 7pm summer
  - 10h. 9am winter
  - 10i. 12pm winter
  - 10j. 3pm winter

NOTE  
Shadows as per  
Spring Equinox  
21.09 Brisbane

**3pm spring shadow diagram** 1:250



PROJECT	proposed new dwelling	ADDRESS	lot 31 collins lane casuarina new	CLIENT	grahame croft	DRAWING	shadow diagrams 10 of 11	SCALE	1:250 @ A3	DATE	05/11/2009	Rev A
												TP10C
												Drawn by: AM



NOTE: Buildings shown on lot 32  
to illustrate purposes only

SHADOW DIAGRAMS SHEET LIST

- 10 the model used for studies
- 10a 9am spring
- 10b 12pm spring
- 10c 3pm spring
- 10d 6am summer
- 10e 12pm summer
- 10f 3pm summer
- 10g 7pm summer
- 10h 9am winter
- 10i 12pm winter
- 10j 3pm winter

NOTE  
Shadows as per  
Summer Solstice  
21.12 Brisbane

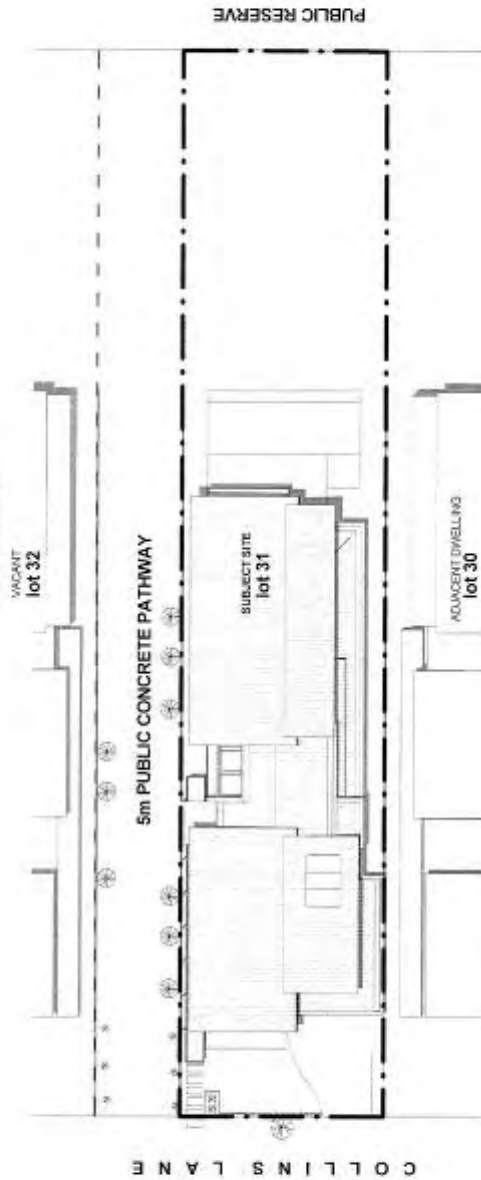
**9am summer shadow diagram** 1:250



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



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



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

NOTE  
Shadows as per  
Summer Solstice  
21.12 Brisbane

**12pm summer shadow diagram** 1:250



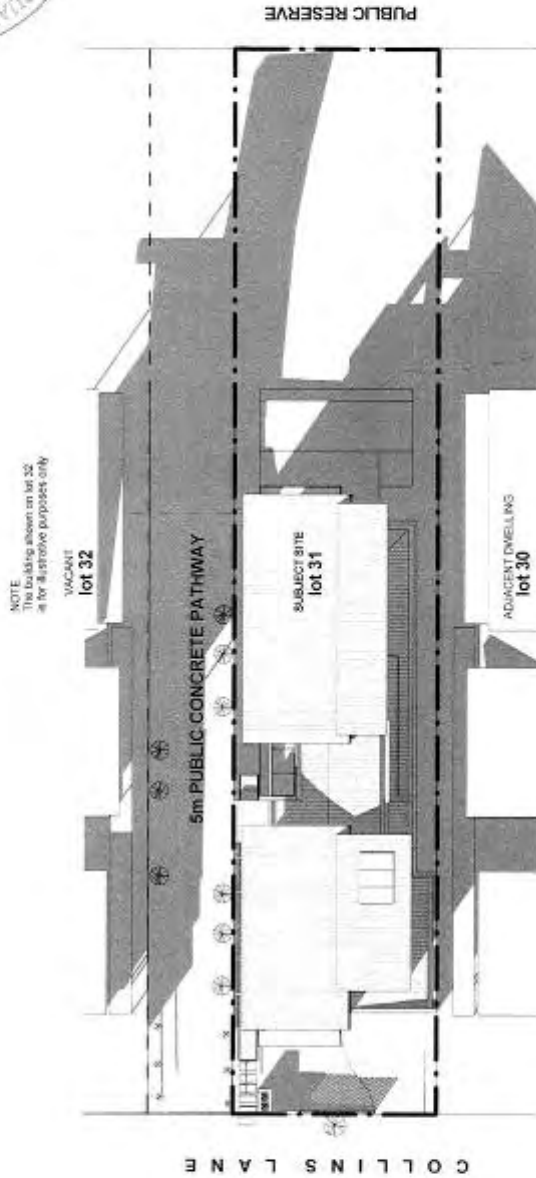
Rev A  
**TP10e**  
DATE 05/11/2009  
Drawn by: AM

SCALE 1:250 @ A3  
DRAWING shadow diagrams  
10 of 11

CLIENT graeme craft

ADDRESS lot 31 collins lane  
calcastris  
nsw

PROJECT proposed new dwelling



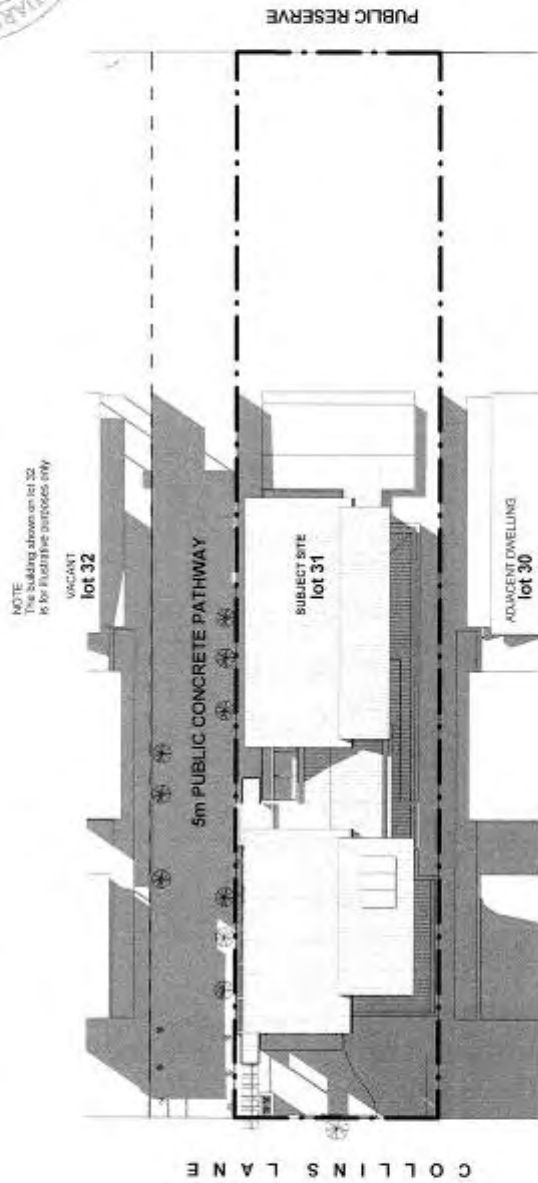
NOTE  
Shadows as per  
Winter Solstice  
21.06 Brisbane

**3pm winter shadow diagram** 1:250

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



PROJECT proposed new dwelling  
ADDRESS lot 31 collins lane casuarina nsw  
CLIENT greene croft  
DRAWING shadow diagrams 10 of 11  
SCALE 1:250 @ A3  
DATE 05/11/2009  
Rev A  
TP10j  
Drawn by: AM



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

**9am winter shadow diagram** 1-250

NOTE  
Shadows as per  
Winter Solstice  
21.05 Brisbane



Rev A  
**TP10h**

DATE 05/11/2009  
Drawn by: AM

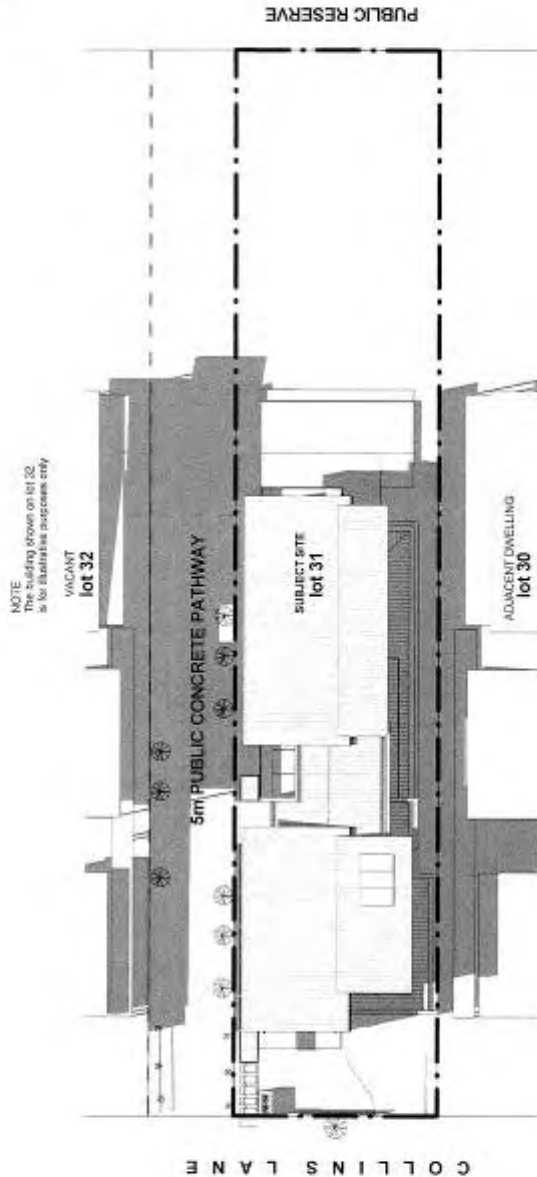
SCALE 1:250 @ A3

DRAWING shadow diagrams  
10 of 11

CLIENT graeme craft

ADDRESS lot 31 collins lane  
cbeuwnis  
nsw

PROJECT proposed new dwelling



- SHADOW DIAGRAMS SHEET LIST
- 10 the model used for studies
  - 10a 8am spring
  - 10b 12pm spring
  - 10c 3pm spring
  - 10d 8am summer
  - 10e 12pm summer
  - 10f 3pm summer
  - 10g 8pm summer
  - 10h 8am winter
  - 10i 12pm winter
  - 10j 3pm winter

**12pm winter shadow diagram** 1:250

NOTE  
Shadows as per  
Winter Solstice  
21.06 Brisbane



PROJECT	ADDRESS	CLIENT	DRAWING	SCALE	DATE	Rev A
proposed new dwelling	lot 31 collins lane casuarina NSW	greeme croft	shadow diagrams 10 of 11	1:250 @ A3	05/11/2009	TP10i
						Drawn by: AM

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

The secondary objective relates to the provision of other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

The proposed development is consistent with the objectives of the zone.

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

The proposed development is consistent with the zone objectives.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

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

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

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

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

Clause 39A – Bushfire Protection

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

**State Environmental Planning Policies**

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

Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

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

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

Clause 33: Coastal hazard areas

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



### SEPP No. 1 - Development Standards

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

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

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

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

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

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

### SEPP No 71 – Coastal Protection

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

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SEPP (Building Sustainability Index: BASIX) 2004

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

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

Draft Tweed Local Environmental Plan 2010.

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

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

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 of Tweed DCP introduced detailed parameters for improved site outcomes including the provision of deep soil zones, impermeable site area, private open space, landscaping, car parking, setbacks and general street presence. These are addressed below.

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools

Public Domain Amenity

**Streetscape**

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

The dwelling is proposed to be set back 5m from the street which is consistent with the surrounding developments. The garage will be setback 6 metres. This is consistent with the objectives of Sections A1 and B5 (Casuarina Beach) of the Tweed Development Control Plan.

**Public Views and Vistas**

The proposal will not result in an unreasonable view loss of the beach and foreshore given that the dwelling is 2 storey. The proposed dwelling will provide for view corridors for dwellings located on the western side of Collins Lane. An additional view corridor is also available via the public walkway that is positioned on the northern side of the property.

### **Deep Soil Zones**

The property contains two areas of deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling adjacent to the eastern property boundary.

The deep soil zone in the front yard of the property extends across the entire width of the site, and excludes the concrete driveway and entrance path, which is consistent with the design control requirements.

The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a depth of 20 metres.

### **Impermeable Site Area**

The current provisions of A1 limit the maximum allowable impervious surface area of the site to 60% for allotments over 750m<sup>2</sup>. The area of the subject site is 752m<sup>2</sup> and therefore the maximum impermeable area permitted at the completion of the development would be 451m<sup>2</sup>.

The proposal has a calculated impermeable area of 56% or 422m<sup>2</sup>. This being less than the maximum 60% permitted.

### **External Living Areas**

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

### **Landscaping**

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the southern side boundary and shrubs within the front and rear setbacks.

The proposal is generally consistent with this design control.

### **Setbacks**

The proposal has setbacks of 1.5 metres to the northern boundary as required by Section A1 of the TDCP with the exception of a point encroachment of a 2.5 metres wall which is proposed to be positioned in close proximity to the boundary. As this wall will adjoin a public path it is not considered that the wall will have a detrimental affect on the amenity of the area.

The southern wall of the majority of the dwelling is proposed to be setback 1.2 metres from the boundary. However the majority of this elevation is single storey. It is considered that this minor departure from the 1.5 metres required by Section A1 of the TDCP which typically relates to a 2 storey building and will not detract from the objectives of the DCP. It should also be noted that Section B5 of the TDCP which is a specific locality control permits external walls to be constructed up to 900mm from side boundaries.

It is also proposed to construct the external southern wall of the garage which has a length of 8.23 metres, up to the southern boundary.

The proposal was notified which resulted in an objection being received in relation to the proposed position of the external walls of the dwelling and garage.

Section A1 of the TDCP permits garages to be positioned up to 450mm of a side boundary. As noted above Section B5 of the TDCP permits external walls to be positioned 900mm from side boundaries. Furthermore Section A1 of the Tweed Development Control Plan permits single storey dwellings to be positioned up to 900mm from a side boundary.

An instrument under Section 88B of the Conveyancing Act 1919 is applicable to the site under deposited plan 1030322. This is also a site specific control and is common to many lots within the Casuarina area. This control permits the external garage wall of the subject property to be constructed up to the side boundary as long as it is constructed of low maintenance materials such as masonry. It should also be noted that the Architectural Review Committee for the estate has given its consent for the external wall of the garage to be positioned in close proximity to the side boundary. It is acknowledged that within the estate there exists a mixture of external garage walls that are positioned in close proximity to boundaries and walls that also comply with the standard 900mm setback requirements.

In a submission made by the applicants planning consultant, Planit consulting has advised the following;

*“We feel satisfied that the issues raised in the submission are compliant with the relevant controls and that the design proposed will not have any significant detrimental impact on adjoining properties and accordingly no alteration to the submitted plans are considered necessary”*

It is considered in this circumstance due to the existence of three setback controls and the existence of an objection from the adjacent property owner that Council should recommend that a compromise be attained by requiring a side boundary setback of 450mm. This setback will also enable the existing brushwood fence to remain in place during the construction phase of the project and allow for future maintenance of the garage wall and fence.

### **Building Height**

The maximum height of the dwelling is 8.76 metres which is consistent the current maximum design control of 9 metres.

### **Ceiling Height**

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 3.0 m which satisfies the current requirements of the DCP.

### Building Amenity

#### **Sunlight Access**

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated to the east adjacent to the pool area.

Shadow diagrams submitted indicate that overshadowing impacts on the adjacent properties will be minimal. The proposed development is in keeping with the bulk and scale of existing dwellings in the area.

#### **Visual Privacy**

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

#### **Acoustic Privacy**

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

#### **Natural Ventilation**

The design of the dwelling provides for adequate natural ventilation.

#### **Roof**

The roof is a pitched butterfly design and is consistent with the design requirements of section A1. The roof design will provide visual interest to the dwelling. A condition regarding the implementation of non-reflective roof materials has been recommended in the conditions.

### Building Performance

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP (Building Sustainability Index: BASIX) 2004.

### Swimming Pools

The proposed swimming pool/spa is in the rear yard of the property and will be setback 1.5 from the northern and southern boundaries and is consistent with the design control objectives for swimming pools in Section A1.

### Floor Space Ratio (FSR)

The current A1 provisions control the maximum allowable floor area of a dwelling in relation to the total area of the site as a means of matching the building scale with the capacity of the site and local area.

Under the current A1 requirements the maximum FSR allowable for this site is 0.55:1.

The site area of the subject property is 752.5m<sup>2</sup> and the total floor area of the proposed dwelling is 378m<sup>2</sup> which represents an FSR of 0.5:1 which complies with the requirements of Section A1 of the TDCP.

### A2-Site Access and Parking Code

The development will comply with the requirements of section A2 in relation to vehicle access and parking. Two car spaces have been provided through a ground level double garage.

### A11-Public Notification of Development Proposals

The proposal was notified to the adjacent property owners and this did result in the receipt of a submission in relation to the position of the external garage wall in relation to the boundary.

The concerns of the adjacent property owners have been addressed through an appropriate condition of consent.

### B5-Casuarina Beach

The controls relating to setbacks were addressed in an earlier section of this report.

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

### Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within the policy.

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

The proposal is consistent with the goals and objectives outlined within the policy.

The property is within a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

Access, Transport and Traffic

Minimal impact is envisaged, the proposal is a single residence within an approved residential subdivision.

Flora and Fauna

Minimal impact is envisaged, the site has been cleared during the creation of the subdivision.

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

Surrounding Landuses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The design of the dwelling is in keeping with the residential character of the area.

Topography

The building platform was created at subdivision stage and is generally flat however, does have fall towards the eastern boundary.

Site Orientation

The building has been centrally located on the property 5 metres back from the front property boundary. The site is rectangular in shape with the western front boundary facing Collins lane.

The living areas of the dwelling have been mainly orientated to the east and north to optimize ocean views and solar access to the north.

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

As previously discussed a submission has been received in relation to the proposal.

**(e) Public interest**

The proposal will not prejudice the public interest.

**OPTIONS:**

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application subject to conditions of consent.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application, providing reasons for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

The approval of this proposal will not result in a precedent being set in relation to policy.

**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to the locality.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**14 [PR-CM] Development Application DA09/0199 for a Depot Permitting only the Parking of 3 Trucks and 3 'Dog' Trailers at Lot 2 DP 873149, No. 233 Round Mountain Road, Round Mountain**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0199 Pt1**

**SUMMARY OF REPORT:**

The subject application seeks approval for the storage of three (3) trucks and three (3) trailers ('dog' trailer) on a portion of the subject site. No structures or physical alterations (apart from landscaping which has been conditioned) to the site are proposed, and the Development Application only involves the parking of the three trucks and three trailers on site. The proposed land use is defined as a 'depot' pursuant to the *Tweed Local Environmental Plan 2000*. The depot is located on the portion of the site zoned 1(a) Rural and is therefore permissible with development consent.

The application is notified development, to which, Council received eleven (11) submissions objecting to the proposal, primarily for the following reasons: numerous truck movements, noise, dust and traffic problems, safety and loss of rural amenity. Due to the issues and number of objections received, the application has been reported to Council for determination.

On the balance of consideration of the existing planning controls and merit of the proposal, the officers have considered that the application is suitable for approval subject to conditions.

**RECOMMENDATION:**

**That Development Application DA09/0199 for a Depot Permitting only the Parking of 3 Trucks and 3 'Dog' Trailers at Lot 2 DP 873149, No. 233 Round Mountain Road, Round Mountain be approved subject to the following conditions: -**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan 'Site Plan' dated NOV 02 drawn by 'Ace Homes', (as amended in Red on the approved plan) except where varied by the conditions of this consent.**

[GEN0005]

2. The driveway is to be bitumen sealed from the edge of the bitumen of the existing road to include the access driveway up to and including the truck turn around and parking area. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve. Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee and approved prior to the use of the site as a depot.

[GEN0245]

3. All trees of the *Banksia integrifolia* species greater than 125mm diameter at a height of 1.5 metres above ground level and being koala home range trees, primary browse trees, which are utilised by koalas as a component of normal ranging patterns, are not to be removed from the lot.

[GENNS01]

4. A maximum of 12 trips per week in total are permitted each week (one truck leaving and entering the site is counted as two trips). In this regard, the owner of the business is to maintain a daily log of trips made from the site. The log is to be made available to the General Manager or delegate upon request.

[GENNS02]

5. This consent restricts a maximum of 3 trucks and a maximum of 3 dog trailers are to be stored at the premise.

[GENNS03]

6. All conditions are to be complied with prior to the commencement of use, where required.

[GENNS04]

#### **DURING CONSTRUCTION**

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

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

[DUR1005]

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

[DUR1025]

9. Acid sulphate soils shall not be exposed or disturbed.

10. All landscaping work is to be completed in accordance with the approved plans prior to commencement of use.

[POC0475]

11. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed prior to the commencement of use.

[POC0525]

12. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan, prior to the commencement of use.

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

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

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

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

(a) Tweed Road Contribution Plan:

1.71 Trips @ \$1125 per Trips \$1924

(\$1022 base rate + \$103 indexation)

S94 Plan No. 4

Sector8\_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities

0.216688 ET @ \$1759.9 per ET \$381.35

(\$1759.9 base rate + \$0 indexation)

S94 Plan No. 18

[PCC0215/PSC0175]

13. A detailed plan of landscaping by a suitably qualified person, in accordance with Planning for Bushfire Protection 2006, containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species, is to be submitted and approved by Council's General Manager or his delegate prior to the commencement of use of the land as a depot.

A detailed plant schedule and plan at a scale of 1:100 to 1:500 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site and including:

- species listed by botanical and common names, with a minimum of 80% of plants constituting local native species;
- specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.

The landscape plan is to provide visual screening of the depot from the road users and neighbouring residents.

[POCNS02]

14. The stopping of the subject trucks on Round Mountain Road, when entering the site is prohibited.

[POCNS03]

## USE

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

[USE0125]

16. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act, the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.

[USE0155]

17. Hours of operation of the business are restricted to the following hours: -
- \* 6.00am to 6.00pm - Mondays to Saturdays
  - \* No operations are to be carried out on Sundays or Public Holidays.

The subject trucks are not to start before 6.00am and are not to be running after 6.00pm.

[USE0185]

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

[USE0225]

19. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

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

[USE0875]

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

[USE0965]

22. Petroleum, fuels, oils or other potentially hazardous materials shall not be stored at the premise in association with the depot.

[USENS01]

- 23. The depot shall not be utilised for mechanical repairs or servicing of vehicles.**

[USENS02]

- 24. The LAeq(15min) noise level emitted from any activity undertaken in association with this consent shall not exceed the background noise level (LA90) by more than 5dBA at the boundary of any effected residence during the permitted hours of operation. Further, the LA1(60 seconds) noise level shall not exceed the background noise level by more than 15dB(A) during the hours of 6am to 7am Monday to Friday and 6am to 8am Saturday when measured outside the bedroom window of any affected residence.**

[USENS03]

- 25. Accumulation or storage of materials ancillary to the depot is not permitted.**

[USENS04]

**REPORT:**

**Applicant:** Linkways Pty Ltd  
**Owner:** Mr TJ Freriechs and Linkways Pty Ltd  
**Location:** Lot 2 DP 873149, No. 233 Round Mountain Road, Round Mountain  
**Zoning:** 1(a) Rural & 7(a) Environmental Protection (Wetlands & Littoral Rainforests)  
**Cost:** N/A

**BACKGROUND:**

The subject application seeks consent for the use of part of the subject allotment for the storage of three (3) trucks and three (3) dog trailers (Refer to figure 1 and 2), the land use is defined as a depot pursuant to the *Tweed Local Environmental Plan 2000*. The proposal does not involve the construction of any structures or the storage of any fuel or chemicals. The applicant has outlined that there will be twelve vehicle movements per week (only using the three trucks twice in a week, the number of trips has been conditioned and contributions calculated on 12 trips per week).

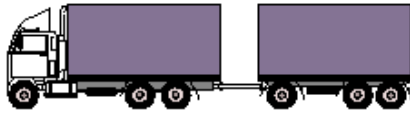
Council has previously received complaints regarding trucks on the subject property, creating noise and traffic hazards. Council investigated the subject site (on the 27 March 2009) and discovered three trucks and two excavators stored on the land. Council advised the landowner that development consent would be required for the land use.

The subject site is legally described as Lot 2 DP 873149, located at 233 Round Mountain Road, Round Mountain. The subject allotment has an area of 3.2150h and is zoned Part 1(a) Rural and Part 7(a) Environmental Protection (Wetlands and Littoral Rainforests). The site currently contains a dwelling house and shed. Mature vegetation exists on site with the majority of the site being predominantly cleared around the dwelling, shed and proposed depot location (Refer to figure 3).

Adjacent development consists of rural residential development. The general locality consists of a Country Energy facility, the Tweed Shire Sewer Treatment Plant for the Cabarita/Pottsville area, sand and gravel depot, turf farm, quarry, model air plane flying area, facility for jet boat sprint and the Cabarita Pony club grounds.

Due to the number of objections received, Council's Director of Planning and Regulation instructed staff to submit a report to Council for determination.

**Three Axle Rigid Truck with Three Axle Dog Trailer**



Maximum Mass Limit (tonnes): 42.5\* (no increase permitted)  
Annual Charge (\$);  
Up to 42.5t 2,062  
Over 42.5t 7,190  
Width=2.5m  
Height=4.3m  
Length=19m

**Two Axle Rigid Truck with Two Axle Dog Trailer**



Maximum Mass Limit (tonnes): 30.0 (no increase permitted)  
Annual Charge (\$) 1,457  
Width=2.5m  
Height=4.3m  
Length=19m

**Three Axle Bus**



Figure 1 – An example of the type of vehicle proposed to be stored on the site ([www.ntc.gov.au](http://www.ntc.gov.au))



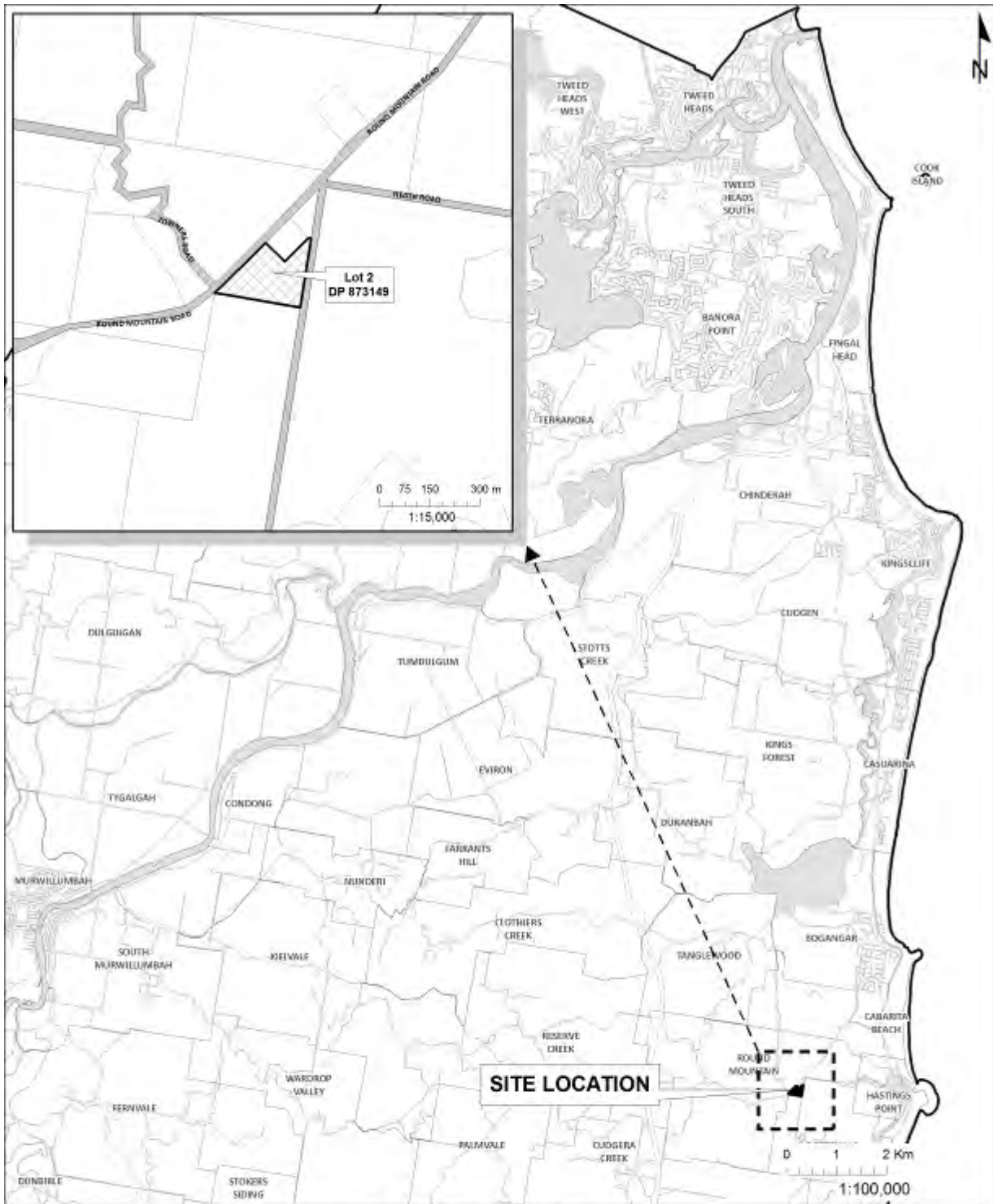
Figure 2 – Location of parking area “depot”



Figure 3 – Aerial photo of the subject site



**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 2 DP 873149

No. 233 Round Mountain Road, Round Mountain

Filename: z:\asr\planning\msd\A4P\_B&W SitePlan.mxd

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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Cadastre: 1 December, 2009  
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Coordinate System - MGA Zone 56  
Datum - GDA 84

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Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 616  
Murwillumbah NSW 2484  
T: (02) 6670 2400 / 1300 292 872  
F: (02) 6670 2483  
W: www.tweed.nsw.gov.au  
E: planning.reforms@tweed.nsw.gov.au



DEVELOPMENT PLAN:



**ACE HOMES**  
 BUILDING CONTRACTORS  
 CHARLIE FREEMAN  
 100 LAUREL ROAD  
 P.O. BOX 1000  
 BOWLING GREEN, TASMANIA

L. Constantina & T. Freeman  
 Lot 2 Round Mountain Rd  
 Round Mountain

SCALE	1:100
DRAWN BY	ACE
CHECKED BY	ACE
DATE	27/11/02
SHEET	1 OF 1

4271 Jorgensen 78 Laura Street  
 4271 Jorgensen 78 Laura Street  
 4271 Jorgensen 78 Laura Street

Nov 02

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The vision for the Tweed Shire is outlined as: *“The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”*

The subject proposal is consistent with the outlined vision and will not result in an impact that is detrimental to the natural and developed character of the Tweed Shire, (subject to conditions).

Clause 5 - Ecologically Sustainable Development

The subject proposal is consistent with the four (4) principles of ESD.

Clause 8 Consent considerations

The proposed depot is consistent with the primary objective of the zone by providing for a land use that is not suitable near an urban area, it does not fragment the extent of rural land in this locality, and retains the site’s rural character.

The other aims and objectives of this plan (Tweed LEP 2000) relevant to the development have been considered and addressed within the body of this report. The development would not have an unacceptable cumulative impact on the community or locality.

Clause 11 - Zone objectives

The subject site is zoned Part 1(a) Rural and Part 7(a) Environmental Protection (Wetlands and Littoral Rainforests). The application proposes to establish a Depot which is defined as: *Land used for the storage or maintenance, or both, of plant, machinery, equipment, building materials and the like (Tweed Local Environmental Plan 2000)*. The proposed Depot is located in the 1(a) section of the site zoned 1(a) Rural. The proposed depot is permissible with development consent. The primary objectives of the 1(a) Rural zone are:

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

### *Secondary Objectives*

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

The subject proposal for a Depot is a use that is not suitable near urban areas. The location of the Depot area on the allotment is separated from the closest dwelling house by approximately 70m in distance. The subject proposal has been assessed in terms of its impacts upon the amenity of the area and the impacts have been considered to be able to be adequately mitigated via conditions.

### Clause 15 - Essential Services

The proposal does not require connection to any services.

### Clause 16 - Height of Building

No building works are proposed or required.

### Clause 17 - Social Impact Assessment

The subject proposal does not warrant a social impact assessment.

### Clause 35 - Acid Sulfate Soils

Acid Sulfate Soils will not be disturbed by the proposed development. The subject site is classified as Class 2 Acid Sulfate Soils, the development does not require or propose any earth works.

### Other Specific Clauses

#### Clause 34-Flooding

##### *Objective-*

- *To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *To minimise the adverse effect of flooding on the community.*

The subject allotment is mapped as 'Could be affected' in terms of flooding. In this instance the proposed Depot is considered to not increase the effects of flooding risk as the application does not propose or require any construction works.

### Clause 39A Bushfire Protection

#### *Objective*

- *To minimise bushfire risk to built assets and people to reduce bushfire threat to ecological assets and environmental assets.*

In terms of the subject proposal, no built works are proposed and the Depot is situated on a cleared section of the site. The New South Wales Rural Fire Service was contacted in relation to the proposed development and the bush fire risk of a vegetated screen adjacent to Round Mountain Road. The Department advised that a vegetated screen would only start to become a fire hazard in this situation if it had a depth greater than 50 metres.

A condition of consent, has been recommended, requiring no storage of fuel or chemicals to occur at the site. In terms of these factors it is considered that the fire risk of the proposal is minimal. A condition of consent has also been recommended requiring the maintenance of a 20m Asset Protection Zone and the approval of a landscape plan that adequately screens the proposed depot from the road users and neighbouring properties.

### **State Environmental Planning Policies**

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

##### Clause 12: Impact on agricultural activities

Adjoining lands are primarily utilised for rural residential purposes as such, the proposed development is unlikely to have any major impact on agricultural activities in the area as there are minimal activities conducted in the area. The site is used for rural residential purposes and is identified as not containing land of state or regional significance in accordance with the *Northern Rivers Farmland Protection Project*. The development will not result in the loss of prime crop or pasture land.

##### SEPP No. 44 - Koala Habitat Protection

SEPP 44 is applicable to the subject site due to the size of the allotment (greater than 1h). The application does not propose or require the removal of vegetation. Therefore the proposed depot is unlikely to result in a detrimental impact on any koala populations in the area as their current habitat will not be disturbed.

##### SEPP 71- Coastal Protection

SEPP 71 is not applicable to the subject site. However, In terms of the subject proposal, the use of part of the site as a depot would be unlikely to contravene the requirements of SEPP71.

SEPP (Exempt and Complying Development Codes) 2008

The proposed development is not a type of development applicable to the policy.

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

Draft Tweed Local Environmental Plan 2010

The site is identified as being zoned both RU2 - Rural Landscape and E2 - Environmental Conservation pursuant to the Draft Tweed Local Environmental Plan 2010 (Refer to figure 4). The proposed land use is defined as *depot* meaning *a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use* (Draft Tweed Local Environmental Plan 2010). A depot is permissible with consent within the RU2 zone but is prohibited with the E2 zone. The location of the depot is within the portion of the site zone RU2, as such the land use is permissible with consent under the draft Tweed Local Environmental Plan 2000.

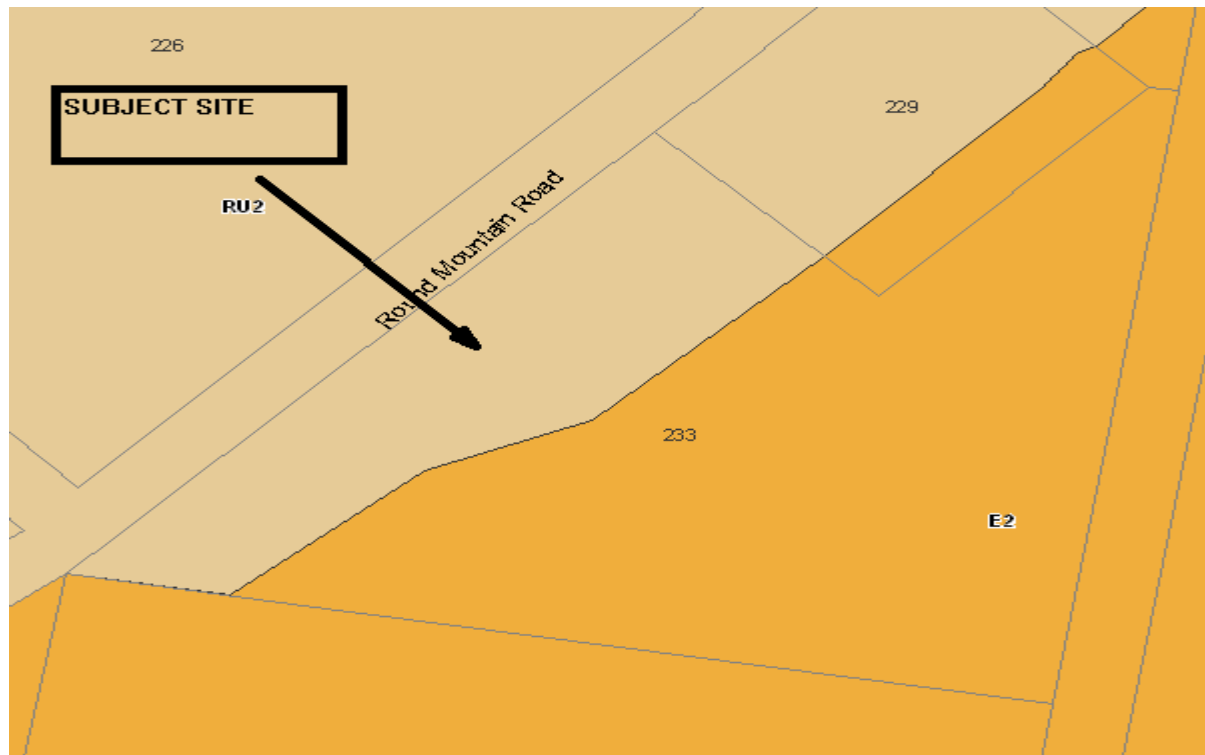


Figure 4 - Zoning extract Draft LEP 2010

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

A2-Site Access and Parking Code

The application states that the proposed use will generate an average of 12 truck movements per week. This equates to the three trucks leaving and returning twice per week. An appropriate condition of consent restricting the movement has been recommended. Suitable parking is available on site as identified on the submitted site plan.

Access to the site is via the existing drive way access from Round Mountain Road. Concerns have been raised by the public in regards to the subject trucks entering the site and blocking the road waiting for the gated entrance to be opened. To mitigate this issue, a condition is recommended that restricts the stopping of the subject trucks on Round Mountain Road. An amended plan has been submitted by the applicant that illustrates the entrance to the site is setback from the road edge (20 metres) to enable a truck and 'dog' trailer to park in the entrance (off Round Mountain Road) if the gate is closed, reducing the impact on other road users.

#### A3-Development of Flood Liable Land

The proposed parking of three trucks and three 'dog' trailers on the subject site is considered not a land use adversely affected by flooding or that would create an adverse impact on neighbouring properties.

#### A11-Public Notification of Development Proposals

The subject application was notified from Wednesday 27 May 2009-Thursdays 11 June 2009 in accordance with the requirements outlined within the clause. During the notification period 11 submissions were received including 1 petition containing 14 signatures; one submission was received after the notification period. The submissions received are detailed later in the report.

#### A13-Socio-Economic Impact Assessment

The proposed development is not a type that requires a socio-economic impact assessment.

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

#### Clause 92(a) Government Coastal Policy

N/A

#### Clause 92(b) Applications for demolition

N/A

#### Clause 93 Fire Safety Considerations

N/A

#### Clause 94 Buildings to be upgraded

N/A

**(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 not to create significant adverse environmental impacts on the natural or built environments subject to the recommended conditions.

Context and Setting

The site is located within a rural setting (Refer to figure 5), with the development not requiring or proposing the construction or earthworks. Condition requiring landscape screening, restricted hours of operation and traffic movements are considered to mitigate potential impacts on amenity – noise and visual impacts.



Figure 5 – Aerial photograph identifying the subject site in relation to surrounding properties.



### Access, Transport and Traffic

Access to the site is via the existing drive way access from Round Mountain Road. Concerns have been raised by the public in regards to the subject trucks entering the site and blocking the road waiting for the gated entrance to be opened. To mitigate this issue, a condition is recommended that restricts the stopping of the subject trucks on Round Mountain Road, when entering the site, that, either the gate is to remain open or the entrance is to be modified to enable a truck and 'dog' trailer' to park in the entrance (off Round Mountain Road) if the gate is closed. The development consent also restricts the number of trucks to three and the number of trips to 12 per week (i.e. the three trucks can only be used twice each per week). The restricted number of trips is conditioned and appropriate contributions have been calculated at 1.71trips (12 trips divided by 7 days per week, as trips rates are calculated daily, in accordance with Tweed Contribution Plan No.4).

### Flora and Fauna

The application does not propose or require the removal of vegetation. It is recommended that additional vegetation is to be provided, to ensure adequate screening between the road and location of the storage area.

### Noise

It is noted that the general precinct or area already has, or has had a Country Energy facility, STP, sand and gravel depot, turf farm, quarry, model air plane flying area and jet boat sprint events. These activities involve the use of various plant and vehicle/trucks and machinery. In this instance it has been deemed that the proposal does not require a noise impact assessment and that any noise generated from the development can be managed via conditioning (i.e. no engine start before 6.00am and not to be running after 6.00pm).

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

The site is considered suitable for the proposed development subject to recommended conditions.

### Surrounding Land uses/Development

The site is adjoined by rural residential land to the north, north east, west and south west with dense vegetation with environmental protection for wetlands and literal rainforests located to the south and east.

### Flora and Fauna

The development does not require or propose the removal of vegetation. A condition is recommended requiring vegetation screening along the boundary fronting Round Mountain Road.

Topography

The site is relatively level with an average Relative Level of 2.0m Australian Height Datum.

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

The subject application was notified for a fourteen day timeframe from the Wednesday 27 May 2009-Thursaday 11 June 2009. During the timeframe 11 submissions were received, including one petition containing 14 signatures. The objections are outlined below:

Objection	Comment
Approval of a depot would seem to give approval for a future large scale development on site.	The proposal seeks consent for the use of part of the site as a depot for the storage of three trucks and three dog trucks. Appropriate conditions have been recommended permitting only the storage of three trucks and three dog trucks. Any development not in accordance with the development consents application to the site would require separate development approval where statutorily required.
Change the perceived land use of the whole area, and open our rural residential lifestyle up to semi industrial land usage. .In particular, the future use of our land may become limited if this proposal is accepted-especially in the absence of any Rural Settlement Strategy.	The subject proposal is a permissible use in the 1 (a) Rural zone, as defined by the Tweed Local Environmental Plan 2000. The objection does not elaborate on how the future use of the land may become limited.
Our lifestyle, land values and future land usage would be severely compromised...Numerous truck movements, noise, dust and traffic problems would all flow from this development. The windfall gain that TSC would grant the developer by accepting this proposal would be offset by private loss of nearby property values. Is compensation considered?	Property values are not a matter for consideration under Section 79c of the Environmental Planning and Assessment Act, 1979.
The amenity of our local area will be affected by this depot. It will be a visual eyesore.	A condition of consent has been recommended to screen the proposed depot use from the Round Mountain Road and neighbouring properties.
The vehicles stored in the depot are likely to have a noise impact.	Some level of noise is to be expected. Conditions of consent have been recommended to monitor noise levels.

Objection	Comment
TSC may even change our rates, which are currently Rural, which would be another cost without benefit.	Not a consideration for assessment under Section 79c of the Environmental Planning and Assessment Act, 1979.
The proposed depot is at odds with the local environment- more truck journeys equals more risk to fauna (and kids riding horses and bikes).	The local environment consists of a Country Energy facility, Sewer Treatment Plant, sand and gravel depot, turf farm, quarry, model air plane flying area and jet boat sprint facility in addition to rural residential allotments. The proposed depot is considered to be relatively compatible with surrounding land uses, with the truck drivers obligated to adhere to road safety rules.
Both site and Round Mountain Road are unsuitable for B double trucks.	Round Mountain Road is a standard road that currently supports a range of vehicles travelling along the road. Council's Engineering department have determined that the road can support the proposal. The site has been assessed in terms of suitability for use as a depot and deemed to be satisfactory.
Vehicle speed of local traffic on Round Mountain Road can be excessive and ingress/egress to the depot may cause a serious accident.	Vehicle speed along Round Mountain Road is a matter for the police and not a Council matter.
The DA states that the truck destination arrival time is 6.30am. This would mean trucks would be warming up at 5.30am. This will destroy our amenity of life which we have enjoyed for 30 plus years.	A condition has been recommended restricting the hours of operation.
The subject site has some 7a wetlands zoning and the proposed depot would appear to 50 metres form this zone. The DA does not state what fuels, oils, chemicals will be stored for use by the trucks. There is a potential for fuel spills etc, becoming a hazard to this wetland environment.	An appropriate condition has been recommended prohibiting; fuels, oil or chemicals of any kind are to be stored at the depot.

Objection	Comment
<p>This area of Round Mountain Road has a very long history. The house at 229 Round Mountain Road next to the DA site was originally the Round Mountain school. Next door to that again is another old residence. Our house at 256 Round Mountain Road was the school teachers residence and post office. All these buildings are over 100 years old and to put a construction works depot next door is not acceptable.</p>	<p>It is unclear how the depot will impact upon the residential structures as described by the objector. The trucks will be entering and existing the site but are required to abide by the road rules.</p>
<p>A petition containing 14 signatures was received from group of equestrians who utilise the Cabarita beach Pony Club grounds on Round Mountain Road-</p> <p><i>'We enjoy leisurely horse rides, mostly with children, along Round Mountain Road. The Pony Club has been doing this for over 40 years. Round Mountain Road has no centre lines and in most places is not wide enough to safely allow children to get their horses off the road. Truck and Dog trailers are long vehicles. This DA represents an enormous Safety risk to our children.'</i></p>	<p>Dog trucks and trucks in general are permitted to travel along Round Mountain Road without consent from Council and adhere to road rules and speed guidelines.</p>
<p>In correct calculation of truck movements.</p>	<p>The assessment of the proposal is based on the applicants' submitted details. Therefore Council must consider that the submitted information is correct. The estimate has been clarified with Councils Development Engineers as being an acceptable indication of trips.</p>
<p>Safety risk.</p>	<p>Trucks are currently permitted to travel along Round Mountain Road and must abide by road rules.</p>
<p>Designated Road – access</p>	<p>Round Mountain Road is not a designated road. The applicant amended the access to incorporate a 20 metre setback from Round Mountain Road to the gated entrance of the subject site.</p>

The issues raised by the submissions that are considered relevant have been mitigated by recommended conditions of consent.

**(e) Public interest**

The proposed use of the site for the storage of three (3) trucks and three (3) dog trailers is considered not to negate the public's interest, subject to conditions.

**OPTIONS:**

1. Approve the application subject to recommended conditions.
2. Refuse the application and provided reasons for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the applicant is dissatisfied with Council's decision the applicant has the right to appeal in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development subject to conditions is considered not to create a significant adverse impact on the natural or built environments, with the site considered suitable

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0223 Pt2**

**SUMMARY OF REPORT:**

In late 2008, Council was made aware of unauthorised building works at the existing approved restaurant adjacent to the Jack Evans Boat Harbour. An investigation into the works was undertaken, with the proprietor of the premises being advised that an application to modify Development Consent DA05/0223 was required. This was to be accompanied with a Building Certificate application for the unauthorised works, as well as a Construction Certificate for any further building works.

An application to modify the original approval by way of internal and external building modifications and use of the premises (known as the "iBar") was subsequently lodged by the applicant. Unauthorised use (lap dancing) was also included in Council's assessment of the development. The application was refused by Council in May 2009, with a recommendation to initiate legal action with regard to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

On 17 November 2009 a report was presented to Council to highlight the fact that the issues arising with the premises had evolved and required reconsideration. It was also prepared to update Council on the best way forward with regard to finalising all outstanding matters and included a summary of the legal advice received on the matters raised above. Council resolved to request the occupier of the premises to lodge an extra S96 application to modify Development Consent DA05/0223 and building certificate application, incorporating all unauthorised building works on the subject site, within 21 days.

A S96 application and Building Certificate application were lodged on 8 January 2010. The S96 application was deficient in detail, with the applicant yet to provide the substantial list of additional detail required for assessment. The following report provides: a summary of the communication between Council and the applicant; issues raised by the premises; and reasons for refusal of the proposed modifications.

**RECOMMENDATION:**

**That: -**

- A. Council refuses Development Application DA05/0223.07 for an amendment to Development Consent DA05/0223 for a restaurant at Lot 1 DP 553728, No. 4 Wharf Street, Tweed Heads for the following reasons: -**

1. The proposed development is contrary to Clause 8(1) of Tweed Local Environmental Plan 2000, relating to not providing applicable or sufficient information for the application to be assessed against: the objectives of the zone; the aims and objectives of any other relevant clause; and to determine whether the development would have an unacceptable cumulative impact on the community.
  2. Amended plans have not been provided to adequately demonstrate that the development complies with all relevant Development Control Plans.
  3. The proposed development is not considered to be in the public interest.
- B. Council re-initiates legal action through Council's Solicitor's in relation to unauthorised building works and modification of trading hours.
- C. Council notes that ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(a) of the Local Government Act 1993, because it contains:-
- (a) *personnel matters concerning particular individuals (other than councillors)*



**REPORT:**

**Applicant:** Mr A Wright  
**Owner:** Mr AB Warner and Mrs AM Warner  
**Location:** Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads  
**Zoning:** 3(e) Special Tourist (Jack Evans Boatharbour)  
**Cost:** Nil

**BACKGROUND:**

The subject site is located adjacent to the Chris Cunningham Park and Jack Evans Boat Harbour, opposite Centro Tweed (Tweed Mall) on Wharf Street, Tweed Heads. The existing single storey building was previously a Tourist Information Centre, as well as the sales office for the Latitude 28 proposal, which is now the Ultima site.

On 8 June 2005, Council's Development Assessment Panel issued development consent DA05/0223 for a restaurant known as "*Wright on the Water*" at 4 Wharf Street, Tweed Heads. The original approval was for the installation of a commercial kitchen to run a Steakhouse Restaurant from the existing building. The approval was for two stages of development. Stage 1 involved: the installation of a kitchen and bar within the existing building; the replacement of part of the northern and eastern external walls with retractable doors; and the installation of the services and refuse enclosure on the southern side of the building. Stage 2 incorporated: the construction of a 4.5m wide roofed terrace along the northern and eastern elevations for alfresco dining; and an additional unisex disabled toilet.

Following an investigation by Council's Compliance Officer with regard to a complaint regarding unauthorised construction activities in December 2008, the Lessee of the premises lodged a S96 application on 19 March 2009 to modify the original approval by way of internal and external building modifications and use of the premises.

On 16 June 2009, Council resolved to refuse the proposed modifications and initiate legal action in relation to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

Since the refusal of the S96, several evening site inspections from Council staff and observations from Tweed Police concluded that lap dancing no longer occurs at the premises. As such, the occupation of the premises now appears to be in general accordance with the approved use – a restaurant. However, the unauthorised building works remaining unregulated.

On 17 November 2009 a report was presented to Council as an update on the best way forward with regard to finalising all outstanding matters and included a summary of the legal advice received on matters relating to: unauthorised building works; the use of the premises; and outstanding contributions fees.

The following is a summary of the chronology of events from November 2009:

**Council Meeting – 17 November 2009**

- Council resolved to request the occupier of the ibar to lodge a S96 application to modify development consent DA05/0223 and building application, incorporating all unauthorised works on the subject site;

- If such applications were not lodged within 21 days of the notice from Council, it was resolved to seek further legal advice about appropriate cause of action in regard to the unauthorised building works; and
- It was also resolved that outstanding contribution fees relating to DA05/0233 not be pursued and that only the contributions paid to date are recognised as credit for any future development of the subject site.

**Letter sent to Mr Warren Armstrong – 26 November 2009**

- As per the Council resolutions referenced above, Mr Armstrong was requested to lodge a S96 Application and Building Certificate Application within 21 days (ending on 17 December 2009). A list of requirements were raised (although they were not an exhaustive list) including:
  - Floor Plans / elevations clearly identifying the modifications;
  - Use of premises / number of staff;
  - Patron numbers;
  - Hours of operation;
  - Details on floor area;
  - Confirmation of no live / amplified music;
  - Details of colour scheme / signage;
  - S96 criteria (“substantially the same” principles);
  - Detailed construction drawings of the disabled toilet;
  - Floor plans / details of food related areas; and
  - Advertising fee of \$540.

**Phone call from Mr Adrian Wright – 7 December 2009**

- Mr Wright asked if the letter sent (to Warren Armstrong) on 26 November 2009 could be resent to Mr Wright (saying the land owner would not sign off on the S96 form unless Mr Wright’s name was on the letter);
- Mr Wright said that all the information we were after was already on the file;
- Mr Wright requested an extension of time to the 21 day requirement until the end of January, due to his consultant (Coastline) being on Christmas leave.

**Council’s reply phone call to Mr Wright – 8 December 2009**

- Mr Wright was advised that Council would not resend the letter (addressed to him), noting that it didn’t matter who the applicant was for the application;
- Mr Wright was advised that Council needed all information to be relogged (standard Council policy). It was up to the applicant to obtain that detail. It was suggested he contact Council’s Peter Brack to do an “FOI” of the file, if he no longer had the plans etc;
- With regard to the extension of time, Mr Wright was advised the time frame was a Council resolution and would not be changed. Council would be instructing their lawyers after the 21 days were up. It was suggested that Mr Wright use another consultant if Coastline were not available.

### **Council letter to Marsdens Lawyers – 22 December 2009**

- Acting upon the Council resolution of 26 November 2009, a letter was sent to Marsdens Law Group requesting legal advice on Class 4 proceedings with regard to the unauthorised building works at the subject site, as a result of the proprietor not submitting a S96 application within the 21 day time frame.

### **Email from Coastline – 23 December 2009**

- Advice was provided to the effect that owners consent had not been obtained yet (noting that the owner's solicitor was going over the details prior to the owner signing the form);
- The email noted that the owner's solicitor would be submitting the application and they would likely request an extension of time to early in the new year.

### **Council's reply email – 23 December 2009**

- Coastline was advised that a letter had been sent to Council lawyers to re-activate legal proceedings;
- An extension of time to 8 January 2010 was granted, after which instructions would be given to Council lawyers to continue appropriate action.

### **S96 Application and Building Certificate Application lodged – 8 January 2010**

- Floor plans and elevations (same as previous S96) were provided. Detailed construction drawings of the disabled toilet; and floor plans / details of food related areas were not provided. Advertising fee of \$540 was not provided.
- The application went to Council's Area Team Meeting (ATM) for internal comments.

### **Council's email to Marsdens Lawyers – 13 January 2010**

- As a result of the applicant lodging a S96 application, Council requested that Marsdens put "on hold" any further legal advice, until such time as an assessment had been carried out on the proposed modifications to DA05/0223.

### **Further Information letter sent to applicant – 15 January 2010**

- Advertising fee of \$540 was outstanding;
- Detailed food area drawings requested (as per Council's EHO requirements);
- A noise report required (as a result of the S96 request to modify the 12 month period for 24 hour trading and the deletion of prohibition of live / amplified music);
- Floor plans / elevations are not acceptable. Revised floor plans requested, clearly delineating the designated smoking area. The plans need to be dimensioned and indicate the extent of the existing / proposed roof area over the terrace etc. A site plan is required, along with scaled and dimensioned elevations. Clarification of colour scheme and signage is required, as well as additional justification as to how the proposal is substantially the same as the original approval;
- A period of 28 days was given for the outstanding information to be submitted (ending on 15 February 2010).

### **Email from Coastline – 17 February 2010**

- Coastline noted that the applicant had spent several hours at Council when the S96 was lodged and believes that they have provided everything that Council has previously requested to allow the application to be determined;
- The applicant is frustrated with Council's request for further information of 15 January 2010 and wants to know why the issues were not raised in Council's previous letters and meetings;
- Coastline has explained to their client that Council can be asked for further information at any time, but the applicant is worried the application...*'may continue to go around and around without any progress'*;
- Coastline has requested a meeting with relevant parties to discuss.

### **Council's reply email – 18 February 2010**

- Coastline was provided with a chronology of events (similar to this) which concluded that...*'Council officers have been extremely diligent in outlining the submission requirements for your client's Section 96 application, both prior to, and following the lodgement of the application, and three months onwards from Council's November resolution, the Council officers still do not have sufficient enough details to assess the submitted application'*;
- Coastline were advised that Council would support a further meeting with them and their client, only on the basis that they were willing to address the specific elements of the outstanding information request identified in Council's letter of 15 January 2010, and that any meeting was preceded by a clear written agenda of the matters of which they wished to discuss.

### **Letter from Coastline – 23 February 2010**

- Coastline advised that their client no longer sought modification to Condition 6 (trading hours) or Condition 13 (prohibition of live/amplified music) and it was their understanding that a Noise Report was no longer necessary;
- Coastline referred to details previously submitted to Council in regard to the nominated hours of operation proposed after the expiry of the initial 12 month period, in reference to Condition 7 (S96 required to modify the 12 month limitation to trading hours). Coastline noted that to date his client has had no response from Council.
- Coastline advised that his client intended to remove the proposed BBQ area. Amended plans would be submitted separately to confirm this.

### **Council's reply letter – 26 February 2010**

- Council acknowledged that modifications to Conditions 6 and 13 are no longer sought and confirmed that a Noise Report was no longer necessary in that regard. It was stated that Council did not have details of the nominated trading hours after the expiry of the initial twelve months, and Coastline was requested to submit the nominated hours of operation for the restaurant for Council's consideration;
- It was acknowledged that the BBQ area is no longer proposed. Amended plans are required in this regard, along with all other outstanding matters raised in Council's letter of 15 January 2010.

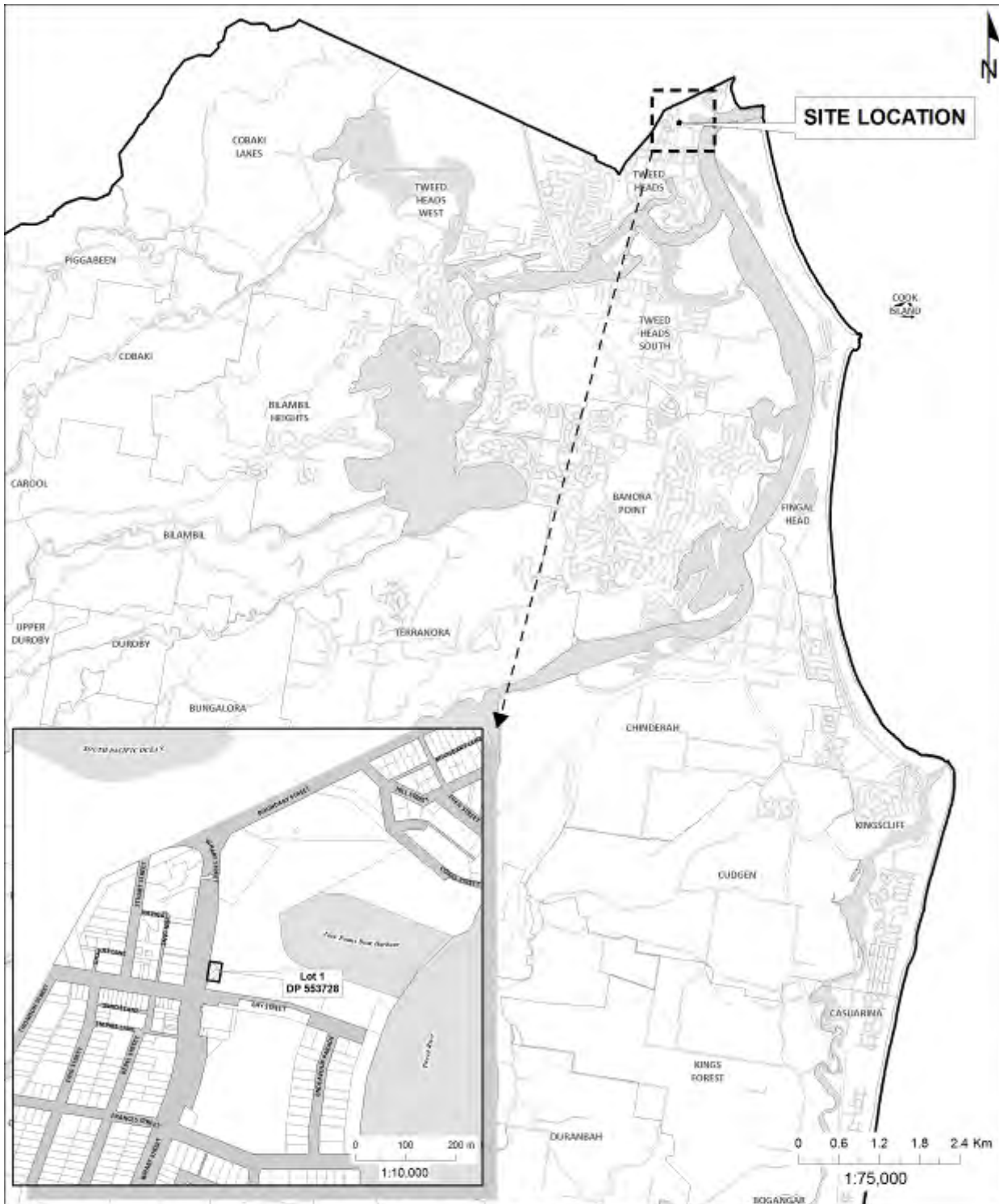
**Letter from Coastline – 26 February 2010**

- Coastline requested that the original proposed modification to Condition 6 remain as 24 hr trading is still sought.

**Facsimile from Mr Adrian Wright – 26 February 2010**

- Mr Wright faxed through a copy of a letter dated *30 March 2006* in relation to the 24hr liquor licence for the 'Wright on the Water' restaurant, which requests Council's confirmation that the 24 trading can continue after the initial 12 month period has ended.

**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 1 DP 553728  
No. 4 Wharf Street Tweed Heads

Filename: z:\usr\planning\mxd\A4P\_S&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 February, 2010

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Datum - GDA 84

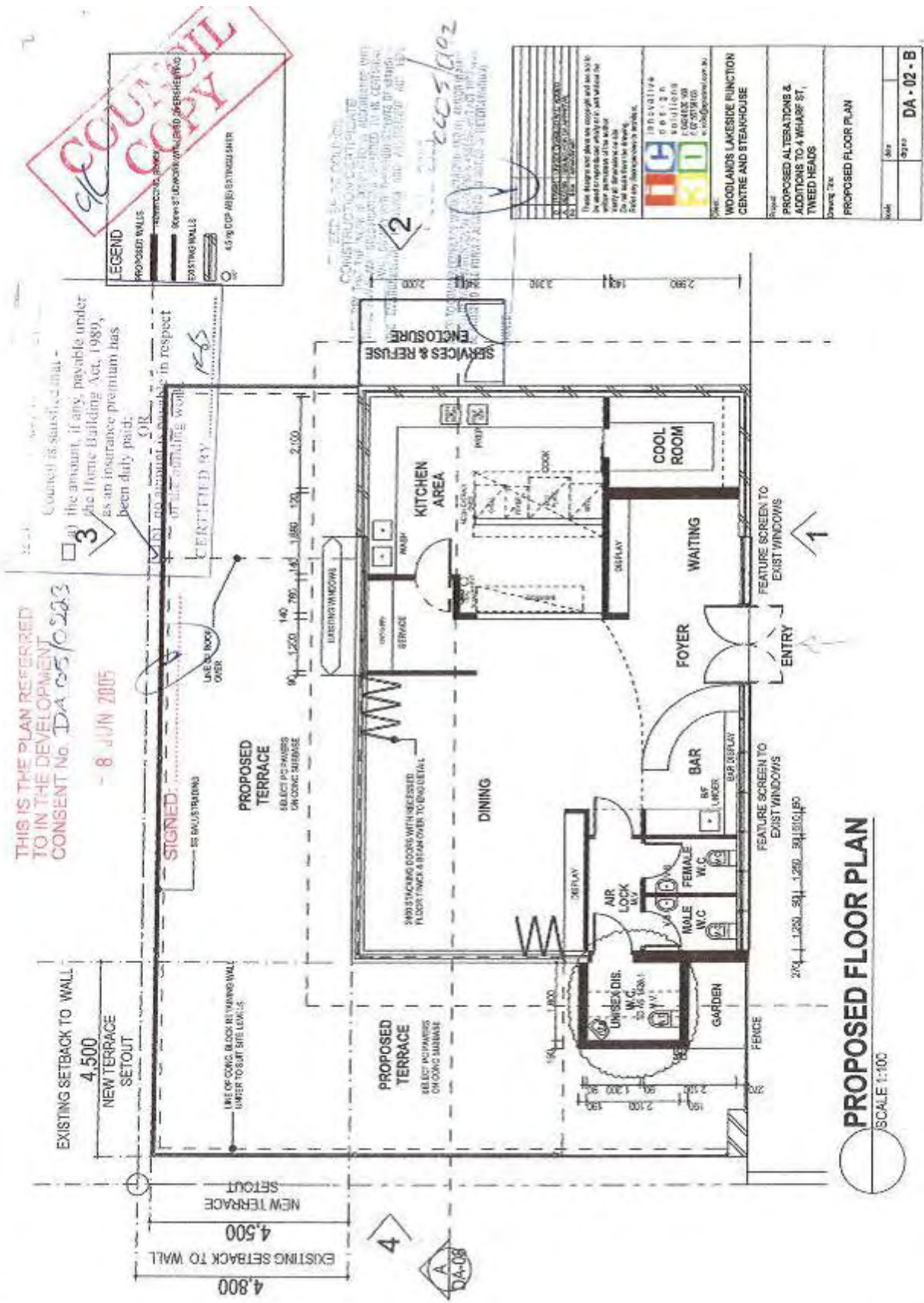
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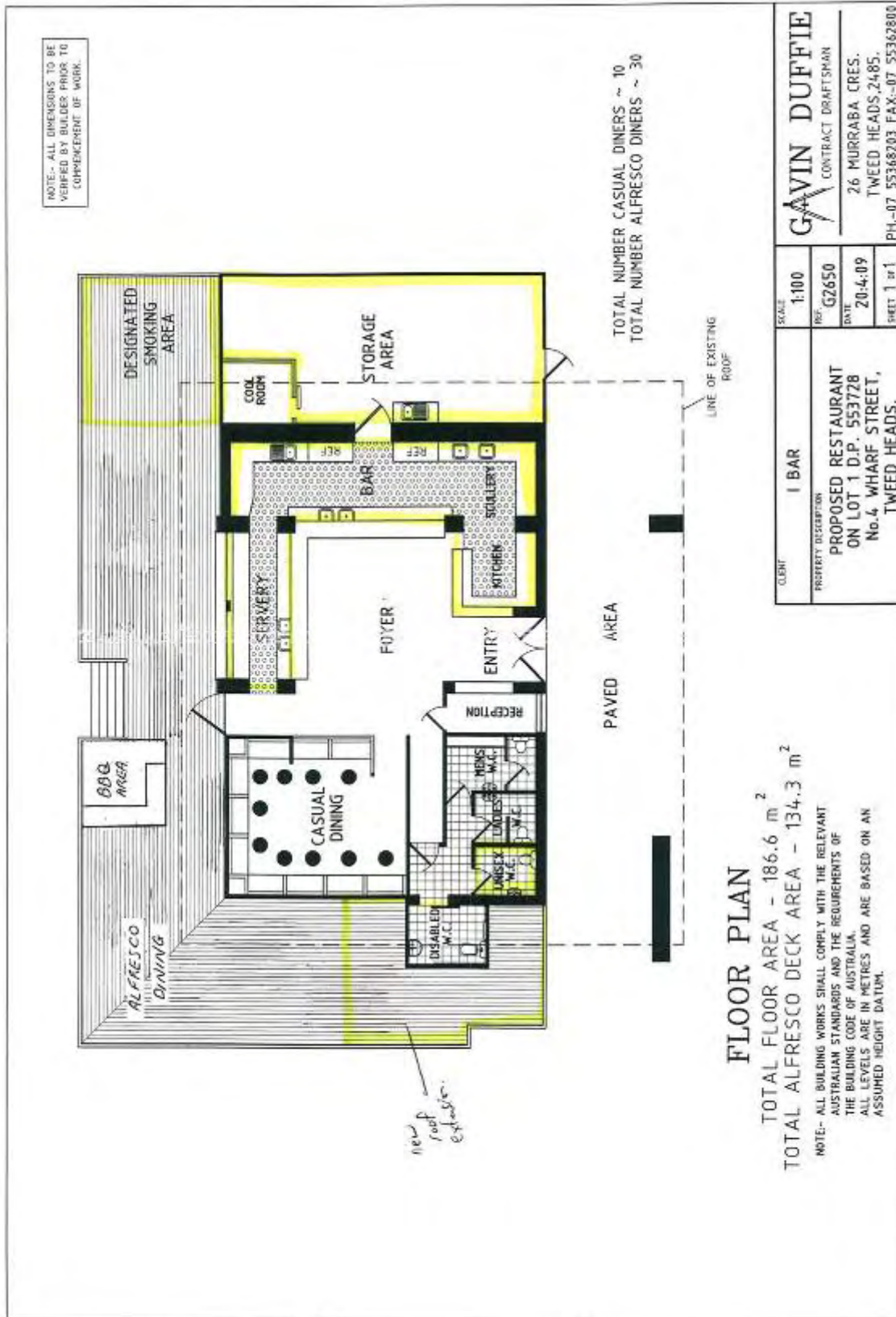
Civic and Cultural Centre  
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F: (02) 6670 2485  
W: www.tweed.nsw.gov.au  
E: plans@reform@tweed.nsw.gov.au



APPROVED LAYOUT PLAN OF RESTAURANT:



**PROPOSED INTERNAL LAYOUT:**





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

As highlighted in the preceding chronology, the applicant has failed to submit the outstanding documentation required for the assessment of the Section 96 application requested on 15 January 2010. It should also be noted that the applicant has not requested any meeting with staff since Council's email of 18 February 2010.

In order to grant consent to development, Clause 8 (1) of the Tweed Local Environmental Plan 2000 requires Council officers to be satisfied that: the proposal is consistent with the clause 11 zone objectives within which it is located; the proposal meets the aims and objectives of any other relevant clause; and the development would not have an unacceptable cumulative impact on the community. The lack of detail has not enabled an assessment of the proposed modifications against clause 8 provisions. As such, consent cannot be granted.

The following issues have also been flagged as being of concern:

### Unauthorised Building Works

Council's Development Assessment Unit, Building Services Unit and Environmental Health Unit are unable to carry out an assessment of the proposed modifications due to unsatisfactory plans, conflicting information between plans and the Statement of Environmental Effects, or no detail provided at all in some instances. As such, the unauthorised building works cannot be regularised as was the intention of requesting the submission of this S96 application. Consequently, the Building Certificate (lodged in conjunction with the S96) cannot be approved.

### Noise

Final comments have not been provided from Council's Environmental Health Unit as a result of the applicant not submitting details. The Environmental Health Unit would normally have commented on issues such as: noise; servery/bar/kitchen/coolroom requirements pursuant to the Food Regulations; smoke free areas; and hours of operations. Council's records indicate that one (1) noise complaint was lodged on 2 March 2009, relating to loud music coming from the ibar. No other noise complaints have been registered in conjunction with the premises.

It is acknowledged that the applicant no longer wishes to delete Condition 13, which prohibits live or amplified music on the premises. As such, a noise report is no longer required for this S96. However, noise issues relating to trading hours and potential impact on the community in general would still require assessment.

### Trading Hours

As noted in the chronology of events above, the applicant originally requested to allow the 24 hr trading to continue, then advised that they no longer wished to modify the condition limiting the 24 hour trading to a 12 month period, and most recently requested that the 24 hr trading continue indefinitely.

The purpose of limiting the 'restaurant' to a 12 month period of 24 hr trading was to enable Council an opportunity to assess any issues associated with the extended hours of operation, with regard to the enclosed deck area particularly after 12 midnight, and modify the hours of operation if necessary.

Mr Wright recently submitted a copy of a letter (dated 30 March 2006) requesting confirmation from Council that the 24 hour trading will continue after the initial 12 month period had expired. Council's records (electronic filing system and hard copy file) do not have any evidence of Mr Wright lodging such letter in 2006. In any event, if Council had received such a letter, Mr Wright would have been advised in writing that a S96 was required to modify Condition 6, rather than he simply submitting a letter. Condition 7 of the development consent clearly indicates the process required:

7. *Ninety (90) days prior to the expiry of the initial twelve (12) month period, the Applicant shall lodge with Council for consideration by the Director of Planning and Environment a Section 96 application nominating the hours of operation proposed after the expiry of the initial twelve (12) months. Such application will need to address any issues associated with the enclosed deck area particularly after 12 midnight.*

The non-lodgement of a S96 (90 days prior to the expiry of the initial 12 months), results in the proprietor of the premises not being compliant with Condition 7 of the development consent.

Due to the concern raised with the proposed continuation of the 24 hr trading, a copy of the S96 application was referred to NSW Police's Tweed/Byron Local Area Command for comment. The Police have provided a comprehensive report on the proposed modifications, including a list of incidents attached to the subject premises. The report includes the following comments:

*'In essence the premises, which had been operated as a Restaurant, has moved towards that of a Bar with some restaurant facilities. The nature of an operation geared more towards that of a bar has lead to an increased level of anti-social behaviour.*

*As can be seen from pages 7 and 8 of this report there were no police reports attached to this premises prior to the current proprietorship. Of particular concern is the consistency of the early morning hour matters reported. I can inform that this has continued through February.*

*On page 9 the Licensed Premises Summary shows an increasing risk rating for this premises. The risk rating is based on a system of linking used by police that gives an indication of risk.*

*Also on page 9 is a list of premises with their risk rating for the last completed seasonable period, being Spring 2009. Despite being a small restaurant it rates higher than major clubs and hotels in the area. I can inform that interim information for the summer 2009/2010 period is no better.*

*Police area aware of problems associated with the early morning activities of patrons leaving this premises causing other businesses in the area to have to vary their opening times to avoid these same persons interfering with their business.*

*Police are also in receipt of intelligence linking this premise to prostitution where services are offered at the premises with the full knowledge of the proprietors and clients are taken to nearby unauthorised premises for fulfilment of that service.*

*Police submit that unless conditions are placed on the premises to restrict hours of operation and define usage of the interior and exterior (enclosed deck) for this premises that the problems associated with this premises will not stop and the amenity of community life will not improve in that area.*

*Police recommend the following:*

- *That the hours of operation be restricted to 9am to 12 midnight.*
- *That proper direction is given concerning the usage of the enclosed deck area to prevent persons standing around and using the area as a bar'*

The issues raised by the police are concurred with, particularly with regard to anti social behaviour impacting upon the community in general. The trading hours recommended by the police are considered to be reasonable and justified. An assessment of the police list of incidents at the ibar (from March 2009 to January 2010) highlights that 38 of the 43 incidents occurred outside the recommended hours of 9.00am to 12 midnight.

Verbal conversations between Council's Planning officers and Tweed Police suggest that the premises is effectively "catching" patrons from surrounding licensed premises in Tweed / Coolangatta when they close for business (i.e. after midnight). If the trading hours if the ibar were to be modified to 9.00am to 12 midnight, it seems likely that the majority of anti social behaviour (associated with the ibar) would cease.

### Liquor Licence

The 24 hour liquor licence for the ibar requires food to be served with the alcohol, as a result of the original approval as a restaurant. Police have advised that if the trading hours were reduced, there would be no change to the actual liquor licence hours. It simply means that the proprietor has a licence with hours that they cannot utilise. However, it was noted by Tweed Police that the police (or even Council), would then have grounds for applying to the Authority to reduce their licensed hours.

### Use / Patron Numbers

The original approval for the restaurant restricted the premises to a maximum of 40 diners at any one time. Although the applicant has stated that the...*'premise will continue to operate as a restaurant and with a reduced dining area it will not generate more than 40 diners at any one time'*, there is a question of whether the ibar is operating as a restaurant. As noted by the police submission, the premises appears to be more of a bar (with some restaurant facilities), rather than the "Steakhouse" restaurant (and associated bar facilities) as was the original intention for the premises.

Although the last Council report for the ibar (November 2009) acknowledged that...*'the occupation of the premises now appears to be in general accordance with the approved use – a restaurant'*, that was dependant upon applicant providing a clear indication of seating, hours of operation, noise impact etc for Council's consideration.

The floor plan provided to-date does not include seating arrangements on the external deck area. Without further detail in this regard, assessment in terms of use and patron numbers cannot be undertaken.

### Legal Advice

Marsden Lawyers have provided legal advice on the matter to date. Based on previous instructions from Council's Development Assessment Unit, they have held off on taking any legal action against the proprietor, until advised otherwise by Council. Legal action sought to-date has been in the form of Class 4 proceedings in the Land and Environment Court, seeking orders and declarations with respect to the unauthorised works undertaken on the premises.

Marsdens have noted that it is difficult to provide an estimate of their fees, however in their experience the costs incurred in taking Class 4 proceedings are in the order of \$20,000 plus GST (based on the matter proceeding to a hearing of one (1) days duration). Marsdens have noted that this estimate may vary depending upon complexity of issues which arise in the proceedings and the actual length of the hearing of the matter.

If further legal action was to be initiated, Class 4 proceedings would be sought in relation to re-instating the premises back to the originally approved layout. Council would also seek orders for the proprietor to lodge a S96 application with regard to the trading hours of the premises, pursuant to Conditions 6 and 7 of the consent.

### **CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

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

### **Likely Environmental Impact**

As noted above under S79c considerations, Council's Development Assessment Unit, Building Services Unit and Environmental Health Unit have been unable to assess the proposal in detail. As such, Council cannot be satisfied that the proposed modifications are of minimal environmental impact.

### **Substantially the Same Development**

An assessment needs to be undertaken in terms of whether the proposed development is "substantially the same" as the originally approved development, pursuant to the provisions of the Environmental Planning and Assessment Act. Key planning principles relate to a general comparison (rather than in detail) between the approved development and the proposed modifications, to determine if the development as a whole is essentially or materially similar to the originally approved development.

In this regard, it could be argued that the development is substantially the same, in that it is still a "restaurant", despite the internal / external configuration changing somewhat. The alternative is that the proposed modifications are a change of use to a bar. The only way to determine the principle use of the premises is by way of seating arrangements, number of patrons etc. The lack of detail provided by the applicant does not allow Council to conduct a thorough assessment of the proposed modifications to determine whether the proposal is substantially the same.

### **Notification/Submissions**

Despite Council advising the proprietor (Mr Armstrong) and the applicant (Mr Wright) that the S96 would be placed on public exhibition, thereby requiring \$540 in advertising fees, no payment has been received. As such the proposed modifications have not been placed on public exhibition.

### **PUBLIC INTEREST:**

As noted above, the police have highlighted anti-social behaviour emanating from the 24 hour trading of the premises. Without a thorough assessment of the potential impacts and change of trading hours, the proposed modifications are not considered to be in the public interest.

### **OPTIONS:**

1. Refuse the proposed modifications to Development Consent DA05/0223; and
2. Re-initiate legal action through Council's Solicitor's in relation to unauthorised building works and modification of trading hours (Class 4 proceedings through the NSW Land and Environment Court); or
3. Defer the determination of the application, allowing the applicant to submit outstanding information, place the development on public exhibition, and undertake an assessment of the proposed development.

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

Financial implications will result from legal proceedings involving Class 4 proceedings.

The applicant also has a right of appeal (Class 1) in the NSW Land and Environment Court if dissatisfied with the determination of any future S96 application.

### **POLICY IMPLICATIONS:**

Nil

### **CONCLUSION:**

The history of this premise, in terms of not providing detail required by Council for assessment, suggests that unless a determination to refuse the proposed modifications and legal action is undertaken, the issue of unauthorised building works etc will continue. In terms of the issues raised by the police, as well as regularising the unauthorised building works, legal action may also need to address the issue of use and trading hours.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. **Confidential Attachment** Police Report (ECM 13495856)
  2. iBar Request for Further Information Letter dated 26 November 2009 (ECM 9421721)
  3. iBar Request for Further Information Letter dated 15 January 2010 (ECM 11676068)
-

**16 [PR-CM] Cobaki Lakes Project Application - Central Open Space and Lake - Council Submission to the Department of Planning**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/52 Pt12**

**SUMMARY OF REPORT:**

The Department of Planning has requested Council's comment on the Project Application received for the Cobaki Lakes central lake and open space area. Council officers have previously identified their concerns to the proponents before and throughout the Cobaki Lakes Part 3A Concept Plan process in respect of the dedication to Council and environmental impacts of the proposed lake, open space areas and environmental rehabilitation areas. These concerns are still held by the Council officers in respect of the details provided in the Project Application. The attached submission to this report provides a detailed account of these concerns. It is therefore recommended that Council endorses the forwarding of this submission to the NSW Department of Planning, which highlights the view that Council does not accept the dedication of the proposed lake, open space and environmental rehabilitation areas, unless significant modifications are made to the Project Application.

**RECOMMENDATION:**

**That Council endorses the attached draft submission to this report on the Project Application for the Cobaki Lakes central lakes and open space area and it be forwarded to the NSW Department of Planning.**

**REPORT:**

**Applicant:** Leda Manorstead Pty Ltd  
**Owner:** Leda Manorstead Pty Ltd  
**Location:** Lot 1 DP570076, Lot 2 DP566529, Lot 1 DP562222, Lot 1 DP570077, Lot 1 DP823679, Lot 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 & 305 DP755740 at Cobaki Lakes Estate, Tweed Heads  
**Zoning:** 2(c) Urban Expansion, 2(e) Residential Tourist, 6(b) Recreation, 7(d) Environmental Protection (Scenic Escarpments) and 7(l) Environmental Protection (Habitat)  
**Cost:** N/A

**BACKGROUND:**

In February 2009, Council reviewed the Cobaki Lakes Concept Plan and supporting Environmental Assessment and provided a detailed submission to the Department of Planning.

In January 2010, Council reviewed the Preferred Project Report (PPR) for Cobaki Lakes and provided a submission to the Department of Planning. It is noted that the submission to the Department of Planning on the Cobaki Lakes PPR indicated that dedication of the lakes was not supported based on the cost of maintenance and limited design details provided in the PPR. Furthermore, concerns were raised with the design of proposed open space (casual and structured areas) which were not in accordance with Council's standard requirements (Development Control Plan A5 – Subdivision Manual). There were also considerable concerns raised in relation to the proposed revegetation and rehabilitation plans for the areas proposed to be rezoned to Environmental Protection and dedicated to Council.

The Cobaki Lakes Development Code was placed on public exhibition from 13 January 2010 to 26 February 2010.

Council officers have reviewed the Cobaki Lakes Development Code and prepared a report on the issues and a recommended submission on the Draft Codes to apply to both the Cobaki Lakes and Kings Forest development sites. This report and draft submission was presented to the Council at its meeting 16 February 2010, however, as a result of a rescission motion, this report will be re-submitted to Council's March 2010 meeting for further consideration.

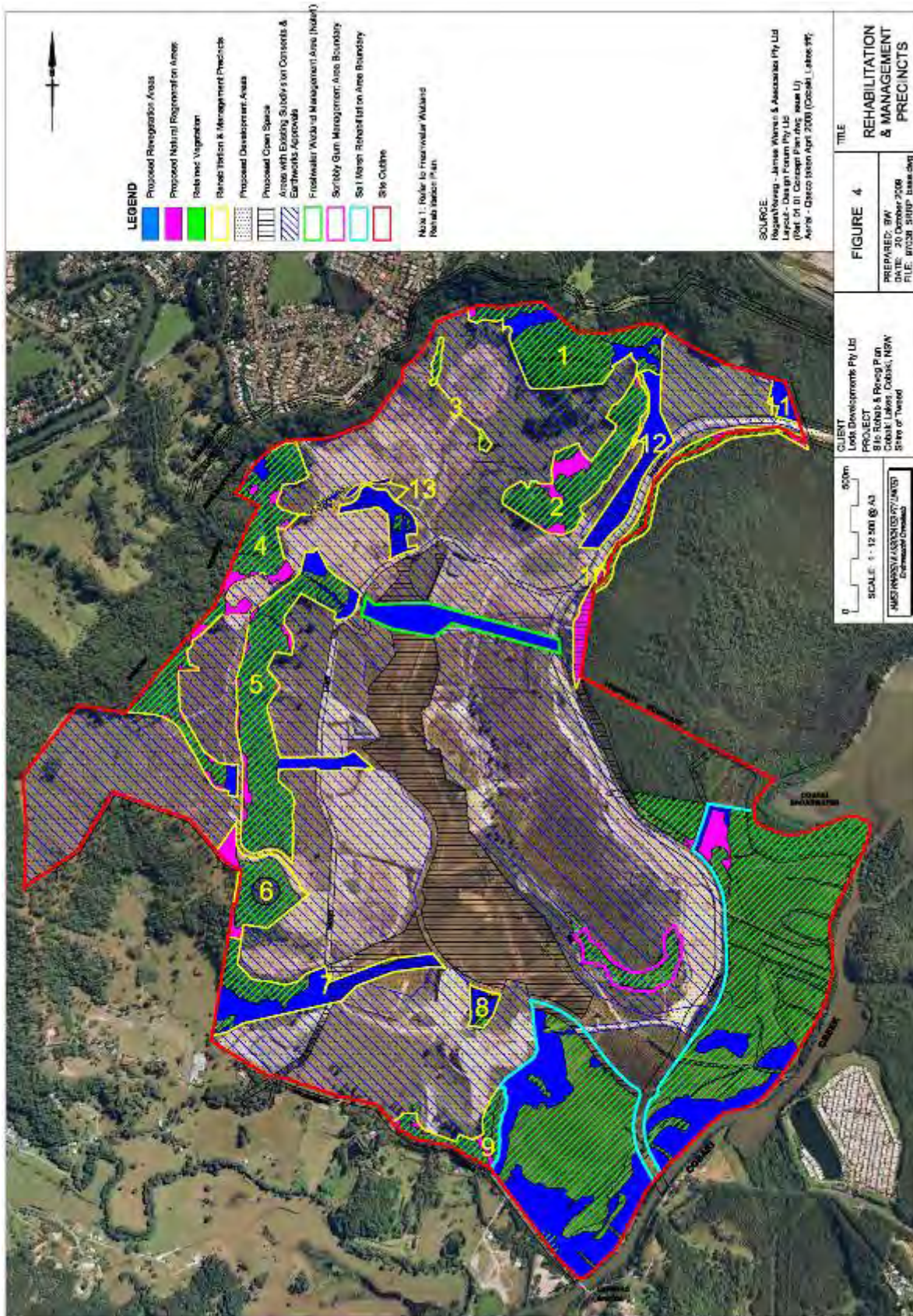
Council received a copy of the Project Application (PA) for Cobaki Lakes on 12 January 2010. The application is lodged pursuant to Part 3A of the *Environmental Planning and Assessment Act 1979* and the Minister for Planning is the approval authority.

The PA includes an Environmental Assessment (EA) and the EA has been on public exhibition from 13 January 2010 to 26 February 2010.

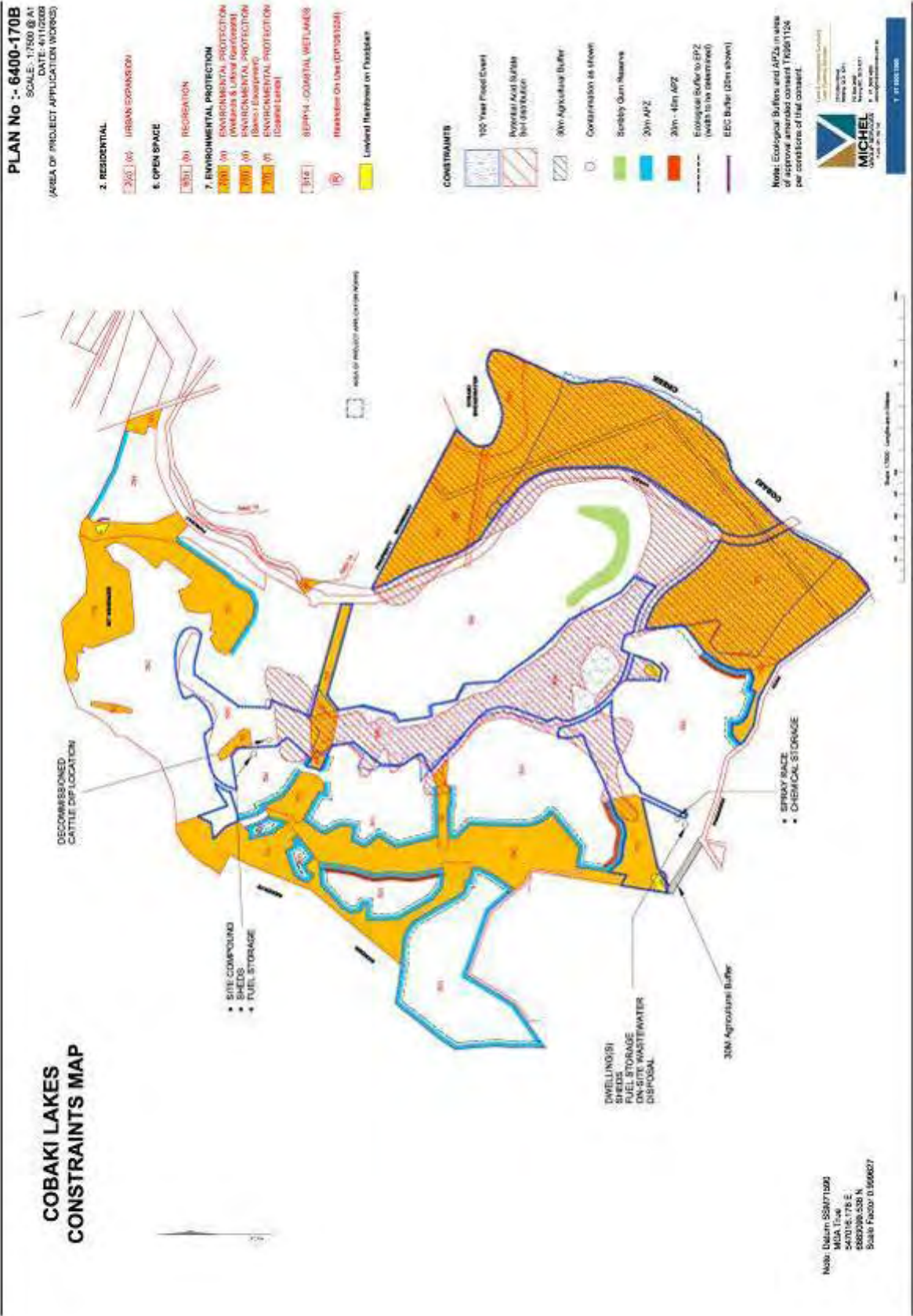
The Department of Planning has invited Council to provide comments on the PA.



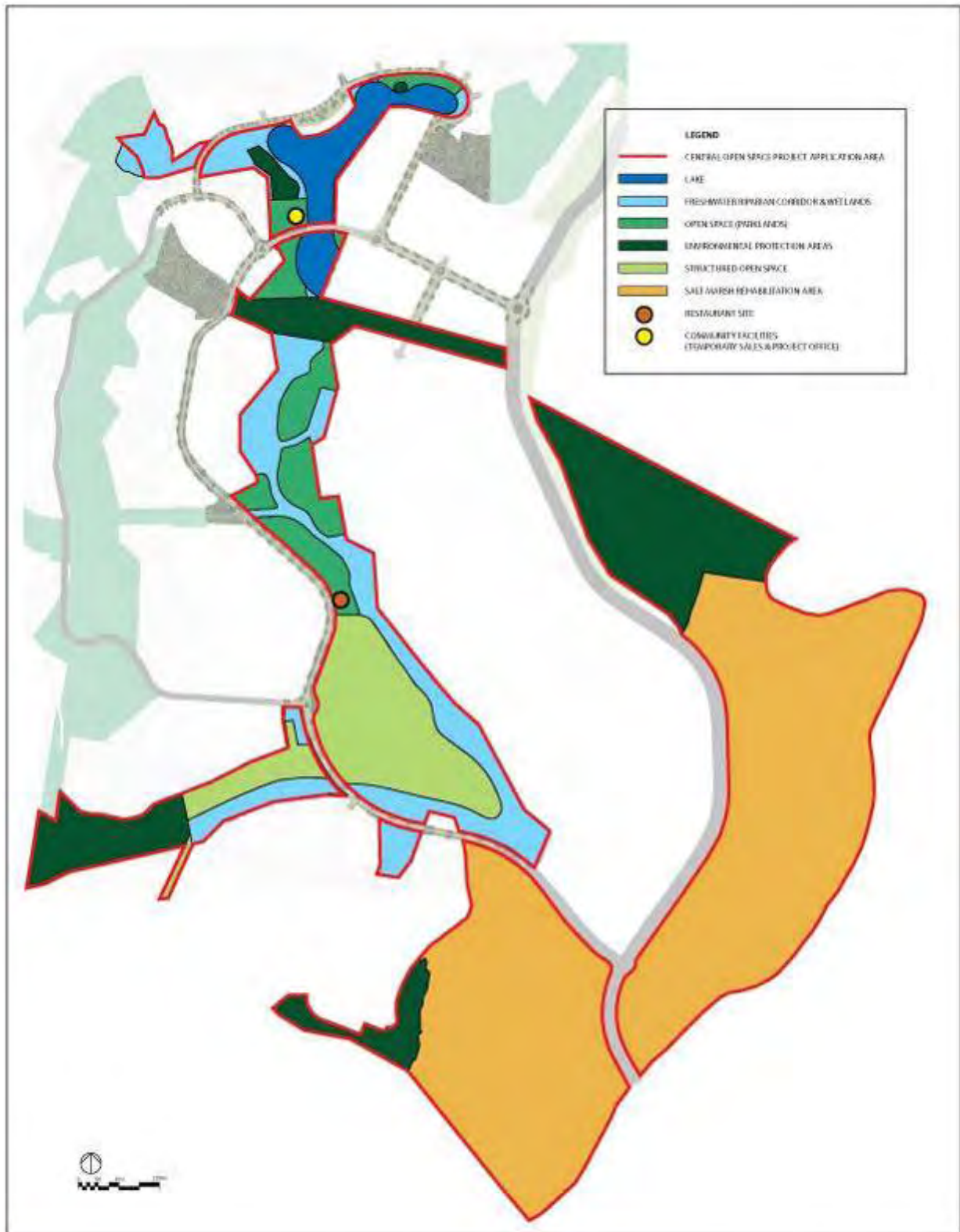
# REHABILITATION AND MANAGEMENT PRECINCTS



# CONSTRAINTS MAP

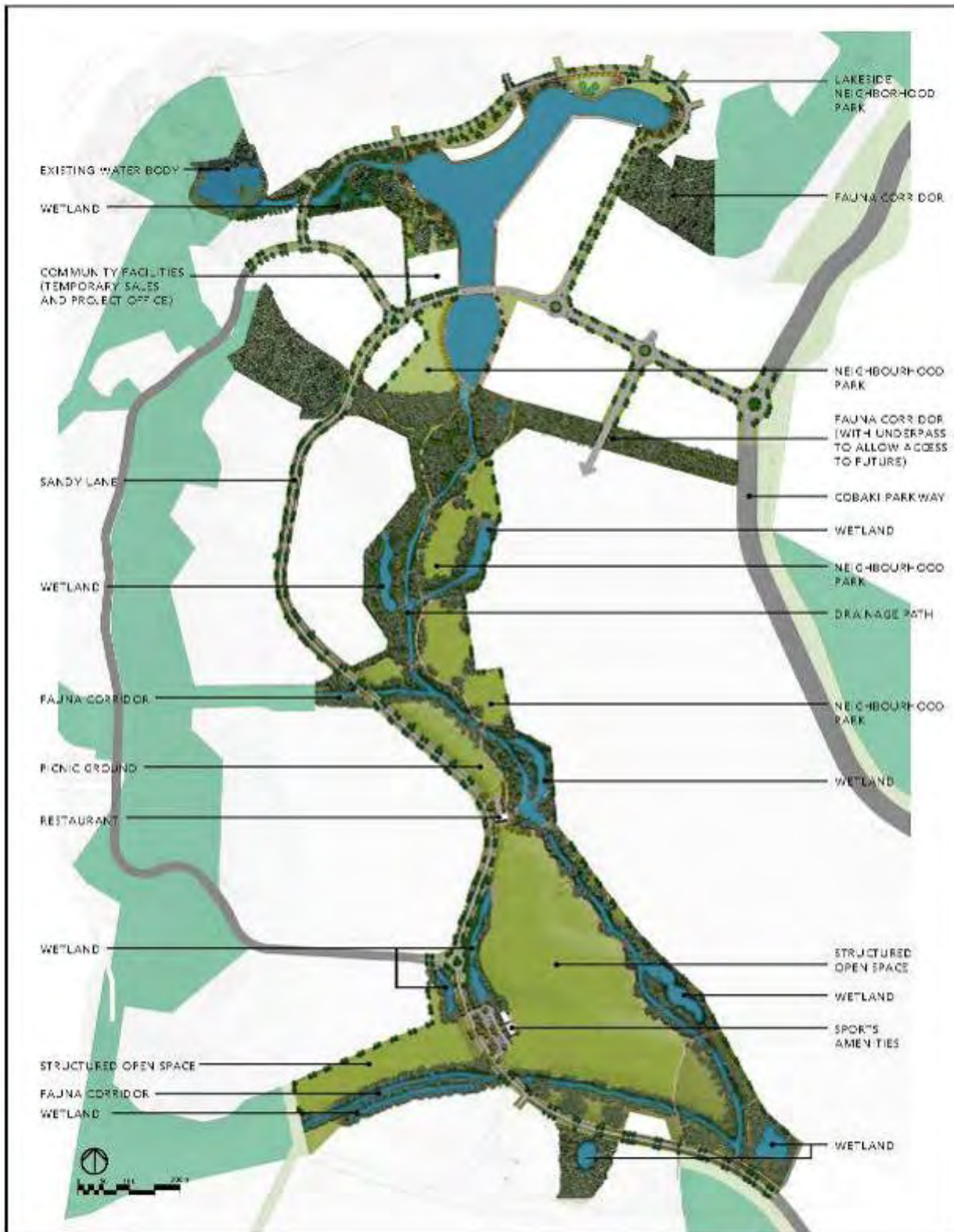


### CENTRAL OPEN SPACE - LAND USE AREAS



	PLACE Design Group Pty Ltd Level 1, 262 Widdoway Street Forrestvale Valley, Vic 3105 AUSTRALIA T + 61 7 3852 3922 F + 61 7 3852 4796	<b>COBAKI LAKES</b> CENTRAL OPEN SPACE - LAND USE AREAS	<b>DATE: 27/10/2009</b> <b>SK01 - 06</b>
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# CENTRAL OPEN SPACE – LANDSCAPE PLAN

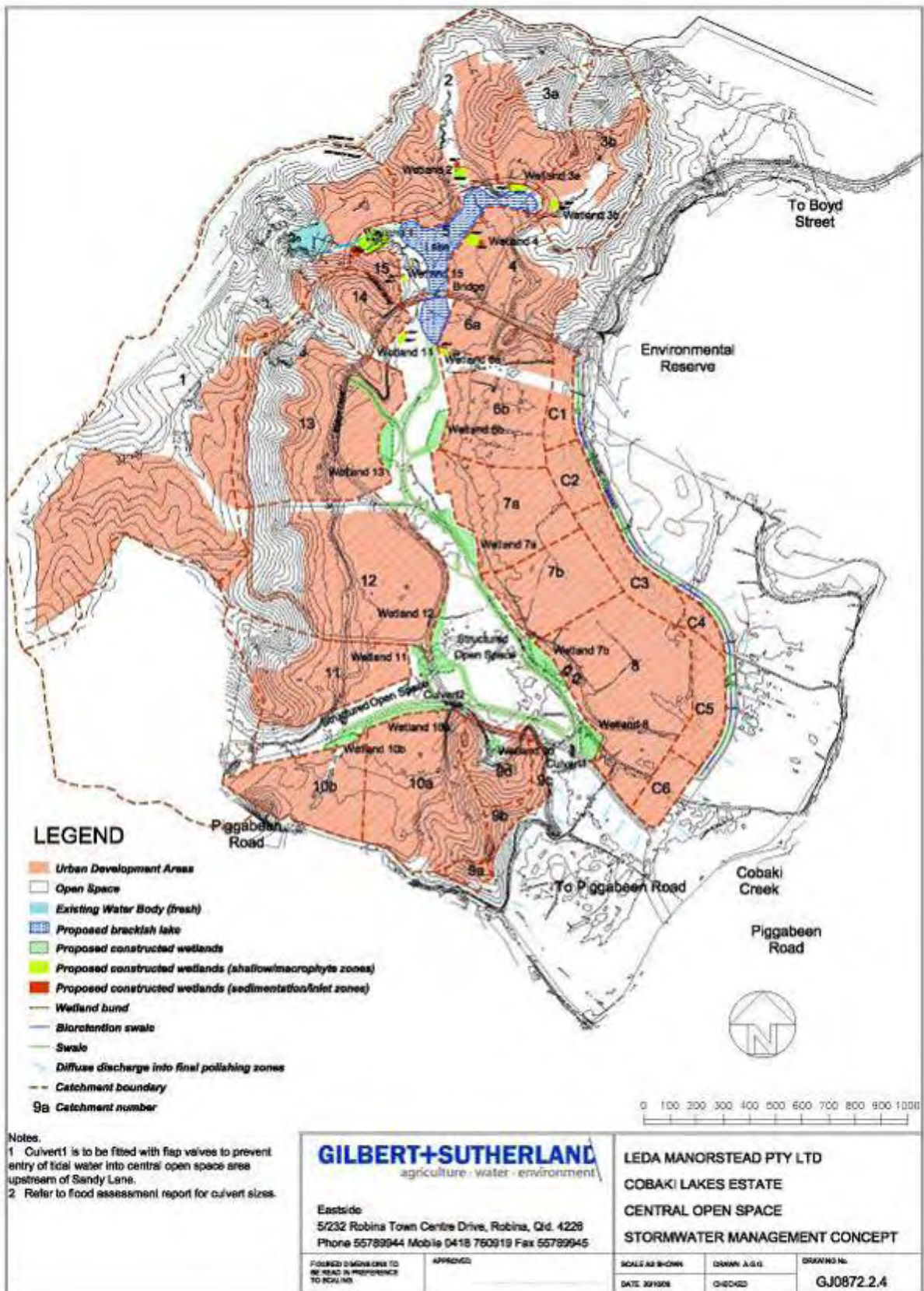


 PLACE Design Group Pty Ltd  
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Fortitude Valley, QLD 4006 AUSTRALIA  
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**COBAKI LAKES**  
CENTRAL OPEN SPACE - LANDSCAPE PLAN

DATE: 27/10/2009  
SK01 - 01

# STORMWATER MANAGEMENT CONCEPT



**SUBDIVISION PLAN**

DATE OF SURVEY		20/05/2009
LOT AREA		21.11 Ha
PROJECT AREA		21.11 Ha
SUBJECT		LOT 810, 811
DRAWN BY		P. SUTHERLAND
CHECKED BY		P. SUTHERLAND
DATE		22/05/09
SCALE		1:10000
PROJECT NO		6400-162
SHEET NO		1 of 1

**NOTES & DISCLAIMERS**

DETAILED SURVEY AND FURTHER APPROVALS WILL IDENTIFY ROAD CLOSURES AND REMAINDER LOTS OF THE UNDERLYING LAND PARCELS.  
AREAS ARE SUBJECT TO SURVEY.

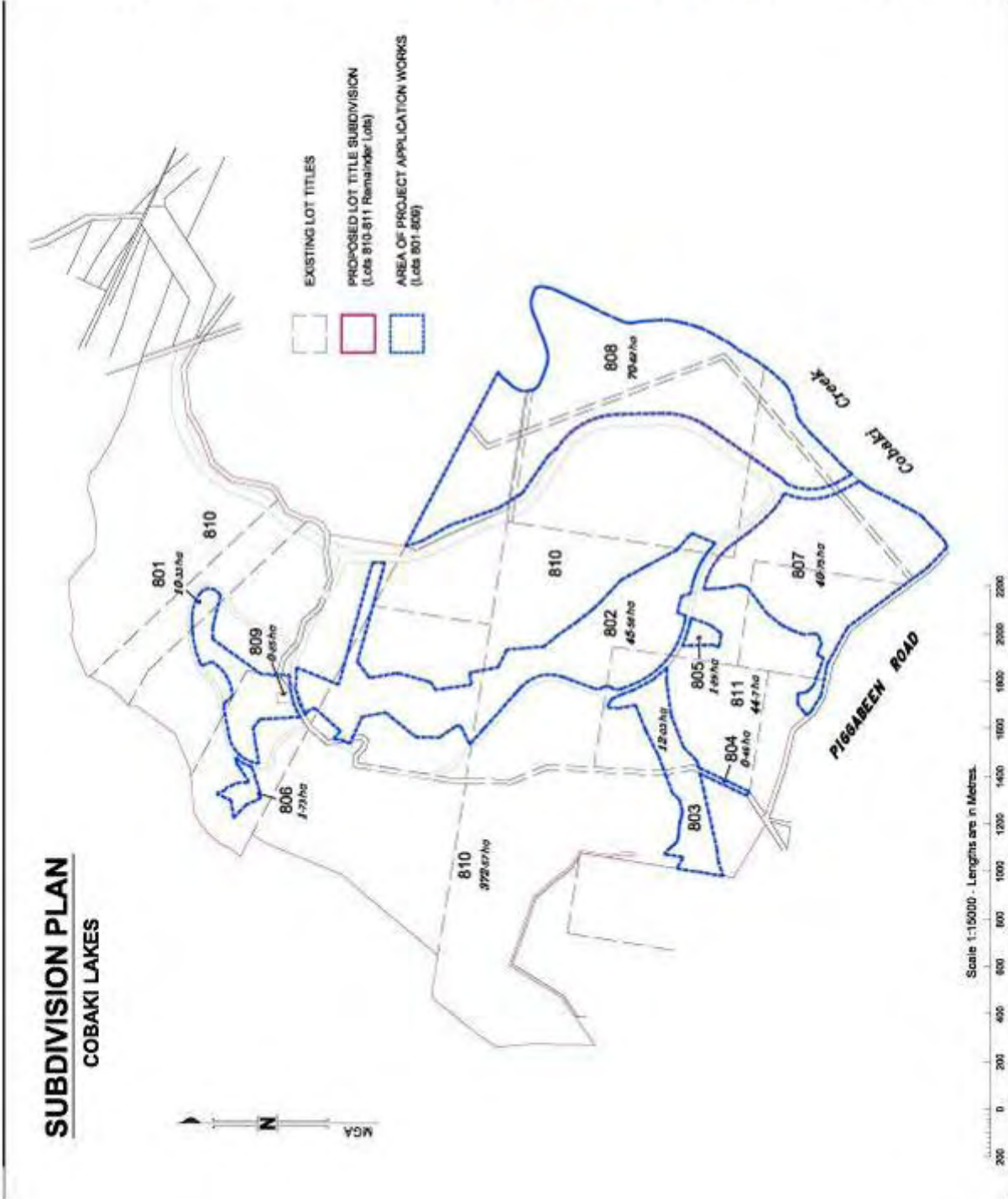


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**PROJECT**

**COBAKI LAKES**  
CLIENT: LEO MANORSTEAD PTY LTD  
SUBDIVISION PLAN  
COBAKI LAKES

PROJECT NUMBER	DATE	SCALE	PROJECT NAME
6400-162	20/05/2009	1:10000	COBAKI LAKES
PROJECT AREA	DRAWN BY	CHECKED BY	DATE
21.11 Ha	P. SUTHERLAND	P. SUTHERLAND	22/05/2009



## PROJECT APPLICATION

### Proposal

Unlike a concept plan, a project application if approved, allows for development to occur without further approval (besides detailed subdivision or construction certificates). A more detailed assessment is therefore required. Notwithstanding, given the ongoing resourcing demands of a number of Part 3A proposals, the assessment of the Cobaki Lakes PA has been limited to those areas which relate to proposed future Council assets including open space, environmental reserves, roads and stormwater infrastructure.

The PA seeks approval for the subdivision, detailed design and construction of the central open space (including lake) and riparian corridor in the Cobaki Lakes Estate consistent with the existing Concept Plan. (Note that the Concept Plan is yet to be determined by the DoP).

In terms of infrastructure provision, the main objective of the application is to provide the north-south trunk drainage system for Cobaki Lakes. In order to manage stormwater quality, quantity and flood liability, the trunk drainage system is made up of:

- A central Lake
- An open channel
- A Saltmarsh Polishing Zone
- Constructed wetlands
- A bridge over the lake,
- Three small culvert crossings and a major flood-gated culvert crossing at the outlet of the open channel on Sandy Lane

Works proposed as part of this PA include:

- earthworks (cut and fill) including creation of a lake, wetlands and riparian drainage corridor;
- landscaping of the central open space parkland areas;
- revegetation and rehabilitation of environmental protection bushland areas;
- revegetation and rehabilitation of freshwater wetlands and riparian corridor;
- revegetation and rehabilitation of saltmarsh areas;
- construction of access paths and bridges;
- construction of the lake edge landscape treatments including wetland edges, stonewalls, boardwalks, promenades, hand railing, and road bridge.

The PA also seeks approval of the following plans:

- Land Use Area Plan;
- Landscape Plans;
- Pedestrian Connectivity Plan;
- Stormwater Management Plan;
- Earthworks (cut and fill) diagrams;
- Draft Plan of Subdivision.

The subdivisional component of the application seeks approval for the subdivision of the open space, lake and riparian corridor into 9 lots (Lots 801 to 809) leaving 2 master lots (Lots 810 and 811) for the future urban development of the Cobaki Lakes Estate.

Various components of the PA are described in greater detail below.

### Lake

As per the (unapproved) Concept Plan, a 7.86Ha lake is proposed at the northern end of the project application area, at the base of the "Northern Hillside" precinct and immediately west of the Town Centre. The lake will be embellished with open space, landscaping, revetments, boardwalks, promenades etc around its foreshore, and provides a significant amenity and marketing feature for the applicant. As such, the applicant aims to minimise plant growth in and around the lake, which could promote odour (due to rotting vegetation) and "nuisance wildlife", including but not limited to vermin and mosquitoes.

The central lake (providing a surface area of 6.86ha) is proposed at a depth of 5m, which will be achieved by excavating to -2.5m AHD and constructing a weir (approx. 55m in length) at the lake outlet with a crest level of +2.5m AHD. Suitable spoil from the excavation will be used to fill flood liable land within the Estate for future urban development (in accordance with separate approvals). For a lake of this depth vegetation growth will be limited, but stratification is likely to occur. To counter this, the applicant proposes a vertical mixer (such as a fountain) to provide oxygenation.

The lake edge profile in front of residential areas is proposed to consist of a constructed / formed underwater "shelf" approximately 3.6m wide at RL + 1.90m AHD (600 depth of water) with either a 3.5m wide concrete slab promenade or a 2.5m timber boardwalk, both at RL + 3.0m AHD. The promenade deck and boardwalk are both supported by a lake revetment wall and give access to private property via internal steps to the allotment behind the promenade and/or boardwalk up to RL + 4.50m AHD.

Other lake edge profiles to parkland and wetland edges will consist of similar "shelf" and retaining wall heights to RL 3.0m AHD, as for residential areas, but with finished levels behind the wall to suit surrounding ground levels, or, flat vegetated batter slopes of 1(V):6 (H) into the underwater zone batter slope of 1(V):3(H).

The lake revetment walls are proposed to consist of mass gravity concrete walls approximately 1.1m to 1.2m in height.

The lake is located "on line" with runoff catchments to the north, east and west, and as it accepts all water from these areas (some 60Ha), performs an important stormwater drainage function. While these flows will be passed through various treatment measures including constructed wetlands, relatively high levels of nutrients (nitrogen and phosphorus) are predicted in the lake, which are likely to lead to algal blooms in the warmer months. To counter this, the applicant proposes to pump salt water from Cobaki Creek and inject it into the upstream end of the lake, to achieve salinity levels that will inhibit vegetation and algal growth. The system will consist of a 250mm UPVC gravity line from Cobaki Creek, across the salt marsh rehabilitation area, to a storage reservoir located south of Sandy Lane. A pump station will be provided, capable of delivering 100L/s of salt water from the reservoir to the lake via a 250mm UPVC rising main. This system will mean that the lake will be brackish for six months of the year, and that this brackish water will travel down the central corridor of the Estate.



### Water Quality Management of the Lake

Three options are proposed for management of water and aesthetic quality of the lake.

Option 1 - A shallow (approximately 2.0m deep) freshwater lake, which will be susceptible to the growth of emergent macrophytes. Operating and maintenance costs of this form of lake are estimated to be \$932,000 (life cycle estimate).

Option 2 - A freshwater lake of 5.0m depth with a mixer (a fountain) to avoid stratification. Some macrophyte harvesting would be required around the perimeter of the lake, plus occasional Phoslock dosing to reduce TP levels and prevent the algal blooms. Operating and maintenance costs of this form of lake are estimated to be \$1,620,000 (life cycle estimate).

Option 3 – A brackish lake with a depth of 5.0m with a mixer (fountain) as well as a water pump delivering saline water. This would result in no weed harvesting (including algal blooms) being required. Operating and maintenance costs of this form of lake are estimated to be between \$1,249,000 and \$1,437,000 (life cycle estimate) to operate that lake at salinities up to 3,000mg/L and 10,000mg/L respectively.

As discussed above the applicant's preferred option is Option 3.

### Open Channel

Downstream of the lake weir, a large open channel will be provided through the site. The channel will be some 1900m long, from the lake to Sandy Lane. The drain will be 10m-30m wide, generally 0.6m-0.7m deep, with a trapezoidal cross section. Longitudinal gradient is virtually flat, at 0.05%. A salt water "trickle feed" from the lake is proposed to provide some flushing at this low grade.

### Saltmarsh Polishing Zone

The open channel terminates at a set of culverts at Sandy Lane towards to southern end of the site (refer to Section (d) for further discussion on this critical element of the drainage system). From this point, the applicant intends to allow flows to dissipate across the salt marsh rehabilitation / compensatory planting zone, relying on existing agricultural drains across this land to convey this stormwater to floodgated outlets through the Cobaki Creek levee. This is intended to provide final "polishing" of the stormwater runoff before it enters Cobaki Creek. While in principle this may be an acceptable approach to managing nutrients in urban stormwater, it does not provide a continuous and maintainable drainage path through the site between Sandy Lane and Cobaki Creek, nor does it address the potential impacts of these pulses of concentrated stormwater on the salt marsh environment.

### Roads

The PA includes part of Sandy Lane, specifically a bridge crossing of the lake.

This bridge is proposed to consist of a reinforced concrete with 4 x 15m spans between bridge abutments and bridge piers, with a deck width of 14m, providing a 9m roadway between kerbs.

## Staging

The PA proposes staging as follows:

1. Implementation of Saltmarsh Rehabilitation Plan and Biting Midge and Mosquito Control Plan (to occur immediately upon approval);
2. Earthworks (cut and fill) for construction of the lake and landscaping of its edges (to commence within 6 months of approval);
3. Landscaping of open space and roads (including implementation of relevant flora and fauna management plans). This is intended to commence in conjunction with civil works for the subdivision of adjacent precincts.
4. Landscaping of structured open space and playing fields (to commence on a pro-rata basis with subdivision of adjacent precincts in accordance with Tweed DCP rates).

The Cobaki Lakes PA has been reviewed by Council's engineers, environmental scientists and open space officers in relation to proposed future Council assets, namely: the proposed roads: casual and structured open space; environmental reserves and stormwater infrastructure.

Issues identified with the PA are summarised below.

## **Summary**

From a town planning and urban design point of view, provision of a Lake for amenity purposes is not opposed, provided environmental engineering matters can be adequately addressed ensuring impacts are mitigated.

Upon review of the PA, Council officers consider that there are significant environmental and engineering concerns with the proposal. Based on the information provided in the PA, it is recommended that Council's position is as follows.

- Council will not accept dedication of the lake as it cannot be feasibly maintained to an appropriate standard without adverse impact on the environment and is contrary to ecologically sustainable development principles.
- Council will not accept dedication of the central stormwater drainage corridor as it does not provide adequate, continuous and maintainable drainage conveyance to Cobaki Creek, and fails to take account of boundary conditions imposed by adjoining land;
- Until matters relating to the lake and stormwater management can be resolved to Council's satisfaction, all current and future applications that rely on stormwater discharge to the drainage corridor should be deferred as they impact directly on the provision of viable public infrastructure.
- Council will not accept dedication of proposed casual and structured open space areas until issues relating to flooding, maintenance and compliant design are resolved satisfactorily.
- Council will not accept dedication or maintenance of the saltmarsh and freshwater rehabilitation areas until: there is no conflict between the PA and proposed rehabilitation plan objectives; rehabilitation plans are amended satisfactorily; on-going management and maintenance issues are rectified and costs for maintenance in perpetuity are identified and deemed appropriate.
- The saltwater flushing system proposed for the lake is deemed inappropriate due to potential impacts on downstream environments and rehabilitation areas (including

- potential issues associated with acid sulphate soils and acid ground water as well as potential for the system to increase algae bloom occurrence).
- Council opposes the PA in its current form given the fundamental conflict between the saltmarsh and freshwater rehabilitation area objectives and the proposed stormwater management systems.
  - That Council opposes the PA as it contradicts justification provided in the Concept Plan and PPR for removal of Ecologically Endangered Communities and Threatened Species Impact through introducing infrastructure, roads (etc) into compensatory habitat areas proposed as offsets.

In terms of stormwater infrastructure, Council's Planning and Infrastructure Engineer has advised that Council should only reconsider its position stated above, if the following changes be made to the PA:

- a) Deletion of the lake, or reconfiguration of the lake to locate it off-line to all public drainage infrastructure and the lake privately maintained in perpetuity;
- b) Extension of drainage design and local flood modelling to incorporate the land downstream of the Sandy Lane culverts, to provide a continuous and maintainable drainage service, that takes into account the long term boundary conditions imposed by adjoining land, including environmental management areas, public open space and filled land for urban development;
- c) Modification of the central drainage design and/or the proposed fill design for adjoining land to provide flood immunity for residential allotments up to the 100 year ARI flood event, plus allowance for climate change;
- d) Provide consideration of existing filling and drainage approvals for precincts within the drainage catchment, to ensure that tailwater levels in the lake and central open channel permit efficient design of infrastructure within these urban areas.

Further justification for these comments is summarised below, including identification of areas which (should the PA be approved) require amendment as well as additional issues of concern.

### **Engineering**

- As identified previously with the Council, there is concern with overlap and conflict between the PA, existing development consents and construction certificates.
- Further detail on on-going tidal monitoring is required, as proposed in the Saltmarsh Rehabilitation Plan particularly in relation to the proposed adjustable weir structure within the existing Cobaki Creek to control inundation of the Saltmarsh and rising sea levels.
- The proposed developer maintenance period of two years for the central open space, lake and riparian corridor is not adequate.
- The proposed Sandy Lane bridge crossing of the lake needs to be increased to a width of 18 metres wide to provide pedestrian movement and to be consistent with previous Development Consent S94/194.

- There are concerns with maintenance of the proposed open channel and ensuring the appropriate rate of flow is provided (in accordance with Council's Development Design Specification D5 – Stormwater Drainage. Further information is required on the channel in terms of groundwater influence.
- The area allocated for constructed wetlands should be 5% of the contributing urban catchment (with no discounts applied) at the PA stage.
- Council's water quality criteria should be used for erosion and sediment control, not from criteria established by the applicant through monitoring as proposed.
- Proposed use of infiltration systems for water quality management is of concern given the existing soil has limited permeability.

### **Environmental and Waterway Issues**

- Detailed Section 5A assessment is required for any threatened species occurring within the PA area including large areas of freshwater wetland Ecologically Endangered Community (EEC) and the Wallum Froglet.

### **Freshwater Wetland Rehabilitation Area**

- There are concerns with the freshwater wetland rehabilitation area (proposed as compensation for Wallum Froglet habitat that will be cleared as a result of the proposal) as the area includes infrastructure, roads and stormwater treatment devices. The siting of infrastructure is in conflict with the freshwater wetland rehabilitation plan objectives.
- The Stormwater Management Plan indicates that the freshwater wetland offset area would be used to treat and transfer stormwater flows. Any created freshwater wetland offset area should not have a dual function. Similarly, siting of Cobaki Parkway and pedestrian walkways / cycleways within the freshwater wetland reduces its suitability for an offset area.
- Saltwater flushing proposed as part of the lake system includes stormwater drains through the freshwater wetland rehabilitation area. Saline intrusion into the freshwater wetland area will cause die off and create unsuitable conditions for the Wallum Froglet and is in direct conflict with the objectives of the rehabilitation plan.
- There is concern with impacts from Acid Sulfate Soil (ASS) and potential acid ground water on the freshwater wetland rehabilitation area, particularly during operation and management of constructed wetlands and proposed lakes.
- The proposed freshwater wetland rehabilitation area should be zoned Environmental Protection at the outset. As identified previously, the applicant should identify the cost of maintenance along with strategies for sourcing of funding to allow Council management of the area in perpetuity.
- The proposed developer maintenance period of two to three years is inadequate.

### **Saltmarsh Rehabilitation Plan**

- Stormwater from a large catchment is proposed to discharge into the Saltmarsh Rehabilitation Area (to the west of the proposed Cobaki Parkway and Sandy Lane). There are concerns that the stormwater discharges into the saltmarsh area will be substantial and result in threatening processes including scouring, sedimentation, increased nutrient input and altered salinity.

- The stormwater management plan identifies the saltmarsh rehabilitation area as a final polishing zone for stormwater. This is contrary to the objectives of the saltmarsh rehabilitation area to create and rehabilitate saltmarsh EEC and Swamp Oak Forest EEC to compensate for the loss of these threatened communities as a result of the proposal. The offset area should not have a dual function.
- The stormwater management plan indicates that stormwater will be channelled through existing agricultural drains. Given that these drains will be subject to sedimentation over time, there is concern with maintenance of the stormwater system within an environmental protection and rehabilitation area.
- Stormwater from the central drainage system should not be discharged into the Saltmarsh Rehabilitation Area.
- There is concern with stormwater discharge proposed from the residential catchments to the west of Cobaki Parkway as no treatment is proposed prior to discharge into the saltmarsh area.
- There is concern that construction of stormwater drains and wetlands within the ASS areas and inception of acidic groundwater will result in poor quality stormwater downstream into the saltmarsh rehabilitation area.
- As with the freshwater wetland areas, a funding source for long term management of the area must be identified.
- Impact of proposed infrastructure within the saltmarsh rehabilitation area (including channels, tidal gates and pump station) is not considered in the plan.

#### Site Regeneration and Revegetation Plan

- Detailed regeneration and revegetation plans should be submitted with the EA for the PA, not at later construction stages.
- Management precincts in the plan include stormwater treatment ponds, drains, open space, infrastructure community facilities, lake boardwalks and earthworks. There is a conflict with provision of these works and infrastructure and the objective of the plan, to ensure restoration of degraded areas and offsets for any vegetation removal.
- As above, there is concern that the offset areas (used as justification in the Section 5A assessments in the PPR) will be subject to other land uses and are in conflict with the rehabilitation and conservation of these environmental areas in perpetuity. Offset targets should therefore be reassessed as it is unlikely that they will be met based on the information provided in the PA.. The Section 5A assessments should be amended.

#### Waterways

- It is essential that works proposed to improve water quality do not result in the creation of ASS impacts, including release of acid and mobilisation of high concentrations of iron and aluminium as this will have detrimental impacts on water quality in Cobaki Broadwater.
- The ASS management plan indicates that further investigation of ASS will be undertaken once the detailed design of stormwater and drainage infrastructure is finalised. From a construction and long term operational perspective, this approach is considered to be unacceptable. Detailed ASS assessment should be undertaken to inform the location and depth profile of proposed stormwater treatment wetlands proposed south of the lake, as well as assess the risk that their construction poses to the environment. All precautionary steps must be undertaken to avoid creating long term acid generation potential in the central open space area.

- The proposed stormwater drainage channel through the centre of the site will create significant on-going issues in terms of acid and metals exported to Cobaki Creek and Cobaki Broadwater. The ASS assessment management plan does not provide information on long term management of drains or wetlands, should it be found that they become a source of acid within the environment. The depth of excavation of the channels should be accurately informed by detailed ASS investigations to ensure that ASS is not exposed through drain augmentation and to ensure that hydraulic draw down of adjacent groundwater does not result in oxidation of potential ASS in the adjacent soil profile.
- Management of nutrient and resultant algae growth in the lake waters is a concern. The recirculation of saline water through the lake system may be ineffective in controlling algal blooms.

### **Open Space Officer – Recreational Services**

- Comments previously provided on the PPR remain applicable given that these comments have not been addressed. There is concern with the PA as it proposes structured and casual open space areas which do not comply with Council's minimum standards and dimension requirements.
- Insufficient area of structured open space is proposed, based on maximum population yield of 12,000.
- Sportsfields are proposed below the required level (Q100 – 1m) and can not be accepted.
- An independent review of saline water inundation impacts of on the sportsfield and casual open space, particularly turf management and impacts of salinity levels and frequency of inundation should be undertaken. Further information is also required on the impact of the saline water flush through the adjoining channels outside of flood times. The applicant should demonstrate that saline water will not move by capillary action or affect the root zone of the sportsfield turf.
- Limited details are provided on the construction method for the sportsfield, including the proposed sandy soil layer with adequate subsoil drainage.
- The applicant should commit to construction of the sportsfields to suitable Council standards.
- The applicant must confirm that the proposed 10.9ha “open space parkland” is part of the overall requirement for casual open space.
- The applicant should commit to providing the outstanding amount of casual open space (2.7 ha) in a suitable open space network throughout the development as part of future subdivision applications.
- Further information is required to demonstrate that casual open space areas proposed comply with Council's casual open space requirements, set out in Section A5 of the DCP.
- Additional casual open space areas are required to ensure that 95% of residents are within 400m walking distance of a local park.
- The proposed boundaries to open space areas do not meet Council's requirements for public access and road frontage outlined in Council's DCP, Section A5.
- As above, limited information is provided demonstrating that casual open space areas comply with required minimum fill levels for flood mitigation.
- Species proposed in the Landscape Plan would appear to be suitable for proposed salinity levels but not for freshwater riparian areas, which are also proposed. Further justification is required on species selection, with regard to flood inundation.

- Should the lake proceed, the applicant should provide means of meeting the cost of maintaining the lake and adjoining public infrastructure and public land.
- The applicant should commit to providing public access around the lake.
- Limited information is proposed on proposed embellishments of casual open space areas, other than conceptual drawings. Adequate detail on this is required prior to issue of an approval.
- Further information is required on the potential contaminated land site in the south-west of the development area, adjacent to an area proposed to be dedicated as open space.
- Further information is required on the proposed operation and management of the restaurant.

**OPTIONS:**

1. That Council endorses the attached draft submission to the Department of Planning on the Project Application for Cobaki Lakes.
2. That Council proposes an alternative draft submission to the Department of Planning on the Project Application for Cobaki Lakes.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil

**POLICY IMPLICATIONS:**

Nil

**CONCLUSION:**

Council has the opportunity to make a submission to the Department of Planning on the Project Application for Cobaki Lakes.

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

The purpose of this report is to seek Council endorsement of the attached draft submission to the NSW Department of Planning.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Draft submission to the Department of Planning on the Project Application for Cobaki Lakes (ECM 13590872)
-

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**17 [PR-CM] Proposed Amendments to Tweed Development Control Plan Notification Requirements for Development Applications Affecting Caravan Parks and Manufactured Home Estates**

**ORIGIN:**

**Development Assessment**

**SUMMARY OF REPORT:**

At its meeting of 16 February 2010 Council resolved to defer further consideration to a workshop of a report regarding additional notification procedures for development proposals adjacent to caravan parks and manufactured home estates. The method of how to notify occupants of parks and estates was discussed at a Councillors workshop held on 23 February 2010. Following some further investigations, Council officers put forward a proposed alternative notification procedure involving the use of the most current community maps of each complex for the direct mail-out of notification letters through Australia Post to the permanent occupiers of affected sites. The Councillors present at the Workshop generally supported this approach.

It has therefore been recommended that Council endorse the public exhibition of a revised amendment to Section A11 of the Tweed DCP 2008 to reflect this alternative notification procedure.

**RECOMMENDATION:**

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

**Caravan Parks and Manufactured Home Estates**

**Permanent occupiers of caravan parks and manufactured home estates sites are to be notified in the same way as landowners are notified as set out in clause A11.2.1 Who is to be notified? (affected owners). In this regard individual sites occupiers are to be notified by mail identified by Council's copy of the community map for each caravan park or manufactured home estate.**

**REPORT:**

See the attached copy of the 16 February 2010 report for background information.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

See previous report.

**POLICY IMPLICATIONS:**

See previous report.

**UNDER SEPARATE COVER:**

1. Report to Council's meeting of 16 February 2010 regarding Proposed Amendments to Tweed DCP Notification Requirements for DAs Affecting Caravan Parks and Manufactured Home Estates (ECM 13441992)
-

**18 [PR-CM] Results of Recent Legal Determinations for Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 Comprising 91 Independent Living Units, 94 Supported Living Units and 67 Beds within a High Care**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0413 Pt13**

**SUMMARY OF REPORT:**

In November 2009 the Hastings Point Progress Association made two legal challenges regarding the validity of the previously approved aged care development commonly known as "The Point" (DA06/0413).

The first challenge was made to the Court of Appeal to Re-List the matter under a "slip rule" as the appellant submitted that the conclusion reached by the Court of Appeal (Justice McColl and Justice Young) should lead to the Appeal being allowed and the matter being remitted to the Trial Judge.

This matter was heard on 10 December 2009 and was unsuccessful.

The second challenge was made to the High Court of Australia being an application for leave to Appeal to the High Court (reference S270/2009).

This matter was heard on 12 February 2010 and was also unsuccessful.

Accordingly there is no further avenue of appeal for the Hastings Point Progress Association Incorporated. The only matter that might remain is the issue of costs between the Hastings Point Progress Association Incorporated and Aeklig Pty Ltd.

Therefore, development consent for DA06/0413 (comprising an aged care housing development) as issued by Tweed Shire Council in May 2007 remains valid.

**RECOMMENDATION:**

**That the report on the recent legal determinations for Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 Comprising 91 Independent Living Units, 94 Supported Living Units and 67 Beds within a High Care Facility at Lot 1 DP 786570, No. 87-89 Tweed Coast Road, Hastings Point be received and noted.**

**REPORT:**

**Applicant:** Aeklig Pty Ltd  
**Owner:** Mr AP McIntosh  
**Location:** Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$25,000,000

**BACKGROUND:**

DA06/0413 sought approval for a staged seniors living development under SEPP (Seniors Living) 2004 comprising 91 independent living units, 94 supported living units and 67 beds within a high care facility at Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point.

The application was approved by Council in May 2007 subject to conditions of consent.

The DA was challenged in the NSW Land and Environment Court by Hastings Point Progress Association Incorporated. The nature of the appeal focused on two matters of procedure (as the Appeal could only relate to procedure and NOT merit);

1. That Council failed to consider Clause 8 of the Tweed LEP 2000 specifically in regard to cumulative impact; and
2. That Council's decision was manifestly unreasonable.

The appeal was unsuccessful on both counts.

The judgement determined that the Senior Living SEPP prevailed over Clause 8 of the Tweed LEP 2000, as Clause 8 of the Tweed LEP 2000 was inconsistent with the SEPP Senior Living.

Secondly the judgement determined that Council's decision was not manifestly unreasonable.

The case was accordingly dismissed.

In May 2009 the Hastings Point Progress Association challenged the NSW Land and Environment Court decision. The NSW Court of Appeal undertook a judicial review of the NSW Land and Environment decision primarily focussing on whether Clause 8 of the Tweed LEP 2000 actually formed an inconsistency with the Senior Living SEPP.

The Hastings Point Progress Association argued that the Clause was an additional assessment criterion not one in conflict with anything contained within the SEPP.

Aeklig Pty Ltd argued that:

1. Clause 8 of the LEP mandates that a refusal be granted unless the three matters (8 (1) (a) and (b) and (c) are satisfied; and

2. The SEPP Senior Living permits development despite the provisions of any other instrument provided the development complies with the SEPP

Therefore Aeklig argued that Clause 8 was inconsistent with the SEPP enabling the SEPP to prevail.

The Court of Appeal decision is determined by three judges. In this instance two judges ruled in the favour of Aeklig and one judge was dissenting.

The judgement summarised inter alia:

*"...The critical issue on appeal was whether Clause 8 of the Tweed LEP 2000 was inconsistent with Clause 17 of the SEPP – SL for the purposes of s36 of the Environmental Planning and Assessment Act 1979 (NSW) because it mandated refusal of a development which nevertheless was to be carried out in accordance with SEPP – SL.*

*...That provision cannot, in my view, operate concurrently with Clause 17 of SEPP SL which permits the development to which it refers "despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.*

*This is not to say that the consent authority is not required by s79C to take those conditions into account in its consideration of a development that otherwise complies with SEPP – SL. But having done so, the consent authority has a discretion to grant consent, notwithstanding that it is not satisfied of each of the three conditions in Clause 8(1). The inconsistency arises because Clause 8(1) mandates refusal in those circumstances."*

The Court of Appeal held that the case was dismissed with costs.

As detailed within the summary above Council did not actively defend this case and only put on a submitting appearance. Therefore the costs order issued by the Court of Appeal would only apply to the second respondent Aeklig Pty Ltd to recover their costs from the applicant Hastings Point Progress Association.

In November 2009 Council was advised of two (2) additional appeals that had been lodged by Hastings Point Progress Association Incorporated in regards to this matter:

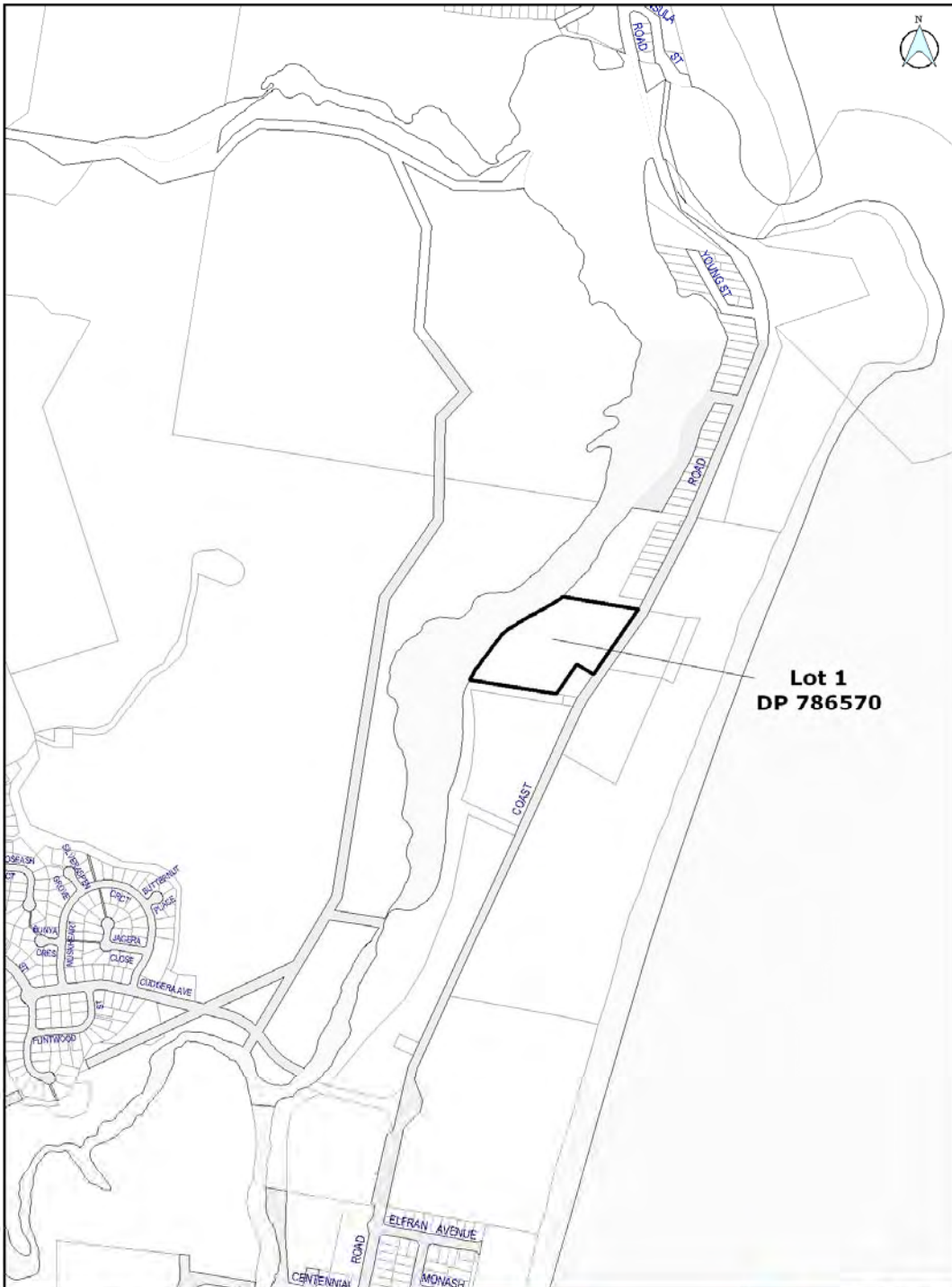
1. Court of Appeal to Re-List under the "slip rule" as the appellant submits that the conclusion reached by the Court of Appeal (Justice McColl and Justice Young) should lead to the Appeal being allowed and the matter being remitted to the Trial Judge.
2. Application for Leave to Appeal to the High Court (reference S270/2009);

Both of these cases relate to the same principals as detailed above.

Both cases were dismissed and therefore the earlier decision by the NSW Court of Appeal in dismissing the Appeal by the Hastings Point Progress Association Incorporated stands.

Development consent for DA06/0413 (comprising an aged care housing development) as issued by Tweed Shire Council in May 2007 remains valid.

**SITE DIAGRAM:**



**Lot 1  
DP 786570**

© TWEED SHIRE COUNCIL, 2007  
 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map.  
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 P.O. Box 916  
 Murumbidgee, NSW, 2484  
 Tel (02) 6670 2489  
 Fax (02) 6670 2483

*Tweed Shire Council*  
**Lot 1 DP 786570**  
**No. 87-89 Tweed Coast Road Hastings Point**  
 File: N:\Munsys\A4P - SITE PLAN\Wor Author: J.Batchelor Date: 01/May/2007



PLANNING  
 REPORTS UNIT  
**Site  
 Plan**  
 Scale: 1:10,000 Sheet: 1 of 1

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council did not actively defend these cases and only put on a submitting appearance thus allowing the case to be defended by the applicant. Council's legal expenses in relation to this case have been minimal (approximately \$1300).

**POLICY IMPLICATIONS:**

It is recommended that TSC continue to undertake judicious consideration of environmental planning instruments when assessing development applications.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. High Court Results 12 February 2010 (ECM 13479726)
  2. Marsden's Letter to TSC 19 February 2010 (ECM 13479726)
  3. Stacks The Law Firm Letter to Marsden's 16 February 2010 (ECM 13479726)
  4. NSW Court of Appeal Judgement CA40279/09 (No. 2) – 10 December 2009 (ECM 13479726)
  5. NSW Court of Appeal Judgement CA40279/09 - 11 September 2009 (ECM 13479726)
  6. NSW Land and Environment Court Judgement - 6 June 2008 (ECM 13479726)
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**19 [PR-CM] Vegetation Clearing at Lot 4 DP 1106447 Tweed Coast Road, Chinderah**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF1070/210 Pt6**

**SUMMARY OF REPORT:**

Certain trees and understorey vegetation were removed from the subject property (currently owned by Gales Holdings) during January 2010. Council officers became aware of this removal through a complaint from a local resident. The contractor states that the trees were dead or damaged from recent storm events and were cleared to remove hazards to cattle.

Various parts of the property are affected by Council's 1990 and 2004 Tree Preservation Orders (TPO's). Although some land is zoned for future industrial and residential land use, other parts will be preserved as environmental protection areas along the existing Drainage Channel, which may also include possible Endangered Ecological Communities. Some of the more significant tree and understorey clearing occurred in these parts.

The works, although initiated by a genuine need for responsible farm management are considered to be in part a breach of both TPO's.

**RECOMMENDATION:**

**That a Penalty Infringement Notice (PIN) be issued to the owner of Lot 4 DP 1106447 Tweed Coast Road, Chinderah for a breach of Council's Tree Preservation Orders.**

**REPORT:**

Background:

Following a complaint from a local resident, Council officers inspected the subject site at 2.30pm 28 January 2010. The 42ha property owned by Gales extends from Ozone Street through to Rotumah Street and the industrial estate at Chinderah.

Observations:

Beyond the tree line around the Kingscliff Drainage channel, some piles of trees around 2m in height were evident with the ground bare as if the area had been underscrubbed. Some piles of trees had boles ranging from 100cm in circumference to much smaller spindly trees less than 10cm in circumference. Species evident included *Banksia integrifolia* and *Casuarina glauca*. Vines had been mixed in amongst the debris in some piles and much of the material consisted of branches and trunks where little green leaves were evident. Most of the removed vegetation was dried/dead even though just cleared.

Fresh works were evident at the drainage channel crossing, with a new replacement bridge having been constructed but also a disturbed area beside the bridge where the excavator had crossed. Unconsolidated grey sand was evident on the waters edge and some foam and minor discoloration was seen within the drainage line which was tannin-stained.

The tree removal operators stated that they were tidying up fallen and storm damaged trees on the farm. Storm winds had knocked over many trees (most having a shallow root systems within a sandy loam soil profile). Some had fallen over fences, some into other trees clusters and some in the open pasture. As they were considered a hazard to cattle and could not be left unmanaged, they stated they were tidying up the property.

The contractors stopped work when requested to do so.

Statutory requirements:

The property is currently zoned 2(a) Residential at the Kingscliff end of the property and 4(a) Industrial at the Chinderah end under Tweed Local Environmental Plan 2000. The lot has two parts affected by Council's Tree Preservation Orders: the most easterly being under the 1990 TPO (following the 2(a) zoning) and the area following the drainage line under the 2004 TPO. The second TPO has some significant vegetation in this area. Much of the site is identified as Melaleuca and Swamp She-oak forest being candidate Endangered Ecological Community categories. The most western portion adjacent Rotumah Street is classed as "very high" ecological status under the Tweed Vegetation Management Strategy 2004.

Assessment:

It appeared that the storm had knocked several trees over. Some were easily removed but as some were “held up” in other trees and tangled with vines, the machine was needed to drag it out. Although much of the work was outside the TPO areas, there were still damaged trees cleared along the Drainage Channel which is an area which contains significant vegetation of high habitat value and perhaps the use of an excavator was not the most sensitive way to resolve deal with the fallen trees. The contractors argue that it was the most cost-effective and only practical method of clearing storm damaged vegetation.

The contractor responsible for management of the property later supplied photos of each area with damaged trees taken before works commenced. The photographs mostly confirmed that in fact the trees were damaged.

Irrespective of the legitimacy of the need to removed storm damaged trees, several trees were cleared out from within an area covered by a TPO. Secondly, whether the damage to, and removal of, vegetation as viewed on the site was for the purposes of cleaning up storm damage or not, there was clearly some damage to live trees, mid-story and understorey plants, all of which are protected without exemption under the 2004 TPO. Of particular concern were the works near the drainage line channel where the majority of clearing had occurred. In addition, some clearing had occurred opposite Peate Court in the eastern half of the property associated with drainage works, where felled trees greater than 3m in height (and thus covered under the 1990 TPO which is applicable to the eastern side) indicate a breach of the instrument. These works may have been undertaken under their ‘existing use rights’ in maintaining an existing farming property.

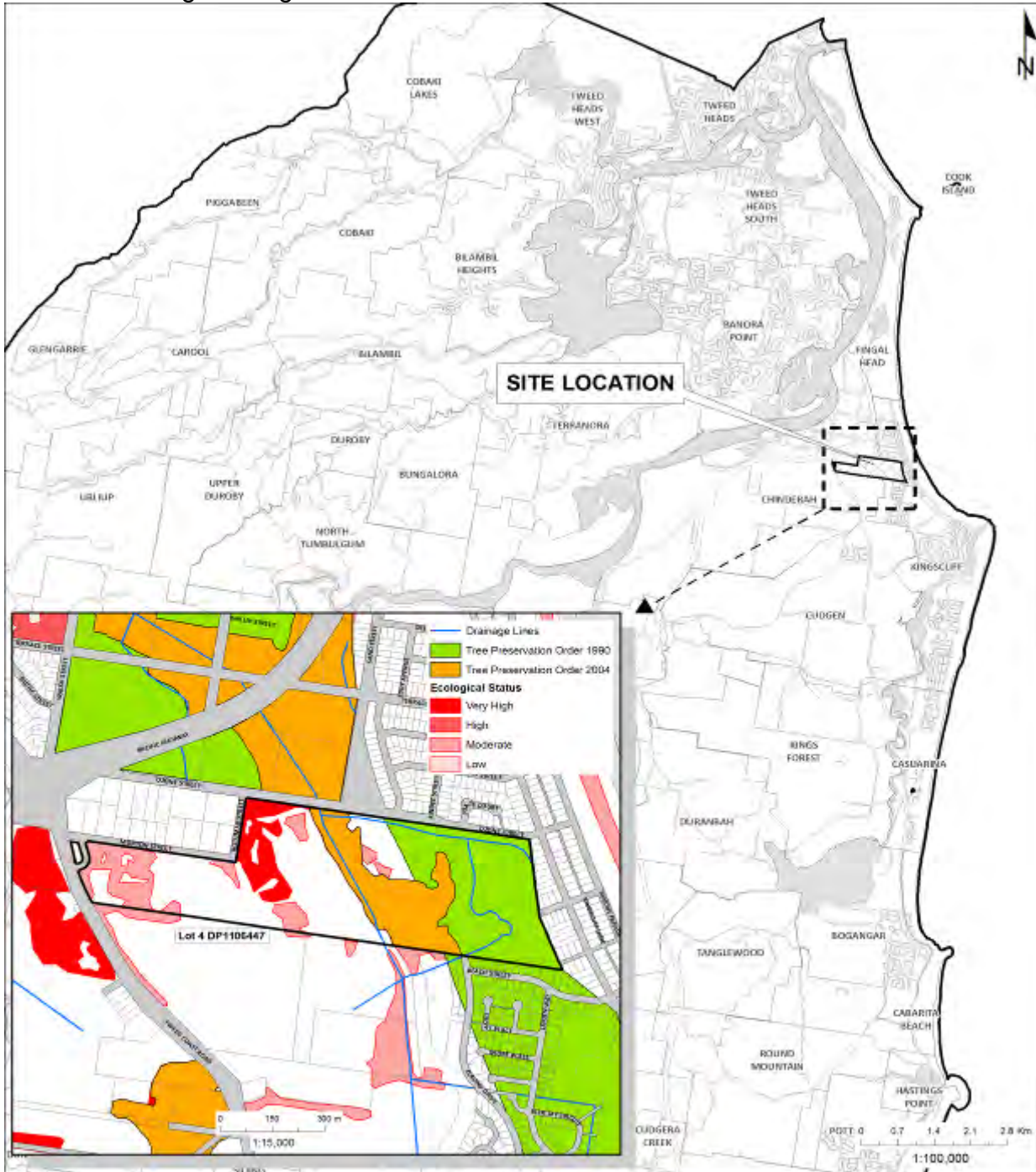
The zoning of the land for future residential and industrial use means the Native Vegetation Act does not apply to the site.

Conclusion:

The works, although initiated by a genuine need for responsible farm management in relation to care of cattle, were still in part a breach of both Tree Preservation Orders.

**SUBJECT SITE:**

Green shading indicates the area covered by the 1990 TPO; orange illustrates the extent of the 2004 TPO; dark red shows vegetation outside the TPO's of *Very High Ecological status* as mapped under the Tweed Vegetation Management Strategy 2004. Thin blue lines indicate existing drainage lines.



**LOCALITY PLAN**  
 Lot 4 DP 1106447  
 Tweed Coast Road, Chinderah

Filename: \\c:\plan\planning\mtd\A4P\_B&W\_SitePlan.mxd Author: J Batchelor - Planning Reforms Unit Date Printed: 03 March, 2010

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Coordinate System - MGA Zone 56 Datum - GDA94

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**TWEED**  
SHIRE COUNCIL

**AERIAL PHOTOGRAPH:**



**AERIAL PHOTO - taken October 2009**

Lot 4 DP 1106447  
Tweed Coast Road, Chinderah

<p>Filename: z:\aerial\binning\standard maps\council\reports\pales_spatial.mxd Path: J:\Bartwick - Planning\Reforma.UHS Date Printed: 03 March, 2010</p>		
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, accuracy 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 a separate losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it is the customer's liability and agreement only. It should not be used for survey or construction purposes and prior to any excavation a 'Dial before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of issue.</p>	 <p>Created: 03 March 2010 © Dept. of Lands &amp; Tweed Shire Council</p>	<p>Civil and Cultural Centre 3 Tarragum Place Murwillumbah NSW 2484 PO Box 818 Murwillumbah NSW 2484</p> <p>T 02 4270 3433 1300 060 870 F 02 4270 3422 E info@tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>
<p>Coastwide Services - 024 246 26 00 Council - 024 246 26 00 COUNCIL ONLY - NOT FOR RELEASE</p>		

Aerial photograph showing approximate location of trees cleared.

**PHOTOGRAPHS OF THE SITE:**



Typical shallow root tree knocked over by storm event.



Trees with understorey cleared up into piles within TPO area along the drainage channel.

**OPTIONS:**

- 1 Take no action.
- 2 Issue a Penalty Infringement Notice (PIN).
- 3 Instigate legal action.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council would incur costs in any prosecution. If successful, costs may be recovered through the courts as a separate hearing.

If the option of issuing a PIN is adopted, the Notice can be disputed in Court.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**20 [PR-CM] Companion Animals Management Plan**

**ORIGIN:**

**Regulatory Services**

**SUMMARY OF REPORT:**

A draft of the Companion Animals Management Plan was placed on public exhibition from 1 January 2010 to 11 February 2010 following an earlier report to Council. Council received comments from three individuals regarding the draft plan, however it is considered that the issues raised did not warrant any amendment to the exhibited Plan. It is therefore recommended that Council adopts the exhibited Companion Animals Management Plan.

**RECOMMENDATION:**

**That Council adopts the final Companion Animals Management Plan referred to and attached to this report.**

**REPORT:**

A draft of the Companion Animals Management Plan was placed on public exhibition from 1 January 2010 to 11 February 2010 following an earlier report to Council. Council received comments from three individuals regarding the draft plan as summarised below:

**Provision of fenced off leash dog exercise areas.**

In accordance with the Companion Animals Act Council is required to provide at least one off-leash exercise area within its area of operation. Within the Tweed Shire there are currently fifteen off-leash areas provided for use by the public. There are no requirements under the Companion Animals Act or associated Regulation stating the necessity to provide a fenced off-leash dog exercise area, however, the inclusion of this type of structure may be incorporated to existing areas as resources permit.

**Provision of dog poo bag dispensers and dog poo bins at all off leash areas**

In establishing off-leash areas the possibility of providing these services were investigated, however, it was established this was not a feasible option due to the ongoing cost associated with maintenance, service contractors, vandalism and the continual replenishment of bags. The provision of these services is not a requirement under the Companion Animals Act and there are provisions within the Act requiring the owner or person in charge of an animal to ensure that any dog faeces is removed and disposed of in an appropriate manner.

The Companion Animals Management Plan is aimed at providing services, facilities and education strategies in the Tweed Shire which enable pet owners to maximise the enjoyment of companion animals whilst also maintaining a harmonious coexistence between, pet owners and all sectors of the community. It is believed this plan has satisfied Councils obligations in planning for the provision of Companion Animal Management.

On the basis of the review of these public submissions, it is considered that no amendments to the exhibited Plan are warranted.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

The endorsement of this Plan will provide Council with a more up to date address of the Companion Animals Act.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Companion Animals Management Plan (ECM 13479701)
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**21 [PR-CM] Beach Vehicle Policy Review**

**ORIGIN:**

**Regulatory Services**

**SUMMARY OF REPORT:**

A request for a review of Councils Beach Vehicle has been received by Mr David Cranwell spokesperson Ecofishers Tweed Branch. The last review was conducted in 2005 with further community consultation in 2006. Council's current policy was formulated and adopted in conjunction with the outcome of both reviews. The correspondence received requests that certain aspects of the current policy be reviewed to enable greater access to beaches by Beach Vehicle Permit holders with a review of the current permit fee.

In further reviewing this matter, a Councillors Workshop was held with Ecofishers representatives on 1 December 2009 and site inspection with Councillors (Polglase, Youngblutt, Skinner, Longland, Van Lieshout in attendance) and Council's Senior Management, was held on 3 February 2010.

In light of the prevailing, endorsed Council position on the Beach Vehicle Policy Review, and in review of the further information provided by the Ecofishers in their latest submission, it is considered that there are insufficient grounds at this stage to support the requested amendments to Council's Policy.

**RECOMMENDATION:**

**That Council in terms of the adopted Beach Vehicle Policy:-**

- 1. Maintains current exclusion zones and time restrictions;**
- 2. Maintains current fees associated with Beach Vehicle Permits; and**
- 3. Declines the request made by the Ecofishers Tweed Branch to approach the Department of Environment, Climate Change and Water regarding amending their Plan of Management for Coastal Nature Reserves, enabling access to Beach Vehicle Permit Holders.**

## REPORT:

A request for a review of Councils Beach Vehicle Policy has been received by Mr David Cranwell spokesperson Ecofishers Tweed Branch, (Attachment 1). The last review was conducted in 2005 with Councils current policy being adopted in July of the same year. In 2006 ECO Fishers Incorporated Tweed Branch lodged a submission on behalf of 4WD permit holders requesting that additional areas of beach within the Tweed Shire be made accessible to 4WD permit holders due to the reduction of areas that stemmed from the 2005 review. Subsequently extensive community consultation was initiated which concluded there was overwhelming support from the public NOT to incorporate additional areas of beach into the current beach vehicle permit policy.

A further request for review of Council's Beach Vehicle Policy was declined through a report and resolution of Council at its meeting of 16 December 2008.

This most recent Ecofishers correspondence requests that certain aspects of the current policy be reviewed to enable greater access to beaches by Beach Vehicle Permit holders with a review of the current permit fee. Following an internal Councillors Workshop held on 1 December 2009, a site inspection of the Tweed Coast beaches was conducted on 3 February 2010, covering the main access points from Casuarina to Wooyung, and was attended by Councillors Polglase, Youngblutt, Skinner, Longland and Van Lieshout and Senior Council Management. During this inspection Mr Cranwell coordinated a briefing of the main issues from the Eco Fishers submission to Council concerning Beach Vehicle Access by Beach Vehicle Permit holders. The documentation used during the site visit is listed as attachment 3 and all the issues raised at the site visit are covered in this report.

## History

Council has an ongoing duty to consider the use of the Shires beaches and as coastal populations increased so did the potential for conflict over beach usage, therefore in 2005 a review of the Beach Vehicle Policy was warranted to establish a clear direction of management for Beach Vehicle access through consultation with the community and interested parties. During the review period Council initiated extensive community consultation regarding the policy and the feasibility of 4WD access to additional sections of beaches previously not allocated for 4WD access.

In reviewing Council's Beach Vehicle Policy there were a number of strategic change factors that impacted the beach areas within the Shire that Beach Vehicle Permit holders were able to gain access.

*The first change factor related to Nature Reserves under the control of the Department of Environment, Climate Change and Water (DECCW).*

Cudgen, Wooyung and Billinudgel Nature Reserves are the areas of the Tweed Coast currently managed by the DECCW. The DECCW have adopted plans of Management for each of these reserves and they advised beach driving in a nature reserve is considered an inappropriate use and contrary to the purposes of dedication of a nature reserve. As specified under the National Parks and Wildlife Act 1974 (NP&W Act) recreational use of nature reserves should be nature based.

The Cudgen, Billinudgel and Wooyung Nature Reserves are all gazetted to the mean low water mark effectively placing the inter-tidal zone under DECCW control. Therefore vehicles traversing the inter-tidal zone within the boundaries of the nature reserve are subject to the provisions of the NP&W Act. Accordingly Tweed Shire Council permit holders were prohibited from accessing these areas in accordance with the DECCW implementation dates for the plan of management for individual reserves.

*The second of these factors was new beach side subdivisions.*

4WD permit holders had access to the beach situated between south Kingscliff and Cabarita, however, this area continues to be increasingly impacted by Casuarina Beach and Salt subdivisions resulting in increased beach activity, therefore creating a potential conflict over beach usage.

It is fair to say the beaches accessible to current BVP holders have historically been located in areas where there was relatively lower beach usage by the general public. Increasing pressures from the above subdivisions was identified as a potential limiting factor, for reasons of public safety and liability issues. These subdivisions also provide improved access and more secure parking adjacent to the beach in these areas resulting in a reduced need for beach vehicle access.

Community consultation and the impact of population growth in the coastal localities resulted in the introduction of the current beach vehicle permit system where restrictions have been implemented on a variety of beaches. This review involved extensive community consultation and advertisement to ensure the broader community were aware of the review and invited submissions from the public and interested stakeholders.

### **Current Policy**

Council's current Policy relating to Vehicles on Beaches is reproduced below. The Beach Vehicle permit season runs from 1 August through to 31 July each year and it should be noted that it makes specific provision for permits under the following categories - amateur fisherman, professional fisherman and special permits. Essentially, during the 2009/2010 permit season 142 permits were issued to amateur fisherman, 33 permits issued to persons who hold a professional fishing license with NSW Fisheries and 31 'special permits' issued to persons holding a disabled parking permit with the Roads and Traffic Authority or state equivalent.

There is not currently any permits issued or policy specific to commercial beach vehicle access, and each application has historically been considered in isolation, and on its individual merits, however, Council resolved 3 May 2000 to issue no commercial (tour) beach vehicle permits in the future.

The current Policy reads as follows:

***“Policy Document Beach Vehicle***

***Vehicles on Beaches - Permits to Drive Vehicles on Beaches***

***Objective***

*To preserve a high standard of safety and enjoyment of persons using beaches within the Tweed Council area.*

***The conditions for the issue of permits to drive vehicles on the beach for Amateur Fisherman shall be:***

*Council shall offer existing permit holders the opportunity to renew their permits for the commencement of each permit season and exclude to offer permits that have not been renewed by current license holders.*

*The fee shall be as determined by Council.*

- a) The vehicle must be a conventional four (4) wheel drive vehicle.*
- b) The Permit is issued for the purpose of fishing only - joyriding and picnicking are not permitted.*
- c) The vehicle is not to be driven above the high tide mark, except when travelling to and from the beach.*
- d) Under no circumstances is the vehicle to be driven on or over frontal dunes or foreshore areas not designated as access points.*
- e) All vehicles must be registered with the relative State Authority.*
- f) The Permit holder must be the holder of either a provisional or full driver's licence, issued by the relative State Authority.*
- g) Vehicles must not be driven by persons under the influence of intoxicating liquor or drugs.*
- h) Vehicles are to be driven only on the beaches specified by the Permit.*
- i) The maximum speed limit at any time is 30 kph.*
- j) Only the vehicle nominated on the Permit is to be driven on the beach.*

Each applicant may only apply for a permit for himself/herself.

***The conditions for the issue of Permits to drive vehicles on the beach for Professional Net Fishermen shall be:***

*The fee shall be as determined by Council..*



- a) *Permits will only be issued to Licensed Net Fishermen.*
- b) *The vehicle nominated on the Permit shall be distinctly marked with the name of the Licensed Fisherman and the words "Net Fisherman" displayed thereon.*
- c) *The compliance with items of conditions applicable to Amateur Fishermen.*
- d) *The Fishermen shall not operate through or drive upon pedestrian areas.*
- e) *Vehicles to be driven onto beaches at specified locations to be designated on the permit.*

### ***Issue of Special Permit***

1. a) *A very small number of permits may be issued by the Director of Planning and Regulation in special circumstances considered appropriate such as to paraplegic persons or persons while engaged in Dune Care works.*
  - b) *The current fee shall be applicable.*

*All general conditions as set out above will apply except for in some instances.*

*Sub-section b) may be waived by the Director of Planning and Regulation.*

2. a) *When a Special Beach Vehicle application is submitted, registration details showing proof of ownership of a 4WD vehicle by the applicant or spouse, parent or child (who is the holder of the Roads and Traffic Authority Disabled Parking Permit) are to be provided as part of the application.*
  - b) *Holders of the Roads and Traffic Authority Disabled Parking Permit must be a passenger in the vehicle in the event of a person other than the permit holder driving the vehicle on the beach. Failing to comply with this requirement may result in Council taking action in the form of an infringement notice and/or disqualification of the permit.*

### ***Beach Vehicle Permits - Paraplegics***

*In the situation where a paraplegic requires a vehicle for transport to the sea, a beach licence shall be issued free of charge subject to receipt of supporting information.*

### **CONDITIONS OF BEACH VEHICLE ACCESS – Special and Amateur Permit Holders**

- *If you are transferring your beach vehicle permit to a different vehicle, the beach vehicle permit sticker must be removed from the old vehicle and presented to Council so that a new permit can be issued. Failing to comply with this requirement may result in the cancellation of your permit.*
- *Any change of address must be supplied to Council.*
- *The Beach Vehicle permit sticker issued by Council must be prominently displayed on the front windscreen of the vehicle whilst the vehicle is on the beach. Old stickers must be removed*

- *The vehicle must be a conventional 4WD vehicle. Motor cycles and beach buggies are PROHIBITED.*
- *The permit is issued for the purpose of fishing and for NO OTHER REASON. Joy riding and picnicking is not permitted.*
- *UNDER NO CIRCUMSTANCES is the vehicle to proceed above the high tide mark, be driven on or over frontal dunes or foreshore areas except when travelling to and from the beach at designated access points. Approved access points are clearly located on the maps provided.*
- *The lights of a vehicle (both front and rear) must be illuminated during hours of darkness whilst on the beach, whether stationary or in motion.*
- *ALL BEACH VEHICLE PERMIT HOLDERS ARE SUBJECT TO THE FOLLOWING BEACH VEHICLE EXCLUSIONS, ACCESSIBLE AREAS AND ASSOCIATED VARIATIONS.*
  - *Beach access is permissible from the south of Cudgen Creek, South Kingscliff to the northern boundary of the Salt subdivision.*
  - *BEACH VEHICLE ACCESS IS EXCLUDED from the northern boundary of the Salt subdivision to the southern boundary of the Casuarina subdivision, other than between the hours of 4:30pm and 7:00am for the months of May to September inclusive.*
  - *Beach access is permissible from the northern boundary of the Cudgen Nature Reserve to an area that is approx 240m north of this point. The boundaries of this permissible area is signposted to allow definition of the accessible area.*
  - *BEACH VEHICLE ACCESS IS EXCLUDED from the south side of Mooball Creek, Pottsville to an area approximately 100 metres south of the main bathing area at Pottsville beach, other than between the hours of 4:30pm and 7am for the months of May to September inclusive.*
  - *Beach access is permissible from the area that is sign posted approximately 100m south of the main bathing area at Pottsville Beach to the northern boundary of Wooyung Nature Reserve.*
  - *Beach access is permissible from the northern boundary of the Billinudgel Nature Reserve to the southern boundary of Wooyung Nature Reserve.*

**NOTE ALL BOUNDARIES ARE SIGN POSTED**

- *Current Beach Vehicle exclusions include, but are not limited to the following areas of beach:*
  - *From the Tweed River to Cudgen Creek, Kingscliff*
  - *From the northern boundary of Cudgen Nature Reserve to Mooball Creek Pottsville*
  - *From the Wooyung Nature Reserve*
  - *From the northern boundary of the Billinudgel Nature Reserve to the southern boundary of the Tweed Shire.*

**NOTE: THE MAPS PROVIDED CLEARLY INDICATE THE AREAS ACCESSIBLE TO BEACH VEHICLE PERMIT HOLDERS. Access to all other areas is prohibited**

- *The National Parks & Wildlife Service (NPWS) has management responsibility for beaches within Cudgen, Billinudgel and Wooyung Nature Reserves within the Tweed Shire. The boundaries of these are at the Mean Low Water Mark.*

*Tweed Shire Council Beach Permit holders are subject to the following conditions concerning individual reserves.*

- *Wooyung Nature Reserve: Access is PROHIBITED*

- Cudgen Nature Reserve: Access is PROHIBITED
- Billinudgel Nature Reserve: Access is PROHIBITED

## **REGULATIONS**

*The use of motor vehicles below the high tide mark is now controlled by Local Councils in New South Wales except those Reserves subject to the plan of management under the NPWS. This section of beach is defined as a Public Reserve and is therefore considered to be open to and used by the public.*

*That section of beach open to and used by motor vehicles is now considered by Law as being a Public Street, under the meaning of Section 2 Motor Traffic Act 1909. As such you will be required to obey all regulations under both the Local Government Act 1993 and the New South Wales Motor Traffic Act 1909.*

*Any offences committed will result in permanent suspension of your beach vehicle permit, prosecution by the Council and prosecution by the New South Wales Police*

*The above will apply especially to the following*

1. *Driving an unregistered motor vehicle upon a public beach.*
2. *Driving a motor vehicle whilst unlicensed or disqualified.*
3. *Driving a motor vehicle whilst under the influence of intoxicating liquor.*
4. *Exceeding the 30kph speed limit at any time.*

*All vehicles must be registered with the Road Traffic Authority. All drivers must be the holder of either a provisional or full drivers licence issued by the appropriate Road Traffic Authority.*

***FAILURE TO COMPLY WITH ANY OF THE CONDITIONS OF THE PERMIT BY THE OWNER OR DRIVER OF THE VEHICLE MAY RESULT IN THE ISSUE OF INFRINGEMENT NOTICES AND/OR THE CANCELLATION OF YOUR PERMIT. IN SUCH CASES COUNCIL RESERVES THE RIGHT TO REFUSE ANY FURTHER APPLICATION IN RESPECT OF SUCH VEHICLE OR BY THE OWNER THEREOF."***

## **Current Areas Accessible by Beach Vehicle Permit Holders**

Attachment 2 shows a map which depicts the total length of the Tweed Coast and shows the location of accessible areas, time restrictions and prohibited areas that Beach Vehicle Permit holders are subject to.

In viewing these maps, Council are requested to note:

- The location of the three National Parks and Wildlife Reserves, Cudgen, Wooyung and Billinudgel which are subject to the plan of management for each reserve and,
- The proximity of coastal villages located along the foreshore area.

Both of these factors contribute to the areas made available for 4WD access.

## **Correspondence Received: Addressing the Requests**

### **Access to Nature Reserves**

As stated in the correspondence received the writer believes the biggest problem facing Beach Vehicle Permit holders relates to the Tweed Coast Nature Reserves that are under the control of the DECCW subsidiary National Parks and Wildlife Services. The writer of the letter is requesting the support of Council to help lobby the DECC to enable access to the foreshore areas of each of these reserves.

The Management Plans of the Reserves state that the Management purposes and principles of Nature Reserves are to:

- Conserve biodiversity, maintain ecosystem functions, and protect geological and geomorphological features and natural phenomena;
- Conserve places, objects, features and landscapes of cultural value;
- Promote public appreciation, enjoyment and understanding of the reserves natural and cultural values; and
- Provide for appropriate research and monitoring.

Within the context of the plan of Management for the Reserves it states inappropriate activities in the reserve, include 4WD access and that private vehicles are prohibited from driving in the reserve, with the exception of vehicles given permission on a case by case basis undertaking authorised research or reserve maintenance programs and similar activities. Emergency vehicles may enter the reserve for emergency purposes. It also states that commercial fishing activities have been undertaken on the beaches within these reserves for a number of years and that vehicles associated with pre-existing commercial fishing activities may be permitted on the beaches within the reserves only if they are licensed by the NPWS. The licences associated with this activity include conditions designed to protect the natural and cultural values of the reserve.

Council officers are reluctant to support the request to Lobby the DECCW for Tweed Shire Permit Holders to access the reserves under the control of the DECCW as the management of nature reserves are subject to legislative and policy framework, being primarily the National Parks and Wildlife Act, the Threatened Species Conservation Act and policies of the National Parks and Wildlife Service. These plans of Management are compiled from this legislative background, the corporate goals of the service and internationally accepted principles of park management. The preparation and adopted plans of management for reserves in the Tweed Shire have been implemented following detailed consideration of public submissions and the collection and analysis of large volumes of information, accordingly Council officers feel it would be inappropriate to request any change to the plans of management.

### **Review of exclusion zones**

A review of the conditions of Beach Vehicle Access has also been requested relating to the exclusion zones and the time restrictions associated with some beaches that are under the control of Tweed Shire Council.

Management objectives of the Tweed Shire Coastline Management Plan conflict with the opening of additional beaches to vehicle access and it would be advisable for any proposal to open new beach areas to vehicles, to be placed on public exhibition and subsequent community comment considered.

In accordance with the NSW Government's Coastline Management Manual (1990), Council formulated a coastline management plan. The Tweed Shire Coastline Management Plan was adopted by Council in June 2005.

The Tweed Shire Coastline Management Study Stage 1, Values Assessment (2003) identified off-road vehicle beach usage as a Key Issue for management of the Shire's coastline. The potential for conflict between beach users was identified with specific issues including pollution and litter; damage to dunal vegetation and fauna habitat; disturbance of roosting shorebirds; and public safety (difficulty of seeing people on the beach from a moving vehicle).

Extensive community consultation was undertaken during the development of the Draft and final Tweed Shire Coastline Management Plan. A large number of submissions were received on the Draft Plan with 23 submissions supporting the removal of 4WD access to beaches and more than 100 submissions were received in support of retaining 4WD access to Tweed Beaches, with the vast majority of these submissions received lodged by 4WD permit holders who hold a strong interest in fishing.

The recommendation in the Draft Plan was removal of recreational Beach Vehicle Permit access to those areas of the coastline experiencing high population growth and increased beach access by residents (Kingscliff South and Pottsville). Following review of submissions and a meeting between Council and Fishing Club representatives, the compromise position was to allow access from the mouth of Cudgen Creek to the northern end of the Salt development, a distance of 2.1 kilometres.

It was also identified that upon adoption of the Wooyung Nature Reserve Plan of Management by the National Parks and Wildlife, that off-road vehicle access would be illegal within Wooyung and Cudgen Nature Reserves that both extend to Low Water Mark.

As a review of the Beach Vehicle Permit was underway at the time of finalising the Plan, the relevant recommendations in the Tweed Shire Coastline Management Plan (2005) were changed to:

*"KC12 Implement recommendations from Beach Vehicle Permit Policy review (April/May 2005)"*

*"BC18 Remove Beach Vehicle Permit Access from Cudgen Nature Reserve and physically restrict unauthorised access points e.g. bollards or vegetation planting"*

*"PW9 Implement recommendations from Beach Vehicle Permit Policy review (April/May 2005)"*

The Coastline Management Study and Plan process identified that the stretches of the Tweed coastline could no longer support off-road vehicle activities in light of the increased population pressures and the inherent safety and environmental risks. Comments to this effect were provided to Council staff undertaking the Beach Vehicle Policy review in 2005 and subsequently the current 4WD policy was adopted which reduced beach areas accessible by 4WD beach vehicle permit holders and the number of permits issued each year through natural attrition.

However, in conforming with current policy, new beach access areas would need to be located on sections of beach that are not subject to the proximity of residential development. A buffer zone may also need to be established between areas accessible by BVP permit holders and residential areas. There is also additional beach usage such as offleash dog exercise areas which are located on semi isolated sections of beach to consider when assessing appropriate areas of beach to open up for 4WD recreational purposes. New beach access tracks for 4WD vehicles would also need to be created through sensitive dune areas associated with any new section of beach allocated for 4WD use.

Below are sections of the following beaches that may be considered for 4WD access:

- Fingal Head to the Tweed River
- Kingscliff to Fingal Head (incorporates an off leash dog exercise area)
- Hastings Point to Cabarita (incorporates an off leash dog exercise area)
- Pottsville to Hastings Point

A similar request to this was lodged in 2006 and details pertaining to this are detailed below.

Council's current Beach Vehicle Policy was adopted in 2005 and it incorporated a number of the desires of current beach usage whilst maintaining safety on beaches. This effectively minimised the areas of beach that were accessible to Tweed Shire Council Beach Vehicle Permit Holders. Accordingly in 2006 ECO Fishers Incorporated Tweed Branch lodged a submission on behalf of 4WD permit holders requesting that additional areas of beach within the Tweed Shire be made accessible to 4WD permit holders due to the reduction of areas that stemmed from the 2005 review. Subsequently Council resolved to initiate community consultation regarding the request to access the following beaches:

- a) Wommin Bay Kingscliff - from a point north of the pedestrian beach access at the end of Murphy's Road Kingscliff to a point 800m south of the Fingal Head Quarry.
- b) South Cabarita Beach – from a point 500m south of Norries Headland to a point 700m north of Cudgera Creek, Hastings Point.

In consulting the community on the issue of additional access to beaches by 4WD beach permit holders it was apparent, due to various reasons, that there was overwhelming support not to incorporate additional areas of beach into the current beach vehicle permit policy.

## **Review of Time Restrictions**

In 2005 interested stakeholders expressed their concern regarding the removal of beach access to the area from the northern boundary of the Salt subdivision to the southern boundary of Casuarina, especially throughout the period of May to September, as this is a peak fishing period. Accordingly a compromise was sought enabling beach access during this period at times when the beach was not being significantly utilised by the public, therefore reducing the potential conflict over beach usage. These times are from 4.30pm to 7am, May to September inclusive.

Council officers do not support an increase in the time restrictions as it is believed the current restrictions reflect equity in beach usage whilst maintaining public safety.

## **Fee Associated with Beach Vehicle Permits**

The current fees associated with each specific permit are listed below. Please note that these fees are subject to CPI each year.

- Amateur Beach Vehicle Permit \$230.00.
- Special Beach Vehicle Permit \$230.00.
- Professional fishing permits \$100.00 per permit.

It could be argued that the reduction in BVP access from the 2005 review for amateur and special permit holders, should reduce the value of any permit being issued, however, since amateur permits are not available to the public and current permit holders have exclusive access, the monetary value of the permit may be deemed as equitable.

The correspondence also requests the consideration of a reduction in fees to Special Beach Vehicle Permit Holders or permit holders who have a pension card. Again due to the exclusivity of access to beaches by BVP holders it could be argued that a reduction in fee is not warranted.

Aligning with the request Council may waive or reduce fees in accordance with Section 610E of the Local Government Act.

- (1) A council may waive payment of, or reduce, a fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.
- (2) However, a council must not determine a category of cases under this section until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed fee under section 610F (2) or (3).

The cost associated with beach vehicle permits is categorised in Councils Revenue Policy Fees and Charges 2009/2010 as a significant partial cost pricing. Accordingly the price for this good/service is set to make a significant contribution towards the cost of providing the service with the remainder of the costs being met from general purpose income.

**CONCLUSION:**

Council has an ongoing duty to consider the use of the Shires beaches and as coastal populations increase so does the potential for conflict over beach usage. If an amendment or review of the current BVP system is undertaken Councillors need to take into account public safety and issues of liability associated with potential mishaps between general beach users and 4WD vehicles.

The current system of offering existing permit holders the opportunity to renew their permits may be seen as inequitable and even discriminatory to members of the public who wish to obtain a permit, accordingly if a review was to be undertaken it should include all aspects of the policy.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Beach Vehicle Permit Policy.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Submission from Ecofishers which was presented to a Councillor Workshop on 1 December 2009 (ECM 12160690)
  2. Coastline Map (ECM 12160706)
  3. Documentation used during the site visit (ECM 13338319)
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**22 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning & Regulation**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

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

**REPORT:**

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

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

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA09/0566	two (2) lot subdivision	Lot 2 DP 701967 No. 611 Cudgen Road, CUDGEN	18/2/2010	Clause 20(2)(a) - Minimum lot size 40ha	1(b2) Agricultural Protection, 1(b1) Agricultural Protection, 2(a) Low Density Residential	Variation to Clause 20(2)(a) is sought as a result of the minimum lot size (40 hectares) for the 1(b2) land not being met, despite there being no change to this part of the lot. The proposed subdivision does not reduce the area of land zoned 1(b2); the proposed subdivision does not create an additional dwelling entitlement; and the proposal will not fragment rural land. The subdivision creates a new dwelling entitlement within the 2(a) zoned land.	land zoned 1(b) is much less than 90% of 40ha minimum	Director General of the Department of Planning
DA09/0814	dwelling additions	Lot 1 DP 781535 No. 10 Dobbys Crescent TERRANORA	18/2/2010	Clause 22 – Development near designated roads	1(c) Rural Residential	SEPP 1 objection relates to thirty metre building alignment to Terranora Road which is a designated road. Additions are proposed to observe a building line of 19.938 m which is considered to be acceptable due to the size of the allotment, the precedents set in the local area and the absence of impact on Terranora Road.	The extent of the SEPP 1 variation is that the building setback to Terranora Road, which is a designated road, will be less than thirty metres and the variation in the setback exceeds 10%.	Tweed Shire Council

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**23 [PR-CM] Results of the Department of Planning's Local Development Performance Monitoring Report 2008/09**

**ORIGIN:**

**Director Planning & Regulation**

**SUMMARY OF REPORT:**

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning report, "Local Development Performance Monitoring 2008/09", released on 21 February, 2010 with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

The Department of Planning commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07, 2007/08 and the most recent for 2008/09. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a state-wide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 103 in 2007/08 to 110 in 2008/09. This compares to the 2008/09 NSW average of 74 days.

However, when analysed in the context of other NSW councils, as well as those applications where the "stop the clock" measure has been applied for information requests and external referrals, Tweed Council's DA determination performance is actually very comparable to the State average. This is evidenced by the fact that approximately 75% of all Tweed Council DAs involve smaller residential developments (new single dwellings and alterations and additions to dwellings) assessed by Council's Building Unit. For the 2008/09 period, the average processing times (a net figure with allowance for "stop the clock") for these applications was 32 days, as compared to the State net average of 45 days, for all types of applications. This indicates that Tweed Council is processing the bulk of its DAs in a reasonable timeframe.

Notwithstanding, it is acknowledged that the processing times for all DA types, particularly the larger developments, needs to be improved. It is evident that Tweed Council's processing performance has suffered in recent years from the practice of accepting too many DAs with deficient information, and once in the system, allowing repeated opportunities for applicants to submit amended plans and additional information for clearly deficient proposals. Council has been working to re-address these deficiencies through the introduction of clearer, up-front lodgement (hard copy and electronic) guidelines and web information, stricter scrutiny of new DAs by staff at the time of lodgement, and improvement of internal processing systems. These actions should produce a more positive statistical result for the 2009/10 period.

**RECOMMENDATION:**

**That the report on the results of the Department of Planning's Local Development Performance Monitoring Report 2008/09 be received and noted.**

## REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning (DOP) report, "Local Development Performance Monitoring 2007/09", released on 21 February 2010, with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

Copies of the report have been emailed separately to all Tweed Councillors prior to this meeting. The report can also be viewed on-line through the Department of Planning's web site [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

The Department of Planning commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07, 2007/08 and the most recent for 2008/09. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

It should be noted that the accuracy of the results produced in the report are off-set by the fact that virtually all NSW councils record their own assessment statistics in different forms of development categories and IT programs, and the raw data from these systems are then consolidated by the DOP into their own report classifications. Nonetheless, the final DOP report provides a good, indicative guide for Council's to benchmark and improve their assessment processes on a state-wide, regional and Department of Local Government size classification basis.

In terms of interpreting the report, there are a number of key definitions which underpin the collection of application processing times:

Gross determination time – full length of the development assessment process, from lodgement to determination.

Net Time – the gross time minus referral and/or stop-the-clock time.

Mean determination time – the mean or average of a set of data values, which is the sum of all of the data values divided by the number of data values (ie. for DAs, the total number of days taken, divided by the number of DAs determined)

Median determination time – the median of a set of date values is the middle value of the data set when it has been ordered.

Referral time – the time taken by State agencies to either grant concurrence consent (some DAs require council and agency consent), or to provide advice to council on a development proposal. It should be noted that a number of Councils, such as the Tweed Shire, currently do not have the technical capacity in its IT systems to record the referral time statistics, but arrangements are currently being organised to rectify this recording mechanism.

Stop the clock – the time taken by applicants to respond to requests by councils or agencies for further information on a DA.

## Summary of Results for Tweed Council

### Broader Application Results

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a state-wide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 103 in 2007/08 to 110 in 2008/09. (Refer to Page 110, Table 3-21) This compares to the 2008/09 NSW average of 74 days.

In terms of Section 96 applications (modifications of development consent), the mean gross determination for Tweed Council was 75 days in 2008/09 (Refer to Page 110, Table 3-21), compared to the NSW average of 53 days.

### Other Key Statistics

The following statistics have been drawn from the DOP report as they apply to the Tweed LGA, and with a State average comparison, where available.

Table 2-17: Volume and Value of DAs and S96 (Page 95)

Number of DAs determined	Total estimated value of DAs determined	Total estimated value of DAs approved	Number of S96 determined
1,041	\$290.1M	\$281.4M	246

Table 2-19: Volume and Value of Complying Development Certificates (Page 105)

Number determined	% alterations and additions	% single new dwellings	% Commercial retail office	Total estimated value	% determined by Council	% determined by private certifiers
174	53	0	28	\$5M	37	63

Table 3-21: Determination times (days) for all Councils (Page 110)

	DA Mean Gross	DA Mean Net	DA Median Gross	DA Median Net	Section 96 Mean Gross
<b>Tweed Council</b>	110	49	60	35	75
<b>All NSW Councils</b>	74	45	42	29	53
<b>DLG Statistical Division 5</b>	83	39	42	25	49

Table 3-22 and Table 3-23: Mean gross and mean net DA determination times (days) for all councils by value (Pages 115 and 119)



	<\$100k	\$100-\$500k	<\$1M	\$1M-\$5M	\$5M-\$20M	>\$20M
<b>Tweed Mean Gross</b>	101	101	102	272	497	330
<b>Tweed Mean Net</b>	50	41	47	98	76	60
<b>NSW Mean Gross</b>	60	83	70	189	230	324
<b>NSW Mean Net</b>	39	50	44	102	113	157
<b>DLG Division 5 Mean Gross</b>	66	92	78	234	244	196
<b>DLG Division 5 Mean Net</b>	35	42	38	83	95	253

Table 3-24: Mean gross DA determination (days) by type (Page 124)

	<b>Residential alterations and additions</b>	<b>Single new dwelling</b>	<b>Commercial Retail Office</b>
Tweed	71	108	166
DLG Division 5	53	81	106

Table 3-25: Effect of stop-the-clock on DAs (Page 129)

	<b>% of DAs with stop-the-clock</b>
Tweed	64
DLG Division 5	54

Table 5-4: Staff allocated to development assessment (Page 160)

	<b>Average DA per EFT – 2008/09</b>	<b>Total DAs determined</b>	<b>EFT DA staff</b>
Tweed	65.1	1,041	16
DLG Division 5		1,354	25

Table 7-5: Construction and occupation certificates issues for all councils (Page 176)

	<b>Construction Certificates 2007/08</b>	<b>Construction Certificates 2008/09</b>	<b>Occupation Certificates 2007/08</b>	<b>Occupation Certificates 2008/09</b>
Tweed	1,214	848	1,229	1,001
DLG Division 5	1,492	1,170	1,108	970

Other Miscellaneous Facts

There were a number of omissions relating to the Tweed LGA in the DOP report:

- There was no data provided in respect of Council's Land and Environment Court appeal activity. A copy of Council's Register of 2008/09 Land and Environment Court Class 1 Appeals is attached to this report. It should be noted that most of these matters has cross-over time periods in other beyond the 2008/09 financial year monitoring period.
- There was no data provided in terms of the % of those DAs determined by Council, and those under delegated authority, seemingly an unexplained omission in the Department's report. Council officers have again reviewed the data for 2008/09 and it was identified that 23 out of the 1041 DAs determined were assessed by Tweed Councillors, a proportion of 2.2%, which compares favourably to the state average of 3.8%
- No data was provided in terms of Council's referrals for approval from government agencies. As previously explained, Council is seeking to rectify the current technical limitations in recording and reporting on this data.

Comparison of Tweed's Performance in the Context of Other North Coast Councils

- Tweed Council determined a total of 174 Complying Development Certificates, clearly the highest in the North Coast Region (**Refer to Page 104, Table 2-19**);
- Tweed Council's total determination of 1,041 DAs and total value of DAs of \$290.1M in (**Refer to Pages 92-95, Table 2-17**) are much greater than those councils in the North Coast Region: Ballina (682 and \$90.8M), Byron (662 and \$143.3M.), Kyogle (163 and \$9.8M.), Lismore (562 and \$65.1M.), and Richmond Valley (395 and \$59.5M.);
- Tweed Council's total determination of construction certificates and occupation certificates (**Refer to Pages 172-175, Table 7.5**) also are much greater than the other councils in the North Coast Region, as shown in the table below:

<b>COUNCIL</b>	<b>CONSTRUCTION CERTIFICATES DETERMINED</b>	<b>OCCUPATION CERTIFICATES DETERMINED</b>
Ballina	575	580
Byron	455	468
Kyogle	109	14
Lismore	405	250
Richmond Valley	301	209
Tweed	848	1,001

## **Other Specific Tweed Shire Influences**

A major consideration in the assessment of applications in the Tweed Shire is its vast and, highly sensitive natural environment, which often demands detailed technical investigations into a range of complex issues, including bushfire risk, contamination, acid sulphate soils, native flora and fauna, biodiversity, flooding, and coastal erosion.

Another major impact upon Council's development assessment processes are the resource draining demands of a large number of Part 3A Major Projects and State Significant developments, which require significant, ongoing Council multi-disciplinary staff review and assessment, often within very tight timeframes. In the context of the North Coast Region, Tweed Council also carries a comparatively much greater workload and redevelopment pressure, as evidenced by the total number of current, undetermined Part 3A Major Projects and State Significant development proposals.

## **Overall Appraisal of Tweed Council's Performance**

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a state-wide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 103 in 2007/08 to 110 in 2008/09. This compares to the 2008/09 NSW average of 74 days.

However, when analysed in the context of other NSW councils, as well as those applications where the "stop the clock" measure has been applied for information requests and external referrals, Tweed Council's DA determination performance is actually very comparable to the State average. This is evidenced by the fact that approximately 75% of all Tweed Council DAs involve smaller residential developments (new single dwellings and alterations and additions to dwellings) assessed by Council's Building Unit. For the 2008/09 period, the average processing times (a net figure with allowance for "stop the clock") for these applications was 32 days, as compared to the State net average of 45 days, for all types of applications. This indicates that the Tweed is processing the bulk of its DAs in a reasonable timeframe.

Notwithstanding, it is acknowledged that the processing times for all DA types, particularly the larger developments, needs to be improved. It is evident that Tweed Council's processing performance has suffered in recent years from the practice of accepting too many DAs with deficient information, and once in the system, allowing repeated opportunities for applicants to submit amended plans and additional information for clearly deficient proposals. Council has been working to re-address these deficiencies through the introduction of clearer, up-front lodgement (hard copy and electronic) guidelines and web information, stricter scrutiny of new DAs by staff at the time of lodgement, and improvement of internal processing systems. These actions should produce a more positive statistical result for the 2009/10 period.

One particular initiative that Tweed Council has taken to improve upon the efficiency of its development and building assessment processes is its commitment to providing a range of e planning services. This initiative has been strengthened by the participation in the Department of Planning's E Housing Pilot Project, for which Tweed Council has been selected as one of 12 NSW Councils to develop an end-to-end electronic lodgement process for complying developments under the NSW Housing Code. With the assistance of Federal Government Housing Affordability Fund finance, each of the 12 Councils will upgrade their existing systems, and work collaboratively towards a "go live" electronic lodgement process by late November 2010. The achievement of this goal will place Tweed Council as one of the States e planning leaders, and will provide Tweed businesses and its community with a much more efficient and affordable option for the assessment of smaller scale, residential developments.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Tweed Council's Register of Class 1 Land and Environment Court Appeals 2008/09 (ECM 13434555)
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