



TWEED
SHIRE COUNCIL

Mayor: Cr K Skinner (Mayor)

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

Agenda

Planning and Regulation Reports

Ordinary Council Meeting

Tuesday 19 October 2010

held at Murwillumbah Cultural & Civic Centre
commencing at 3.30pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

Items for Consideration of Council:

ITEM	PRECIS	PAGE
	REPORTS FROM THE DIRECTOR PLANNING AND REGULATION	5
7	[PR-CM] Planning Reform Fees and Charges	7
8	[PR-CM] Planning Proposal PP10/0005 - Lot 1 DP 1046935 Old Lismore Road, Murwillumbah	13
9	[PR-CM] Tweed Local Environmental Plan Amendment No. 69 - Seabreeze Estate (Stage 2)	19
10	[PR-CM] Request for a Planning Proposal - Lot 16 DP 856265, No. 225 Terranora Road, Banora Point	37
11	[PR-CM] Draft Tweed Local Environmental Plan 2000 Amendment No. 35 - Lot 1 & 6 DP 9042, Lot 14 DP 733411, Dry Dock Road, Tweed Heads South and Application to Convert the Local Environmental Plan (LEP) to a Planning Proposal	45
12	[PR-CM] Planning Reform Unit - Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code	69
13	[PR-CM] State Emergency Services - Tweed Heads Unit	103
14	[PR-CM] Major Project Application MP09_0016 Mixed Use Tourist and Residential Development at Lots 1-3 Section 1 DP 29748; Lot 4 Section 1 DP 31209 Nos. 2-6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach (DA10/0642)	107
15	[PR-CM] Development Application DA10/0395 for The Unity Festival at Lot 167 DP 729468, Queensland Road, Murwillumbah	127
16	[PR-CM] Development Application DA10/0342 for a Proposed Two Storey Outbuilding and Use of an Illegally Constructed Retaining Wall at Lot 19 DP 737064, No. 54 Parkes Lane, Terranora	129
17	[PR-CM] Development Application DA10/0495 for a Smash Repair and Tow Truck Business (Holding Yard) at Lots 3 and 4 SP 75111, No. 3/23 and No. 4/23 Enterprise Avenue, Tweed Heads South	159
18	[PR-CM] Equestrian Pad Compliance Matter - Lot 7 DP 826941. No. 308 Tomewin Road, Dungay	189
19	[PR-CM] Failing Retaining Wall Between No. 2 Kerry Court and No. 18 Tyrone Terrace, Banora Point	191
20	[PR-CM] Cobaki Lakes Concept Plan for Residential Community Development and Project Application for Central Open Space and Lake System - Council Submission to the Department of Planning	199
21	[PR-CM] Class 1 Appeal Lodged in Relation to Consent Conditions applied to Development Application DA06/0897.01 for an Amendment to a Nine (9) Lot Subdivision Involving Alterations to	231

the Approved Lot Sizes, Realignment of the Road and the Staging of the Development into Two (2) Stages at Lot 1 DP 601049; Lot 1 DP 1084992, No. 15 Tanglewood Drive, Tanglewood

22 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards 241

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

THIS PAGE IS BLANK

7 [PR-CM] Planning Reform Fees and Charges

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt10

SUMMARY OF REPORT:

At its meeting of 20 July 2010 Council resolved to publicly exhibit a draft amendment to the Fees and Charges Schedule 2010/2011 relating to planning proposals.

The exhibition has been undertaken and no public submissions were received.

Whilst primarily aimed at seeking Council's adoption of the draft fees and charges this report also further highlights the changes in the legislative planning framework that occurred on 1 July 2009, which support the need for the proposed fees and charges. It also provides further informative explanation about those changes and how they relate to Council's role and function as a "relevant planning authority" (RPA) under the Part 3 of the Environmental Planning and Assessment Act, 1979.

The draft fees and charges are recommended for adoption.

RECOMMENDATION:

That Council adopts the amendment to Council's Fees and Charges Schedule 2010/2011, identified within Table 1 of this report, which will take effect from 19 October 2010.

REPORT:

At its meeting of 20 July 2010, Council considered a report on the Planning Reform Unit's work program. That report also canvassed the need for an amendment to the Council's Fees and Charges to include additional fees relating to ancillary fees for service associated with that assessment and preparation of planning proposals.

Council resolved to publicly exhibit the amendments in accordance with Section 610F of the Local Government Act, 1993. Public exhibition occurred between 18 August and 17 September.

No public submission has been received.

Planning Proposal Related Fees & Charges – Need for Additional Fees

The legislative amendments to Part 3 (Plan Making) of the Environmental Planning and Assessment Act 1979, which took effect on 1 July 2009, altered the way in which planning proposals need to be managed and processed.

In particular, the amendments further instituted the role of councils' as the "relevant planning authority" (RPA) and in doing so placed full responsibility and accountability on RPAs for preparing planning proposals. Under the new planning scheme amendments there are several key elements or functions that could have a significant impact on council's (as RPA) resources, particularly as the majority of planning proposals are very complex.

To further assist Council with its understanding of the legislative amendments, as well as further clarifying the areas giving rise to the need for additional fees and charges, a discussion paper detailing the relevant provisions and their operation is attached to this report.

The purpose of the discussion paper was to seek any external views from local industry consultants who are currently involved with planning proposals and the Regional Office of the Department of Planning to assist in the redrafting of the Planning Reform Unit's guideline to preparing planning proposals. This need was generated by the apparent inconsistency between the Department's guidelines and the legislation, and the seemingly differing approaches taken by the Department's regional and head offices in their application of the legislation and the Government's supporting policy, which has recently been encountered by Council staff.

The net effect arising from the prevailing inconsistencies and misinterpretation or application of the 'rules' is the uncertainty surrounding two key elements:

1. Who is responsible for what?
2. When should studies/investigations be undertaken?

In that regard, the following extract from the discussion paper highlighting relevant key points is noteworthy as it answers those two questions, as well as, providing the context for supporting a need for additional fees and charges:

1. There is no applicant.

2. A submission must be made by a landowner or their agent or a person or entity acting on that persons behalf. This means that the authorisation of the landowner must accompany a submission to the Council requesting that it exercise its functions for the purposes of Part 3.
3. The RPA (council) is the responsible entity for preparing a planning proposal, as such it will:
 - a. Determine whether to prepare a planning proposal.
 - b. Determine what studies will be required.
 - c. Formulate and direct the scope of any required studies.
 - d. Require a close working and collaborative relationship between the Council and any entity preparing a study or report that the Council will be relying on.
 - e. Decide who will prepare and/or pay the cost of any studies or other work.
 - f. Proceed with any necessary investigations required to satisfy itself as to the suitability of the proposal on its own terms and prepare the required justification.
 - g. Keep the landowner making the request informed and involved in the process, as appropriate.
4. A Gateway determination is a notice of requirements that must be satisfied by the RPA, it is not a direction as to the heads of considerations that an RPA is restricted to considering.
5. The Gateway determination is not the process or stage for determining what studies and investigations are required, but the Minister or their Delegate may prescribe a matter or consideration which the RPA had not.
6. A Gateway determination is actionable by the RPA and not by a landowner making a request, except where directed by the RPA.
7. The RPA is not obliged to accept any studies prepared by the landowner.
8. The RPA will specify the terms of reference for any required studies where the landowner is requested to prepare the study or alternatively will be advised of and be liable for the cost of studies undertaken by or on behalf of the RPA.

It was stated in the planning report to the 20 July meeting that the additional fees and charges will ensure that any additional cost burden associated with a request to prepare a planning proposal will remain to be borne by the proponent. It is premised on the principle that the community, through Council, should not be accountable for the cost of processing privately originating planning proposals, particularly where they yield a betterment or up-lift to the property/landowner through the changes to the Tweed LEP.

The draft fees and charges are based on cost recovery for services rendered. This is consistent with the amendments to the fees and charges initially adopted by Council in April 2009, which were also premised on full cost recovery.

The following table highlights Council's current fees and charges and the draft amendments highlighted in **bold**, as publicly advertised.

Table 1 – Proposed Associated Rezoning Fees & Charges 2010/2011 (in **BOLD**)

Rezoning Fees			
	Stage 1	Stage 2	Stage 3
Anomaly (no increase in the developable capacity of the land)	\$1,030	\$1,545	\$1,030
Minor rezoning (no significant increase in developable capacity of the land and s. 72J applications or schedule 3 amendments)	\$1,600	\$3,500	\$2,000
All others	\$3,500	\$7,000 + \$115 per hour beyond 60hrs	\$5,500 + \$115 per hour beyond 40hrs
Council appointed and managed consultancy	An Applicant may elect to have an application processes by an external consultancy. The cost is to be determined by a Council Tender invitation and submission process and agreed to by applicant + 20% administration fee.		
Preparation of Local Environmental Study (where required)	Cost in addition to rezoning application processing and is to be determined by a Council Tender invitation and submission process and agreed to by applicant + 30% administration fee.		
Reassessment of the same issue or a new issue not previously identified or sufficiently detailed in a planning proposal arising after the assessment of the proposal by the relevant Unit or Division of Council is subject to the prescribed assessment fee.	Assessment of additional supporting information is \$115 per hour, per staff member, plus an administrative fee of \$55.		
Council reporting required in consequence of consideration of additional information is subject to the prescribed fee.	The fee for preparing a Council report arising from reassessment of a planning proposal is \$300.		
Written correspondence associated with a planning proposal is subject to the prescribed administration fee.	The administration fee associated with written correspondence is \$25		

CONCLUSION:

As discussed in this report the legislative amendments to Part 3 (Plan Making) of the Environmental Planning and Assessment Act 1979, which took effect on 1 July 2009, altered the way in which planning proposals needed to be managed and processed, but more importantly it removes any ambiguity about the council (as RPA) being responsible for every aspect of the planning proposal, including the supporting or background studies irrespective of whether prepared by the council or a third party.

The strengthening of the council's role as the responsible planning authority (RPA) means that it has a greater role to play in the preparation of the background studies than was previously the case. Prior to 1 July 2009 the 'applicant' prepared all of the required studies, except where a local environmental study (LES) was required in which case the council appointed a consultant at the applicant's cost. An applicant was statutorily prevented from preparing an LES.

In essence, the amended system replaces the LES process requirement by requiring the RPA to accept responsibility and accountability for the accuracy and currency of background

studies (this may include threatened species, flora and fauna, water, sewer and road infrastructure or the like). Whilst this is quite normal where the study has been prepared by or on behalf of the council it seemingly raises the bar when it comes to an RPA accepting a report prepared by a landowner and in which it has had no or restricted participation. In that regard, it is quite probable that many RPAs will endeavour to undertake certain studies themselves (at the cost of the landowner) while deferring other nominated studies to the landowner. This process is a de facto manifestation of the LES process, that is, the legislative regime derived by the Executive Government recognises that certain types of studies are best carried out by the RPA, where objectivity and accountability are arguably higher.

The requirement that only an RPA can prepare a planning proposal, and correspondingly the studies that support it, although sound in theory has in practice increased the resource demand of councils.

The draft fees and charges recognise this change and will enable the recovery for costs for services rendered by the Council in preparing planning proposals. This will assist in maintaining the Planning Reforms Unit's ability to process planning proposals with the essential support of other internal Divisional staff because resource allocation can be appropriately costed and recovered from the landowner.

The draft fees and charges are recommended for adoption.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The proposed fees and charges are intended to limit the financial cost arising on Council from privately originating planning proposals.

POLICY IMPLICATIONS:

This report seeks a clear direction and prioritisation of Council's strategic planning program and the associated Fees and Charges relating to associated costs of planning proposals.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Discussion Paper – Planning Proposals under the EPAA 1979 – A Review of Current Provisions, Roles and Responsibilities (ECM 22391350)
-

THIS PAGE IS BLANK

8 [PR-CM] Planning Proposal PP10/0005 - Lot 1 DP 1046935 Old Lismore Road, Murwillumbah

ORIGIN:

Planning Reforms

FILE NO: PP10/0005 Pt1

SUMMARY OF REPORT:

The intention of this report is to inform Council of a request from the landowner of Lot 1 DP 1046935, Old Lismore Road, Murwillumbah for Council as the Relevant Planning Authority, to prepare a planning proposal for the rezoning of land from 1(c) Rural Residential to low density residential similar in form and scale to surrounding urban development.

Another Planning Reforms Unit (PRU) item on the current Council Meeting agenda provides guidance on updated legislative requirements and fees for planning proposals. In accordance with these requirements, this report requests Council to resolve to prepare a planning proposal and enter into necessary dialogue with the landowner regarding the relevant technical and supporting information it deems necessary to ascertain whether it is appropriate, orderly and economic to furnish a planning proposal (stage 1) to the Department of Planning (DoP) for Gateway determination. Council should note that should the PRU deem it appropriate to seek a gateway determination in the future, it must submit a further report to Council for appropriate resolution prior to furnishing the Department of Planning with a formal planning proposal.

RECOMMENDATION:

That Council:

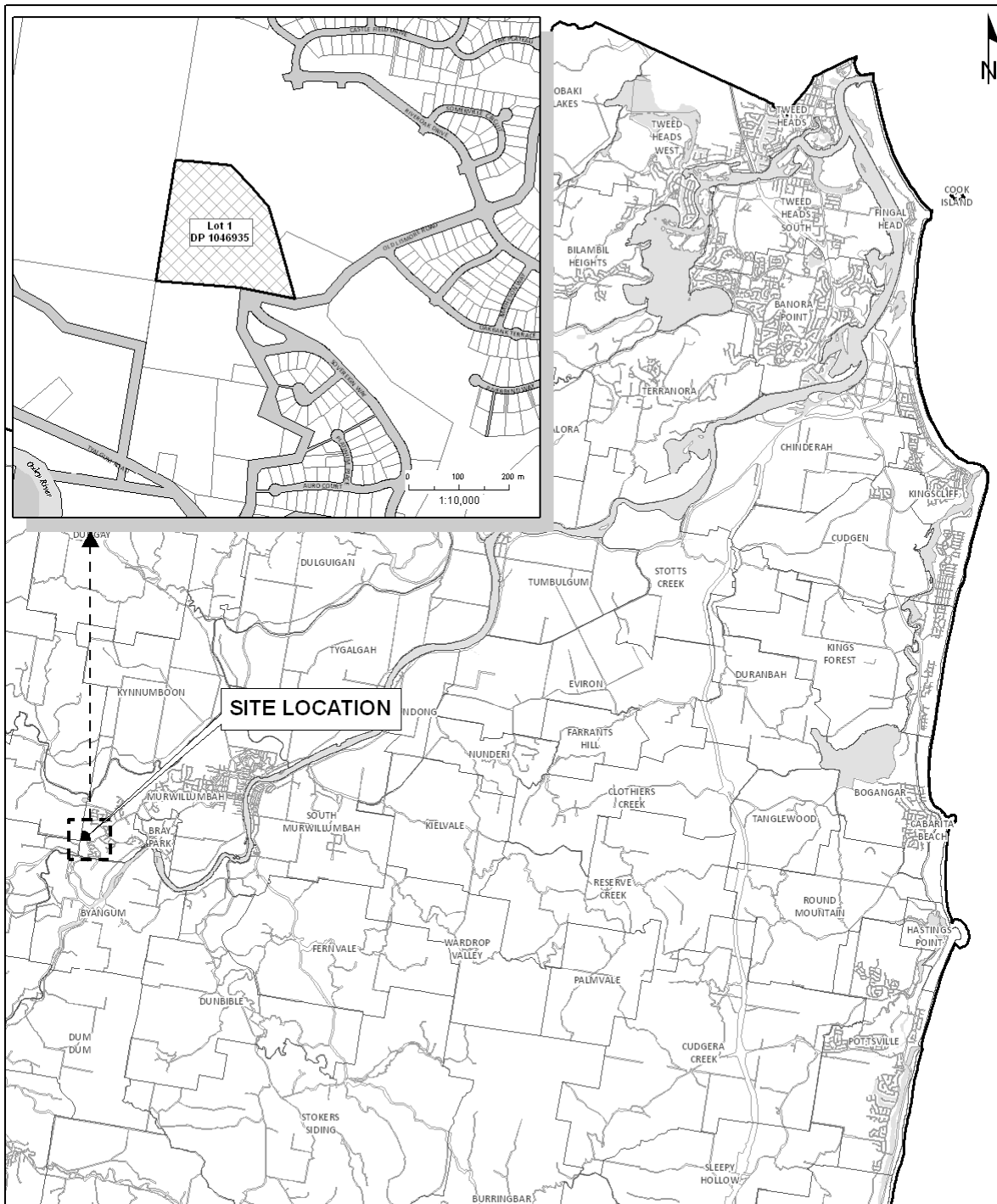
- 1. As the Relevant Planning Authority (RPA), prepares a planning proposal for the site identified as Lot 1 DP 1046935 Old Lismore Road, Murwillumbah; and**
- 2. Endorses the Planning Reforms Unit (PRU) to enter into dialogue with the landowner of Lot 1 DP 10469357 regarding the relevant supporting documentation and technical assessment to satisfy the RPA's requirements for preparing a planning proposal for subsequent lodgement of a planning proposal with the Department of Planning for Gateway determination.**

REPORT:

Pursuant to the provisions of Clause 54(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) a request has been received from the land owner of Lot 1 DP 1046935 Old Lismore Road, Murwillumbah requesting Tweed Shire Council as the *Relevant Planning Authority* (RPA) (for the purpose of Clause 51(1)(a) of Part 3) to consider preparing a planning proposal to rezone land. This report provides Council the opportunity to consider whether to exercise its function to prepare and define the parameters for a planning proposal.

The request is for land known as Lot 1 DP 1046935 at Old Lismore Road, Murwillumbah. The site is approximately 25ha in area and currently zoned 1(c) – Rural Residential pursuant to TLEP 2000. The request from the landowner / proponent suggests in the first instance, that a general urban zoning, such as 2(c) – Urban Expansion (TLEP 2000) or R1 – General Residential and accompanying development controls would be appropriate. The intention of this report is not to define the specific provisions of the planning proposal, but to simply highlight the overarching facts to enable Council to determine whether or not a Planning Proposal should proceed. In that context, it is requested that Council (as RPA) prepare a planning proposal to rezone land from 1(c) Rural Residential to general residential in a low density residential subdivision, similar in form and character to surrounding residential areas, with appropriate urban amenities.

The location of the subject site is depicted on the map below.



LOCALITY PLAN

Lot 1 DP 1046935
Old Lismore Road, Murwillumbah

0 1 2 Km
1:125,000

Filepath: Z:\ESRI\Planning\Projects\PP10-0005 Old Lismore Road\MXD\MAP 1- Site Plan.mxd

Author: C. Lees - Planning Reforms Unit

Date Printed: 06 October, 2010

Disclaimer: While every care is taken to ensure the accuracy of the 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 '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 supply.



Cadastre: 30 June, 2010
© Dept. of Lands & Tweed Shire Council

Coordinate System - MGA Zone 56
Datum - GDA 94

DO NOT SCALE
COPY ONLY - NOT CERTIFIED

Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

Figure 1: Locality Plan

Whilst from the map below (Figure 2), the site appears to be fragmented from the existing urban footprint, recent approvals for subdivision on adjoining properties have been approved. Council should note the existing approval (DA04/1618) for residential subdivision which approved the following:

- 306 Residential lots (formerly known as the 'Riveroaks Estate' – Stages 5 to 15)
- 1 commercial lot (now known as Hundred Hills Stage 10A).
- 9 residential lots (8 of which have already been developed and registered by Greenview Developments under the 'Bellevue Heights Estate'. The remaining allotment is Lot 89).
- 8 Rural Residential lots (formerly part of 'Riveroaks Estate' Stage 16, now known as Hundred Hills Stage 16).
- 6 Public Reserves

The subject site, annotated below (labelled with the 1(c) Rural Residential Zone) is the site which currently accommodates approval for 8 Rural Residential Lots.

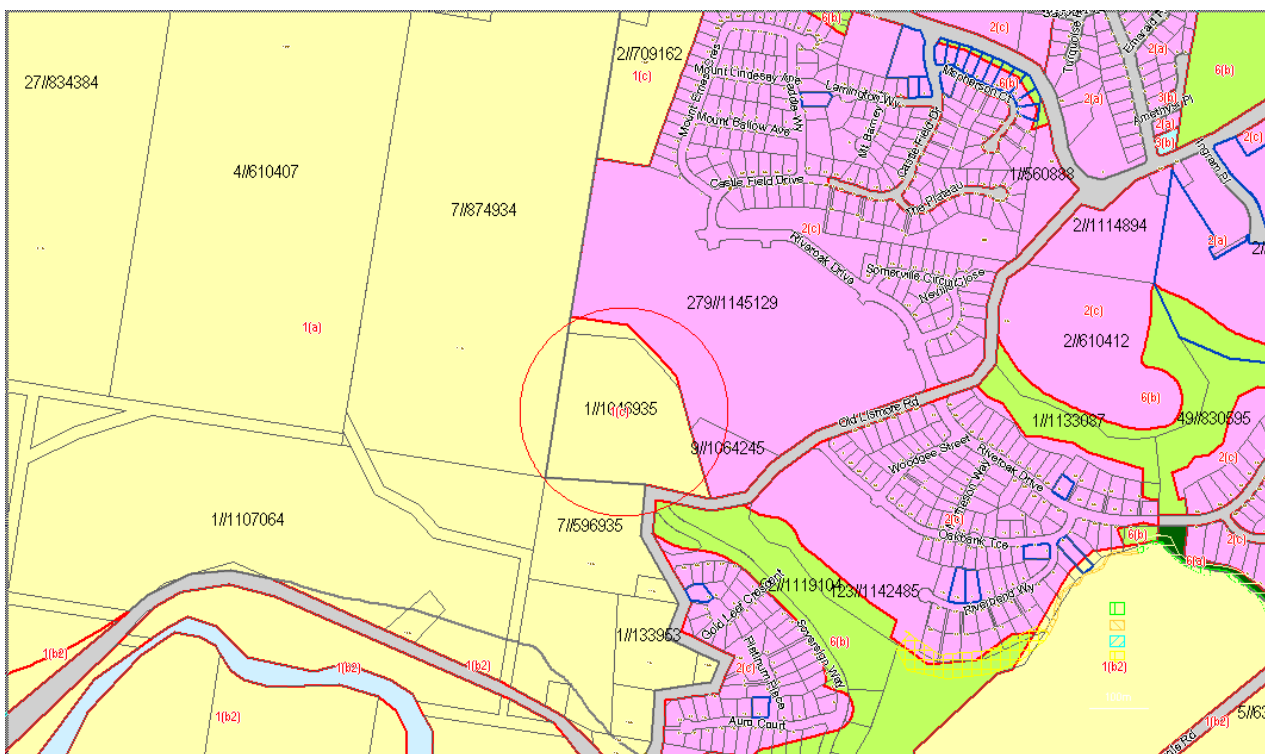


Figure 2: Zone Map with subject site circled

Council is directed to the previous agenda item regarding Planning Proposal – Legislative Overview. With reference to this Council is requested to consider preparing a planning proposal over the subject site for the rezoning of land from 1(c) – Rural Residential to Low density residential, similar in form and scale to the surrounding urban area.

Council staff has undertaken a preliminary review of the subject planning proposal. Whilst a full assessment of merit and technical requirements would be undertaken by officers in the stage 1 – Gateway process, there appears at this stage to be sufficient justification in

resolving for the RPA to prepare Planning Proposal (stage 1) in accordance with Clause 55(1) and Clause 55(2)(e).

Subject to Council resolving to prepare a planning proposal, the PRU would then enter into dialogue with the landowner regarding the extent of content of any supporting documentation required. Preliminary review of the subject site indicates some potential issues surrounding infrastructure provision (for example, but not limited to sewer, road provision, land forming and flooding), which, as part of the stage 1 process, would be resolved to the satisfaction of the RPA prior to referring to Department of Planning for a Gateway determination.

This resolution seeks only to commence a dialogue with the landowner regarding supporting documentation to furnish a planning proposal prepared by the Council. The resolution does not support the intent or merit of the rezoning, it simply provides a commitment of resources to advancing this project in the short term.

A further Council resolution would be needed prior to advancing any planning proposal to the Department of Planning's Gateway determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

THIS PAGE IS BLANK

9 [PR-CM] Tweed Local Environmental Plan Amendment No. 69 - Seabreeze Estate (Stage 2)

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2000/69 Pt 4

SUMMARY OF REPORT:

On 15 December 2004, Council resolved to prepare draft Tweed Local Environmental Plan 2000, Amendment No. 69 – Seabreeze Estate, Pottsville (Stage 2). The draft LEP amendment investigates the suitability of land located to the immediate north of the existing Seabreeze Estate for potential future urban purposes. The LEP amendment was placed on public exhibition for a period in excess of the 28 day minimum between 21 July 2010 and 20 August 2010 with a total of 8 submissions received.

The purpose of this report is to inform the Council of the issues raised within the submission process, affirm the requirement for minor amendments to the Draft plan (both instrument and mapping) as exhibited and seek endorsement for the preparation and submission of a report to the Director General pursuant to the provisions of s68(4) of the EP&A Act 1979.

RECOMMENDATION:

That Council:

- 1. Receives and notes the summary content of submissions received as part of the exhibition of Tweed Local Environmental Plan Amendment No. 69 – Seabreeze Estate (Stage 2) relating to the rezoning of the area identified as Lots 1145 and 1147 DP 1115395, Lots 7 and 10 DP 1137819, Lot 740 DP1072580 and Lot 138 DP 1045822 from 1(a) Rural to 2(a) Low Density Residential and 7(l) Environmental Protection (Habitat) with additional clause 53E Specific Provisions for Seabreeze Estate – Stage 2.**
- 2. Endorses the additional definitions and mapping extracted from the Standard Instrument relating to Urban Release Areas to ensure consistency with the Standard Instrument Order 2006 and the emerging Draft Tweed Local Environmental Plan 2010.**
- 3. Endorses the preparation and subsequent furnishing of a report to the Director General, pursuant to the provision of s68(4) of the Environmental Planning and Assessment Act 1979.**

REPORT:

On 15 December 2004, Council resolved to prepare draft Tweed Local Environmental Plan 2000, Amendment No. 69 – Seabreeze Estate, Pottsville (Stage 2). The draft LEP amendment investigates the suitability of land located to the immediate north of the existing Seabreeze Estate for potential future urban purposes.

The preparation of the draft LEP amendment was prepared externally by LandPartners, including the preparation of a Local Environmental Study as required by the NSW Department of Planning to inform the recommendations of the LEP amendment sought. Whilst the LES found that the land suitable for ‘urban purposes’ should comprise a mixture of low and medium density zoning, constraints in sewer capacity available to the site has resulted in the amendment only pursuing 2(a) Low Density Residential and 7(l) Environmental Protection (Habitat) zonings.

At its 18 May 2010 meeting, Council resolved to publicly exhibit the Draft Tweed LEP Amendment 69 – Seabreeze Estate Stage 2. A full history and detail of the relevant planning issues relating to the rezoning of land are available within that report (attached). In accordance with cl.12 of the Environmental Planning and Assessment Regulation 2000, and section 66 of the Environmental Planning and Assessment Act 1979, the Draft Amendment and relevant supporting information was placed on exhibition between Wednesday 21 July 2010 and Friday 20 August 2010. A total of 8 submissions were received.

The amendment investigates Lots 1145 and 1147 of DP 1115395, Lots 7 and 10 DP 1137819, Lot 740 DP 1072580 and Lot 138 DP 1045822 (Study Area) for urban purposes in line with the Seabreeze masterplan and Tweed Development Control Plan (DCP), Section B15 – Seabreeze Estate.

The following illustration highlights the ‘balance area’ the subject of the Draft LEP Amendment 69 (Seabreeze Stage 2).

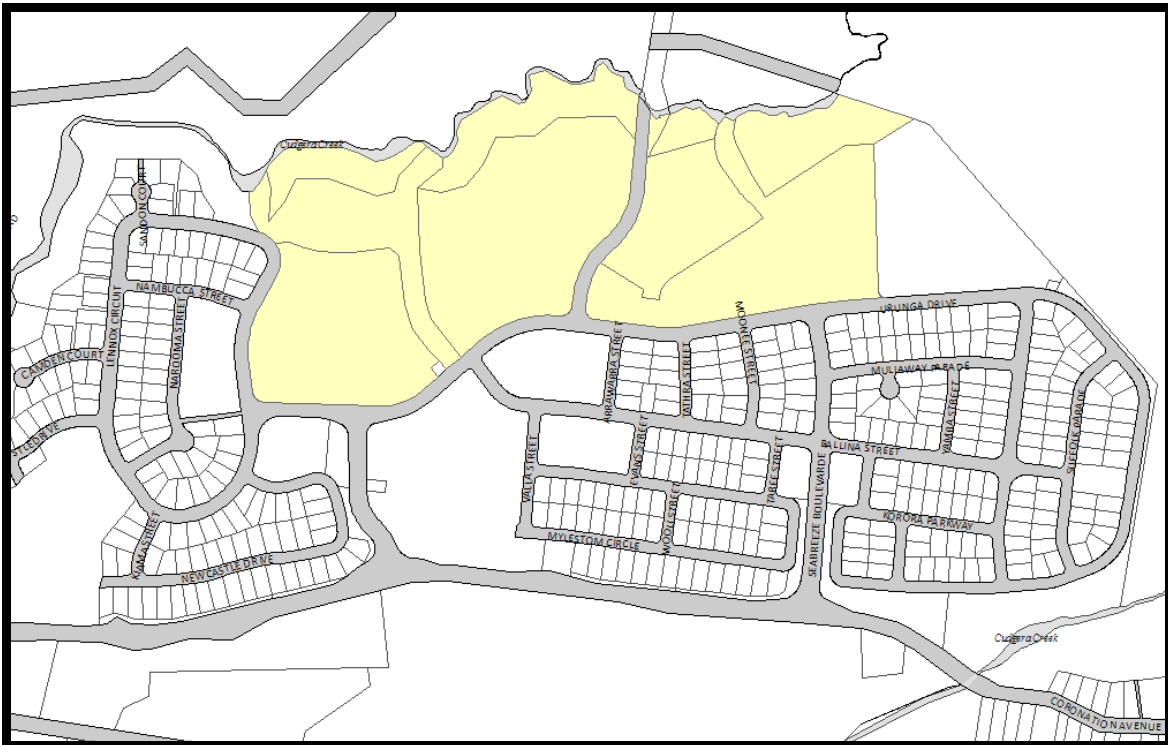
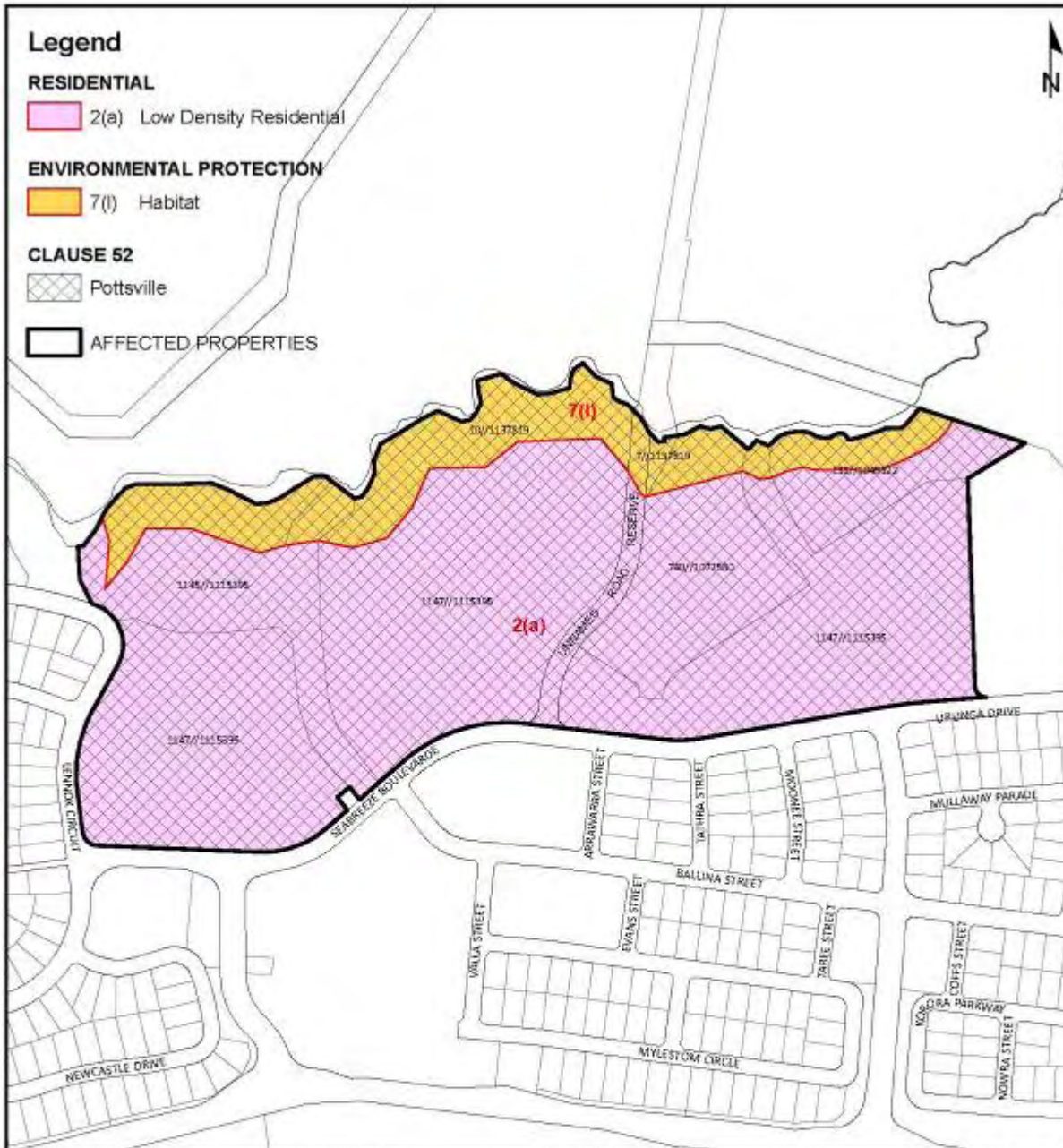


Figure 1 – The Study Area

The exhibited maps show the zone boundary. Given timing of the LEP Amendment and the emerging Standard Instrument LEP (Draft Tweed LEP 2010) maps with both existing (LEP 2000) zones and standard instrument zones have been exhibited.



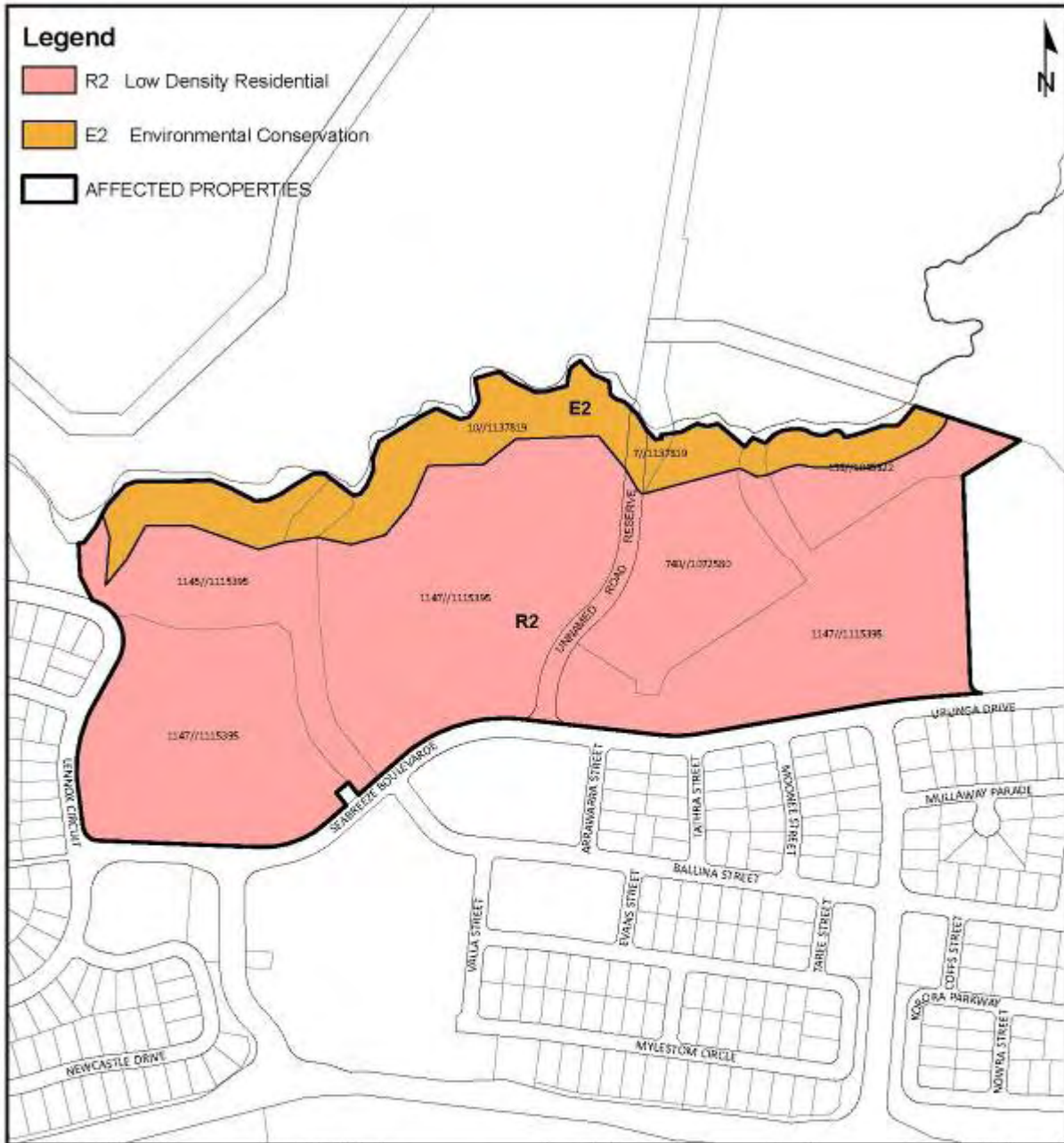
SCALE: 1:5,000 LOCALITY: POTTSVILLE PARISH: CUDGEN COUNTY: ROUS SHEET: 1 of 1

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

TWEED

DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No.69

DRAWN BY: J.Batchelor DATE: 29/04/2010 SUPERVISING DRAFTER: PLANNING OFFICER: J.Townsend COUNCIL FILE No: GT1/LEP/2000/69 DEPT. FILE No: GOVT. GAZETTE OF:	STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000 CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 & REGULATIONS _____ GENERAL MANAGER DATE
--	--



SCALE: 1:5,000 LOCALITY: POTTSVILLE PARISH: CUDGEN COUNTY: ROUS SHEET: 1 of 1

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979	
TWEED	
DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No.69 IN ACCORDANCE WITH STANDARD INSTRUMENT ORDER 2006	
DRAWN BY: J. Batchelor DATE: 29/04/2010	STATEMENT OF RELATIONSHIP WITH OTHER PLANS
SUPERVISING DRAFTER:	AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000
PLANNING OFFICER: J. Townsend	
COUNCIL FILE No: GT1/LEP/2000/69	
DEPT. FILE No:	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 & REGULATIONS
GOVT. GAZETTE OF:	GENERAL MANAGER DATE

A total of 8 submissions were received pursuant to s.67 of the EP&A Act 1979. A summary of the submissions and response from Council / Landpartners is detailed below to demonstrate that no further amendment to the Draft Plan is required.

The following documentation has been prepared by the Planning Reform Unit and Landpartners:

Public Participation – Sections 66 and 67

The following documentation has been prepared by the Planning Reform Unit and Landpartners:

Draft Tweed LEP 2000, Amendment No. 69 and LES were exhibited in accordance with s.66 and s.67 of the Act.

The draft plans and associated documents were placed on public exhibition from the 21 July 2010 to the 20 August 2010 for a period of 31 days (exceeding the statutory requirement of 28 days).

The exhibition was advertised in the Tweed Link, Council's publication and on Councils' website.

The draft Plan was available for inspection at the following places:

- Murwillumbah Civic Centre from 8.00am to 4.30pm weekdays;
- Tweed Heads Civic Centre from 8.00am to 4.30pm weekdays;
- Kingscliff Library from 10.00am to 5.00pm Tuesdays, Thursdays & Fridays, from 10.00am to 7.00pm Wednesdays, and from 9.00am to 12 noon Saturdays.

In accordance with the Environmental Planning and Assessment Act, the following documents were placed on public exhibition:

- Draft Local Environmental Study - Draft Tweed Local Environmental Plan 2000 Amendment No. 69 - Seabreeze Estate Stage 2
 - Appendix A – Flora and Fauna Assessment
 - Appendix B – Visual Assessment
 - Appendix C – Traffic Impact Study
 - Appendix D – Cultural Heritage Assessment
 - Appendix E – Preliminary Acid Sulfate Soil (ASS) Assessment
 - Appendix F – Stormwater Management Report
 - Appendix G – Preliminary Contaminated Site Investigation
 - Appendix H – Agricultural Assessment
- Draft LEP2000 Amendment 69 Instrument and Mapping
- Copy of the Standard Instrument (Local Environmental Plans) Order 2006
- Statements of Compliance with S117 Directions, SEPPs and REPs
- Details of s62 Consultation
- Details of s64 Compliance
- S65 Certificate

A total of 8 submissions were received pursuant to s.67 of the EP&A Act 1979. A summary of the submissions and response from Council / Landpartners is detailed below to demonstrate that no further amendment to the Draft Plan is required.

The breakdown of issues raised by submissions and applicable responses are as follows:

Submission	Key Issues	Response
Department of Environment, Climate Change & Water (DECCW)	<ul style="list-style-type: none"> • Support rezoning of the site as proposed • Flora & Fauna - Preference for buffer strip to Cudgera Creek to be 50m wide • Cultural Heritage Assessment (CHA) - Support CHA recommendations, plus additional recommendation requiring training of construction workers in Aboriginal cultural heritage awareness & site identification • Flooding – has the levee design taken in consideration climate change in accordance with DECCW sea level rise policy? • Stormwater – additional controls or treatment regimes are likely to be required at development stage • Acid Sulfate Soils (ASS) – additional precautions are likely to be required at development stage • Agricultural buffer – confirm buffer adequacy with Department of Industry & Investment 	<ul style="list-style-type: none"> • Flora & Fauna (width of buffer to Creek) - The southern boundary of the proposed Environmental Protection Zoning (EPZ) coincides mostly with the 50m buffer, apart for portions where the EPZ is slightly narrower to accommodate for existing stormwater management ponds. The Flora and Fauna report undertook a review of studies and policies applicable to site and found that the currently implemented buffers in accordance with Condition No. 88A of the s96 Application K99/1837.68 approval for Stage 1 Seabreeze Estate complies with the DCP-B15 requirements on riparian buffer. • CHA – Recommendation should be included as additional consent condition for future development • Flooding – The levee design and construction was undertaken prior to Council modelling climate change scenarios. However the levee was designed with a crest level a minimum of 0.3m above the flood of record, being the June 2005 flood. The 2009 Coastal Creeks Flood Study demonstrated that this flood was in excess of the 100 year ARI event in the Seabreeze area. This same flood study estimated climate change impacts (consisting of 0.9m sea level rise and 10% increase in rainfall intensity, to 2100) to be less than 0.3m around Seabreeze. As such, the levee should continue to adequately protect Seabreeze Estate, including Stage 2. Regardless, Stage 2 has previously been filled above the design flood level, so generally does not rely on the levee for flood protection. • ASS & Stormwater impacts - To be addressed in detail as part of future development applications as already recommended in LES • Agricultural buffer – DII found that proposed buffer provide reasonable separation between future residential development and the adjoining agricultural land (refer to DII comments)
Department of Industry & Investment (DII)	<ul style="list-style-type: none"> • Agricultural buffer – proposed buffer provide reasonable separation between future residential development and the adjoining agricultural land • Flooding – Flood study not provided. Discussion on potential impacts from new 	<ul style="list-style-type: none"> • Agricultural buffer – noted • Flooding - The LES states: Modelling has confirmed that the increase in duration of inundation for the cane land, which is typically the critical factor in flood crop losses, is not significant. These minor

Submission	Key Issues	Response
	<p>levee on agricultural land should be more fully discussed. Sugar industry should be consulted</p> <ul style="list-style-type: none"> Fisheries – support adoption of proposed Environmental Protection (Habitat) zone. Future development application should not compromise the integrity of this zone by proposing stormwater & other infrastructure to be located within the habitat buffer 	<p>impacts are considered unavoidable due to the need to exclude water from the urban area.</p> <ul style="list-style-type: none"> Fisheries (permissible use within EPZ) – Future development proposals will need to comply with the permissible uses as prescribed in the zoning table
<p>NSW Office of Water (NOW)</p>	<p>Riparian Zone:</p> <ul style="list-style-type: none"> NOW support E2 zone to protect & enhance waterways & riparian land Any activity in this zone needs to be consistent with E2 zone intent. Only environmental protection works, drainage & crossings should be allowable with consent in this zone. All other uses should be prohibited within riparian zone Core Riparian Zone (CRZ) of at least 50m is recommended- This area is to be fully vegetated. No APZ should be located within CRZ <p>Stormwater Management:</p> <ul style="list-style-type: none"> Appropriate stormwater management measures are put in place at development stage Measures to adhere to Water Sensitive Urban Design (WSUD) principles Stormwater management measures should be located outside of the 50m buffer zone <p>Groundwater Impact:</p> <ul style="list-style-type: none"> Concerned about potential contamination of groundwater by ASS Future development application to assess impacts of development on groundwater <p>Development Control Plan (DCP)</p> <ul style="list-style-type: none"> DCP for rezoned land to ensure protection of riparian zone, maintain appropriate buffer, protect ground & surface water & implements appropriate stormwater management measures 	<ul style="list-style-type: none"> Riparian Zone (permissible use within E2 zone) - Future development proposals will need to comply with the permissible uses as prescribed in the zoning table CRZ (width of buffer to Creek) - The southern boundary of the proposed Environmental Protection Zoning (EPZ) coincides mostly with the 50m buffer, apart for portions where the EPZ is slightly narrower to accommodate for existing stormwater management ponds. APZ location – Planning for Bushfire Protection 2006 discourages locating APZ within incompatible zoning such as EPZ Stormwater management measures - To be addressed in detail as part of future development applications as already recommended in LES. Consideration of WSUD principles are a current requirement when designing stormwater management measures for residential development. As noted above, future development proposals (including stormwater measures) will need to comply with the permissible uses as prescribed in the zoning table Groundwater impacts - To be addressed as part of future development applications DCP to protect riparian zone - Existing 'DCP Section B15- Seabreeze Estate Pottsville' to be amended to incorporate these principles to subject land
<p>Darryl Anderson Consulting Pty Ltd (DAC) & Metricon QLD Pty Ltd</p>	<p>DCP</p> <ul style="list-style-type: none"> Object to requirement to prepare new DCP (as prescribed in cl. 53E of Draft Instrument) prior to granting any development consent in an Urban Release Area* Support subcl. 53E(5)(3) of Draft Instrument Support the DCP as a mechanism to provide for proper use of subject land, and coordination & integration of infrastructures, but object to preparation of new DCP Recommend that existing DCP Section 	<p>The LES only recommendation in this regard was as follow:</p> <p>It is acknowledged that a DCP will be required to satisfy requirements of cl. 53E for reason, including, but not limited to sewer capacity. If all of the unconstrained land is zoned for urban purposes that a DCP be prepared to describe development so that it does not exceed the capacity of the STP (eg. dwellings/Ha). In accordance with</p> <p>Tweed DCP 2008 was prepared in accordance with section 74C(2). As such,</p>

Submission	Key Issues	Response
	<p>B15- Seabreeze Estate Pottsville be amended to incorporate the subject land</p> <ul style="list-style-type: none"> Amendment to existing Section B15 to be commence in near future to avoid delay in obtaining future development approvals. Council to advise on timeframe regarding the aforementioned amendment of DCP <p>*Urban Release Area Definition</p> <ul style="list-style-type: none"> Objection to cl. 53E hinges to the lack of definition in Tweed LEP 2000 for 'Urban Release Area' 	<p>there is provision to amend an existing section within that DCP such as B22. Council would support amendment to the existing DCP Section B15- Seabreeze Estate Pottsville to incorporate the subject land</p> <p>The applicant has noted that there is no definition for 'Urban Release Area' included within TLEP 2000. This definition is included within the Standard Instrument LEP as a local provision. For completeness, it is recommended the Tweed LEP 2000 – Schedule 1 Meaning of Terms: be amended to include the definition of 'Urban Release Area' as follows:</p> <p><i>urban release area</i> means an area of land shown hatched and lettered Urban Release Area Map.</p> <p><i>Urban Release Area Map</i> means the Tweed Local Environmental Plan 2000 Urban Release Area Map.</p> <p>All mapping, included within TLEP 2000 will be in accordance with Standard Instrument Order 2006.</p> <p>This ensure consistency between TLEP 2000 and the Draft Standard Instrument LEP for Tweed Shire.</p> <p>For completeness, a specific map for the Seabreeze (Stage 2) area will be included.</p>
<p>Department of Education & Training (DET)</p>	<ul style="list-style-type: none"> Thankful of opportunity to comment & appreciative of Council advice regarding future development proposals within the LGA Aware of potential future educational facilities needs in the Pottsville/King Forest area Currently negotiating with Department of Planning on a suitable site for future high school to service anticipated demand in the area 	<p>Noted</p>
<p>Pottsville Community Preschool (PCP)</p>	<p>Concerned about</p> <ul style="list-style-type: none"> absence of a site nominated for High School Site in accordance with 2007 Master Plan absence of consultation with DET re provision of high school site lack of content in LES re cumulative impacts of increasing population and inadequate planning for community & social infrastructure provisions lack of pro-active consultation with community advising of loss of potential high school site 	<ul style="list-style-type: none"> The LES role was to assess land capability for rezoning. As part of the assessment the LES found that the portion of the land can accommodate school/public education facilities and the recommended landuse zoning will allow for that to occur. However, it is up to DET to identify the need for a school and purchase the land to cater for it. DET was consulted on this issue and in accordance with their submission (see above) are currently negotiating with Department of Planning on a suitable site for future high school to service anticipated demand in the area

Submission	Key Issues	Response
Roads and Traffic Authority (RTA)	<ul style="list-style-type: none"> • Impact of Cudgera Creek Rd interchange with Pacific Highway has not been undertaken as requested in the s.62 consultation letter from the RTA • Concerned re cumulative impacts on Pacific Highway from rezoning proposal & other developments along Cudgera Creek Rd • Traffic report to be updated to include assessment of the current performance and 20 year into the future for the Cudgera Creek Rd interchange 	<ul style="list-style-type: none"> • The RTA letter did not specifically ask for the Highway interchange analysis. • The Traffic Impact Study examined the Pottsville Rd/ Cudgera Creek Road, it also included figures relevant to the Pacific Highway. • The Chartered Engineer/Scientist who undertook the 2008 traffic assessment has undertaken a further assessment of this interchange. This information was provided to the RTA on the 13/09/10. • In a letter dated 20/09/10, the RTA replied that '...the imposition of the assessment of the cumulative traffic impact on Cudgera Creek Interchange is an imposition. This should not necessarily be placed on the Seabreeze LEP amendment and should not delay this LEP assessment,...'.
NSW Rural Fire Service	<ul style="list-style-type: none"> • A small section of the subject site has been identified as bush fire prone on the Tweed Bush Fire Prone Land Map. You are reminded the development of that area will be subject to the requirements of 'Planning for Bush Fire Protection 2006'. 	<ul style="list-style-type: none"> • These requirements are noted and the requirements for Planning for Bushfire Protection will be canvassed within the DCP amendment and also at subsequent stages of the development process (Development Application Stage).

Public Hearing

No submission requested a public hearing. No issues were raised in submissions of such significance that they should be the subject of a hearing.

Consideration

The draft LEP has been prepared and exhibited in accordance with the Act.

The body of the LES details the relationship between the potential use of the subject site for urban purposes and applicable overarching strategy documents, such as Section 117 Ministerial Directions, State Environmental Planning Policies, the Far North Coast Strategy and Tweed 04/24 Strategic Plan. In this regard the LES concludes that the proposal is consistent with the applicable strategic framework and where a departure is required, the proposal is appropriately justified.

The Draft LEP is consistent with, or justifiably inconsistent with, relevant directions made under section 117.

In light of the above it is proposed to amend the Tweed LEP 2000 by way of amended zonings (comprising the use of 2(a) Low Density Residential and 7(l) Environmental Protection (Habitat) and an additional clause, being Clause 53E Specific Provisions for Seabreeze Estate – Stage 2. Clause 53E is considered a necessary inclusion to address, among others, an integrated and coordinated approach to the provision and allocation of sewer infrastructure.

This LEP is being progressed concurrently with the Draft shirewide LEP 2010. It is a requirement that any draft LEP be prepared in the format of the Standard Instrument Order 2006 (SI), as such two LEP maps have been produced, one with the relevant Tweed LEP 2000 zones, and another with the SI. In the event that the draft LEP 2010 is gazetted prior

to this LEP amendment the proposed Clause 53E will not be required, the amendment will default to Part 6 of the SI, Urban Release Areas.

Buffer Zones

A follow up on buffer zones to Cudgera Creek is included within this summary for information purposes. The LES depicted two buffer zones: 40m as prescribed within the existing DCP 15 – Seabreeze Estate, and 50m as prescribed by Tweed Coast Estuaries Management Plan. A map was included within the LES depicting these distances, and has been reproduced for this Council report (see below).

The relevant wording from DCP 15 states that:

“Buffers with a general width of 50m are to be provided, to the bank of Cudgera Creek, and to the closed forest located on the eastern side of the site both within the property and in the Tweed Environmental Park. These buffers to include regeneration planting. The buffer width to the closed forest may be narrower if justified in terms of drainage impact, fencing, or other measures. The buffer width to the bank of Cudgera Creek (riparian buffer) may be reduced to a minimum of 40m in places if justified in terms of water quality and drainage impact, amenity, fencing, topography, and type and extent of riparian vegetation rehabilitation.

A minimum buffer of 5m is to be provided between the road reserve at the eastern end of the site and the proposed fauna exclusion fence on the boundary, to incorporate appropriate landscaping, drainage controls and access to boundary for maintenance and bush-fire control.”

Currently, the Cudgera Creek Riparian Buffer has been implemented in accordance with Condition No. 88A of the s.96 Application K99/1837.68 approval for Stage 1 Seabreeze Estate. This buffer complies with the DCP 15 Requirements. Furthermore, this riparian buffer area has been dedicated to Council and its current land tenure is community land.

The relevant condition reads as follows:

88A. The Vegetation Management Plan to be implemented for the Cudgera Creek Riparian Buffer zone generally in accordance with Appendix 14 to the SIS and Annexures 1 and 5 of that appendix (option 2 - Assisted Revegetation) to develop a 5 metre high dense screen within 5 years, pioneer species and planting strategies identified in Table 1 to the letter dated 2 May 2000 from James Warren and Associates Pty Ltd to be used; minimum width of planting buffer within the area identified in Seabreeze Riparian Buffer plan undertaken by McLauchlan Surveying dated 2/5/03, plan reference 2970-8 Buffer dated 11-12/03 by Cardno MBK and riparian buffer to be protected by fencing, riparian buffer planting to be maintained for three years by the applicant / developer subject to compliance with the following:

- * detailed remediation and management plan for the vegetative buffer along the bank of Cudgera Creek and in the south east of the development area shall be submitted to Council for approval prior to the relevant stage of the development.*

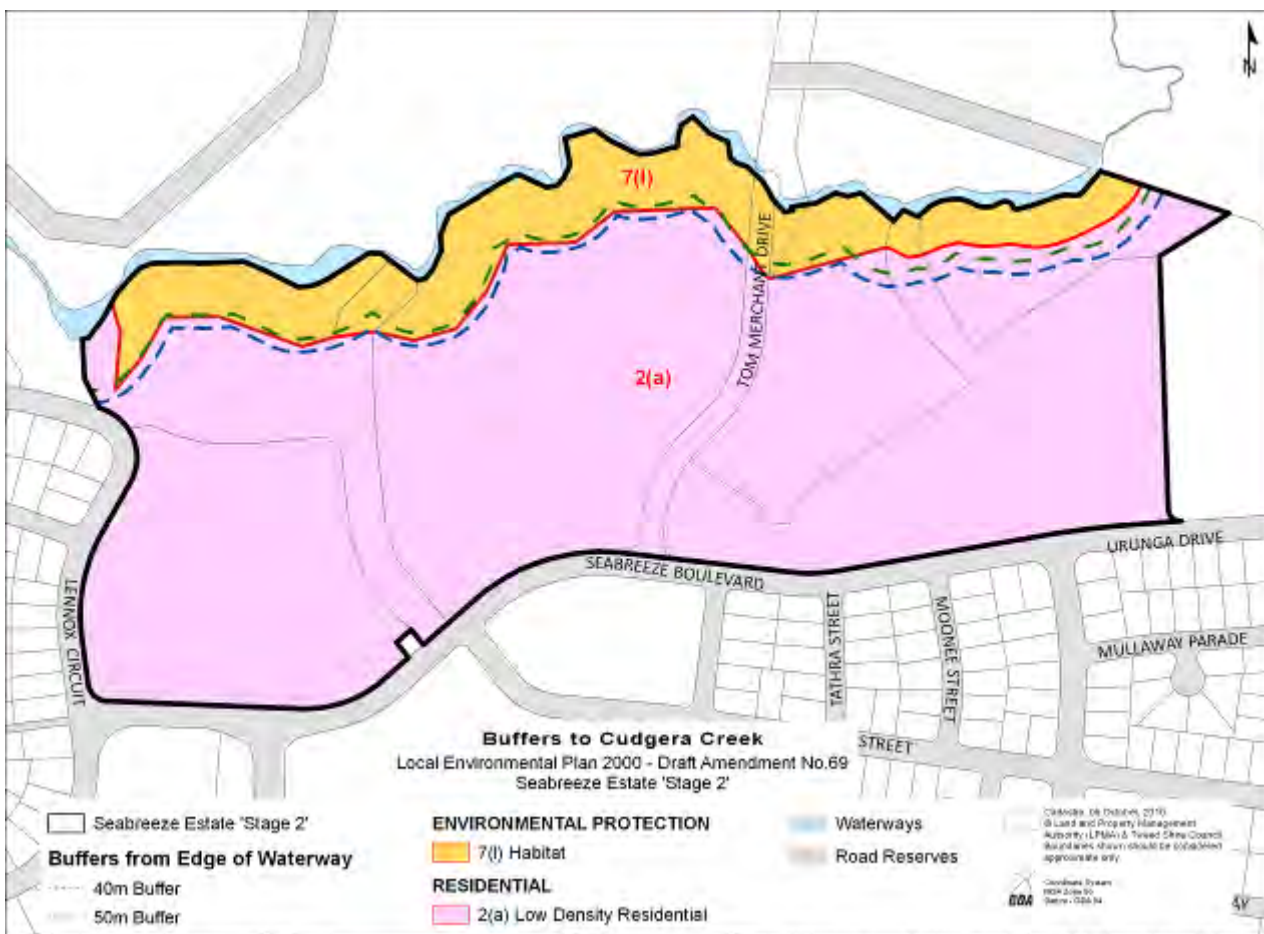
The buffer to Cudgera creek shall be as identified in Seabreeze Riparian Buffer plan undertaken by McLauchlan Surveying dated 2/5/03, plan reference 2970-8 Buffer dated 11-12/03 by Cardno MBK.

The riparian buffer is to provide a strip of undeveloped, revegetated land fringing watercourses to provide a buffer between terrestrial land uses and the stream and assist in maintaining the stream and riparian zone environmental values.

In drafting the amended LEP, Council implemented the recommendations of the Tweed Vegetation Management Strategy (TVMS), known formally as Draft Tweed LEP Amendment 21. As such, this zone line that delineates the change from urban to environmental, is consistent with the findings of that strategy.

As detailed in the submission summary, two agencies raised the buffer issue within their submission, reaffirming the necessity for a 50m buffer. Council should note that the environmental zone boundary is generally in accordance with the 50m buffer (as shown below). As noted within the address of the submissions above, *'the southern most boundary of the environmental of the proposed environmental protection zone (EPZ) coincides with the 50m buffer, apart from portions where the EPZ is slightly narrower to accommodate for existing stormwater management ponds.'*

The requirement for an appropriate riparian buffer will reiterated as part of the DCP which is required by the draft instrument.





Changes to the Exhibited LEP

The exhibition has not resulted in the necessity to significantly amend the proposed LEP Amendment from that which was exhibited. It is recommended that, in order to ensure a smooth transition between TLEP 2000 and the Standard Instrument (DTLEP 2010) in the future, that some particular mapping and definitions, consistent with the Standard Instrument Order 2006, be included within TLEP 2000 for consistency.

In the public exhibition, the Draft Tweed LEP 2000 Amendment 69 both LEP 2000 and Draft LEP 2010 mapping formats were exhibited given that the PRU is not certain of the gazettal date of Draft TLEP 2010. As such, the maps below, prepared in accordance with the Standard Instrument Order 2006, are prepared for both TLEP 2000 and Draft TLEP 2010.

Amendments included are recommended as follows:

Insert definitions:

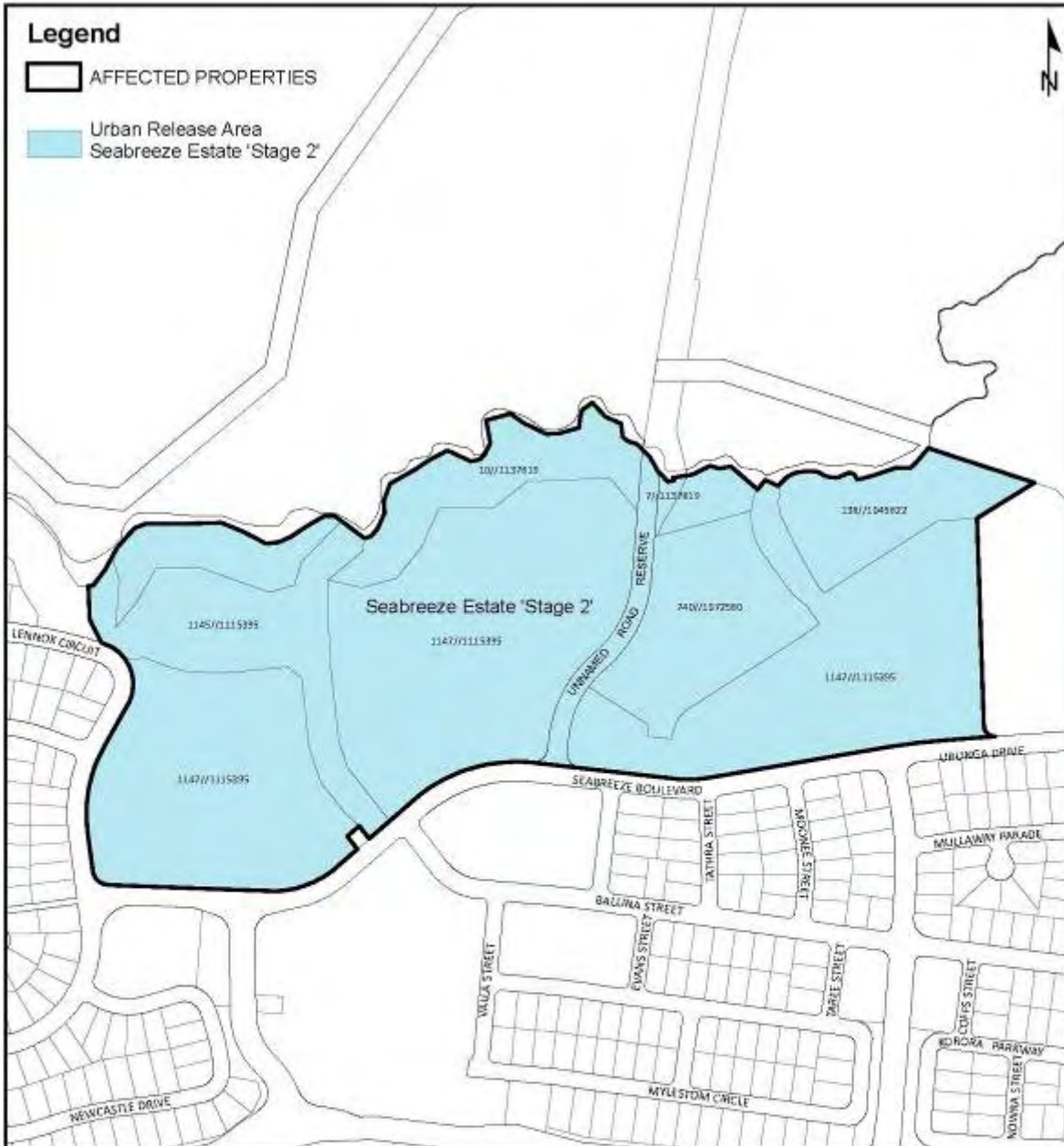
Schedule 1 – Meaning of Terms

urban release area means an area of land shown hatched and lettered Urban Release Area Map.

Urban Release Area Map means the Tweed Local Environmental Plan 2000 Urban Release Area Map.

Insert Map:

Urban Release Area Map showing Seabreeze LEP as follows:



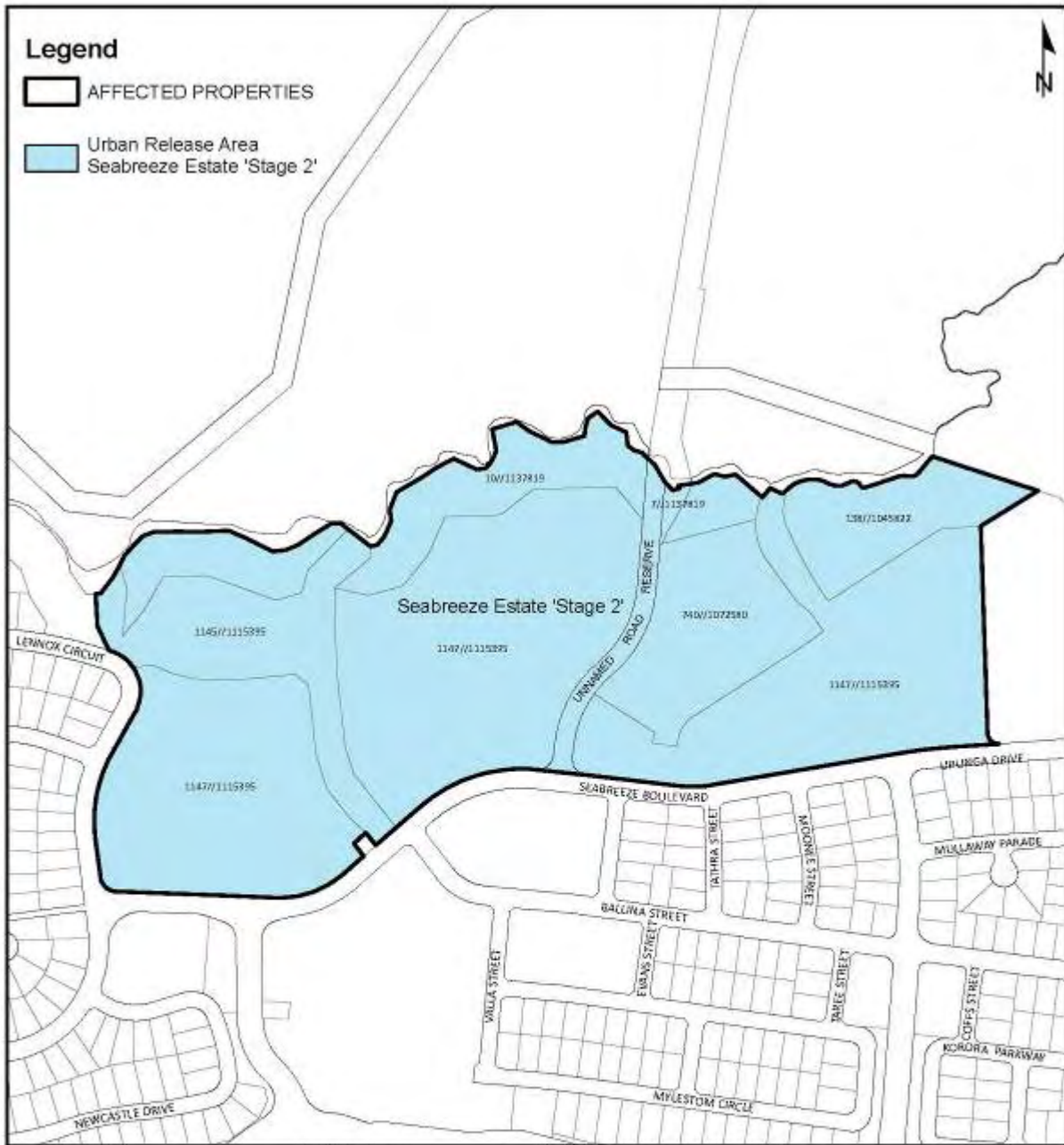
SCALE: 1:5,000 LOCALITY: POTTSVILLE PARISH: CUDGEN COUNTY: ROUS SHEET: 1 of 1

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

TWEED

DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No.69

DRAWN BY: J. Batchelor DATE: 06/10/2010	STATEMENT OF RELATIONSHIP WITH OTHER PLANS
SUPERVISING DRAFTER:	AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000
PLANNING OFFICER: J. Townsend	
COUNCIL FILE No: GT1/LEP/2000/69	
DEPT. FILE No:	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 & REGULATIONS
GOVT. GAZETTE OF:	GENERAL MANAGER DATE



SCALE: 1:5,000 LOCALITY: POTTSVILLE PARISH: CUDGEN COUNTY: ROUS SHEET: 1 of 1

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 TWEED DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No.69 IN ACCORDANCE WITH STANDARD INSTRUMENT ORDER 2006	
DRAWN BY: J. Batchelor DATE: 06/10/2010 SUPERVISING DRAFTER: PLANNING OFFICER: J. Townsend COUNCIL FILE No: GT1/LEP/2000/69 DEPT. FILE No: GOVT. GAZETTE OF:	STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000 CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 & REGULATIONS _____ GENERAL MANAGER DATE

Timing and Progress

Council should note that the subject LEP Amendment is being processed under the old (pre-Gateway) system and will no longer continue if not made before 31 December 2010. Based on this information, the PRU, in conjunction with Landpartners are responsible for furnishing a final report in accordance with the provisions of s68(4) of the Environmental Planning and Assessment Act 1979. The requirements of cl. 68(4) state:

Subject inclusions as recommended within this report and endorsement of Council, the PRU in conjunction with Landpartners is able to finalise this report and forward to the Director General for consideration pursuant to the provisions of s.69 of the EP&A Act 1979.

68(4) The Council shall, subject to and except as may be provided by the regulations, submit to the Director-General:

- (a) details of all submissions*
- (b) the report of any public hearing*
- (c) the draft local environmental plan and the reasons for any alterations made to the plan pursuant to subsection (3), and*
- (d) a statement:*
 - (i) to the effect that the provisions of sections 66 and 67 and this section relating to public involvement in the preparation of the draft plan have been complied with,*
 - (ii) specifying the environmental planning instruments and directions under section 117 that have been taken into consideration.*
 - (iii) giving details of any inconsistency between the draft plan and any instrument or direction referred to in subparagraph (ii) and the reasons justifying the inconsistency, and*
 - (iv) giving details of the reasons justifying the exclusion of provisions of the draft plan under subsection (5) or the exclusion from the application of the draft plan of any land under that subsection.*

The content of the report will be detailed with documentation included within this Council report, the public exhibition material and address of submissions received. With the exception of inclusion of definitions and mapping as detailed above, no additional technical information is required to fulfil the requirements of the report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (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. Council Report dated 18 May 2010 on Tweed Local Environmental Plan 2000 – Amendment 69 – Seabreeze Stage 2 (ECM 22395515)
-

THIS PAGE IS BLANK

10 [PR-CM] Request for a Planning Proposal - Lot 16 DP 856265, No. 225 Terranora Road, Banora Point

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt22

SUMMARY OF REPORT:

The intention of this report is to inform Council of a request from the landowner of Lot 16 DP 856265, No. 225 Terranora Road, Banora Point for Council as the Relevant Planning Authority ("RPA"), to prepare a planning proposal for the investigation of a rezoning of part of the land from 1(c) Rural Residential to low density residential, similar in form and scale to the surrounding urban development.

Another Planning Reforms Unit (PRU) item on the current Council Meeting agenda provides guidance on updated legislative requirements and fees for planning proposals. In accordance with these requirements, this report seeks Council's endorsement to commence a draft LEP investigation by way of preparing a planning proposal, and to enable staff to enter into necessary dialogue with the landowner regarding the relevant technical and supporting information necessary to ascertain whether a rezoning is appropriate.

Should the planning proposal identify the suitability of a rezoning, the PRU will submit a further report to Council in due course for consideration of whether the proposal is appropriate for the referral to the Department of Planning for a 'Gateway' determination.

RECOMMENDATION:

That Council:

- 1. As the Relevant Planning Authority (RPA), approves the preparation of a planning proposal for the site identified as Lot 16 DP 856265, No. 225 Terranora Road, Banora Point, and**
- 2. Endorses the Planning Reforms Unit (PRU) to enter into dialogue with the landowner of Lot 16 DP 856265, No. 225 Terranora Road, Banora Point regarding the preparation and funding of any relevant supporting technical documentation required to satisfy the RPA's requirements for preparing a planning proposal sufficient for submission to the Department of Planning for a Gateway determination.**

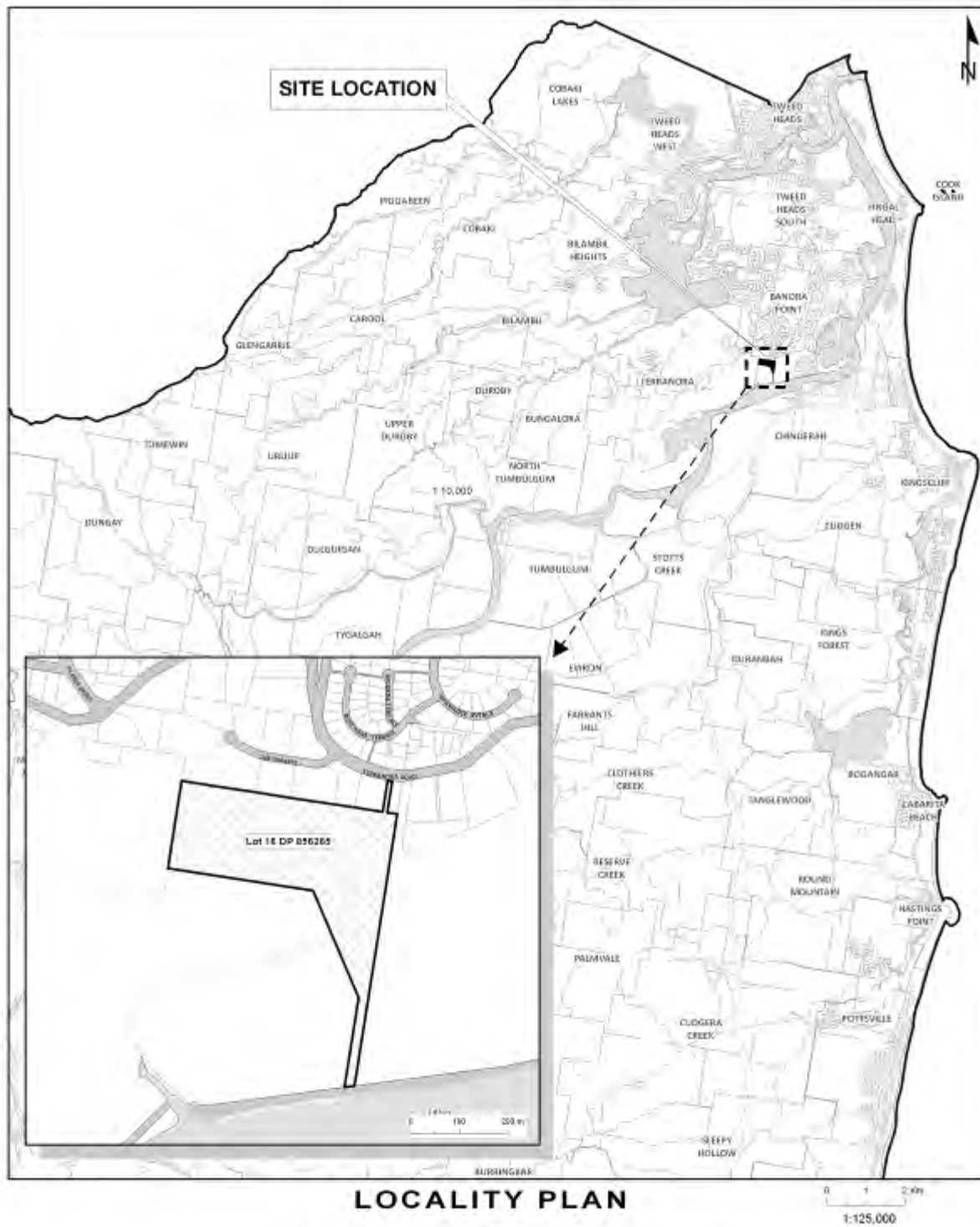
REPORT:

Pursuant to the provisions of cl. 54(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) a request has been received from the land owner of Lot 16 DP 856265, No. 225 Terranora Road, Banora Point requesting Tweed Shire Council as the *Relevant Planning Authority* (RPA) (for the purpose of cl. 51(1)(a) of Part 3) to consider preparing a planning proposal to rezone part of the subject land.

This report provides Council the opportunity to consider whether to exercise its statutory function to prepare a planning proposal.

The site is about 10 hectares in area and is currently zoned for the most part 7(d) Environmental Protection (Scenic/Escarpment) and part 1(c) – Rural Residential pursuant to TLEP 2000.

Figure 1 – Locality Plan



LOCALITY PLAN

1:125,000

Lot 16 DP 856265, No. 225 Terranora Road, Banora Point

Filepath: \\S:\GIS\PROJECTS\REPORTS\AccessPoint\MID\MAP1 - Site Plans.mxd

Author: C. Lingo - Planning Information Unit

Date Printed: 19 October 2010

Disclaimer: Whilst every care has been taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, in writing or otherwise, about its accuracy, reliability, completeness, or suitability for any particular purpose and assumes no responsibility for any loss or damage (including without limitation, liability in negligence) for all or any part of the data. Damage resulting from the use of this data is the user's responsibility. This information is supplied for the general guidance and is to be considered a guide only and should not be used for any purpose other than for general information purposes and prior to any construction, a field surface survey should be made to confirm all data. This information contained on this document is valid for 60 days only from the date of supply.



Coordinate System: MGA Zone 58
Datum: GDA 84



Created on: 30 June 2010
© Dept. of Lands & Tweed Shire Council

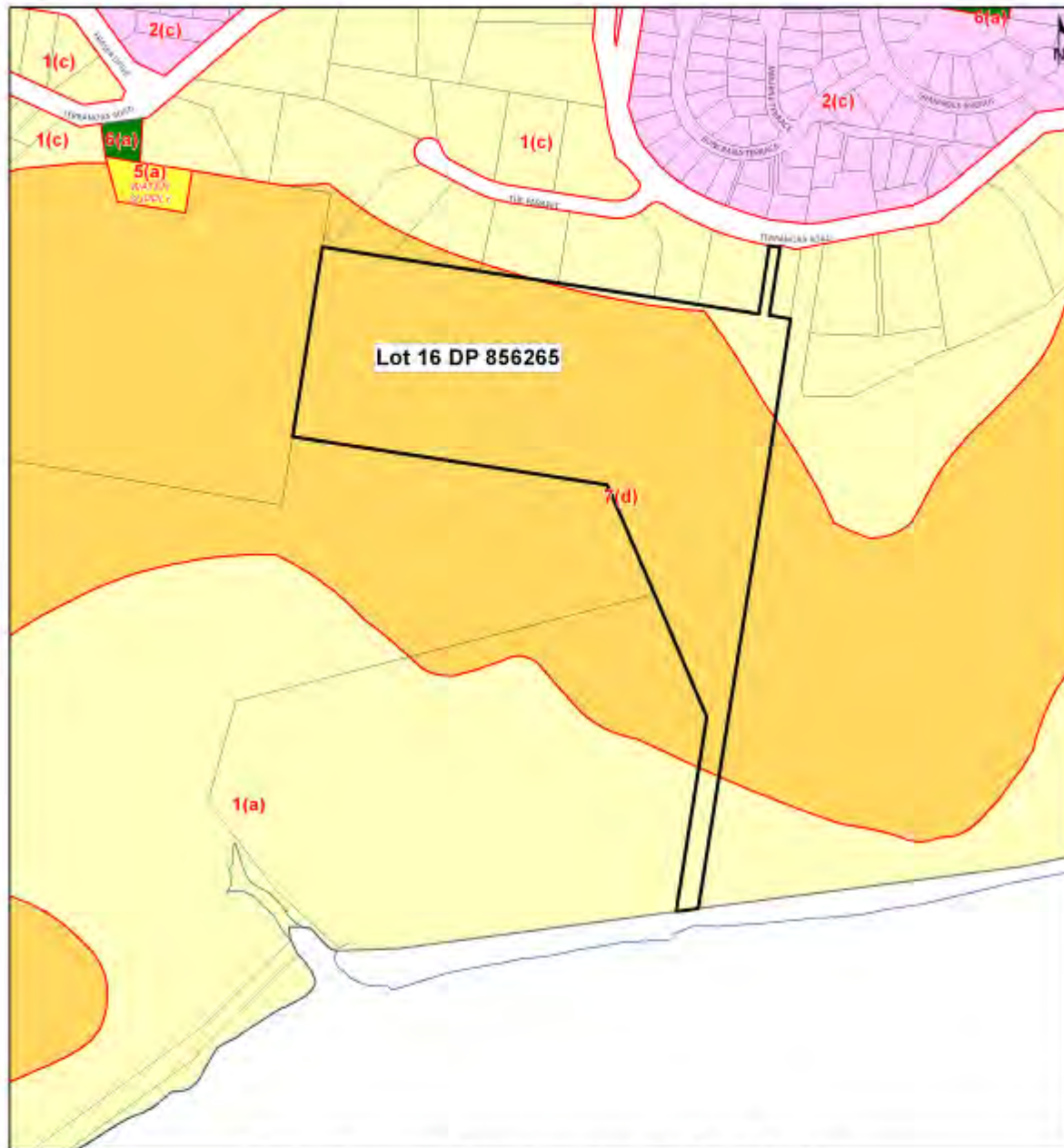
©: BY-NC-ND
copy: any - not certified

City and Cultural Centre
3 Tumbulgon Road
Murrumbidgee NSW 2494
PO Box 816
Murrumbidgee NSW 2484
T: (02) 6870 2400 / 1 300 292 972
F: (02) 6870 2402
W: www.tweedshire.nsw.gov.au
E: planning@tweedshire.nsw.gov.au



TWEED
SHIRE COUNCIL

Figure 2 – Tweed LEP 2000



Tweed Local Environmental Plan 2000
Lot 16 DP 856265, No. 225 Terranora Road, Banora Point

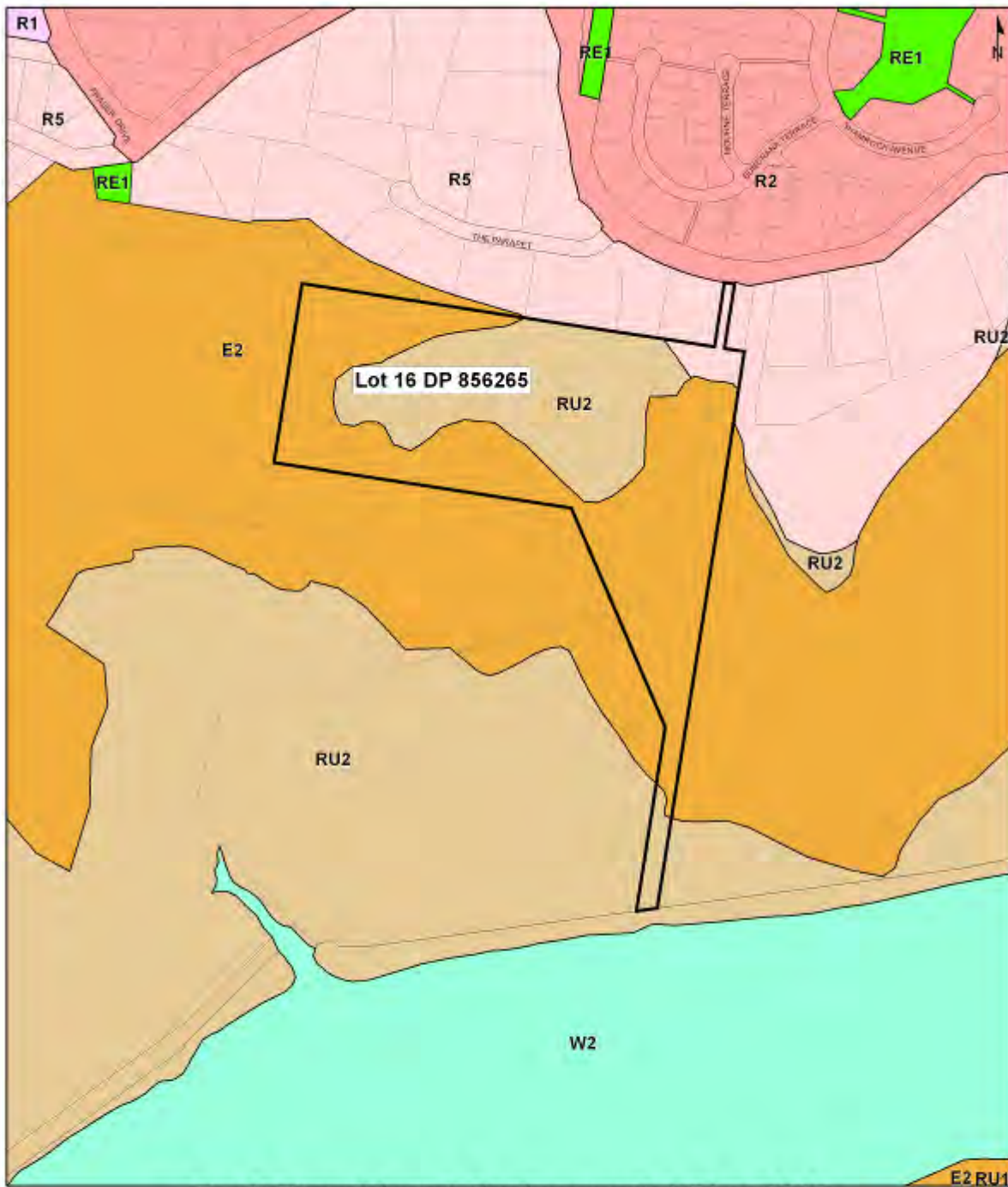
ZONING RURAL 1(a) Rural 1(c) Rural (ing) 1(c1) Agricultural Protection 1(c2) Agricultural Protection	RESIDENTIAL 1(a) Low Density Residential 1(b) Medium Density Residential 2(a) Terrace 2(b) Urban Expansion 2(c) Village 2(d) Residential Town	BUSINESS 1(a) Sub-Regional Business 2(a) General Business 2(b) Commerce & Trade 2(c) Wholesale Enterprise 2(d) Special Neighbourhood (Jack Evans Boat Harbour)	INDUSTRIAL 1(a) Industrial SPECIAL USES 1(a) Special Uses OPEN SPACE 1(a) Open Space 1(b) Recreation	ENVIRONMENTAL PROTECTION 1(a) Environmental Protection (Wetlands and Littoral Raesford) 1(b) Environmental Protection (Coastal Escarpment) 1(c) Environmental Protection (Coastal Lands) 1(d) Environmental Protection (Habitat)	NATIONAL PARKS & NATURE RESERVE 1(a) National Parks and Nature Reserves DEPER 1(a) Defer
ADDITIONAL CONTROLS 1(a) Clause 27 (Transmission Line Corridor) 1(b) Clause 28 (Future Roads)	1(a) Clause 41 (Heritage Conservation Area) 1(b) Clause 52 (Dobaloka)	1(a) Clause 52 (Dobaloka) 1(b) Clause 52 (Existing and Future Dairy Areas)	1(a) Clause 52 (Minimum Lot Sizes) 1(b) Clause 52 (Stormwater and FI)	1(a) Clause 53 (Setback of Bldg.) 1(b) Clause 52 (Particulate)	

File Path: D:\SPM\PLANS\LOCAL_ENVIRONMENTAL_PLAN_2000\FIGURE_2_A4.pdf
Scale: 1:15,000
GDA: Geomatics Division, MSA (2004) 14
Date: 07 October 2010
City and Council Centre: 3 Tunstall Road, Murwillumbah NSW 2484
Tel: (02) 6679 2400 / 199 292 070
Fax: (02) 6679 2629
E: planning@twid.nsw.gov.au
GDA 04
COPY RIGHT - NOT CERTIFIED

The request from the landowner is for the partial rezoning of the land to expand the urban zoning of the land. This is in part based on the proposed zoning amendments in the draft Tweed LEP 2010 and the corresponding reduction of the environment protection zoning, which was based on the Tweed Vegetation Management Study (TVMS) 2004. The following Figure 3 illustrates that area of the site where the environmental zone is reduced. Based on the TVMS implementation strategy as first canvassed in the previous Draft LEP Amendment No.21 and later in the Draft Tweed LEP 2010 the increase in non-environmental land was to defer to a rural landscape zoning. This was apparently premised on the need to limit the increase in residential capabilities without appropriate investigation for that use.

The landowner is requesting that that investigation be undertaken to determine the suitability of the increased non-environmental protection area for residential housing purposes.

Figure 3 Draft Tweed LEP 2010



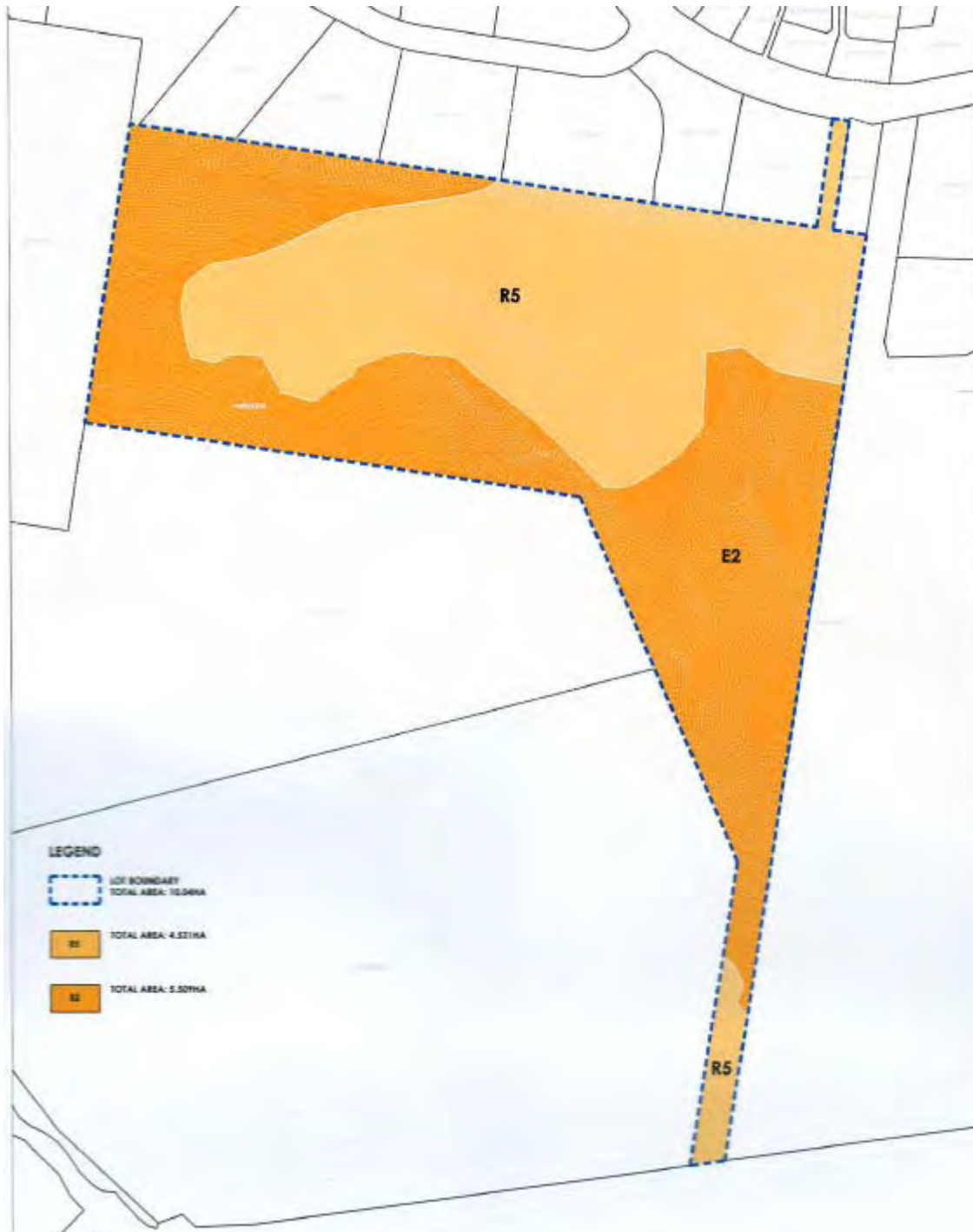
Draft Tweed Local Environmental Plan 2010
 Lot 16 DP 856265, No. 225 Terranora Road, Banora Point

LAND ZONING					
E1 Neighbourhood Centre	R1 National Parks & Nature Reserves	RE1 Medium Density Residential	R2 Rural Landscape	W1 National Waterways	Cadastre: 07 October 2010 Land and Property Management Authority (LPM) & Tweed Shire Council Boundaries shown should be considered approximate only.
E2 Local Centre	R2 Environmental Conservation	R5 Large Lot Residential	S1 Village	W2 Recreational Waterways	
E3 Commercial Core	RE1 General Industrial	RE2 Public Recreation	S2 Special Activities	W3 Working Waterways	
E4 Mixed Use	R5 General Residential	RE3 Private Recreation	S3 Manufacture	U1 Unclassed Land	
E5 Business Development	R6 Low Density Residential	RU1 Primary Production	S4 Tourism	U2 Defunct Matters	

GDA Candidate System 804 Zone 58 Datum - GDA 84	0 25 50 100M 1:5,000 COPY ONLY - NOT GRANTED	City and Council Centre 2 Tindigun Road Mullumbidgee NSW 2484 PO Box 816 Mullumbidgee NSW 2484 T (02) 9070 2400 1800 242 072 F (02) 9070 2420 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au	

The following Figure 4 illustrates the landowner's preference in respect of any rezoning. Although providing a reference point within which to commence the investigation of the site's capability for urban purposes, it should be noted that the ultimate capability and appropriate zoning will be determined through the planning proposal process.

Figure 4 – Landowner's Preferred Rezoning



In relation to Figure 4 above it should be noted that the land zoned "E2" is a reference to Environmental Conservation and "R5" to Large Lot Residential, under the Draft Tweed LEP 2010.

CONCLUSION:

Preliminary assessment of the request for a rezoning of the land appears to be justified on the basis of the reduced environmental protection zoning proposed under Draft Tweed LEP 2010 however, the suitability of the site for a low density residential zoning over some other alternative can only be ascertained through proper investigation of the lands capability and an infrastructure service assessment, which forms the basis of a planning proposal.

The subject planning proposal is not scheduled on the adopted Planning Reform Works Program and it is expected that the work on a planning proposal will not commence until December at the earliest, and subject to other priority work commitments. Based on the scale of any potential development arising from a rezoning of the land and the limited public benefit resulting this is not considered a priority project.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

- 11 **[PR-CM] Draft Tweed Local Environmental Plan 2000 Amendment No. 35 - Lot 1 & 6 DP 9042, Lot 14 DP 733411, Dry Dock Road, Tweed Heads South and Application to Convert the Local Environmental Plan (LEP) to a Planning Proposal**

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2000/35; PF 2920/30; PF 2920/36

SUMMARY OF REPORT:

The purpose of this report is three fold: firstly, to provide Council with an update on the status of the LEP amendment as it has been with Council for about 5 Years. Secondly, a resolution is sought to progress the Draft LEP to the Department of Planning for a Section 65 Certificate certifying that the draft plan may be publicly exhibited, and thirdly, because of the savings and transitional provisions introduced as part of the 1 July 2009 amendments to the NSW planning legislation the validity of this draft LEP will cease if the Plan is not gazetted by 1 January 2011. Gazettal is not likely to occur within that timeframe and as such Council's endorsement to request the Department of Planning to 'rollover' the draft LEP into the new planning proposal system is also sought.

Due to the extent of issues raised during consultation with government agencies and the Department of Planning's previous refusal to issue a Section 65 certificate, a comprehensive review of the proposal was undertaken. This identified a diverse range of issues that have been fully addressed in either applicant's documentation or the Consultant's Local Environmental Study.

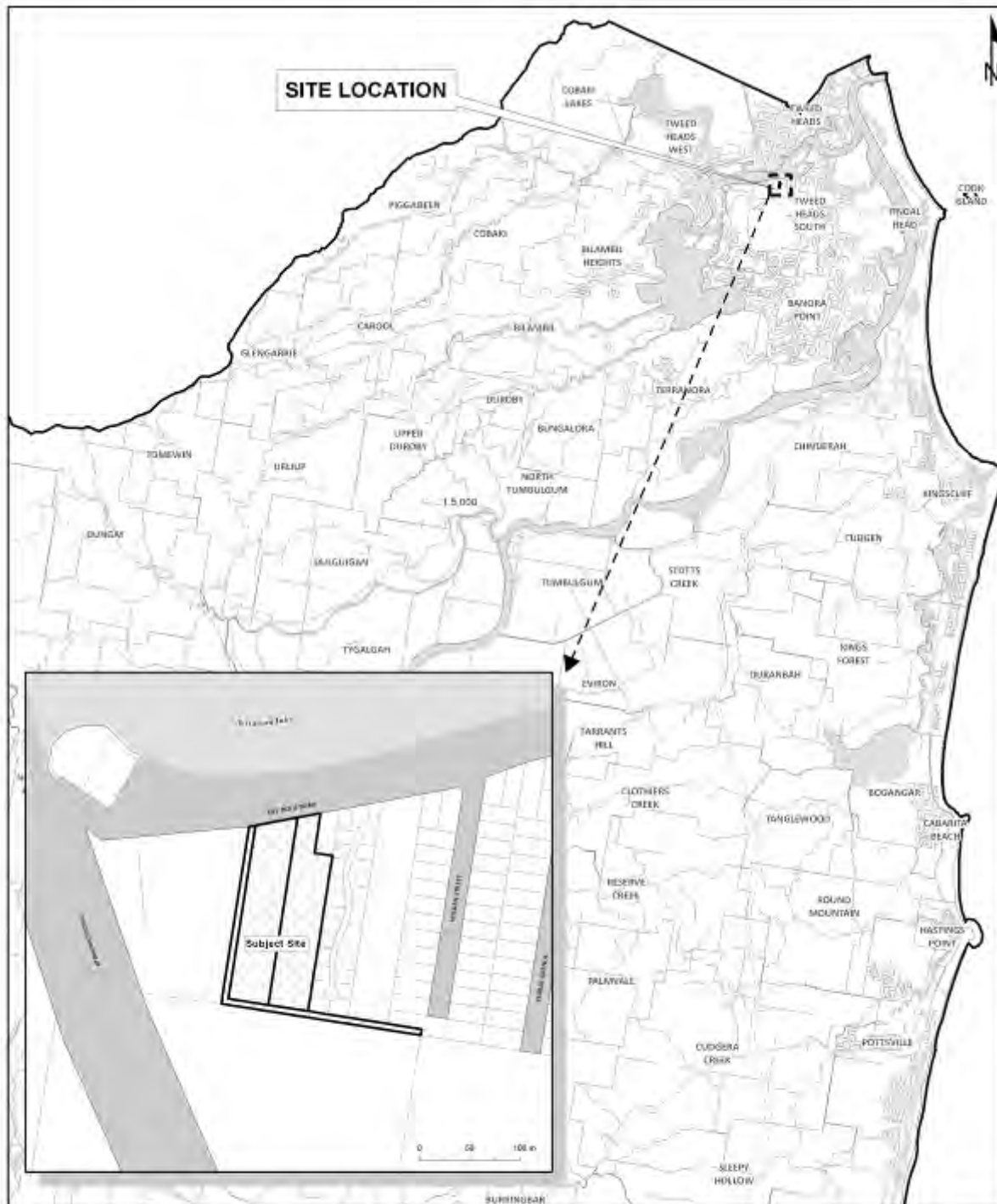
The outstanding matters have been addressed and the draft LEP is suitable to proceed to public exhibition.

RECOMMENDATION:

That:

1. **Council endorses the referral of the draft Local Environmental Plan Amendment No. 35 to the Department of Planning for a Section 65 Certificate to publicly exhibit the draft Plan, and**
2. **The Department of Planning be requested to rollover draft Local Environmental Plan Amendment No. 35 into a 'planning proposal' for the purposes of Part 3, Division 4 of the Environmental Planning and Assessment Act, 1979.**

LOCATION MAP:



LOCALITY PLAN

Lot 1 & 6 DP 9042, Lot 14 DP 733411
Dry Dock Road, Tweed Heads South

0 1 2 Km
1:125,000

File path: C:\ASRT\Planning\Projects\LEP2000 AMENDMENTS\Amendment 35\INDMAP 1 Site Plans.dwg

Author: C. Lees - Planning Returns Unit

Date Printed: 09/06/2010 10:11

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility (and all liability including without limitation, liability in negligence) for all consequences arising directly or indirectly from any use of the information contained herein. This information is supplied for the general guidance and is to be considered in conjunction with other relevant information. It should not be used for survey or construction purposes and prior to any excavation or "dig before you dig" enquiry must be made by calling 1300. The information contained on this document is valid for 30 days only from the date of issue.



Coordinate System: MGA Zone 56
Datum: GDA 94

Code: 30 June 2010
© Dept. of Lands & Tweed Shire Council

Copyright: 2010
Copyright - not defined

City and Cultural Centre,
3 Tumbalunga Road,
Murwillumbah NSW 2484
PO Box 616,
Murwillumbah NSW 2484
T: (02) 6670 2480 / 1300 282 872
F: (02) 6670 2485
W: www.tweedshire.gov.au
E: plan@shire@tweedshire.gov.au



REPORT:

The purpose of this report is to provide Council with a summary of investigations and responses to matters raised as a result of a detailed investigation of the rezoning proposal and constraints affecting the site. This report also provides advice to the Department of Planning relating to the issue of a Section 65 Certificate certifying that the draft LEP may be placed on public exhibition, and requests that the Department 'rollover' the draft LEP into the new planning proposal system.

While it is not the intention of this rezoning process to determine the finished form of any development of the site, which would be the subject of a separate development application(s) at a later stage, it is imperative that Council has confidence that the rezoning of the site to allow what is currently a prohibited development will not have adverse impacts either on the site, adjoining land or residents and will not generate adverse cumulative impacts.

Prior development and rezoning Applications

On 4 June 2002 the proponent lodged an application for an amendment to the Tweed LEP 2000 by way of including an enabling clause under Schedule 3 of the Tweed LEP 2000 to permit the construction of tourist accommodation, shops, and a caravan park on the subject site; landuses which are currently prohibited in the 2(a) Low Density Residential zone affecting the site.

Council resolved on 6 November 2002 to prepare a draft LEP amendment to include an enabling clause in Schedule 3 of Tweed LEP 2000 to facilitate approval of the development proposed above.

This application was subsequently withdrawn on 25 June 2004.

On 29 October 2003 a development application was lodged (DA03/1592) seeking consent to demolish structures on the site, removal of all vegetation and filling. Following receipt of state agency responses seeking refusal of the proposal or additional information, the DA was withdrawn on 19 August 2005.

Current rezoning application

On 8 October 2005 the proponent lodged a submission seeking an amendment to the Tweed LEP 2000 by way of including an enabling clause under schedule 3 of the Tweed LEP 2000 to permit the construction of tourist accommodation, shops, and a caravan park on the subject site, which are currently prohibited in the 2(a) Low Density Residential zone affecting the site.

Responses from government agencies received during consultation raised a wide range of potentially significant issues which required further detailed considered.

Apart from an extensive list of concerns raised by government agencies, the Department of Planning wrote to Council on 24 September 2008, refusing to issue a s65 Certificate on the grounds that the following matters remained outstanding:

1. High aircraft noise impact and ameliorative measures;
2. Coastal Policy not addressed;
3. EPA enquiries not addressed (matters unspecified in this letter);
4. Significance of coastal Forest Red Gum within a Sub-Regional corridor and koala food trees, and
5. Unauthorised clearing of native vegetation on the site.

On 18 December 2008 additional information was forwarded to the Department of Planning along with an amended LES for the site.

Due the extent of concerns raised by government agencies and the Department of Planning, a comprehensive review of all matters affecting the site was undertaken. As seen in the list below, this highlighted a diverse range of matters which were forwarded to the proponent to address.

On 25 March 2009 a request for response to these issues was sent to the proponent who responded with a revised submission on 15 July 2010 addressing the majority of issues raised; with the last outstanding matter of site contamination forwarded to Council in a separate report on 15 September 2010.

The history and conclusion of each of the matters raised is summarised in the remainder of this report.

The Site:

Zoning:	2(a) Low Density Residential
Approx. site area:	16669.02 m ² (Including road)
Approx. area within the ANEF 2020 (20-25) zone:	15063 square metres (~90%)
Distance to Terranora Creek:	45 metres
Area of native vegetation cleared:	Approx. 1.2 hectares

The Proposal:

The revised concept plan (July 2010) for the site shows the proposed development to comprise:

- Retail shop (100 square metres);
- Reception (232 square metres);
- Administration (228 square metres);
- 35 cabins
- Parking (38 spaces)

This proposal represents an extension to the existing Tweed Billabong Holiday Park which will relocate the main entrance from its current location in Holden Street to Dry Dock Road.

It should be noted that whilst concept plans are required in support of a rezoning they are unlike 'concept plans' to be provided as part of a development application or Part 3A proposal in the sense that they cannot be relied upon outside of the LEP amending process – they are indicative only and serve as a guide as to what may be achievable as opposed to what has been assessed as actually being proposed.

Issues:

The following issues were identified (Not in order of priority) as significant and requiring a response:

1. Permissibility
2. Status of Alleged Illegal Clearing
3. Bushfire Threat
4. Riparian Buffers
5. Aircraft Noise
6. Noise (site generated)
7. Flooding
8. Stormwater
9. Contamination
10. Acid Sulfate Soil (ASS)
11. Traffic
12. Status of Access to Tweed Billabong Holiday Park via Holden Street
13. Ancillary Development
14. Relation to, impact on, and integration with Existing Caravan Park
15. Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005
16. Coastal Policy
17. SEPP 71 – Coastal Protection
18. North Coast Regional Environmental Plan 1988

Issue 1: Permissibility

1. The proposal is not permissible within the 2(a) Low Density Residential zone.
2. The proponent has requested that Council, amend Schedule 3 of the Tweed LEP 2000 to include an enabling clause making the development permissible on this site;
3. Department of Planning (letter dated 16.12.02) questioned why Council was pursuing an enabling clause rather than a rezoning which they saw as preferable. Council is of the opinion that an enabling clause would better control use of the site rather than opening up opportunity for a range of potentially incompatible landuse options under the broader provisions of a zone.

Response

An enabling clause is to be added to Schedule 3 of the Tweed LEP as provided in Attachment 1.

Issue 2: Status of Alleged Illegal Clearing of Ecologically Endangered Communities

1. Alleged illegal clearing of remnant native vegetation on the site has been a cause of substantial delays in processing this submission;
2. Prior to clearing, the site was, in conjunction with vegetation on the adjoining western allotment, one of the largest remaining stands of Coastal Forest Red Gum in the Tweed Shire (see Plates 1 and 2 at the end of this report);

3. Coastal Forest Red Gum Forest and Swamp Sclerophyll Forest on Coastal Floodplains were listed as an Ecologically Endangered Communities on 3 December 2004;
4. The vegetation is listed as being within a sub-regional corridor containing koala food trees; refer to Figure 1;
5. Clearing of the site appears to have occurred without approval; removing more than 200 native trees over an area of approximately 1.2 hectares; refer to Figures 3-5;
6. Neither of the Tweed TPOs cover this site;
7. While the site is currently zoned 2(a) Low Density Residential zone, that does not infer that clearing will be permissible;
8. A DA for clearing and filling of the site was lodged in October 2003, and subsequently withdrawn on recommendations of refusal or requests for additional information from government agencies;
9. Clearing of the site occurred in or around October 2005 allegedly with verbal approval of Council, although this is disputed, and RFS;
10. File notes demonstrate that the landowner was aware of the protected status of the vegetation prior to clearing;
11. The proponent has suggested that the adjacent vegetated site should be assessed for any potential impacts on threatened flora and fauna as part of any future application for development;
12. In January 2005 P. Parker undertook an investigation and reported to Council addressing outstanding environmental issues, in which, on page 3, substantial reference is made to the gazettal under the Threatened Species Conservation Act 1995 on 3 December 2004 of Ecologically Endangered Communities present on the site;
13. During May and June 2006 correspondence between Council officers and DECCW took place including advice that the applicant had been advised that the rezoning would not continue until the clearing matter was resolved;
14. On 15 August 2006 DECCW was formally advised in writing with accompanying documentary evidence of the alleged illegal nature of vegetation clearing;
15. On 21 August 2006 DECCW responded with advice that "it is not clear to DEC that regulatory action in this instance is warranted or that it would be successful";
16. On 4 February 2009 DECCW was again approached to seek further advice on the alleged illegal nature of native vegetation clearing and to confirm their previous position on taking no action on this alleged illegal clearing;
17. In response, dated 9 February 2009, DECCW advised that it does not seek to be involved in the matter, and that they will not be taking any action on this matter because of the 2 year statute of limitations for commencement of actions on such cases (options to pursue action expired in 2007).

18. 24.9.09: The Department of Planning advised that they are aware that remnant Coastal Forest Red Gum vegetation of high ecological status, koala habitat, that formed part of a sub-regional corridor has been cleared without approval and stated that notwithstanding that the land had been cleared, the environmental study needed to address the significance of the vegetation, sub-regional corridor and the koala food tree species as previously requested by the Department;

Response

With DECCW having resolved not to pursue action under its legislation and with the site not covered by a tree preservation order under Council's LEP, there were no options open to Council regarding action which may be undertaken for a perceived benefit gained from an alleged illegal work or activity.

Issue 3: Bushfire Threat

1. Native vegetation exists on the land immediately to the west of the site;
2. The original proposal has been modified to remove sites from the high exposure, higher risk western boundary;
3. An Asset Protection Zone (APZ) or setback from the Remnant Coastal Forest Red Gum Forest on the allotment to the west will be required;
4. The Amended Concept Layout Plan is not compliant with Rural Fire Service (RFS) guidelines established in the Planning for Bushfire Protection;
5. On 30 January 2008 RFS advised that the proposed site is considered an exceptional circumstance in terms of bushfire hazard given the size and isolated nature of the adjoining bushfire threat, and that future development may be subject to the requirements of Section 100B of the Rural Fires Act 1997 and Section 79BA of the Environmental Planning and Assessment Act 1979.
6. At the DA stage, a detailed Bushfire Threat Assessment will be required which will need to address, amongst other matters; a more accurate assessment of size of the Forest Redgum Open Forest on the adjoining land, demonstrate that radiant heat levels of more than 10Kwm^2 will not be experienced within the SFPP to ensure the safety of emergency workers, and an Emergency and Evacuation Management Plan approved by RFS.

Response:

While preparation of a detailed Bushfire Threat Assessment is not a matter to be finalised at this stage, it is essential that the applicant can demonstrate that the proposal is achievable within the absolute constraints imposed by the close proximity of the site to potentially hazardous vegetation.

The applicant has amended the concept plan to a point where, while still not compliant with Rural Fire Service (RFS) guidelines has demonstrated that it will be possible to implement a development which accommodates bushfire threat constraints will be achievable at the DA stage albeit with a reduced development footprint.

Issue 4: Riparian Buffers

1. A small tidal flow line, identified on the 1:25 000 topographic map appears to transect the allotment to the west, and runs into the lagoon in the Tweed Billabong Holiday Park. The stream runs within metres of the south western corner of the subject site; refer to Figure 6 below;
2. While this stream is not classified as a 'Prescribed Stream', DECCW has advised that development may trigger activity provisions of the Water Management Act 2000 requiring referral under integrated referral provisions;
3. On 28 May 2004 the DECCW (then NPWS) advised that riparian buffers of from 20 to 50 metres apply to streams and drainage lines and that adequate buffers have not been provided to protect the drainage line and riparian vegetation communities".

Response:

While not imposing a limitation on the rezoning of the site, the potential for imposition of a buffer along the stream could impact the concept plan and final layout of the development.

Issue 5: Aircraft Noise

1. Approx. 90% of the site lies within the ANEF 2020 (20-25) zone; refer to Figure 2 below;
2. Any increase in the size of Coolangatta Airport is likely to cause an expansion of the ANEF zones. However detail of any potential alteration in the ANEF zones is not available at this time;
3. Caravan parks are conditionally acceptable under AS 2021-2000 with the note that "some people may find the land is not compatible with residential or educational uses...", and "noise control features in the construction of residences ... may be appropriate";
4. Construction and materials used in caravans make them particularly light-weight and therefore more prone to the impact of noise penetration into living areas than the standard residential dwelling. Additionally, because of the elevated nature of mobile homes, noise is able to penetrate through the floor area, making the attenuation of noise a matter of significance in establishing habitable areas complying with development standards.;
5. The amended concept plan has removed all caravans from the proposed development, replaced with cabins for tourist-only short-stay accommodation;
6. The acoustic report provided by the proponent concludes that with the incorporation of the recommended acoustic treatments , that noise impacts will be capable of satisfying the relevant noise impact related criteria;
7. The consultant has provided sufficient information with the submission of the Acoustic Report to establish that potential noise issues can be satisfactorily addressed.

Response:

Any development application for the additions to the caravan park will be conditioned to require, at least, compliance with all recommendations of the Acoustic Report including the need to provide a system of air conditioning to each cabin.

Issue 6: Noise (site generated)

1. Adjoining residential development is at this stage isolated from the existing caravan park located on the southern boundary;
2. The proposed development will expose this residential area to a potentially substantial increase in noise generation from cabins which are located immediately adjoining the common boundary;
3. Caravan parks are known for their recreational activities and 'out-of-hours' activities of temporary residents who are enjoying their holidays. Such noise impact needs to be considered at the early stages to ensure that potentially adverse impacts of noise generated by residents of the caravan park are addressed in the design of the park;
4. Setbacks are stipulated in the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005;
5. The Acoustic Report provided by the consultant recommends the construction of acoustic barriers along the eastern boundary with adjoining residential properties of 2.0 to 2.1 metres in height

Response

Any development application for the additions to the caravan park will be conditioned to ensure that the adverse impact of noise generated by tourists utilising the site is mitigated in accord with the Acoustic Report and other requirements of Council.

Issue 7: Flooding and emergency evacuation

1. 1 in 100 year flood levels of 2.6 metres AHD are recorded for the site;
2. Existing ground levels of approximately 1.00 metres appear typical across the site;
3. Filing of the site and/or elevation of habitable areas will be required;
4. "habitable area" means a living or working area, such as a lounge room, living room, dining room, rumpus room, kitchen, bedroom, office or the like, and includes rooms constructed and furnished for these purposes. Rooms containing a bath and/or shower are considered habitable. Rooms containing a toilet or basin are not considered habitable if additional to a main bathroom. (Tweed DCP A3, Development on Flood Liable Land);
5. Movable dwelling parks will not be approved unless it can be demonstrated that the land can be filled to a level of not less than the adopted design flood level for the locality without adversely affecting the current flood levels and patterns in the area. (Tweed DCP Section A3 – Development of Flood Liable Land);

6. New caravan parks or additions to existing caravan parks will not be permitted to accommodate long term residents unless the development site is at a level of not less than the design flood level or it can be shown that the site will be filled to the design flood level without impeding the free flow of floodwater. (Tweed DCP Section A3 – Development of Flood Liable Land);
7. Tweed DCP Section A3 – Development of Flood Liable Land permits the development of a caravan/moveable dwelling parks provided there is a permanent high level road evacuation route to land above PMF level;
8. A” high level evacuation route” is defined as a road or footway (as applicable based on the development type), whose entire length has a level (measured at top of kerb for roads) of not less than the design flood level and, which provides a route to enable people to evacuate to land above the PMF. (Tweed DCP Section A3 – Development of Flood Liable Land);
9. While Council has agreed to permit the landowner to utilise un-serviced high land in the short term, and the Kirkwood Road overpass, once constructed, in the long term, the applicant will need to demonstrate via survey plans that an internal evacuation route to the Kirkwood Road property boundary is achievable;

Response

At the DA stage the applicant will need to demonstrate via survey plans that an internal evacuation route (at least pedestrian access) to the Kirkwood Road property boundary is achievable.

Issue 8: Stormwater

1. The site lies just 45 metres from Terranora Creek;
2. The original LEP provided no stormwater management plan or strategy, apart from stating that “sufficient arrangements exist via the existing drainage network to support the proposed LEP amendment”. However, this statement failed to acknowledge that development of the site will have a significant impact on both the quantity and quality of stormwater runoff leaving the site;
3. The EPA (LES p.6) has sought advice about the impact of the development on stormwater. This information was further requested by the Department of Planning in their more recent communication (24 September 2008) in which they refused to issue a s65 certificate until such detail was provided;
4. The applicant has completed a stormwater management plan;
5. The site will need to be filled to the design flood level;
6. Filling of the site has the potential to impact flow regimes on the vegetated land to the west and other land;

7. A Stormwater management Plan has been prepared which provides sufficient detail to indicate that a more detailed design should yield a satisfactory stormwater management plan at the DA stage;
8. Suitable perimeter drainage is to be provided along with stormwater management strategies which ensure no adverse impact on adjoining land, vegetation thereon, or receiving waters;

Response

Apart from other requirements to be determined at the DA stage, the applicant will need to provide suitable stormwater management strategies to ensure that filling of the site has no detrimental impact on adjoining land, vegetation or receiving waters.

Issue 9: Contamination

1. The site is recognised as a disturbed site with a reported history, albeit distant, of operation as a market garden;
2. The historical use of at least part of the site as a market garden triggered investigation under clause 6 of SEPP 55 Contaminated Land. Council has a statutory obligation in the preparing of an environmental planning instrument to consider any land specified under the SEPP, if the inclusion of the land in that zone would permit a change of use of the land. Market gardening is a specified landuse;
3. On 15 September 2010 Council received a Preliminary Site Contamination Assessment which appears to have been carried out in accordance with relevant NSW DECCW Contaminated Land Guidelines under the Contaminated Land Management Act and addressed matters as required;
4. The report highlights the possibility of encountering residual termite treatment under the slab of the house on the site;
5. While it is acknowledged that a substantial amount of filling will be required on the site, legislative requirements and the potential for disturbance during construction must be considered at this stage.

Response

The preliminary contaminated land assessment has not identified any signs of site contamination, but highlights the potential for residual termite treatment under the slab of the existing residence.

Apart from other requirements, a detailed site contamination assessment will be required at the DA stage.

Issue 10: Acid Sulfate Soil

1. The site is a Class 2 site with respect to Acid Sulfate Soil (ASS). There is a probability of disturbing ASS if excavations to a depth of more than 1.0 metres occur;

2. The statement in the LES that “There is little likelihood of encountering contaminated or acid sulfate soil” does not address the fact that there is a probability as yet unquantified;
3. The site lies within 45 metres of the Tweed River. Any disturbance of ASS or potential ASS could easily reach sensitive receiving waters;
4. While ASS is a matter of concern, it is manageable.

Response

The provisions of Clause 35 of the Tweed LEP 2000 will need to be considered with any development application for additions to the caravan park.

Any excavations that extend below the existing ground level will require an investigation of potential or actual ASS and if necessary, the provision of an ASS Management Plan

Matters relating to Acid Sulfate Soils have been adequately addressed for this stage in the development process.

Issue 11: Traffic

1. The site will be linked to the existing caravan park to the south through a bridge in the south western corner of the site;
2. A Traffic study (29 March 2006) was completed for the previous concept plan which proposed a greater density of development;
3. Council’s assessment of this concept lead to advice that the proponent would need to erect parking restriction signage along the sites frontage. (Council note: 8.5.06);
4. Council has also suggested that the LEP amendment should specify the closing of the unapproved access over Council property in Holden Street;
5. Under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 only 1 visitor parking space is required for every 20 short-term sites, and 1 visitor parking space for every 10 long-term sites is required. Plus 1 Disabled parking space per 100 sites;
6. The anticipated traffic generated by the proposal will not trigger any major roadworks on Dry Dock Road apart from possible localised (driveway) improvements such as turning bays, which will be subject of later detailed design together with off street parking and other matters to be determined at that time.

Response

Matters relating to traffic have been adequately addressed for this stage in the development process.

Issue 12: Status of Access to Tweed Billabong Holiday Park via Holden Street

1. The Tweed Billabong Caravan Park currently has its main access at the southern end of Holden Street with the access crossing Council-owned land;
2. Advice from Council officers suggests that the current owner of the Tweed Billabong Holiday Park does not have legal access across Council land to Holden Street.
3. Legal advice to Council is that the current owner, being the third owner of the park does not have evidence of right of passage across Council's land;
4. Council is keen to sell the allotment;
5. Unless an alternative access to the park can be provided Council may not be unable to dispose of the land;
6. Several alternative access locations exist, including access to Dry Dock Road as part of the proposed development; or longer term, access to Kirkwood Drive once the road is formed;
7. Compounding this issue is the potential for the NSW Rural Fire Service to require a secondary emergency access/egress to the park should the development subject of this rezoning proceed. Closure of the Holden Road access could be problematical to this issue unless an alternative emergency access/egress can be found;
8. It will be imperative at the DA stage for a Bushfire Emergency Evacuation Plan to scope out all potential emergency evacuation routes from the site, this may include access to Kirkwood Road once completed, and potential for the Holden Street access to be permanently closed;

Response

While not critical in determination of this rezoning, matters relating to the on-going use of the Holden Street access will need to be finalised with any development application for the subject site.

Alternative locations for secondary or emergency access should be fully scoped out including the proposed Kirkwood Road extensions.

Issue 13: Ancillary Development

1. In general, ancillary development refers to development that is for the specific use of the associated development. If the development were removed the ancillary development would not be viable;
2. The initial rezoning submission proposed a substantial amount of 'ancillary development' with retail shops of 300 square metres facing Dry Dock Road;
3. The revised concept plan shows ancillary development more proportionate to the proposed development, with a reception area of 232 square metres, a 100 square metre shop and a 228 square metre administration area;

Response

Because of a substantial reduction in the floor area of proposed ancillary development, this matter has been adequately addressed for this stage in the development process.

Issue 14: Relation to, Impact on, and Integration with Existing Caravan Park

1. The original LES did not adequately address the relationship between the existing caravan park and the proposed park, and how usage of facilities proposed under the LES amendment will compliment facilities on the existing caravan park, and whether the entrance to Holden Street will be closed permanently;
2. The revised concept plan and additional information has addressed matters relevant to the integration of the proposed development into the existing caravan park.

Response

While not fully addressed, matters relating to the relationship to, impact on and integration with the existing caravan park have been adequately addressed for this stage in the development process.

Issue 15: Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

1. The revised concept plan reflects an intention to add on to the existing caravan park; such additions will need to conform to the provisions of the Regulations.

Response

Any development application for the additions to the caravan park will be conditioned to require compliance with the relevant provisions of the Regulation. The applicant will as a requirement of the condition need to amend the current local Government Act Section 68 Approval to Operate a Caravan Park to reflect the additional sites and amend the Community Map and Emergency Evacuation Plan (if the current Emergency Evacuation Plan details are altered by the addition).

Matters relating to Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 have been adequately addressed for this stage in the development process.

Issue 16: Coastal Policy

1. The Department of Planning (letter of 24 September 2008) has asked for an assessment of the effects of the NSW Coastal Policy which has not been adequately addressed in the latest version of the LES (5 November 2008);
2. Section 117 Direction S26 Coastal Policy directs that: A Council in preparing a draft LEP must:
 - (a) include provisions that give effect to and are consistent with the government publication entitled *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast* (as amended from time to time);and

- (b) not alter, create or remove existing zonings unless an environmental study relating to the draft LEP has been prepared and considered by Council.
3. A compliance checklist has been provided detailing conformity with requirements

Response

Matters relating to the NSW Coastal Policy have been adequately addressed for this stage in the development process.

Issue 17: SEPP 71 – Coastal Protection

1. Aims of the SEPP include:
 - a) *to protect and manage the natural, cultural*
2. Removal of all native vegetation on the site is not consistent with this legislation;
3. Matters for consideration under the SEPP include:
 - (c) *to ensure that new opportunities for public access to and along coastal foreshores.*
 - (d) *the suitability of development given its type, location and design and its relationship with the surrounding area.*
 - (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats.*
 - (i) *existing wildlife corridors and the impact of development on these corridors.*
 - (m) *likely impacts of development on the water quality of coastal waterbodies.*
4. The clearing of a significant proportion of the largest remaining stand of an ecologically endangered community does not demonstrate consistency with this head of consideration;
5. The proponent has stated that “The site does not contain a wildlife corridor”, however, the site is recognised as part of a major north-south Sub-Regional corridor;
6. Discussion relating to the alleged illegal clearing of native vegetation on the site can be seen in ‘Issue 2: Status of Alleged Illegal Clearing of Ecologically Endangered Communities’ above;
7. Provision of a Stormwater Concept Plan has provided certainty about the intention of the applicant to manage and mitigate any potential adverse impacts of sensitive coastal receiving waters;

Response

With the exception of the status of native vegetation cleared without approval, matters relating to SEPP 71 Coastal Protection have been adequately addressed for this stage in the development process.

Issue 18: North Coast Regional Environmental Plan 1988

1. The North Coast Regional Environmental Plan 1988 is now a deemed SEPP;
2. Clause 32A (d) of the SEPP refers to consideration of the impact of sea level rise which has not been addressed in the LES. The impact of sea level rise could have a significant impact on the sustainability of the proposed development and should be considered at this stage;
3. Clause 33 directs Council to take into consideration the Coastline Management Manual. This does not appear to have occurred in assessment of this application;
4. Advice from the Department of Planning (letter of 16.12.02) the role of the REP and its "wide ranging" objectives in ensuring that urban and tourist development is free from environmental hazards such as flooding, ASS, and aircraft noise, and the protection of natural vegetation and wildlife from destruction and to provide corridors between significant areas (clause 28).
5. Council at this time does not have a requirement to consider sea level rise for infill development, however this situation may change and may be considered again at the DA stage.

Response

While Council does not have a policy requiring sea level rise to be addressed for infill development, a more detailed review of this issue will be undertaken when a development application is lodged.

Conclusion

Following an exhaustive review of the concept plan and justification for requesting an amendment to the Tweed LEP 2000, Council requested further information which has subsequently been reviewed and determined to satisfy the requirements of Council.

This proposal for rezoning is now deemed to be suitable for referral to the Department of Planning with a request seeking a Section 65 Certificate certifying that the draft plan may be placed on public exhibition, and that the draft LEP be rolled over into the planning proposal system.

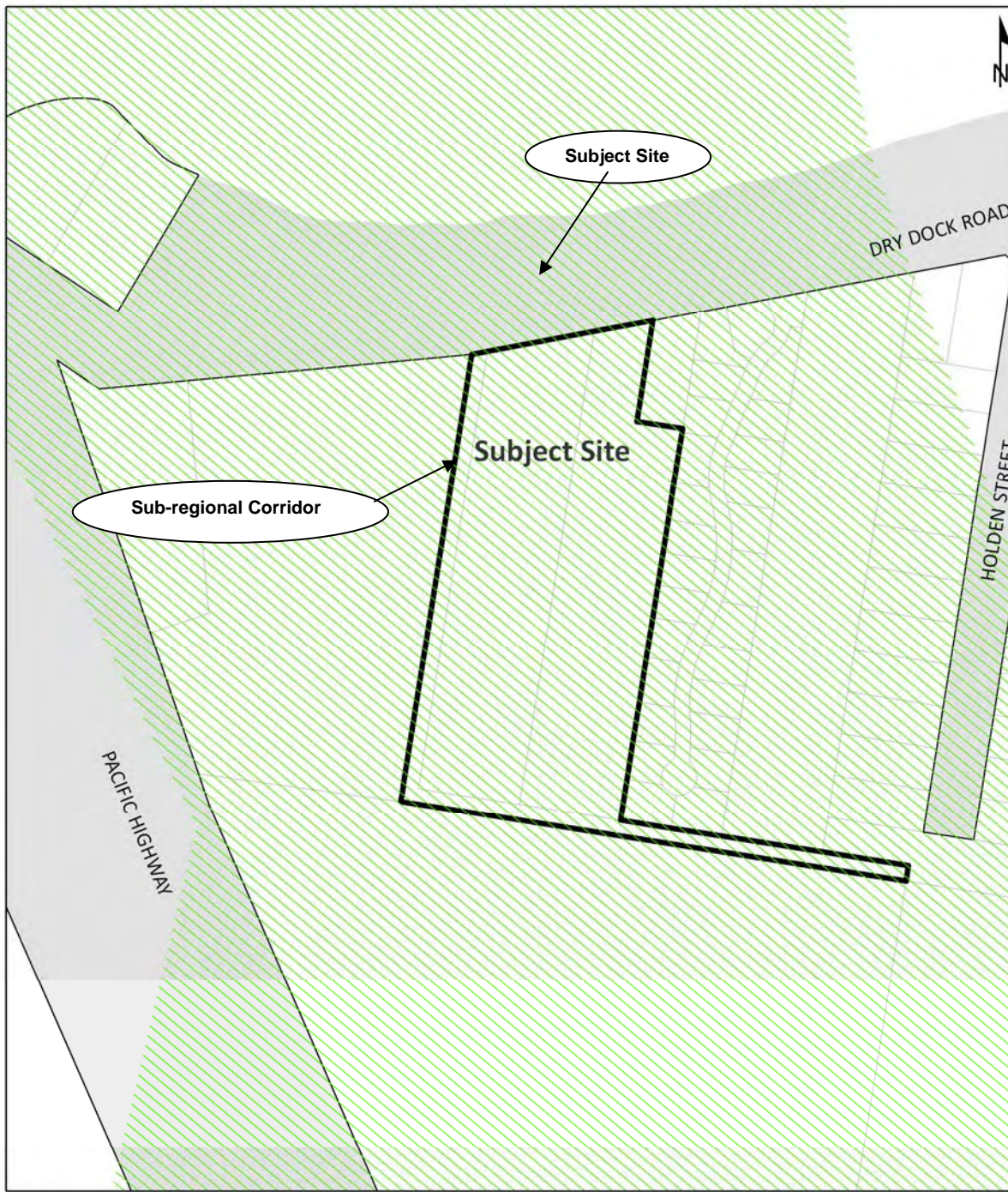


Plate 1: Images of vegetation as at 7 July 2001



Plate 2: Images of vegetation as at 7 July 2001

Figure 1: Sub-regional corridor



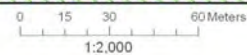
Fauna Corridors

Class

-  Regional
-  Subregional

Figure 1: Sub-regional Corridor

Lot 1 & 6 DP 9042, Lot 14 DP 733411
 Dry Dock Road, Tweed Heads South



Filepath: Z:\ESRI\Planning\Projects\LEP2000 AMENDMENTS\Amendment 35\MXD\MAP 1 - FaunaCorridor.mxd

Author: C. Lees - Planning Reforms Unit

Date Printed: 07 October, 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 '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 supply.



Coordinate System - MGA Zone 56
 Datum - GDA 94

Cadastre: 07 October, 2010
 © Dept. of Lands & Tweed Shire Council

DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484

T | (02) 6670 2400 | 1300 292 872
 F | (02) 6670 2429
 W | www.tweed.nsw.gov.au
 E | planningreforms@tweed.nsw.gov.au



TWEED
 SHIRE COUNCIL

Figure 2: ANEF 2020 Aircraft Noise

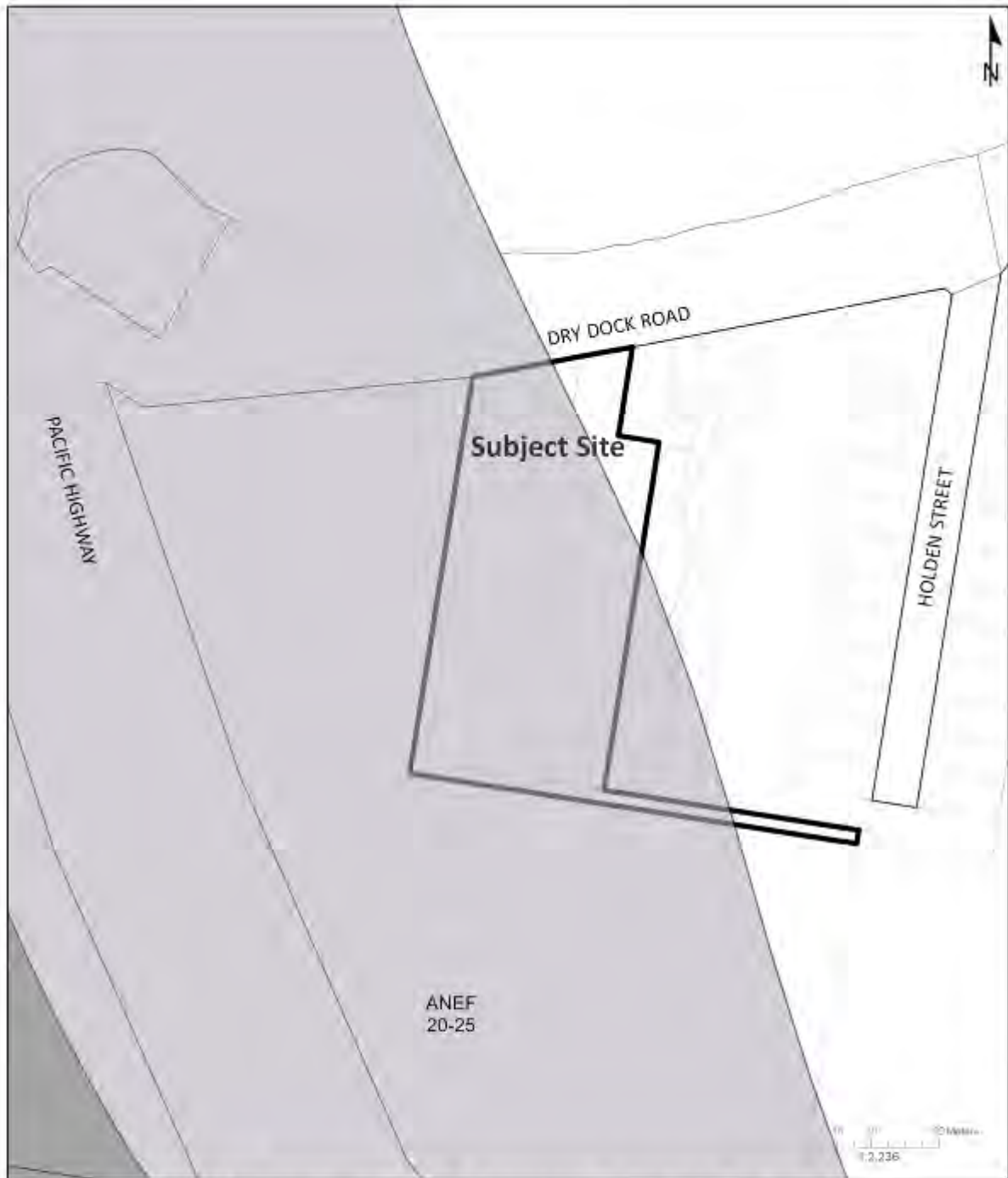


Figure 2: Airport Noise Exposure Forecast 2020 (ANEF)

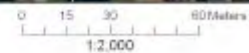
Lot 1 & 6 DP 9042, Lot 14 DP 733411
 Dry Dock Road, Tweed Heads South

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility for any liability, including without limitation, liability in negligence to all expenses, losses, damages (including interest 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 public and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and/or for any operations or 'Dig before You Dig' activity made by calling 1100. The information released by this document remains valid for 30 days only from the date of supply.</p>		<p>GDA Geospatial Data Australia Canberra ACT 2601 Dept. of Urban & Tweed Shire Council</p>	<p>Tweed Shire Council Civic and Cultural Centre 7 Tankagean Road Manildra NSW 2348 PO Box 818 Manildra NSW 2344 T: (02) 6770 2400 1800 292 872 F: (02) 6770 2428 M: 08 1311 7262 / 08 1311 7263 E: planning@tweedshire.nsw.gov.au</p>
---	--	---	--

Figure 3: Native Vegetation (As at May 2007)



AERIAL PHOTOGRAPHY 2007
Fugro Spatial



Lot 1 & 6 DP 9042, Lot 14 DP 733411
Dry Dock Road, Tweed Heads South

<p>Filepath: Z:\GIS\Planning\Projects\DP 2000 AMENDMENTS\Assessment\2008\DP\MAR 3 - Aerial Photography\004.mxd</p>		<p>Author: C. Lewis - Planning Reforms Unit</p>	<p>Date Printed: 06 October 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, whether 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 interest 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 is to be considered indicative and diagnostic only. It should not be used for survey or construction purposes and prior to any excavations or "Dig before You Dig" enquiries must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>		<p>GDA Cadastre: 06 October 2010 © Dept of Lands & Tweed Shire Council</p>	<p>City and Cultural Centre 3 Tumbidgee Road Burrumbidgee NSW 2484 PO Box 016 Burrumbidgee NSW 2484 T (02) 6078 2480 / 1169 292 870 F (02) 6078 2429 W www.tweedshire.nsw.gov.au E planning@tweedshire.nsw.gov.au</p>
<p>Coordinate System - MGA Zone 56 Datum - GDA 94</p>		<p>DO NOT SCALE COPY ONLY - NOT CERTIFIED</p>	

Figure 4: Native Vegetation (As at June 2004)



Figure 4: AERIAL PHOTOGRAPHY 2004
Plateau Images

Lot 1 & 6 DP 9042, Lot 14 DP 733411
Dry Dock Road, Tweed Heads South

<p>Report: 2:\ESR\Planning\Projects\EP 2006\AMENDMENTS\Amendments\5800\84474 - AerialPhotography2004.mxd</p>		<p>Author: C. Lewis - Planning Reforms Unit</p>	<p>Date Printed: 07 October 2010</p>
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and declines all responsibility and all liability (including without limitation, liability in negligence) for all expenses, 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 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. This information contained on this document remains valid for 30 days only from the date of supply.</p>		<p>GDA</p> <p>Coordinate System - 8604 Zone 56 Datum - GDA 94</p>	<p>Created: 07 October, 2010 © Dept. of Lands & Tweed Shire Council</p> <p>TWEED SHIRE COUNCIL</p> <p>City and Cultural Centre 3 Turakulgan Road Marvunbah NSW 2484 PO Box 916 Marvunbah NSW 2454</p> <p>T 02 4478 2488 1300 290 872 F 02 4478 2429 E info@tweedshire.gov.au E planning@tweedshire.gov.au</p>

Figure 5: Coastal Forest Red Gum Open Forest to Woodland

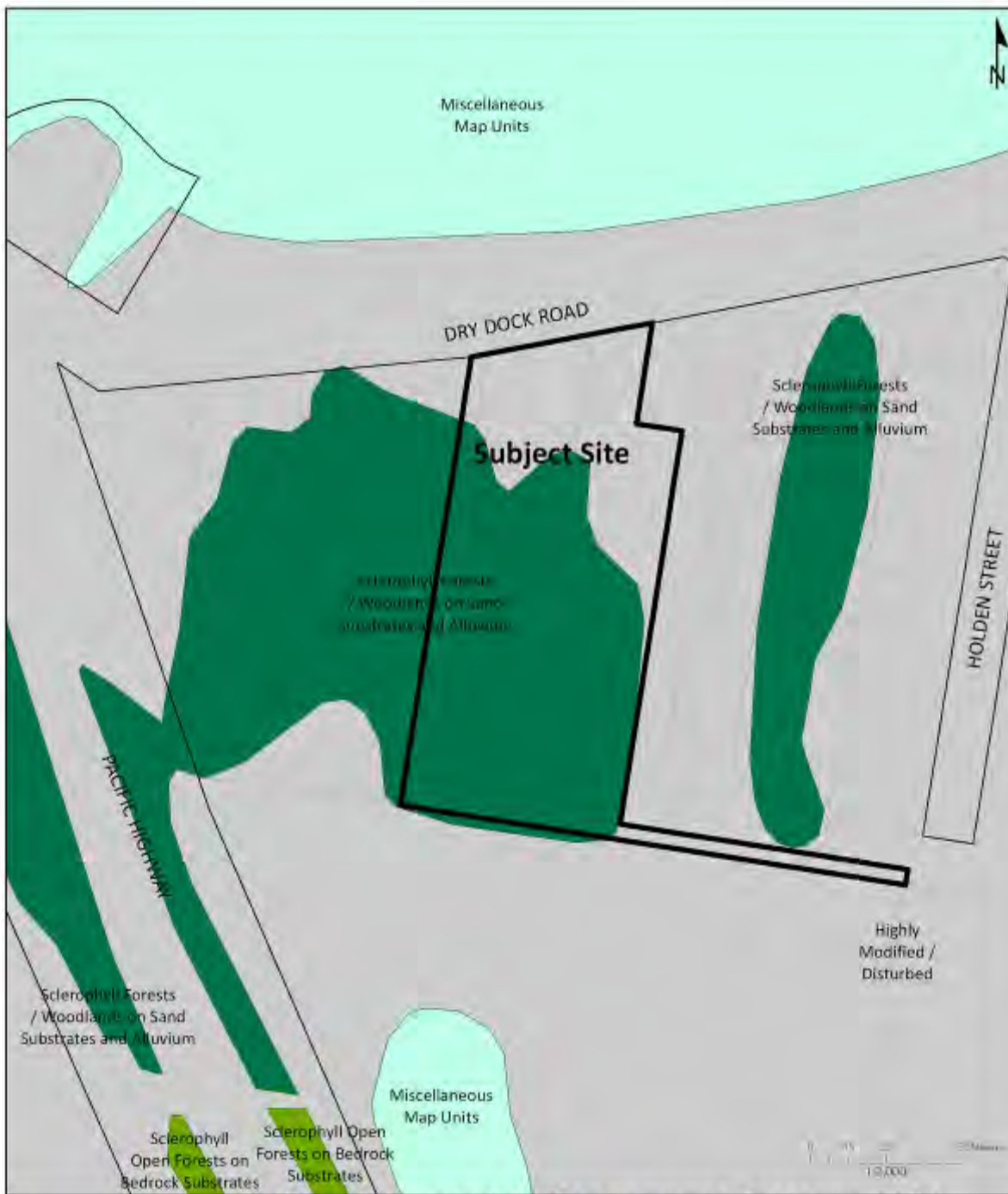


Figure 5: Tweed Vegetation Management Strategy 2004

Lot 1 & 6 DP 9042, Lot 14 DP 733411 Dry Dock Road, Tweed Heads South

Legend

- Estuarine Complexes
- Foredune Complex
- Heathlands
- Highly Modified / Disturbed
- Melaleuca and Swamp She-oak Forests
- Miscellaneous Map Units
- Rainforest and Riparian Communities
- Sclerophyll Forests / Woodlands on Sand Substrates and Alluvium
- Sclerophyll Open Forests on Bedrock Substrates
- Sclerophyll Open Forests on Bedrock Substrates
- Sedgelands and Related Communities

Project: E:\ES\Planning\Projects\EP7000 AMENDMENTS\Amend\level 20\W10 MAP 05 - TWS 2004.mxd

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 accepts all responsibility and liability (including without limitation, liability in negligence) for all expenses, losses, damages, including without limitation 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 approximate only. It should not be used for survey or construction purposes and prior to any construction a 'Call before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastral: 07 October 2010
Dept of Lands & Tweed Shire Council

DO NOT SCALE
COPY ONLY - NOT FOR PRINTING

AMR/CL: CL Used / Planning Documents only

CWEP PRR/EP - EP 01/04/06/01/01/01

Civic and Cultural Centre
3 Tankalpa Road
Murrumbidgee NSW 2486
PO Box 818
Murrumbidgee NSW 2484



TWEED
SHIRE COUNCIL

T (02) 6670 2406 | 1300 281 272
F (02) 6670 2425
W www.tweedshire.nsw.gov.au
E planning@tweedshire.nsw.gov.au

- Note: 1. High ecological status, High ecological sensitivity (source: Enlighten)
 2. Vegetation boundaries represent the boundary of vegetation as mapped,
 3. This vegetation community is registered as an Ecologically Endangered Community.

Figure 6: Location of stream with 40 metre buffer

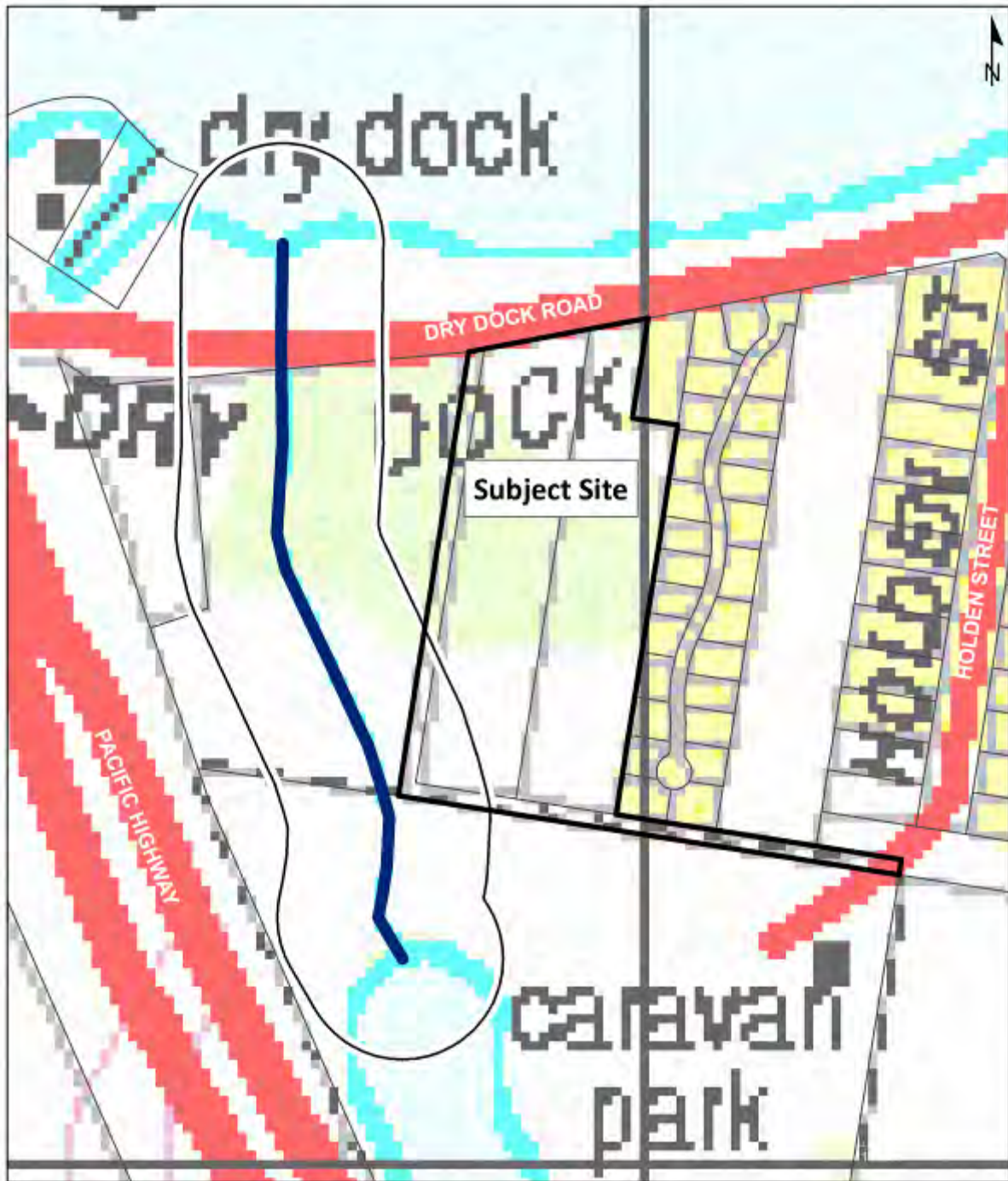


Figure 6: Location of Stream and 40m Buffer
1:25 000 Topographic Map

- Stream
- 40m Buffer

Lot 1 & 6 DP 9042, Lot 14 DP 733411
Dry Dock Road, Tweed Heads South

<p>Filepath: Z:\EOR\Planning\Projects\EP2009 AMENDMENTS\Amendments\2010\GDA\MAP5 - Topographic.mxd</p> <p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, whether in writing, 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 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 is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavation a "Call before You Dig" enquiry must be made by calling 1100. This information released on this document remains valid for 30 days only from the date of supply.</p>	<p>Coordinate System - MGA Zone 56 Datum - GDA 94</p> <p>Created: 07 October, 2010 By: Dept. of Lands & Tweed Shire Council</p> <p>DO NOT SCALE COPY ONLY - NOT CERTIFIED</p>	<p>Author: C. Lees - Planning Reforms Unit Date Printed: 07 October, 2010</p> <p>City and Cultural Centre 3 Tunnicliffe Road Marvillumbah NSW 2494 PO Box 816 Marvillumbah NSW 2494</p> <p>T 02 4670 2488 1908 270 872 F 02 4670 2429 E planningreform@tweedshire.nsw.gov.au</p> <p>TWEED SHIRE COUNCIL</p>
---	---	---

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

An amendment to Schedule 3 of the Tweed LEP 2000 will be required.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

12 [PR-CM] Planning Reform Unit - Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code

ORIGIN:

Planning Reforms

FILE NO: GT1/DCP/B23

SUMMARY OF REPORT:

This report seeks to provide an update on progress of the Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code which will be further reported to Council for final adoption most likely at the November meeting.

While it was anticipated that the final Hastings Point Locality Plan Based Development Code ("the Code") would be presented to this Council meeting, a delay in receipt of the final draft from the consultant has caused a delay in completion of the finished document.

This report provides advice on the process in preparation of the Code along with a table summarising issues raised during the public exhibition period and a planning response and amendment comments where appropriate.

On 30 October 2008 Council resolved that a detailed locality plan and development control plan be prepared for the Hastings Point locality. Ruker and Associates Urban Design was engaged on 15 April 2009 to prepare the plan.

Since that time Planning Reform Unit staff has worked with the consultant to undertake extensive community consultation and public exhibition of the draft Code which occurred during the period 28 April 2010 to 2 July 2010.

Public submissions received have been considered as part of the post exhibition final review by both the Council's consultant and staff, with the consultant's final draft received on 30 September 2010. Issues raised in submissions and a planning comment are provided in this report.

RECOMMENDATION:

That the report on Planning Reform Unit – Tweed Development Control Plan Section B23 – Hastings Point Locality Based Development Code be received and noted.



Figure 1: Hastings Point Precinct Boundaries

REPORT:

Background

On 21 August 2007 Council engaged Ruker Urban Design to assess the appropriateness of the height and density controls under the Tweed LEP 2000 for development in Hastings Point. The final report was considered by Council on 22 April 2008 at which it was resolved:

- “1. Council amend Section A1 of the Tweed Development Control Plan to include interim development controls in relation to the height and density limit in Hastings Point applicable to all land south of the Cudgera Creek Bridge, restricting height to two (2) storeys only with such provision being reviewed no later than 12 months from the date of adoption.
2. That the draft amendment be publicly exhibited in accordance with s 74E of the Environmental Planning Assessment Act 1979.”

The interim controls were incorporated into Tweed DCP Section A1, and subsequently amended by resolutions of Council, as follows:

- **25.11.2008** - Amendment to Area Specific Site Controls to include height and density provisions for Hastings Point – south of Cudgera Creek Bridge Council Resolution,
- **21.04.2009** - Extension of the Area Specific Site Controls relating to Hastings Point (south of Cudgera Creek Bridge) to the whole locality of Hastings Point.
- **28.04.2009** - Repeal of an Area Specific interim site control (density ratio of 1 dwelling per 250m² of site area) and the inclusion of a new density control of no more than 2 dwellings (dual occupancy) per site relating to Hastings Point

Current height and density controls stipulated in the interim controls are:

- a) The maximum building height is 2-storeys and 8 metres.
- b) The maximum density on any lot or combination of lots comprising a development site is two dwellings (dual occupancy).

A review period of 12 months from adoption was applied, except where a locality or structure plan, or area specific planning controls are in preparation in which case it will be the adoption date of that body of work and the concurrent or subsequent repeal of the interim provisions.

Resolution to prepare the Hastings Point Locality Plan and DCP

On 30 October 2008 Council resolved that a detailed Locality Plan and Development Control Plan be prepared for the Hastings Point locality. Council's Planning Reform Unit (PRU) subsequently engaged Ruker and Associates Urban Design, effective as of 15 April 2009.

Public consultation

An extensive community consultation programme was implemented which provided local landowners with the opportunity to provide direct input into development of the Code, and included:

- Three landowner workshops,
- Comprehensive 7-page questionnaire mailed to all landowners,
- Site inspections with community representatives,
- 'Walk-and-talk' where PRU staff were able to discuss options for the future of Hastings Point with interested residents.
- Public exhibition, and
- Review of all submissions.

Questionnaire responses considered

A comprehensive 7-page questionnaire was mailed to all landowners; comments have been tabulated, and collated into themes to allow identification of key issues.

More than 130 responses to the questionnaire were received, the majority from landowners, however, because of a number of anomalies in responses, and the intention to collect qualitative information only, all information was used to develop a broad 'feeling' of the communities concerns, likes, dislikes, aspirations and fears for Hastings Point. The consultant was then tasked with formulating the future desired character on which any new controls and urban design principles would be based.

Landowner workshops

The first of two community workshops was held on 28 June 2009 with more than 90 landowners, family and friends in attendance, with a similar number at the second workshop of 20 September 2009.

Representatives from interested parties were present and able to express their point of view in a forum where free and open contributions were encouraged.

Council officers provided information on water quality, estuary monitoring, flooding and flood modelling, before Noni Ruker and Steve Hammond (Landscape Architect) made presentations prior to the breaking into small groups to workshop issues.

Feedback from both events was very positive and pointed to the workshops being both important, and a productive process at which the community had opportunity to meet with the consultant and present their thoughts directly to the document's author.

Public exhibition

The Draft Code was placed on public exhibition during the period 28 April 2010 to 2 July 2010, and concluded with 113 submissions received. During the exhibition period a further workshop was held for local landowners on 25 May 2010.

Submissions received during the public exhibition period covered a broad range of issues including:

- Acid Sulfate Soils
- Building Type
- Beach and Dunal System
- Cudgera Creek bridge
- Cycle and foot paths
- Development Approvals
- Design Controls
- Estuary
- FSR
- Property Value
- Landscape
- Northern dunes
- Residential Flat Buildings
- Retail
- Signage
- Tree canopy height
- Vegetative Escarpment
- Building height
- Building Materials
- Buffers
- Car parking
- Caravan Park
- Drainage
- Education Signage
- Foreshore
- Floodwater
- Headland
- Littoral Rainforest
- Sea level rise
- Setback
- Southern Planting
- Sewerage system
- Tidal wetlands
- Views
- Deep soil zones
- Camping
- Character
- Cudgera Creek
- Christies Creek
- Eastern foreshore
- Fill
- Flooding
- Compliance
- Park facilities
- Precincts
- The Point
- Visual Setting
- Service Station
- Traffic
- Wildlife Corridor
- Water Quality

Tabulation, collation and discussion of actions proposed as a result of the public consultation is provided as a table in Table 1 - Hastings Point Locality Based Development Code – Summary of submissions and response.

Post exhibition amendments

The final draft document was received from the consultant on 30 September 2010 and is currently being reviewed by PRU officers to ensure that amendments are made, text, cross-referencing, graphics and labelling are consistent with organisational standards and that the document is 'user friendly'.

The finished Code is likely to be presented to the 16 November 2010 Council meeting.

Table 1 - Hastings Point Locality Based Development Code – Summary of submissions and response

<i>Locality Wide</i>			
Issue	Community Comments received	Council Planning Response	Consultant Action
Character	Hastings Point is a small coastal hamlet and it should remain so, its natural landscapes and views need to be maintained by good building designs.	It is difficult to identify Hastings Point as a Hamlet under the NSW Coastal Urban Design Guidelines specific criteria. Hastings Point (HP) exhibits characteristics of both a Hamlet and small coastal village in terms of definition. Sentiments with regard to view, natural environment and good building design all captured within the Hastings Point Locality Based Development Code (Code).	Consultant agrees with response. (No change to the Code required)
	Preserve identity of Hastings Point as a traditional family beach holiday destination Dormitory tourist destination.	Holiday opportunities have been identified within the Code including caravan parks and temporary camping which would remain unchanged.	Consultant agrees with response. (No change to the Code required)
	Sense of Community – ensure identity of HP through open space (separation from Bogangar and Pottsville). Acknowledge links to ‘shared’ community facilities with other towns (not everything in one town).	The Code makes reference to the contextual relationship HP has with surrounding localities and recognises the green buffers immediately north and south of the settlement. Green buffers between settlements could be reinforced on the environmental protection plan (pg 37).	Consultant agrees with response. Wording added to page 36 and in key on page 37.
Retail	Limit commercial activities to existing shops licences and concessions.	The Code identifies only 2 allotments immediately adjoining existing shops (south and west) for potential commercial / retail expansion.	Consultant agrees with response. (No change to the Code required)
	No temporary sales outlets or market days (except for limited special events).	The Code does not make provision for temporary sales outlets.	Consultant agrees with response. (No change to the Code required)
Precincts	Identify/define residential and tourism precincts.	The Code has been divided into different character precincts each with precinct specific objectives, desired future character and development controls.	Consultant agrees with response. (No change to the Code required)

<p>Development Approvals</p>	<p>No amendments ever allowed. Developers get DAs approved and then put in so many amendments which are passed no questions asked. Eliminate loopholes so unacceptable DA's can not get through.</p>	<p>This comment appears to relates more to readvertising requirements under s.96 modifications than to the Code.</p> <p>A key objective of the Code is to identify locality and precinct specific controls which are deemed appropriate to achieving the desired future character of the locality.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
-------------------------------------	--	--	--

Locality Wide			
Issue	Comments received	Response	Action
<p>Plan</p>	<p>I feel the plan does not have enough teeth and falls back onto the TLEP and other DCPs to prevail over the Hastings Point Locality Plan B23.</p>	<p>The specific controls of the Code prevail over the DCP A1 and work within the broader framework of the Shire wide LEP provisions.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
<p>Design Controls</p>	<p>Considerable focus on design which is subjective and difficult to control – matters in the final chapter are not legally enforceable.</p>	<p>Within the Code, design controls including materiality, colour and form have been included within the building typology development controls and would form part of a merit-based assessment. This is supplemented by Part 6.0 Design Resources.</p> <p>Consider making the ‘design considerations’ (e.g. pg 135, 4.3.2.5 Point 2) more explicit to show what criteria needs to be adequately addressed.</p>	<p>Consultant agrees with response. Design criteria for potential RFB developments have been included on pg 135 in a series of dot points.</p>
<p>Preliminaries Pg.10</p>	<p>Concern with the statement that “the TLEP shall prevail to the extent of inconsistency.” (Pg10) This is a problem in that the TLEP has height and density limits that exceed those that exist in the locality plan.</p>	<p>The LEP will prevail to the extent of any inconsistencies; however, the Code and associated Tweed DCP 2008 provide details as to the controls which apply more specifically to either location or building type. However in the event of an inconsistency the LEP would prevail. This does not mean that the Code would not be enforceable, as it would be a matter for any appeal to demonstrate that Council had applied the controls specified in the Code and DCP consistently.</p>	
<p>RFB</p>	<p>If there are difficulties proceeding with this type of development (RFB) because of narrowness of the blocks with turning circles for underground car parks, then why have it as an appropriate form?</p>	<p>RFB design over specific sites needs to be tested at the DA on their merits. Some sites can easily accommodate underground parking and turning circles, other allotments may require amalgamation or other innovative solutions. The number of car spaces which can be adequately accommodated over a site, as well as meeting other</p>	<p>Consultant agrees with response. (No change to the Code required)</p>

		requirements, such as setback, building design, Deep Soil Zones, landscape criteria would also help to determine the development potential of a site. The onus is therefore on the applicant to present a well designed building which adequately addresses development controls and site constraints.	
	<p>No more unit blocks for Hastings Point. We do not want it to become like Kingscliff along Marine Parade.</p> <p>3 storey flat buildings should not be allowed at all in Hastings Point.</p> <p>Townhouses are preferable to RFBs. RFBs are an inappropriate building type for Hastings Point.</p> <p>Height limit to be no more than 8.0m south of the bridge and no more than 10m in Creek Street.</p>	<p>Housing choice and different housing typologies are promoted within the Code. Any proposed RFB developments would have a significantly reduced 3rd floor level (30% of level below) and reduced overall height (10.0m) as an outcome of this Code.</p> <p>A number of design criteria have also been included within the Code to ensure that future development is consummate with the desired future character in terms of height, setbacks, site coverage, scale of development, built form, materiality and landscaping.</p> <p>The consultant should consider reviewing controls regarding elevation length to include a maximum street elevation and a maximum lot depth elevation if the intention is to reduce the overall built form and scale of potential RFBs.</p>	<p>Consultant agrees with response with regard to reviewing building design controls regarding maximum RFB elevation length.</p> <p>The RFB Form Control on pg 199 states maximum side boundary elevation is 30m, and the maximum front or rear boundary is 20m long after which a 6m landscaped area is required.</p>

Locality Wide			
Issue	Comments received	Response	Action
RFB	<p>If you allow the RFB with a 2m/1 storey advantage over the desired predominant form, you will not get your desired predominant form.</p> <p>Existing 2b zoning is not justification for 3 storeys RFB.</p> <p>RFBs should only be in places where predominantly RFBs – no south side, not 3 storey/10m – particularly not for central precinct.</p>	<p>3 storey RFBs are predominantly within the northern precinct. However, recent 3 storey RFBs have also been approved or constructed south of the bridge.</p> <p>The Code has been divided into precincts based on residential character. Within those precincts the consultant has recommended appropriate built form and housing typologies based on urban design investigations and site specific characteristics rather than relying on the existing 2(b) zoning.</p> <p>The Code is clear that whilst the preferred built form along south Hastings Point is single dwellings, town houses and dual occupancies, there is opportunity for small RFBs where the stated design criteria and</p>	<p>Consultant agrees with response. Design criteria for potential RFB developments have been included on pg 135 in a series of dot points.</p>

		<p>visual setting criteria have been satisfactorily met.</p> <p>The consultant is to consider more clearly defining what the design considerations for RFBs are (see pg 135, 4.3.2.5 (2) or cross reference to development controls for Shop Top/RFBs.</p>	
	<p>Ensure that multi-unit development is broken up / detached and increased landscaping between.</p> <p>People who own multiple blocks all in a row should not be allowed to build large unbroken buildings continuously across all blocks. They need to appear as separate buildings on each block to maintain a village atmosphere.</p>	<p>The consultant is to consider reviewing controls regarding elevation length to include a maximum street elevation and a maximum lot depth elevation if the intention is to reduce the overall building footprint of RFBs so that RFBs have the appearance of 'large houses' as stated on pg 189 paragraph 4.</p>	<p>Consultant agrees with response with regard to reviewing building design controls regarding maximum RFB elevation length.</p> <p>The RFB Form Control on pg 199 states maximum side boundary elevation is 30m, and the maximum front or rear boundary is 20m long after which a 6m landscaped area is required.</p>

Locality Wide			
Issue	Comments received	Response	Action
Building Type	<p>Beach house single dwelling (low density)</p> <p>Low key beach house</p> <p>Design – Australian coastal architecture – standards for each tourism and residential precinct.</p>	<p>Comments listed within the submitted 'core values table' component of the submission.</p> <p>A mix of housing typologies including single detached, dual occupancies, town houses and residential flat units currently exists within Hastings Point.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
	<p>10% dwellings as units within the Tweed Urban and Employment Land Strategy have been exceeded. Creek St is the only place with single dwellings for families.</p> <p>Current oversupply of units on the Tweed Coast and Hastings Point.</p>	<p>The reference cited is for servicing requirements and not meant to be used to define any future settlement density.</p> <p>A locality based development code provides more contextually specific objectives and controls of what is an appropriate range of building types within a particular precinct. Given its coastal location, Hastings Point for example has more of a holiday or retirement demographic, and therefore would proportionally have a higher amount of units than other non-coastal 'small villages'.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
	<p>Who decides the mix of housing?</p>	<p>A range of documents provide guidance on the mix of housing and include locality plans, Council's DCP and LEP and more regional documents such as the Far North Coast Regional Strategy, which nominate a range of housing types</p>	<p>Consultant agrees with response. (No change to the Code required)</p>

		/ densities which may be suitable to a given zone, site or precinct i.e. single detached dwelling, row and town housing, shop top, and RFB. However the type of development application that is received and the resultant development is predominantly is a combination of these and market aspirations.	
Height	Reduced height will limit the impact to privacy.	<p>Privacy and overlooking are impacted on by height as well as other contributing factors including building separation, building setback and appropriate screening and landscaping between buildings.</p> <p>The Code includes appropriate front, rear and side setbacks (particularly the upper 3rd storey) which will reduce potential privacy and overlooking impacts.</p>	<p>Consultant agrees with response. (No change to the Code)</p> <p>Privacy and overlooking should be covered in the Building Orientation and separation controls. DCP requires a min. 4m setback for primary windows of habitable rooms from the side boundaries which forces primary windows to be facing the street or rear yard. 2m min. for non habitable rooms.</p>
	The height of all buildings should be measured from the existing ground level and not the filled level (finished ground level)	<p>Draft Tweed LEP 2010 requires building heights to be measured from the existing ground level.</p> <p>Consultant to clarify consistency between how building height will be measured within the LP and the building height definition within the TLEP.</p>	<p>Consultant agrees with response. Building height measurement defers to building height definition within the prevailing TLEP.</p>
FSR	There is no need for reduced FSR (i.e. 0.8:1 proposed and 1.2:1 elsewhere in the Shire) for residential flat buildings as an FSR of 1.2:1 is inconsistent with other similar areas and with the zone objectives.	Floor Space Ratio (FSR) has been calibrated for the locality of Hastings Point along with a range of other locality specific controls which vary from the broader more generic Shire wide controls. This has been the result of community consultation urban design and desired future character processes.	Consultant agrees with response. (No change to the Code required)
Signage	Design specific to Hastings point, not generic shire wide.	Consultant to consider including a signage control as part of 5.5 Shop Top Housing if desired outcome is different from what is already controlled by A1. Refer to Signage Controls in DCP A1.	

Locality Wide			
Issue	Comments received	Response	Action
Traffic	Road access to headland needs to accommodate pedestrian and cycle access.	<p>The consultant to consider if there is a need provide separate pedestrian and cycle access? No pathway extensions have been proposed on the public improvements plan between the shop and headland. Currently, cyclists use the road and pedestrians walk along the grassed verge.</p> <p>The consultant to consider the need to formalise a path to the beach on the southern side of the Hastings Point Headland. The current series of paths is scouring and eroding parts of the headland, including some trampling of native grasses.</p>	<p>The aim has been to retain informal headland character.</p> <p>Recommend compacted gravel shared path alongside the road so that cycles can use. No concrete formal pathways.</p> <p>Gravel will be difficult to maintain and contain given the frequent traffic movements and grade of the slope. Lines marked on the road would be a better outcome.</p>
	Improve road verges and bridge amenity.	The consultant to consider potential landscape / public domain suggestions to refurbish the bridge, or make improvements to verges.	<p>Improvements to verges and footpaths have been included to date.</p> <p>Recommend that the Code note the upgrade to pedestrian amenity when bridge is upgraded in future.</p>

Locality Wide			
Issue	Comments received	Response	Action
Traffic	<p>Village of Hastings Point could not cope with proposed increase of traffic flow.</p> <p>The present road structure and layout of Hastings point will not sustain major developments in the suburb.</p>	A detailed investigation into the impact of a development on local traffic would be undertaken at DA stage. Any required road engineering works would also be identified and conditioned appropriately at that stage to ensure that impact was within the design capacity of the road network.	Consultant agrees with response. (No change to the Code required)
Pedestrian Crossing	Please provide safer pedestrian crossing of Tweed Coast Rd, particularly given the percentage of population of our aged and disabled (blind) residents.	The consultant to consider any pedestrian crossing locations to be identified on illustrative master plan? One suitable location could be near the corner store.	<p>Discussions to date with Tweed Council Traffic Dept note that it would be very difficult to achieve a zebra crossing on this road. There is also a formal process for getting this.</p> <p>Recommend that Code note the preference for zebra crossing subject to RTA liaison.</p>

Fill	No fill allowed anywhere in Hastings Point.	No fill is an unrealistic expectation – most new building projects have an element of cut and fill. Cut and fill controlled is controlled within DCP A1.	Consultant agrees with response. (No change to the Code required)
Building Materials	DCP should not try to formulate acceptable building design character by setting limits on the use of building materials and colours. Whereas building form requirements such as smaller forms, varied roofscape, and varied height should be retained in the DCP, the requirements for 4 complimentary building materials should be deleted.	The consultant to consider a control which highlights that variation to building material requirements will be considered where it can be demonstrated the development / building achieves the design objectives within Part 6.0.	Consultant agrees with response and has included a sentence to Materials and Detailing Control C, pg 199 which permits a variation to the 50% lightweight building material requirement based on architectural merit.
	Building form and not choice of building materials determines good building design. Many recent award winning residential buildings have been constructed from off-form concrete and glass with no other embellishments. Clause b will prohibit use of off-form concrete, glass and glass balustrades.	See Above	Consultant agrees with response and has included a sentence to Materials and Detailing Control C, pg 171, 185, 199 which permits a variation to the 50% lightweight building material requirement based on architectural merit.

Locality Wide			
Issue	Comments received	Response	Action
	50% cladding on side house elevations is excessive, expensive and probably impractical.	See above	Consultant agrees with response and has included a sentence to Materials and Detailing Control C, pg 199 which permits a variation to the 50% lightweight building material requirement based on architectural merit.
Building Materials (Cont'd)	Some of the examples of houses illustrated in “5.2 Concept – Designing to Suit Hastings Point” would not satisfy “the palette of at least 4 complimentary building materials” requirement.	See above	Consultant agrees with response and has included a sentence to Materials and Detailing Control C, pg 199 which permits a variation to the 50% lightweight building material requirement based on architectural merit.
	The recommendation for construction using lightweight	The Tweed region falls within Zone 2 Climatic Zone (BCA),	Consultant agrees with response and has

	materials and not masonry and concrete is not in accordance with sustainable building practices. Thermal mass (masonry and concrete) has a stabilising effect on internal temperature thereby reducing heating and cooling costs and CO2 emissions. Variation in form/design can achieve a desired light weight character.	experiencing warm humid summers and mild winters. On the coast the diurnal range is low and as such the use of lightweight construction materials is widely accepted as the most appropriate cooling strategy by negating the need for mechanical systems. High mass materials (masonry) are also appropriate but require sound passive design including shading and adequate cross ventilation to avoid overheating in summer. In multi-storey buildings high mass materials should ideally be used on lower levels to stabilise temperatures. Low mass (lightweight) on the upper levels will ensure that, as hot air rises (convective ventilation) it is not stored in upper level mass as it leaves the building.	included a sentence to Materials and Detailing Control C, pg 199 which permits a variation to the 50% lightweight building material requirement based on architectural merit. Consultant reiterates that sun shading devices and screens all contribute to the lightweight material calculation.
Drainage	Hastings Point needs a locality wide drainage plan.	The Code should refer to the DCP A3 – Development on Flood Prone Land within both the Context Section and on Page 38 – Flooding.	Reference to DCP A3 is made within Part 3.0 Vision – Flooding pg 38 of the LP.

Locality Wide			
Issue	Comments received	Response	Action
Sewerage system	Local sewerage system has been over taxed and failed on numerous occasions with large quantities of raw sewerage overflowing into Cudgera Creek but also thousands of litres forced back through our sewerage pipes and spewing over our resort.	This issue is beyond the scope of this Code. The comment has been referred to Council's Planning and Infrastructure Unit.	Consultant agrees with response. (No change to the Code required)
Car parking	No underground car parks in Central Precinct, Peninsular St or Creek St Precinct. Underground car parks must not be allowed in any precincts due to environmental restraints such as acid sulphate soils and likely contamination of Cudgera and Christies Creeks.	There is already one underground car park in Peninsular St. Merit-based assessment of underground car park in terms of streetscape, overall building design, acid sulphate soils and site management during construction form part of any merits assessment / development approval.	Consultant agrees with response. (No change to the Code required)

Car parking	Developments must be required to provide more above-ground car parking.	Car parking requirements would be in accordance with the Tweed DCP A2 and typology controls within the Code.	Consultant agrees with response. (No change to the Code required)
Service Station Retail	Reject shop front buildings in front of service stations. Rather should increase landscaping and trees where not driveway hazard.	<p>Is the inclusion of shops in these locations practical and are they able to be adequately serviced or would the concept requires a whole of site reconfiguration.</p> <p>Agreed there is scope for additional landscape works to reduce amount of hardstand, however need to acknowledge traffic sightlines and that these sites are private property.</p>	<p>Consultant advises that the only way to fully determine if shops are possible is to do a detailed master plan for this area, which is outside the scope of this project.</p> <p>Consultant recommends leaving the LP as is until more detailed plans become available that will allow this to be sorted out then. However, the scope of landscape improvements proposed should be referred to as works to be undertaken regardless of above.</p>

Locality Wide			
Issue	Comments received	Response	Action
Views	Contradiction suggesting that the view towards Creek St is more worthy of protection than the view towards the central precinct from the bridge, central bbq area, estuary, boatshed and beach. (Pg 10 of submission)	<p>Each of the identified visual settings has equal weighting. New development proposed within or adjoining a view setting is required to address the objectives and controls as they apply to that view setting.</p> <p>View settings would benefit from a tangible Reduced Level (RL) measurement as it would relate to each precinct, and natural elements (e.g. canopy height, mid layers etc).</p>	<p>Consultant agrees with planning comment. No change required.</p> <p>The development of an RL was outside the scope of this plan.</p>
	Estuary view, which you have now disregarded, despite significantly noted in the first Ruker Report – is precious as many locals and tourists use the estuary. The beach and estuary views are very public and need to be protected.	<p>Clarify selection criteria of view fields selected.</p> <p>The estuary view (from the estuary) wasn't a defined visual setting within the draft Locality Plan. The view from the bridge looking north, west and south which includes views out and over the estuary have been included. Whilst a view setting from the middle of the estuary hasn't been included it is obviously an important natural feature of the Hastings Point landscape and any potential impact on its landscape setting would need to be adequately addressed as part of a merits based development assessment.</p>	<p>Consultant agrees with planning comment. No change required.</p> <p>The development of an RL was outside the scope of this plan.</p>

Public Domain			
Issue	Comments received	Response	Action
General	Ensure adequate open space for community gatherings and recreation	Part of the core values table within submission 37 – no specific comments made. All community land will remain available to the public.	Consultant agrees with planning comment. No change required.
Headland	Restrict access to rock platforms and headland by defined walking path, Viewing platforms, Signposting Whale/Dolphin Watching	Part of core values table within submission 37 – For consideration within the Public Domain within the Centre Precinct.	Consultant agrees with planning comment. No change required. The aim of the Code has been to retain informal access and use of headland. Do not support blocking access to rock platforms
Camping	Retain temporary camping on headland	Seasonal camping would continue. Public domain improvement plan however illustrates planting over camping sites which could reduce number of camping sites available. Any provision for improving amenities block within this area would require further consideration by Council in accord with the intention of this Code.	Consultant advises that ALL public domain plans are at this stage only STRATEGIC and require detailed plans to be developed at a further date.
Education Signage	Page 66 – section 4.1.2.2. Estuary Beach Park. Please include as an additional point g, with reference to park enhancement: Installation of environment educational signage describing the attributes of the coastal environment. Development of educational resources for tourism.	Educational signage would need to be the subject of a detailed Public Domain Masterplan. Educational signage was recently removed after community objection when it was being erected on the headland, based on size and materiality of the signage.	Consultant agrees with planning comment. No change required. Consultant advises that ALL public domain plans are at this stage only STRATEGIC and require detailed plans to be developed at a further date. This has been made clear in the LP.
Park facilities	Improve community picnic facilities. Design specific to Hastings point, not generic shire wide.	Detailed design of the park will occur as part of an overall detailed Public Domain Master plan which would illustrate the desired landscaped and facility embellishments appropriate for the park.	Consultant agrees with planning comment. No change required. Consultant advises that ALL public domain plans are at this stage only STRATEGIC and require detailed plans to be developed at a further date. This has been made clear in the LP.

Public Domain			
Issue	Comments received	Response	Action
Southern Planting	The southern boundary of Hastings Point ends at the Shell service station, yet suggested planting of trees along the cycleway to the south (to hide the bulk and scale of The Point), are actually within Pottsville.	Landscape screening illustrated is diagrammatic and would require inclusion within a works program consistent with the Pottsville Locality Plan.	Consultant agrees with response. (No change to the Code required)
Landscape	Landscape design for village tree planting program community ownership	Part of core values table – no specific comments made. Landscape controls are provided. Some landscaping concepts for roadside and public domain planting are provided throughout the document. A preferred species planting list will be included in the appendices of the finished Code.	Consultant agrees with response. (No change to the Code required) A list of species recommended for planting will be included in appendix to the Code.
Floodwater Cudgera Creek bridge	Additional tunnels under the roadway both on both sides of the road approaches at the Cudgera Ck bridge at Hastings Point are needed to ensure more adequate dispersal of floodwater flowing upstream from the bridge during flood events, allowing quicker dispersal of flood water to the ocean which currently inundates North Star Holiday resort during periods of extreme heavy/flood rains.	This is a matter outside the scope of this Code but will be referred to Council's Planning & Infrastructure Unit.	Consultant agrees with response. (No change to the Code required)

Environment			
Issue	Comments received	Response	Action
Eastern foreshore	The undeveloped eastern foreshore should be protected from any development.	No foreshore development is proposed on the (south) eastern foreshore. Development controls (including setbacks) relate to allotments in northern precinct on top of the northern dunes.	Consultant agrees with response. (No change to the Code required)
General	Green zone protection is inadequate.	Vague comment difficult to address. The majority of vegetation surrounding the locality is held within National Park or reserve and is afforded due protection.	No change required.

Estuary	Protective buffer; Residential buffer along estuary; Protect mangroves; Limit commercial activities on water adjoining areas; Monitor health by working with school groups Marine centre; Protect Littoral rainforest	Part of core values table – no specific comments made.	Consultant agrees with response. (No change to the Code required)
Beach and Dunal System	Limit access points (not multiple accesses) Separate Plan of Management for access Guaranteed managed public access points	Locality Plan identified the need to rationalise the number of existing paths to limit trampling impacts on native vegetation, littering, and reduce the spread of weeds.	Consultant agrees with response. (No change to the Code required)
Littoral Rainforest	Identification and Protection	The Littoral Rainforest areas have been identified and included within the Locality Plans appendices and fall within a 7(f) Environmental Protection zoning under the TLEP 2000.	Consultant agrees with response. (No change to the Code required)
Tidal wetlands	Protect through appropriate zoning. Education on the value and health of the estuary and care for it – to be given to locals and tourists.	Locality Plan doesn't recommend rezoning of environmental protection land. Constraints overlay of Lot 156 could be a valuable document inclusion maybe replacing the illustrative diagram of potential building footprints.	Consultant agrees with response. To provide constraints mapping for lot 156.
Vegetative Escarpment	Appropriately zoned for environmental escarpment protection.	The majority of vegetation surrounding the locality is held within National Park or reserve and is afforded due protection.	Consultant agrees with response. (No change to the Code required)
Buffers	Vegetative buffers from estuary to residents Inadequate buffer zones.	Estuarine buffers are an important component of the character of the locality and should be protected from undue human interference. Need to identify an appropriate buffer dimension to the mean high water mark in consultation with Council's Natural Resources Unit.	Consultant agrees with response. (No change to the Code required)

Environment			
Issue	Comments received	Response	Action
Water Quality	Guaranteed water quality in Christies Creek.	Beyond the scope of this project. The Code does however need to cross reference with the Tweed Coastline and Estuary Management Plan in Part 2.0 Hastings Point in Context.	Consultant agrees with response. Cross-reference with the Tweed Coastline and Estuary Management Plan in Part 2.0 Hastings Point in Context to be added.

<p>Green Buffers</p>	<p>A green buffer is retained between the villages of Hastings Point and Pottsville on the western side of the Tweed Coast Road and the hill on the western side between Hastings point and Koala Beach be permanently protected, in law, from any development.</p>	<p>Green 'zones' separating Tweed coastal settlements is an integral part of the character of the Tweed and should be retained. While outside the scope of this Code, the land is currently zoned open space with an Environmental Conservation zoning beyond. This land falls within the Pottsville Locality where it has also been identified as being an important green buffer area. Green buffers between settlements could be reinforced on the environmental protection plan (pg 37).</p>	<p>Consultant agrees with planning comment. Reinforce Green buffers between settlements could be reinforced on the environmental protection plan (pg 37).</p>
	<p>Definitely no dewatering.</p>	<p>The management of site construction activities is an issue dealt with at Development Application stage and throughout the development and building phases. Dewatering of itself is should not have an adverse impact; it is the manner in which water is treated prior to discharge that is of most concern.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
<p>Estuary Management Plan</p>	<p>The Tweed Coast Estuary Management Plan 20, 24, 2504-20, 24, 2508. Clearly this document is dated and in need of review. It is the intention of the NRM Unit to commence a review of this strategy in the 20, 24, 2510 calendar year. Can reference to this document include the addition, "or most contemporary /updated version", or words to this effect.</p>	<p>Amendment Required</p>	<p>Consultant agrees with planning comment. Add reference to this document include the addition, "or most contemporary/updated version", or words to this effect.</p>

Landscape	Real concern is the use of vegetation to hide buildings and blend them into the landscape. I feel this is very dangerous in bush fire prone area.	How do the landscape requirements on bush interfaces relate to requirements and guidelines from the Rural Bushfires Service? Application of bushfire standards would be assessed at the development application stage for new dwellings, however, re-establishment of vegetation around existing dwellings should ensure that vegetation will not become a bushfire hazard once established.	Bush fire regulations would need to be applied on a site by site basis. Regulations refer to setback distanced based on vegetation and slope type as well as construction and materials.
------------------	---	--	--

Environment			
Issue	Comments received	Response	Action
Cudgera Ck	Page 69 – Cudgera Creek foreshore. Second sentence, third paragraph. What is the meaning of the term, 'limiting foreshore retention.' Does this mean foreshore revetment with rocks etc? Under implementation point 1– I am unsure of the intent of the phrase 'subject to a merit based assessment on a case by case basis'. Does this relate to possible enhancement and strengthening of buffers adjacent to freehold land when a DA is lodged? It would be good to state the circumstances which trigger the case by case merit-based assessment.	State the circumstances which trigger the case-by-case merit-based assessment. The intention of the term as specified by the consultant is not immediately obvious.	The consultant has advised that Council is to define this as it is a natural resource management issue.
Northern dunes and estuary edge	4.2.2.3 Northern dunes and estuary edge. Key strategies described in this section are good, in particular item c. It is not clear however who will undertake this, when it would be commenced or how it will be funded. This comment could apply equally to a number of other valid environmental initiatives nominated in the plan (eg. Implementation point 2 on this same page and elsewhere). How will the expectation that these works will be undertaken by Council be managed, particularly as the issue of encroachment into reserves in the Shire is so widespread?	Could the delineation of these boundaries be a requirement at new development application stage such as a dividing fence of some description? Could the restoration works be included within a Native Vegetation Management Plan for Hastings Point?	The consultant has advised that Council is to define this as it is a natural resource management issue. Retention of coastal reserves on the foredune systems in a condition capable of withstanding the impact of coastal processes is essential and will be referred to council's Natural resource Management Unit.

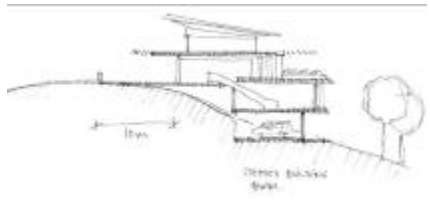
<p>Christies Ck</p>	<p>Christie's creek foreshore. It's a minor issue – but this paragraph refers to 'natural embankment stabilisation'. Embankment is not a term commonly used to describe creek banks or intertidal areas.</p>	<p>Replace with correct terminology.</p>	<p>Consultant agrees with response. (correct terminology. Para refers to 'natural embankment stabilisation'. Embankment is not a term commonly used to describe creek banks or intertidal areas.)</p>
----------------------------	--	--	---

<p>Environment</p>			
<p>Issue</p>	<p>Comments received</p>	<p>Response</p>	<p>Action</p>
<p>Foreshore</p>	<p>Page 12,370, 24, 25 – 4.4.1 Existing character. This may sound like semantics, but the description of the foreshore refers to 'natural and pristine' qualities. I do not think pristine is an appropriate term – pristine defines an absolute un-impacted, natural state. The catchment of Cudgera creek is highly modified and the creek exhibits problems related to this.</p>	<p>Replace with correct terminology.</p>	<p>Consultant agrees with response. (correct terminology).</p>
<p>Constraints</p>	<p>Constraints maps. Maps on pages 227 and 229 are lacking legend information</p>	<p>Constraints map need a title on page 227 and 229</p>	<p>Consultant agrees with response. (add title)</p>
<p>Wildlife Corridor</p>	<p>Clear identification of wildlife corridors Retain Crown land road reserve as wildlife corridor at Creek Exit</p>	<p>A major vegetation communities map is included within the appendices.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
<p>Acid Sulphate Soils</p>	<p>The whole area consists of acid sulphate soils overlaid by sand. The sand layer should not be breached by construction or raging floodwaters and care should be taken to maintain this protective layer so that acid soils are not washed into creeks and beaches.</p>	<p>Acid Sulfate Soil management will be required at the DA stage.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>

<p>Central Precinct</p>			
<p>Issue</p>	<p>Comments received</p>	<p>Response</p>	<p>Action</p>
<p>Residential Flat Buildings</p>	<p>RFBs should only be in places where RFBs predominate – not south side, not 3 storeys / 10m – particularly not for the central precinct. The centre precinct and south precinct should be only 2 storeys which is the predominant form in these areas (1 & 2 storey).</p>	<p>3 storey RFBs are predominantly within the northern precinct. While three storey development has been constructed or is proposed for construction south of the bridge, there is need for more clearly defined design considerations for RFBs (see pg 135, 4.3.2.5 (2) or cross-reference to development controls for Shop Top/RFBs.</p>	<p>Consultant agrees with response. (Consider more clearly defined design considerations for Robes (see pg 135, 4.3.2.5 (2) or cross reference to development controls for Shop Top/RFBs.)</p>

Building height	If 3 storeys were to be allowed in the shop area it would dominate the mountain view looking west from a very popular picnic area along the creek.	A visual setting analysis would need to accompany any development application. The visual setting objectives and controls would need to be adequately addressed.	Consultant agrees with response. (No change to the Code required)
Building height	Height limit should be restricted to 8-9m ensuring minimal impact within identified view corridor. 10m building height will make buildings too visible and drastically change the villages' aesthetic characteristics. (Lower buildings) will reduce the impact of overshadowing of neighbouring properties.	See above	Consultant agrees with response. (No change to the Code required)
Building height 9 Young St	10m height limit on this building will have severe visibility impact on areas such as the picnic areas, Yugari Rd, estuary, caravan park, pedestrian footpaths and north beach peninsula.	See above	Consultant agrees with response. (No change to the Code required)
Tree canopy height	Impact of 10m high commercial blocks sits laterally across vista potential to pierce the tree line within the vista.	See above	Consultant agrees with response. (No change to the Code required)
Tree canopy height	Ensure green zone above current building form is protected in central precinct	See above	Consultant agrees with response. (No change to the Code required)

Central Precinct			
Issue	Comments received	Response	Action
Retail	Support the inclusion of the two neighbouring blocks (for commercial / retail use)	Noted	Consultant agrees with response. (No change to the Code required)
	The shop, if rebuilt, needs to be setback to include landscaping and improve safety/visibility, and safer entry and exit by parked vehicles. No zero setbacks around central shop precinct area. This will improve pedestrian access and safety.	Consultant to confirm the intent of zero setbacks proposed, and that the Illustrative Plan also nominates need to widen and cover footpath for outdoor dining.	Consultant advises that shopfronts need continuity between buildings and proximity to the street to function effectively as a well scaled pedestrian environment. Widening would occur within street not within private allotment. (No change to the Code)
Cycle and foot paths	Need more room for footpath and cycle path – currently insufficient and dangerous Footpath at the shop precinct should continue unabated past the shop. Currently weaving past shop front and behind parked cars to access next section of footpath.	Could a bike lane can be incorporated into the road carriageway? – But would need to consider potential safety issues, e.g. reversing cars. Is there enough footpath width for alfresco and cycle path in front of the nose in car spaces?	Consultant advises that Council cycle strategy is for shared path in this area due to busy road with heavy vehicles. Agree that wider pathway should be recommended in the Code.
Traffic	Pedestrian crossing (not refuge island) where needed.	Consider identifying a suitable location for a pedestrian crossing/improve pedestrian refuge as part of the precinct illustrative plan. This would need to be referred to Council's Planning and Infrastructure Unit for consideration.	Discussions to date with Tweed Council Traffic Department very difficult to achieve zebra crossing on this road. There is also a formal process for getting this. Recommend that Code note the preference for zebra crossing subject to RTA liaison.
Car parking	Considerable issues regarding availability of public car parking space. Inadequate above-ground car parking in central commercial precinct.	Car parking requirements as specified in Tweed DCP A2, with controls identified for each building typology within the Code (Part 5.0).	Consultant agrees with response. (No change to the Code required)
Caravan Park	Should remain a Council low key holiday park.	There is a clear and limited development opportunity proposed within the Council caravan park.	Consultant agrees with response. (No change to the Code required)

Northern Precinct			
Issue	Comments received	Response	Action
Height	<p>Relating to 20, 24, 25-20, 24, 25a Tweed Coast Rd – The statutory height limit applying to the land pursuant to the TLEP 20, 24, 2500 is 3 storeys. By application of the controls within the definition of a storey, theoretically this would provide for a maximum building height of 15m.</p> <p>Object to the two storey height limit in relation to dual occupancies. Inconsistent with TLEP 20, 24, 2500 Draft TLEP 20, 24, 2510. Numerous 3 storey structures exist.</p> <p>10m height limit and 50% of floor level below for a three storey structure restriction is inconsistent with the existing and proposed zone objectives.</p>	<p>Height maps are only one factor used in the assessment of applications for development of sites; other matters raised in the LEP and DCP would need to be considered, including the type of building before the ultimate height constraints could be determined.</p> <p>Heights nominated within the TLEP are blanket heights, not calibrated to specific locations.</p> <p>The proposed building heights and setbacks within the Code take into consideration desired future character of each precinct and identified visual settings.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
	<p>50% 3 storeys on Northern Hill should be in the middle of the building within the natural slope of land. It is too high and overly imposing at the front of the building or on the beachfront.</p> <p>The DCP should be modified to only permit 3 storeys above Tweed Coast Road Level.</p> <p>A 10m building on the hill is significantly above the current existing predominant height evidenced by the building at 24 Coast Rd.</p> <p>3 storey/10m could permit 3rd storey section to be located on the top of the dunes which would then be</p>	<p>Design objectives identify that the part 3rd storey (50% of floor plate below) which needs to be setback 10m from the front building line.</p> <p>Consider inclusion of a sectional diagram which illustrates how a building could step down the slope.</p> <p>Clarify potential 3rd storey setback requirements to the beach elevation.</p> 	<p>Consultant advises that as a 'principle' such a diagram would be fine however a sectional diagram would be only of limited use as a control diagram as each site is different and would require a different solution.</p> <p>If Council has the budget to do this drawing we can provide it. (No diagram to be provided unless budget allows).</p> <p>Agree with response. (Recheck if 3rd storey setback to beach elevation is necessary however likely outcome to be... given that the setback from the dunes is 10m this will force buildings down the slope and therefore reduce the</p>

	above the 'mid-layer' (refer view 4.5.2 From Headland).		overall height making it unnecessary to add an additional control for a further setback for the 3 rd level.)
--	---	--	---

Northern Precinct			
Issue	Comments received	Response	Action
Setback	Objection to the 10m landscape setback from the eastern frontage and a 10m landscape setback from the western road frontage in that it fails to recognise the significant constraints imposed on the development of the land in terms of bushfire, coastal hazard and often the long narrow shape of these blocks.	<p>The 10m top of dune setback relates to Coastal Hazard, and is an appropriate buffer which serves to reduce the visual built form impact when viewed from the headland and beach.</p> <p>There is a need to include potential upper level setback to beach interface as a control.</p> <p>The 10m setback to Tweed Coast Road forms an important vegetative/landscape zone. The Northern approach view terminates on this bend in the road.</p>	Consultant advised that (Recheck if 3 rd storey setback to beach elevation is necessary however likely outcome to be... given that the setback from the dunes is 10m this will force buildings down the slope and therefore reduce the overall height making it unnecessary to add an additional control for a further setback for the 3 rd level.)
DSZ	Due to the existence of a mid block boundary (at No. 20, 24, 25 Tweed Coast Rd), the deep soil zones at the rear would be excessive and further restrict the developable part of the land. A suggestion to rectify this would be to clarify that DSZ are not required adjacent to a mid block common boundary of a battle axe block arrangement.	Deep Soil Zones are requirements in accordance with Tweed DCP A1. Merit based variations which take into account lot size and shape are considered.	Consultant agrees with response. (No change to the Code required)
Service Station	The principal of additional retail between Service Station and Tweed Coast Rd is not practical. Site not big enough to accommodate new shops and adequate parking. The appearance of the hardscape could be improved by screening with soft landscaping.	<p>Consultant to confirm that inclusion of shops in these locations would practically fit and be able to be adequately serviced or whether the concept requires a whole of site reconfiguration.</p> <p>Agreed there is scope for additional landscape works to reduce amount of hardstand, however need to acknowledge traffic sightlines and that these sites are private property.</p>	<p>Consultant advised that the only way to fully determine if shops are possible is to do a detailed masterplan for this area. This is outside the scope of work for the Code.</p> <p>Recommend leaving the Code as is and as more detailed plans become available the issues will be sorted out then.</p>

Creek Street			
Issue	Comments received	Response	Action
Traffic	Unsatisfactory traffic/pedestrian access for Creek St/ Coast Rd intersection.	This is a matter outside the scope of this project, however this comment will be referred to Council's Planning and Infrastructure Unit for consideration. Verge or refuge Island improvements could form part of the public domain improvements plan for this precinct if appropriate.	Consultant agrees with response. Amendment to Code to note this.
	Road base used totally inappropriate – does not filtrate	This is a matter outside the scope of this project, however this comment will be referred to Council's Planning and Infrastructure Unit for consideration.	Consultant agrees with response. (No change to the Code required)
Height	Accept low density, 2 storey, single / dual occupancy size lots for Creek Street Precinct.	Noted. Houses and dual occupancies and town houses are the only building type proposed for Creek Street.	Consultant agrees with response. (No change to the Code required)
	The height in Creek St precinct should be measured from existing ground level at 8-8.5m given flood plain.	TSC Flood DCP nominates minimum levels which is the Design Flood Level (DFL 3.0m) + 0.5m = 3.5m	Consultant agrees with response. (No change to the Code required); Refer to Tweed Flooding DCP
Visual Setting	Account for change in road direction in viewing corridors.	The view field which terminates in vegetation at the end of Creek Street has been identified within the visual settings.	Consultant agrees with response. (No change to the Code required)
Flooding	No fill in Creek St Precinct. This will increase flooding in surrounding area and create problems for existing residents. There should be only one option stated in the Locality Plan and that is houses must be elevated on poles etc so flood water will run freely.	Consider elevated/suspended structural systems as a possible design control within this precinct.	Consultant advises that this information may be too detailed for the locality plan (No change to the Code required)
	Points in the flood section at the front of plan need to be included within the Creek St Precinct controls near the end of the plan.	Check cross-referencing of flooding information.	Consultant advises: (check cross referencing of flooding information.)

Creek Street			
Issue	Comments received	Response	Action
	Stormwater (open) drains surrounding the outside perimeter on North Star Holiday Resort are not draining adequately effectively into Cudgera Creek, as they are clogged with weeds and siltation.	This matter is to be referred to Council's Planning and Infrastructure Unit.	Consultant agrees with response. (No change to the Code required)
Road over 7(a)	Object to fill on Creek St blocks and proposed road / zoning behind creek side houses (south side of Creek St). Should remain 7(a) zoning. Stop mowing. Prevent building form, roads or fences behind houses on southern side of Creek St adjacent to estuary. Construction of a Road would basically forms a levy which will increase the inundation from flood event.	This matter is to be referred to Design and Infrastructure Unit for consideration. The road behind Creek Street houses is part of a major development application currently being considered by the Department of Planning. Council has expressed concerns relating to this application including the development of a road over 7(l) land.	Consultant agrees with response. (No change to the Code required)
7 (a) Land	The zoning is Environmental Protection 7(a) it is to protect the estuarine habitat. Keep it that way and as such all mowing should cease as it prevents any re-establishment of naturally occurring flora and help establish exotic species.	There are no recommendations to rezone this land within context of the Code.	Consultant agrees with response. (No change to the Code required)
7(l) Environmental Habitat Zone	The end of Creek St should remain zoned habitat and not changed. Recent and previous landholders cleared the vegetation illegally.	There are no recommendations to rezone this land within context of the Code.	Consultant agrees with response. (No change to the Code required)

Lot 156			
Issue	Comments received	Response	Action
No development	Object to 156 development, zoning, impact on the environment, flora and fauna, increased traffic, proposed buffers, flooding, plotting of houses and road. Retain environmental habitat zone behind North Star abutting Lot 156. Object to recent illegal clearing over 7(l) zone Return Lot 156 back to its original state, no development should be	This site is the subject of a Part 3A Application currently being considered by the NSW Department of Planning (DoP). Council is not the consent authority for this development proposal. Any concerns about the development of the site should be referred to the Department of Planning.	Consultant agrees with response. (No change to the Code required)

	<p>allowed. Illegally altered and currently causes flood hazard to the Creek St Precinct.</p> <p>Lot 156 fill will act as a dam wall</p>	<p>Council has provided the DoP with comments highlighting outstanding issues regarding ecological matters, geotechnical and earthworks (fill), flooding, stormwater management, traffic management acid sulphate soils, contaminated land, noise and biting midge and mosquito issues.</p>	
Remediate	<p>Lot 156 should be rezoned environmental protection as there is no technical solution to build without flooding area.</p> <p>Impact to the flood levels and the environment will be massive.</p>	See above	<p>Consultant agrees with response. (No change to the Code required)</p>
Constraints	<p>The property (Lot 156) has many significant environmental and management issues including flooding, conservation and acid sulphate soils which need to be investigated.</p>	See above	<p>Consultant agrees with response. (No change to the Code required)</p>
Fill / Flood	<p>The developers flood models are flawed and should be investigated.</p>	See above	<p>Consultant agrees with response. (No change to the Code required)</p>
	<p>The necessary filling of Lot 156 to allow development would create flooding issues for neighbouring properties in Creek St, North Star Caravan Park, the Forest at Koala Beach, Round Mountain residents and also possibly as far north as Bogangar due to interconnected waterways.</p> <p>Involves massive amounts of fill in the floodplain.</p>	See above	<p>Consultant agrees with response. (No change to the Code required)</p>
	<p>Filling changes the existing quality of the landscape and visual setting of this precinct.</p> <p>Filled road behind estuary blocks creates a loss of privacy.</p> <p>Results in unsightly batters at boundary;</p> <p>Obstructs stormwater and flood flow paths;</p> <p>Filling blocks like this will cause cumulative impacts.</p>	See above	<p>Consultant agrees with response. (No change to the Code required)</p>

Lot 156			
Issue	Comments received	Response	Action
Fill / Flood (Cont'd)	<p>Imagine what would happen should Lot 156 be built up an additional 1.5m. Without sufficient redirection of water flow I can see an "island" effect happening, forcing water to pool on the lower level of the already existing North Star Holiday Resort that is home to some 180 permanent homes.</p> <p>Development (156) will place lives and properties at risk. I fear for my safety life and ability to access safe refuge.</p>	See above	Consultant agrees with response. (No change to the Code required)
	The raising of the development site just east of the junction of the Creeks will impede runoff and direct masses of water along Creek St and adjoining low-lying houses.	See above	Consultant agrees with response. (No change to the Code required)
Height / Fill / Visual Setting	<p>To compound visual interruption of the view corridor the Lot 156 lots, due to sewer drainage invert levels, will be filled to 3.1AHD (approx. 1.5m above natural ground level. If the Lot 156 houses are constructed to maximum permissible height in accordance with the HP DCP they will be 9.5m high above street level with roof tops above the tree line.</p> <p>It is evident that after filling, buildings would be very visible from view corridors including the headland.</p> <p>Fill on lot 156 will cause roofs to project much higher than the 'mid-layer' shown in the photo vista and would therefore not comply with the DCP.</p> <p>Height controls are a concern if dwellings are to be built on 2m of fill.</p>	<p>Under the guidelines set down by the NSW Department of Planning for implementation of the draft Tweed LEP 2010, new buildings are to be measured from existing (natural) ground level.</p> <p>If buildings project into the view field, the objectives and relevant design controls within the Code would need to be considered.</p>	Consultant agrees with response. (No change to the Code required)
7L Environmental Habitat Zone	Until it is clear that this land can be developed, the 7L environmental habitat zoning should remain, roads should not be marked on any plan and houses should not be plotted on this block. Remarks in the locality plan relating to the subdivision should only be made with the qualification – "if such was approved."	Remove specific built form elements from Illustrative Diagram.	Consultant agrees with response. (Remove specific built form elements from Illustrative Diagram)

Lot 156			
Issue	Comments received	Response	Action
Wildlife Corridor	<p>Retain habitat and wildlife corridor behind and between North Star abutting Lot 156.</p> <p>Lot 156 sits in a wildlife corridor with endangered species that visit and breed in the area including the bush and beach stone curlews, jabirus and others. The extent of development in this area will destroy this habitat.</p>	<p>This site is the subject of a Part 3A Application currently being considered by the NSW Department of Planning (DoP). Council is not the consent authority for this development proposal. Any concerns about the development of the site should be referred to the Department of Planning.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
Flora and Fauna	<p>Flora and fauna reports are not conducted by qualified experts and are not current and are incorrect.</p>	<p>Council is not the consent authority for this development proposal. Any concerns about the development of the site should be referred to the Department of Planning.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
	<p>Destruction of flora and fauna of the wetland designated area of Lot 156 caused by slashing and the introduction of goats was nothing short of disgraceful.</p>	<p>Council is not the consent authority for this development proposal. Any concerns about the development of the site should be referred to the Department of Planning.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
Compliance	<p>Acceptance of development on this lot needs to be in accordance with NSW Planning Guidelines and policy.</p>	<p>Need a to cross check document compliance with Coastal Design Guidelines</p>	<p>Consultant agrees with response. (Need a to cross check document compliance with Coastal Design Guidelines)</p>
Buffers	<p>Council's own ecologist's reports have recommended a 50m buffer in respect of the north west portion of the site which would eliminate the back half of the current Lot 156 proposal.</p>	<p>This site is the subject of a Part 3A Application currently being considered by the NSW Department of Planning (DoP). Council is not the consent authority for this development proposal. Any concerns about the development of the site should be directed to the Department of Planning.</p>	
	<p>Locality Plan should reflect the application of these laws and policies (Tweed Coastline and Estuary management Plan, DCP A5 – Subdivision 50m Buffer; NSW Coastal Design guidelines 100m buffer where possible to ecologically sensitive areas, Policy and Guidelines Aquatic Habitat Management and Fish Conservation 1999 50m to 100m buffer; and North Coast Handbook for Avoiding and Reducing Rural Land Use Conflict</p>	<p>Ensure consistency of Code with existing council DCPs policy and guidelines.</p>	<p>Consultant advises that the Code does not specify any dimensions for buffer but refers to other document, cross check to ensure this is 100% correct.</p>

	and Interface Issues 100m buffer between wetland and residential areas, 50m between native vegetation and residential areas)		
	A previous argument raised by James Warren and previous planners that the buffer should be reduced because it would encourage midges is legally unsupported.	Impact of Biting Midge and mosquitoes is currently being reviewed by the DoP as part of their assessment of the Major Project application.	Consultant agrees with response. (No change to the Code required)

Lot 156			
Issue	Comments received	Response	Action
Buffers (Cont'd)	TSC Planning has also rejected 17 lots on north west corner of block because need 50m buffer from the wetlands i.e. 2E zoned land adjacent to current 7L environmental habitat zone.	This site is the subject of Part 3A Application being assessed by the NSW Department of Planning (DoP). Council has provided the DoP with comments highlighting outstanding issues regarding ecological matters, geotechnical and earthworks (fill), flooding, stormwater management, traffic management acid sulphate soils, contaminated land, noise and biting midge and mosquito issues. Council is not the consent authority for this development proposal. Any concerns about the development of the site should be referred to the Department of Planning.	Consultant agrees with response. (No change to the Code required)
	Riparian buffer zones around the entire Lot 156 property should be identified, zoned and maintained. Maintenance should include revegetation and regeneration and the reduction of impacts from domestic activities such as mowing and weed introduction. Increase riparian buffers	The Code should cross-reference any guiding policy or legislation with regard to appropriate buffer widths. Assessment of buffer widths is a criteria currently being reviewed by DoP as part of the Major Project assessment process.	Consultant advises that the Code does not specify any dimensions for buffer but refers to other document, cross check to ensure this is 100% correct.
	Ensure all buffers along Lot 156 are 50 -100m	See above	Consultant advises that the Code does not specify any dimensions for buffer but refers to other document, cross check to ensure this is 100% correct.
Boundaries	There are unresolved issues regarding boundaries and the mean high water mark which needs to be resolved.	The question of defining the legal boundary of lot 156 is an issue to be addressed by DoP during their assessment of the Major Development application.	Consultant agrees with response. (No change to the Code required)

Lot 156			
Issue	Comments received	Response	Action
Pocket Park	We reject the expression “likely increase in the number of people living in that subdivision” In the sense that it anticipates that this will occur. More appropriate to express: “...if a subdivision was approved in this area it may be desirable to create a small natural pocket park,”	Make terminology change.	Consultant agrees with response. (No change to the Code required)
Sea level rise	There is no proper consideration for change, increased rainfall, storms and sea level rise.	Councils Flooding DCP adopts a level incorporating projected sea level rise. Any development application over this site would need to adequately address this policy.	Consultant agrees with response. (No change to the Code required)
Traffic	Significant increased numbers of both vehicles and pedestrians if the proposed development were approved, access and egress to Tweed Coast Rd via Creek St would become impossible to control. The road junction Creek Street and Coast Road will never be adequate to handle the increased traffic flow in either direction. The additional traffic noise would also be unacceptable if housing on Lot 156 was approved.	This site is the subject of a Part 3A Application currently being considered by the NSW Department of Planning (DoP). Council is not the consent authority for this development proposal. Any concerns about the development of the site should be directed to the Department of Planning.	Consultant agrees with response. (No change to the Code required)
View corridor	New Lot 156 lots shown at the end of Creek St (see 3.2 Illustrative Plan) will be fully visible as the street direction changes making the new lot houses the backdrop of the vista.	A landscaped front setback would provide some screening to the front elevation of these houses if development were approved. One of the objectives within this view field is that buildings are not visible.	Consultant agrees with response. (No change to the Code required)
Illustrative Plan	Not appropriate to put any houses on Lot 156 on then locality plan. TSC has rejected development there because of flooding, community retained experts say the same.	Due to the current 3A major project assessment being undertaken by the DoP on this site, remove 156 illustrative plan depicting locations of building envelopes and buffer zones. The site would be subject to the same design controls as apply to the remainder of the Creek Street Precinct.	Consultant agrees with response. (remove 156 illustrative plan depicting locations of building envelopes and buffer zones. The site would be subject to the same design controls as they apply to Creek St Precinct with the addition of the constraints mapping)

Property Value	The development will dramatically decrease value of all North Star residents' properties and escalate our insurance.	This would be very difficult to conclude without specialist property economic advice which is beyond the scope of this project.	Consultant agrees with response. (No change to the Code required)
-----------------------	--	---	---

Southern Precinct			
Issue	Comments received	Response	Action
Housing Type	<p>Town houses, dual occupancies and single dwellings only on the south-side controls of height, density and size of land for each type as per draft locality plan</p> <p>Object to 3 storey 10m RFBs south side (incl. 3 storey, 10m shopfront buildings)</p> <p>Preventing the southern the RFB/3 storey exception would avoid negative problems and contradictions/inconsistencies.</p> <p>3 storey opportunity will undermine the predominate form objective for this precinct. Housing choice comment to justify 3 storey RFBs south side is a clear contradiction to the stated objectives and visions in 2.27 and 3.1 of the plan.</p> <p>Restricting southern end to townhouses, dual occupancies and single dwellings provides for real choice- including the possibility for families to live in Hastings Point</p>	<p>Clarify reasoning for 3 storey RFB's within southern precinct.</p> <p>3 storey RFBs are predominantly within the northern precinct, however recent 3 storey RFBs have also been approved south of the bridge including 'The Point' (built), 79-83 Tweed Coast Rd & 75 Tweed Coast Rd (unbuilt).</p> <p>Building height has been reduced to 10m within this precinct. Further the 3rd storey has been reduced to 50% of the floor immediately below.</p> <p>Consider more clearly defined design considerations for RFBs (see pg 135, 4.3.2.5 (2) or cross reference to development controls for Shop Top/RFBs.</p>	<p>NR. South HP has a zoning expectation of medium density. RFBs as a building type offer many benefits over and above town houses relating to the size and configuration of the buildings footprint and underground carparking. With reduced height, reduced top level floor plate and reduced FSR, reduced building frontage the resulting RFBs are likely to be very similar in scale and appearance to large houses whilst offering some development capacity.</p> <p>Agree with Planning Comment (Review building design controls to more clearly defined design considerations for Robes (see pg 135, 4.3.2.5 (2) or cross reference to development controls for Shop Top/RFBs.)</p>
The Point	<p>The Point should be screened with trees</p>	<p>Development consent has determined the extent of vegetation planting associated with the development.</p> <p>Consider including a landscape screen along southern approach (western side of Tweed Coast Road) to The Point on the urban vegetation diagram (page 47).</p>	<p>Consultant advises that vegetation buffer has already been shown on the plans. This can be expanded to show additional screening.</p>

<p>Tree canopy</p>	<p>Tree canopy along the south remains a dominant natural feature and thus all new buildings remain below the tree line.</p>	<p>Visual Setting identifies this view and defines development parameters which would need to be appropriately addressed as part of a development application merits assessment. Building height has been reduced to 10m within this precinct. Further the 3rd storey has been reduced to 50% of the floor immediately below. There are currently roofs which (depending on viewpoint) currently pierce the tree canopy line.</p>	<p>Consultant agrees with response. (No change to the Code required)</p>
---------------------------	--	--	--

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

THIS PAGE IS BLANK

13 [PR-CM] State Emergency Services - Tweed Heads Unit

ORIGIN:

Building and Environmental Health

SUMMARY OF REPORT:

At its meeting of 15 June 2010, Council resolved to endorse the permanent location of the State Emergency Services (SES) Tweeds Head Unit and Tweed Unlimited Arts location at Lot 682 DP 41192 Pioneer Parade, Banora Point, to request the Land and Property Management Authority (LPMA) to create an additional purpose for the Crown Reserve 89237 for emergency service facilities to ensure the long term tenure of the SES facility, and to prepare a works schedule and a Section 94 Plan for the support of SES's in Banora Point, Murwillumbah, Pottsville and an outpost at Kings Forest.

Following this resolution, correspondence was sent to the LPMA and they have since responded stating that the SES is a Council function, and that the existing Crown Reserve is designated for Public Recreation, and the SES has not been authorised to occupy the Reserve.

The LPMA response is a major concern for Council and the current SES Tweeds Head Unit as it places in doubt the current and future use of the Pioneer Parade for the SES operations.

Given the importance and strategic location of the SES in this part of the Tweed Shire, it is considered an imperative that Council seek urgent assistance from the NSW Minister for Emergency Services to make representations on behalf of Council with the LPMA to seek a review of its position on the continuing use of the Pioneer Parade site for the SES Tweeds Head Unit.

RECOMMENDATION:

That Council writes to the Minister of Emergency Services Mr Steve Whan seeking urgent assistance to make representations on behalf of Council with the NSW Land and Property Management Authority to seek a review of its position on the continuing use of the operations of the State Emergency Service (SES) Tweeds Head Unit at Lot 682 DP41192, Crown Reserve 89237 Pioneer Parade, Banora Point.

REPORT:

The State Emergency Service Tweed Heads Unit is sited at Lot 682 DP41192, Crown Reserve 89237 Pioneer Parade, Banora Point. The Unit has identified an operational need to expand its existing facilities. Under the provisions of the *State Emergency Service Act 1989*, Section 17 requires a council of a local government area to provide (free of charge) suitable training facilities and storage and office accommodation for the SES.

At its meeting of 15 June 2010, Council resolved to endorse the permanent location of the State Emergency Services (SES) Tweeds Head Unit and Tweed Unlimited Arts location at Lot 682 DP 41192 Pioneer Parade, Banora Point, to request the Land and Property Management Authority (LPMA) to create an additional purpose for the Crown Reserve 89237 for emergency service facilities to ensure the long term tenure of the SES facility, and to prepare a works schedule and a Section 94 Plan for the support of SES facilities in Banora Point, Murwillumbah, Pottsville and an outpost at Kings Forest. A copy of the report to Council on this matter is provided as an attachment to this report.

Following this resolution, correspondence was sent to the LPMA and they have since responded (a copy of the LPMA letter is provided as an attachment to this report), stating that the SES is a Council function, and that the existing Crown Reserve is designated for Public Recreation, and the SES has not been authorised to occupy the Reserve. Further discussions with the LPMA to clarify the matters raised revealed that it may offer to Council a licence for the existing facility only however it would be offered at commercial market rates.

The LPMA response is a major concern for Council and the current SES Tweed Heads Unit as it places in doubt the current and future use of the Pioneer Parade site for the SES operations and imposes a significant additional ongoing cost.

Given the importance and strategic location of the SES in this part of the Tweed Shire, it is considered an imperative that Council seek urgent assistance from the NSW Minister for Emergency Services to make representations on behalf of Council with the LPMA to seek a review of its position on the continuing use of the Pioneer Parade site for the SES Tweeds Head Unit.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. A copy of the related report and resolution from Council's meeting of 15 June 2010 (ECM 22341412)
 2. A copy of the letter dated 9 September 2010 from the NSW LPMA in response to Council correspondence (ECM 22342428)
-

THIS PAGE IS BLANK

- 14 **[PR-CM] Major Project Application MP09_0016 Mixed Use Tourist and Residential Development at Lots 1-3 Section 1 DP 29748; Lot 4 Section 1 DP 31209 Nos. 2-6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach (DA10/0642)**

ORIGIN:

Development Assessment

FILE NO: DA10/0642 Pt2

SUMMARY OF REPORT:

The Department of Planning (DoP) has received a major project application under Part 3A of the Environmental Planning and Assessment Act for a mixed use tourist and residential accommodation at Cabarita Beach. Various development options were considered by the applicant for redevelopment of the site including the renovation of the existing caravan park use, construction of detached dwellings on the existing freehold lots within the site, a residential flat building development and a three storey tourist accommodation development. The proposed mixed use development was considered to be the 'highest and best use of the site' by the applicant.

In terms of the officers' overall assessment of the proposal, it is acknowledged that the mixed residential/tourist development is generally consistent with the current 2(e) Residential Tourist zoning applying to the site, and with Council's broader strategic plans. However, the officers have identified a number of significant issues which should be considered by the Department of Planning in their assessment and subsequent determination of the proposal.

RECOMMENDATION:

That Council endorses the preparation of a submission to the Department of Planning regarding MP09_0016 (DA10/0642) Environmental Assessment (EA) for a three storey mixed use tourist and residential development comprising 24 accommodation units including 6 x 3 bedroom tourist/residential units 15 x 3 bedroom residential units and 3 x 2 bedroom residential units at Lots 1-3 Section 1 DP 29748; Lot 4 Section 1 DP 31209, Nos. 2-6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach based on the matters identified in this report.

REPORT:

Applicant: Darryl Anderson Consulting Pty Ltd
Owner: Mr KC Hansen and Mrs MJ Hansen
Location: Lots 1-3 Section 1 DP 29748; Lot 4 Section 1 DP 31209, Nos. 2 – 6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach
Zoning: 2(e) Residential Tourist
Cost: N/A

BACKGROUND:

Council received a request for provision of details of key issues and assessment requirements for MP09_0016 on 8 May 2009 for the original three storey proposal for the site comprising 23 units for mixed residential and tourist accommodation. The application took into account comment provided to the applicant by Council at the Development Assessment Panel meeting of 12 December 2008.

The proposal was referred internally at that stage and Council's comments (issues and assessment requirements) on the project application were provided to the Department of Planning in correspondence dated 21 May 2009 (see attachment under separate cover).

THE PROPOSAL

Council received the Environmental Assessment (EA) for the mixed use tourist and residential accommodation at Lots 1, 2 and 3 Section 1 DP 29748 and Lot 4 Section 1 DP 31209 (Nos. 2 - 6 Tweed Coast Road Cabarita Beach and No. 10 Cypress Crescent Cabarita Beach for comment on 27 August 2010.

The Department of Planning exhibited the EA in hard copy and electronic form from 3 September 2010 until 5 October 2010. Council displayed a hard copy at the Tweed Heads Branch Office, the Kingscliff Public Library and the Murwillumbah Office.

The project involves the following key elements:

- Demolition of all structures on the site
- Earthworks requiring cut to spoil of approximately 6000m³ and retaining walls no greater than 1.2m in height
- Erection of a three (3) storey, mixed use residential and tourist accommodation development comprising a total of 24 units (total of 69 bedrooms)
- 6 x 3 bedroom tourist/residential units, 15 x 3 bedroom residential units, 3 x 2 bedroom residential units
- Vehicular access from Cypress Crescent
- Basement car parking for 54 vehicles
- Pedestrian access internally from basement and externally from Cypress Crescent (main entry)
- Comprehensive site landscaping including podium planting and a green roof
- Central atrium area
- Private open space terraces provided to each unit with exclusive access to sunken roof top terraces for Units 17 – 23, and 25
- Gross Floor Area of 3486.09m²
- Floor Space Ratio of 1.24:1.

The development is not proposed as a staged development.

THE SITE

Land to which the application relates to is described as Lots 1, 2, 3 Section 1 DP 29748 and Lot 4 Section 1 DP 31209 (Nos. 2 – 6 Tweed Coast Road and No. 10 Cypress Crescent Cabarita Beach). The site has a total area of approximately 2803m² and is bound by Cypress Crescent to the south, Tweed Coast Road to the west, Cudgen Nature Reserve to the north and 8 Cypress Crescent to the east.

The existing use of the subject site, as Cabarita Beach Caravan Park, has established a mixed residential and tourist use of the site since 1962. There are currently 25 sites, 10 of which are long-term and 15 of which are short-term. The caravan park has approval to operate until 15 January 2013.

The town centre of Cabarita is located approximately 400m south of the subject site.

Site levels range in height from RL 8.23m AHD adjacent to the western boundary to the Tweed Coast Road down to RL 5.96m AHD at the eastern end of the site adjacent to the Cypress Crescent frontage. The site is bushfire prone but is not flood prone.

LOCALITY

Key land uses within the Cabarita Beach locality include:

- Single, two storey and three storey residential and tourist accommodation, single dwellings and dual occupancies along both sides of Tweed Coast Road within close proximity to the beach
- Low density residential accommodation is located further west of Tweed Coast Road
- A busy commercial precinct along Tweed Coast Road that is connected to the beach via Pandanus Avenue
- Open space: beach reserves, Norries Head to the east, Cudgen Nature Reserve.

A significant proportion of land surrounding the Cabarita Beach locality comprises of nature reserves and open space, with some land used for agricultural purposes.

FLORA/FAUNA

Site vegetation comprises of managed lawns and scattered trees. Specimens are arranged haphazardly throughout the existing van sites along with mixed sub tropical shrubs and groundcovers and include:

- Cocus Palms (*arecastrum romanzoffianum*)
- Alexander Palms (*archontophoenix alexandrae*)
- *Cypress Pine (*cuppresses species*)
- Norfolk Pines (*araucaria heterophylla*)
- *Tuckeroo (*cupaniopsis anarcoideoides*)
- *Screw Pines (*pandanus tectorius*)
- Umbrella Tree (*brassia actinophylla*)
- Oleander (*nerium oleander*)

Some of the species mentioned (*) are indicative of Littoral Rainforest Endangered Ecological Community (EEC) and Coastal Cypress EEC.

The application documentation does not provide an existing vegetation survey of the site, nor does the landscaping schedule indicate retention of any of the existing site vegetation.

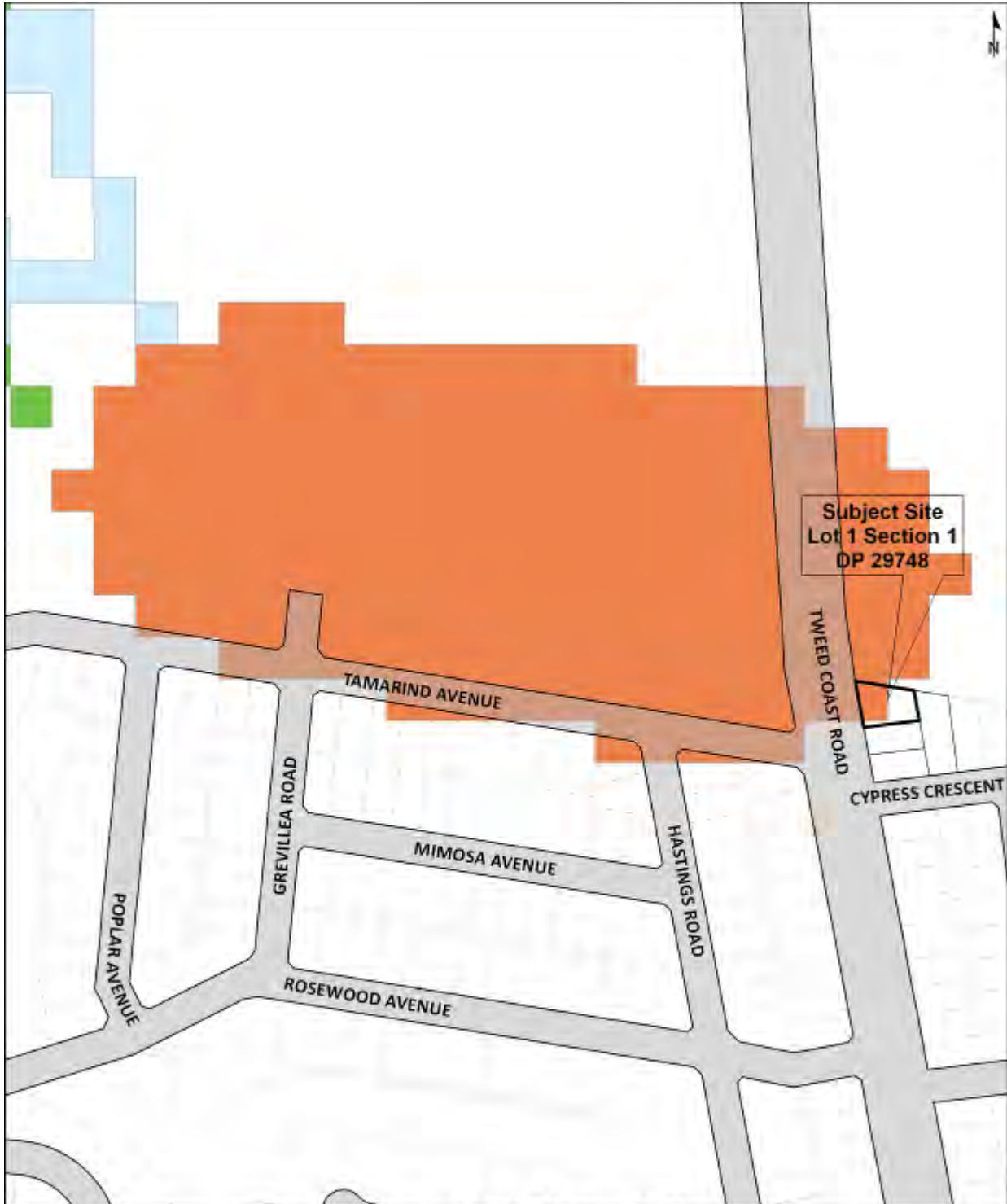
The proposal provides a flora and fauna assessment that focuses on the adjoining site to the north (Cudgen Nature Reserve). Cudgen Nature Reserve contains two vegetation communities. Assessment of the subject site is limited to the following statement and does not include any mention of fauna:

The site is cleared of almost all of the original native vegetation and now consists of managed lawns and a few scattered trees.

The applicant proposes, (by demonstrating 'exceptional circumstances') to utilise land immediately to the north of the subject site within the crown reserve, maintained by the Department of Environment, Climate Change and Water (DECCW) and currently identified in the Cudgen Reserve Fire Management Strategy as a 30m Asset Protection Zone (APZ) for fire protection purposes for the Caravan Park. DECCW have stated that they reserve the right to reduce the width of this APZ in the future to 20m. In this case, Class 3 tourist accommodation (Units 6, 7, 8, 14, 15 and 16) must be located a minimum of 25m from the northern boundary of the subject site to meet the minimum requirement of 45m for an APZ.

A full ecological assessment of the impact of the proposed development upon Cudgen Nature Reserve is to be undertaken by the Department of Environment, Climate Change and Water (DECCW).

The northern portion of Lot 1 in the north-western corner of the subject site is mapped as Primary Koala Habitat under the Koala Habitat Atlas (Australia Koala Foundation), together with land on both sides of Tweed Coast Road to the north within Cudgen Nature Reserve and the residential lots on the northern side of Tamarind Avenue, as indicated below.



Koala Habitat Atlas (AKF)

Lots 1-3 Section 1 DP 29748 and Lot 4 Section 1 DP 31209
 No's. 2-6 Tweed Coast Road and No.10 Cypress Crescent, Cabarita Beach

SOURCE: The Australian Koala Foundation
 Refer to Koala Habitat Atlas
 Project No.4 - Tweed Coast
 September 1999

Secondary Habitat (Class A) Secondary Habitat (Class B) Primary Habitat

Disclaimer: While every care has been taken in the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy of this data. Users of this data are responsible for its accuracy, reliability, completeness or suitability for any particular purpose and assume all responsibility and risk of liability. (Includes: © Crown Intellectual Property, all rights reserved. Errors, omissions, including reliance on uncorroborated data, and liability may be waived as a result of data being inaccurate or not used and the user, reader. This information is provided for the general public and is to be considered indicative and approximate only. It should not be used for the purpose of making legal decisions and should be used in consultation with a qualified professional. This information contained in this document remains valid for 10 days only from the date of supply.

Cadastral: 08 October, 2010
 Dept. of Lands & Tweed Shire Council
 GDA Coordinate System - MGA Zone 58
 Datum: GDA84

0 25 50 M
 1:3,000
 DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

Civil and Coastal Centre
 2 Tarragoola Road
 Maroonbah NSW 2459
 PO Box 810
 Maroonbah NSW 2459
 T (02) 870 2430 (1300 290 472)
 F (02) 870 2433
 E (www.tweed.nsw.gov.au)
 E (planning@tweed.nsw.gov.au)

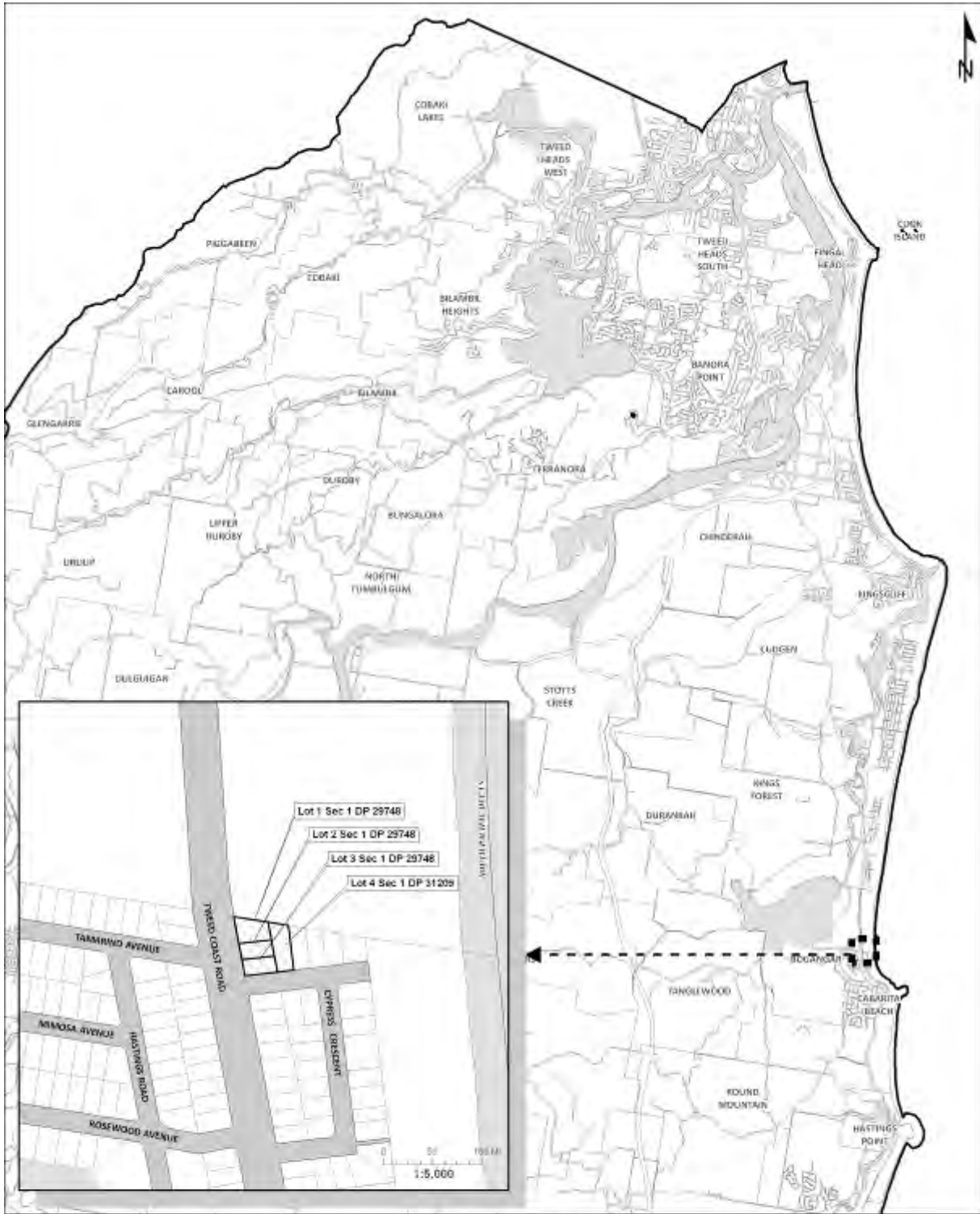


The subject site has an area of less than 1 hectare and as such, development control provisions of SEPP 44 do not apply to the proposal. The applicant states that 'the site is highly urbanised and does not contain core Koala Habitat'. On this basis, the applicant claims that there is no requirement for the preparation of a Plan of Management.

No further study of possible use of the site by koalas has been undertaken.

Although not listed in Schedule 2 of the flora and fauna survey, it is likely that Swamp Mahogany occurs on the adjacent nature reserve and being a significant koala food tree and habitat, the Department's assessment should take into account whether any of these trees would be cleared or compromised as part of the proposed off-site Asset Protection Zone.

SITE DIAGRAM:



Locality Plan

Lots 1-3 Section 1 DP 29748 and Lot 4 Section 1 DP 31209
No's. 2-6 Tweed Coast Road and No.10 Cypress Crescent, Cabarita Beach

This document is a site diagram and does not constitute an offer of land or any other financial product. It is provided for information only and does not constitute an offer of land or any other financial product. It is provided for information only and does not constitute an offer of land or any other financial product. It is provided for information only and does not constitute an offer of land or any other financial product. It is provided for information only and does not constitute an offer of land or any other financial product.

Created: 08 October, 2010
Dept. of Lands & Survey
Coordinate System: MGA Zone 56
GDA - GDA 84

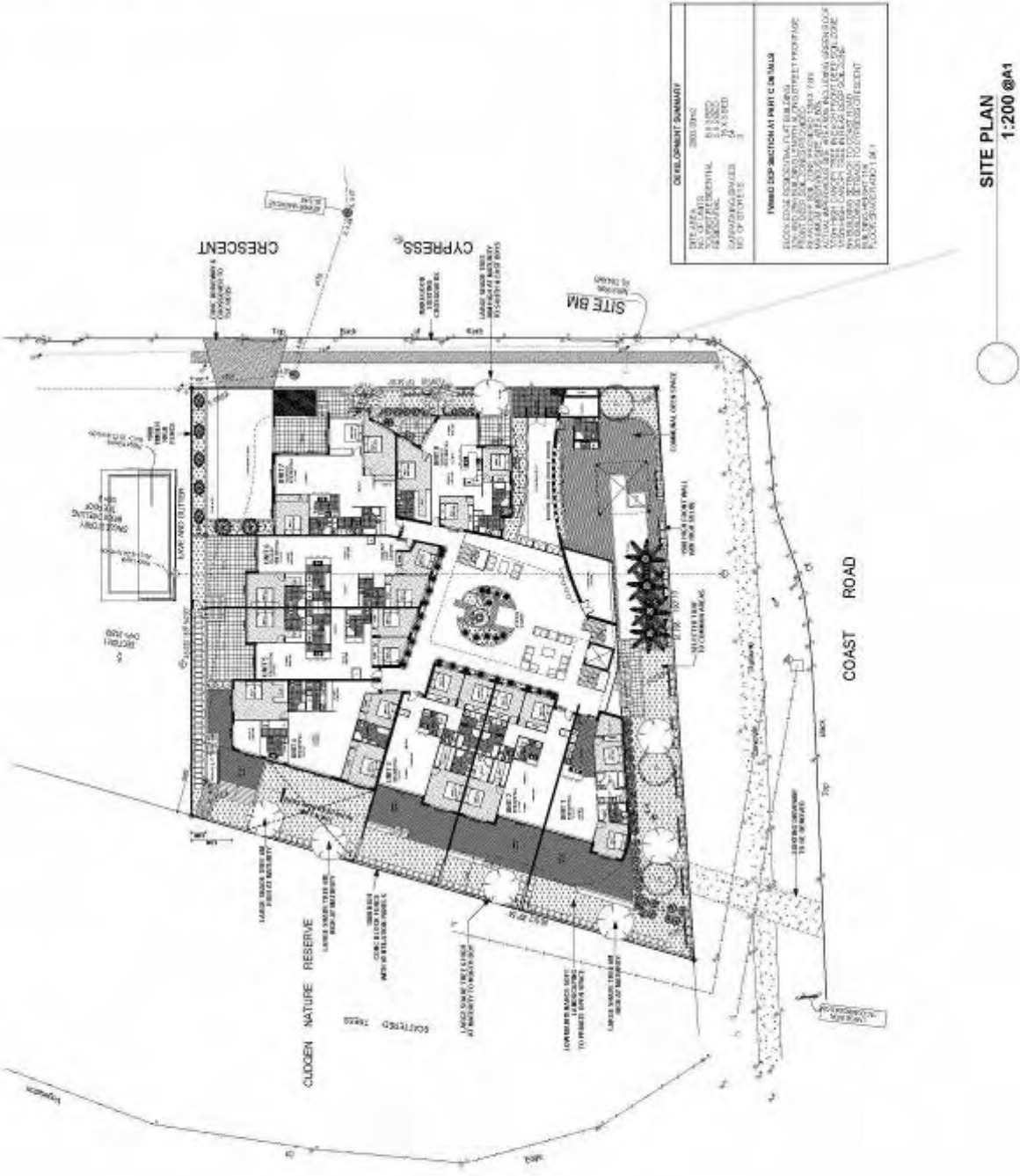
Scale: 1:100,000
COPY ONLY - NOT DIMENSIONED

Council Contact Centre
3 Tumbalong Road
Murumbidgee NSW 2604
PO Box 616
Murumbidgee NSW 2604
T: (02) 6270 2400 | 1300 232 072
F: (02) 6270 2428
W: www.tweed.nsw.gov.au
E: planning@tweed.nsw.gov.au



DEVELOPMENT PLANS:

<p>THIS PLAN, AND ANY INFORMATION CONTAINED HEREIN, IS THE PROPERTY OF THE CONSULTANT AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE CONSULTANT.</p>	
DATE:	08/11/10
PROJECT:	WILSON ROAD
CLIENT:	MR & MRS J. WILSON
SCALE:	AS SHOWN
<p>NOTES: 1. THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION WITHOUT THE WRITTEN PERMISSION OF THE CONSULTANT. 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE STATED. 3. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS APPROVED BY THE LOCAL AUTHORITY. 4. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND CONSENTS FROM THE LOCAL AUTHORITY AND ANY OTHER RELEVANT AGENCIES. 5. THE CONSULTANT ACCEPTS NO LIABILITY FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS PLAN.</p>	
<p>PROJECT: Wilson Road, Towed Coast Home</p>	
<p>SCALE: 1:200</p>	
<p>DATE: 08/11/10</p>	
<p>BY: [Signature]</p>	
<p>FOR: [Signature]</p>	

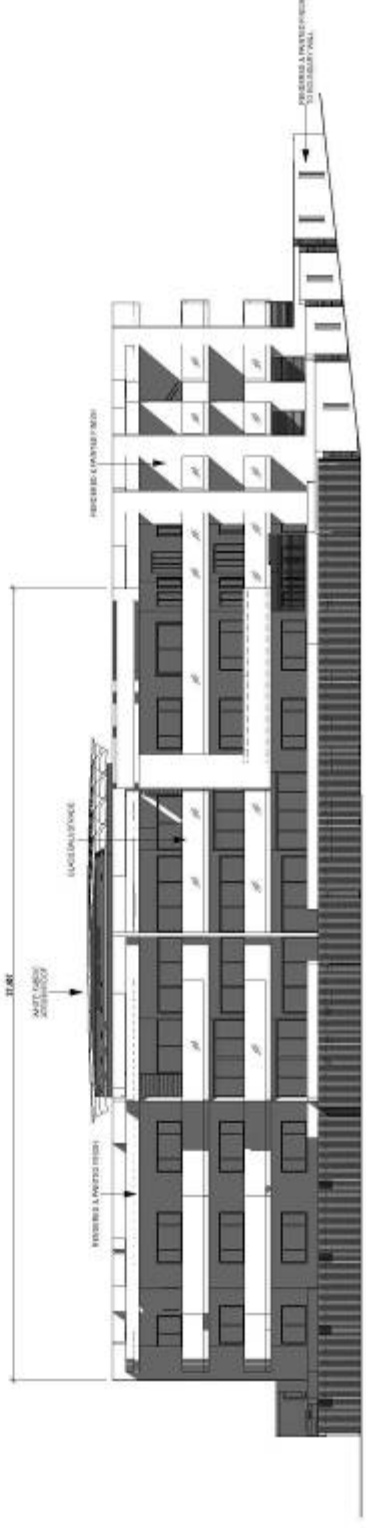
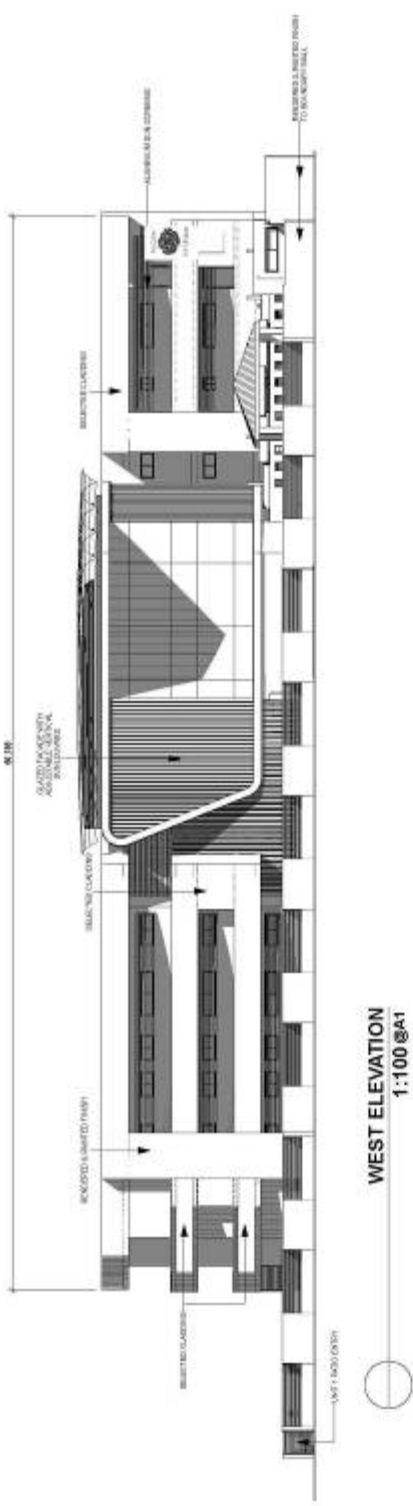


DISCLAIMER: THIS DOCUMENT IS THE PROPERTY OF THE ARCHITECT. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE OR MODIFICATION OF THIS DOCUMENT WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT IS STRICTLY PROHIBITED.

PROJECT: WEST RIVINGTON EAST BLOCK
LOCATION: 6005 BA 1.08
DATE: 19 OCT 2010

ARCHITECT: NETWORK DESIGN PTY LIMITED
ARCHITECTS: K. K. H. T. S.
ARCHITECTS: K. K. H. T. S.
ARCHITECTS: K. K. H. T. S.

SCALE: 1:100 @A1





PAT TWOHILL DESIGNS PTY. LIMITED
A R C H I T E C T S
ARCHITECTS AND INTERIORS
SUITE 1033 MARKET ST
WELLS BEACH NSW 2209
TEL: 02 9439 2200
EMAIL: info@pattwohill.com.au

SOUTHWEST VIEW
PROPOSED MULTI-RESIDENTIAL DEVELOPMENT
CRN COAST ROAD & CYPRESS CRESCENT
CABARITA BEACH, NSW

ZONING/STRATEGIC CONTEXT

The subject site is zoned 2(e) Residential Tourist. The primary objective of the zone is as follows:

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

The development provides for a total of 24 units, six of which can be utilised as either residential or tourist accommodation. The tourist accommodation component is in association with residential development but does not meet the primary objective of the zone unless it is utilised exclusively for tourist accommodation purposes in perpetuity of the proposed land use.

As such, Council does not support proposed Units 6, 7, 8, 14, 15 and 16 for dual residential / tourist use and requests that a Section 88b restriction be placed upon the title to denote exclusive use for tourist accommodation.

The draft zoning of the subject site in accordance with the Draft Tweed Shire LEP 2010 is RE2 Private Recreation. The primary objectives of the draft zone are as follows:

- *To enable land to be used for private open space or recreational purposes*
- *To provide a range of recreational settings and activities and compatible land uses*
- *To protect and enhance the natural environment for recreational purposes.*

Tourist and visitor accommodation is considered to be a permitted use in the draft zone. However, residential accommodation (as a place of residence) is prohibited. Building height is restricted to 10m for the subject site according to the draft LEP. The proposed building height, at 13.6m, exceeds this draft development standard.

Part C of DCP A1 – Residential and Tourist Code specifies that 12.2m is the maximum height for Residential Flat Buildings. The current Tweed DCP B19 (Bogangar / Cabarita Beach Locality Plan) also specifies a building height of 12.2m for this site which is located within the Residential Tourist Precinct. The specified building height in DCP B19 takes precedence over the 10m building height specified in the draft LEP and the three storey height limit specified in the current LEP. As such, Council does not support the proposed building height of 13.6m as it exceeds the maximum building height as specified in DCP B19.

The outcome of the referral to the Planning Reform Unit in relation to these issues is located within the submission table below and discusses the impacts of the draft zoning on the proposal.

The development has the potential to make a positive contribution to the village character of Cabarita Beach should it adhere to existing and proposed development standards.

SUBMISSION

The Environmental Assessment was referred to relevant Council officers within the following fields:

- General Planning
- Environmental Health
- Building
- Ecology (restricted to subject site)
- Engineering
 - Flooding
 - Stormwater Management
 - Parking
 - Traffic Generation
 - Water Supply and Effluent Disposal
 - Waste Disposal
- Planning Reform

The relevant Council officers have assessed the Environmental Assessment and provided comment. These comments have been assembled into the following table.

ISSUE	COMMENT
General Planning:	
Residential / Tourist Use	<p>The development provides for a total of 24 units, three of which are two-bedroom and six that can be utilised as either residential or tourist accommodation. The tourist accommodation component is in association with residential development but does not meet the primary objective of the zone unless it is utilised exclusively for tourist accommodation purposes in perpetuity of the proposed land use.</p> <p>As such, Council does not support proposed Units 6, 7, 8, 14, 15 and 16 for dual residential / tourist use and requests that a Section 88b restriction be placed upon the title to denote exclusive use for tourist accommodation.</p>
Building Height	<p>Part C of DCP A1 – Residential and Tourist Code specifies that 12.2m is the maximum height for Residential Flat Buildings. The current Tweed DCP B19 (Bogangar / Cabarita Beach Locality Plan) also specifies a building height of 12.2m for this site which is located within the Residential Tourist Precinct. The specified building height in DCP B19 takes precedence over the 10m building height specified in the draft LEP and the three storey height limit specified in the current LEP. As such, Council does not support the proposed building height of 13.6m as it exceeds the maximum building height as specified in DCP B19.</p> <p>Appropriate draft conditions can be supplied.</p>

ISSUE	COMMENT
<p>Environmental Health: Local Government Act</p>	<p>A. The Act provides for the Council to have responsibility for the operation of caravan parks as defined under the Act. This application will result in the closure of the Cabarita Beach Caravan Park. The park holds an approval to operate comprising of 10 long term dwelling sites and 15 short term dwelling sites.</p> <p>The operation of the caravan park during the period of closure will be required to operate as per the provision of the Act and the approval to operate as issued under Section 68 of the Act. As such it will be necessary to compile a plan of management to ensure the ongoing provision of adequate and necessary services to all occupants during this period. Conditions of any consent granted should reflect this requirement.</p> <p>It is noted Section 9.1 of the Environmental Assessment Report does not include the Office of Fair Trading as a State Agency having been consulted. The Office of Fair Trading administers the Residential Parks Act and as such deals with the tenancy matters including the fair and reasonable treatment of tenants. Tenants of caravan parks are considered particularly vulnerable due to they're generally being within the older age bracket and/or of a lower socioeconomic group. Whilst there are a number of caravan parks within the Tweed Shire availability of long term sites for placement of relocatable homes has not been considered.</p> <p>B. Section 608 of the Act provides for the charging of fees to assist councils to undertake its regulatory functions. Council maintains a register of all swimming pools to assist in its responsibilities for public health and safety under the provisions of the Public Health Act and relevant Regulation. Conditions of any consent granted should reflect this requirement.</p> <p>Appropriate draft conditions can be supplied.</p>
<p>Building:</p>	
<p>Building Code of Australia BASIX</p>	<p>Demolition of the existing amenity block and storage shed needs to include consideration of the presence of asbestos containing and lead painted materials.</p> <p>Appropriate draft conditions can be supplied.</p>
<p>Ecology:</p>	
<p>Site Vegetation (subject site)</p> <p>Koala Habitat</p>	<p>The flora and fauna study did not include a detailed appraisal of the subject site, despite the landscaping site analysis indicating the inclusion of a number of local tree species. It is unclear as to whether any of these species are to be retained as an existing vegetation survey has not been undertaken.</p> <p>In addition to Cudgen Nature Reserve, the northern portion of Lot 1 in the north-western corner of the subject site is mapped as Primary Koala Habitat on Council's GIS system. However, no study of possible use of the site by koalas has been undertaken.</p>

ISSUE	COMMENT
<p>Parking</p>	<p>With a total of 54 parking spaces being provided, this should be sufficient. However due to the proposal's provision of tandem spaces, certain allocations are required.</p> <p>With 12 sets of tandem car parking spaces proposed, each tandem pair can only be nominated to 1 Residential unit. It is best if these are allocated to the 3 bedroom Residential Units as they require 2 spaces. Tandem spaces should not be nominated to dual use units.</p> <p>The latest submitted plan nominates only 6 car parking spaces for the proposed dual use (Tourist / Residential) Units (i.e. 1 per Unit) which contradicts the wording of the submission that states that the higher Residential Rate (i.e. 2 spaces per 3 bedroom unit) would be applied. If approved, the development should be conditioned to provide 2 car parks per dual use (Tourist / Residential) Unit. This can be accommodated by the numbers proposed.</p> <p>Should the proposal be restricted to tourist use for Units 6, 7, 8, 14, 15 and 16, car parking spaces at the rate of 1 per Unit may be applied. None of these spaces may be located within tandem car parking spaces.</p> <p>Storage for the required 36 bicycles can be provided via the proposed storage areas.</p> <p>In regards to the nominated visitor spaces, it is noted that they are proposed within the basement. This can lead to problems in regards to whether they will be used by residents instead of visitors and how visitors may gain access.</p> <p>It can be argued that if visitor spaces are provided within the basement and not at an unrestricted ground level, then only visitors visiting a resident who is actually at home can gain access to them. Effectively it will be managed by the Body Corporate of the complex. Either way Council's DCP does not preclude the use of basement visitor spaces.</p> <p>In regards to providing facilities for deliveries, it is Council's opinion that the provision for an HRV space (as per DCP A2 requirements for Tourist facilities) is excessive and unwarranted. The complex will most likely be managed off site with deliveries effectively only being linen and possibly the top-up of the mini-bar for the 6 Units, preferably to be used for only tourist accommodation. This could easily be accommodated by an SRV parking space.</p> <p>In regards to staff parking, Council's DCP A2 requires 1 space per staff member for Tourist facilities. It is Council's opinion that at least 1 nominated staff parking space needs to be provided as staff members may need to be present during deliveries, servicing of the tourist accommodation.</p> <p>The current nomination of 54 car parks should be able to accommodate the parking numbers that Council believe are required:</p> <ul style="list-style-type: none"> ▪ 35 for the residential units

ISSUE	COMMENT
<p>Traffic Generation</p> <p>Water Supply & Effluent Disposal</p> <p>Waste Disposal</p>	<ul style="list-style-type: none"> ▪ 5 for visitor spaces ▪ 12 for the dual use units / 6 for exclusive tourist use ▪ 1 for SRV delivery ▪ 1 for a staff member <p>The Civil Engineering Report attached as Annexure 18 provides a traffic assessment based on the standards contained within the RTA Guide to Traffic Generating Developments. The assessment indicates that the proposed development will generate at total of 14.5 peak hour trips which is an increase of only 4.5 peak hour trips compared to the existing development on the site.</p> <p>This increase is marginal and the existing road network can handle such an increase. This indicates that an upgrade to the existing road network is not warranted.</p> <p>The proposed removal of the existing driveway crossover from the site to the Tweed Coast Road and two existing crossovers to Cypress Crescent will also reduce potential traffic conflict points and therefore improve the existing road network.</p> <p>Capacity of both water and sewer systems is considered adequate given the lower flows generated by water efficient products now being incorporated into new development.</p> <p>Specific connection details to each system will be required for approval at a future stage in the application process.</p> <p>The development is required to ensure rainwater inflow to the sewer system from all sources is prevented.</p> <p>The development is also required to maximise use of collected rainwater form rooves, with uses being for toilet flushing, cold water taps to washing machines and external uses.</p> <p>The applicant was requested to supply a Waste Management Plan that, amongst other details, indicates bulk as opposed to individual “wheelie bin” storage. This plan has not been supplied and it is noted that the submitted basement plan shows approximately 50 wheelie bins.</p> <p>Council considers this to be unacceptable.</p> <p>Appropriate draft conditions can be supplied.</p>
<p>Planning Reform:</p>	
<p>Proposed Zoning (Draft Tweed LEP 2010)</p> <p>Tweed Urban and Employment Land</p>	<p>The Draft Tweed LEP 2010 proposes that the site be zoned RE2 Private Recreation in accordance with the existing predominant land use of the site, not Special Purpose as suggested in the email dated 8/9/2010 from the Department.</p> <p>Residential accommodation is a prohibited land use under this draft zoning.</p> <p>Under section 4.4 Letting of Dwellings in the Tweed Urban and Employment Land Release Strategy 2009 reference is made to potential occupancy rates in various zones, stating that “It is suggested</p>

ISSUE	COMMENT
<p>Release Strategy</p>	<p>that maximum population densities be discounted by 50% in 2(e) and 2(f) zones (where tourism is required by Council to balance the residential component) by 20% in coastal located residential zones, and 10% in residential zones west of the Pacific Highway”.</p> <p>At this time, Council has not undertaken a detailed tourism study of the locality and therefore, this advice remains a suggestion only. This advice is directed more at estimations of the future need for infrastructure and services, and is not meant as a definitive tool for development assessment or a means of prescribing the proportion of permanent and short-term tenancies in any particular zone; as such the matter of the ratio of tenancy types that should apply to a particular type would require a much more global assessment.</p> <p>More strategically, this section of the Strategy needs to be read in conjunction with the Tweed DCP section A1 and B19 as explained below.</p> <p>Attention is drawn to page 38 of the DCP which outlines the background to the precinct within which this site is located, precinct objectives and strategic policies, as seen in the extract provided below.</p> <p>The Plan notes that “the sites identified within the Tourist Residential Precinct are intended to be developed as integrated tourist facilities consisting of predominantly accommodation units with attendant facilities to cater for the needs of short-stay guests.”</p> <p>Reference is also made to sections B19.14, 15 and 16 which relate to commercial facade design guidelines, residential design guidelines, and building height respectively.</p>
<p>Tweed DCP B19 – Bogangar / Cabarita Beach Locality Plan</p> <p>Building Height</p>	<p>The applicant has requested that Council amend its building height map to permit a building height of 13.6 metres. The current 2(e) Residential Tourist zone has a maximum building height of 3 storeys under the Tweed LEP 2000, and 12.2 metres as prescribed in Tweed DCP A1 for residential flat buildings. This is also consistent with section B19 Bogangar/Cabarita Beach Locality Plan in the Tweed DCP.</p> <p>An extract from section B19.16 Building Height is provided below.</p> <p>Extract from the Tweed DCP Section B19 Bogangar/Cabarita Beach Locality Plan:</p> <p>B19.16 Building Height</p> <p>B19.16.1 Building Height</p> <p>All buildings are governed by the maximum building height limits set under Tweed LEP 2000. All proposed developments must comply with:-</p> <ul style="list-style-type: none"> • The building envelope controls contained in this section of the DCP. • The maximum height limits imposed under Tweed LEP 2000. <p>B19.16.2 Application Requirements</p> <p>Applicants should provide block models, visual impact statements, shadow diagrams and perspective drawings to demonstrate compliance</p>

ISSUE	COMMENT
	<p>with the objectives of the building envelope control.</p> <p>B19.16.3 Building Envelope Objectives The objectives of the building envelope control are to:</p> <ul style="list-style-type: none"> • Ensure the maximum building height provisions for the area are observed. • Ensure that building setbacks to property boundaries increase relative to any increase in building height. • Minimise the visual and physical impact and apparent bulk of buildings on adjoining developments and public streets and spaces. • Facilitate adequate sunlight access to and minimise shadow impact on adjoining properties and public streets and spaces. <p>B19.16.4 Maximum Building Height The height and scale of development within the study area is generally limited to three storeys. To maintain the character and amenity of the region it is encouraged that these height limits continue.</p> <p>New development should minimise the visual and physical impact and apparent bulk that it has on adjoining development and public streets and spaces. New development should also not detrimentally impact on identified important view corridors.</p> <p>Development, to comply with the goals set by the building height performance criteria, will measure the height in relation to a building to the uppermost ceiling or top plate of the highest external wall in accordance with provisions of the Tweed Local Environmental Plan.</p> <p>The following Building Height Limit Map is an extract from the Tweed LEP 2000 and prescribes the maximum building height for all parts of Bogangar/Cabarita Beach.</p> <p>Council Comment</p> <p>A prevalent and resounding issue raised through the public exhibition of the Draft Tweed LEP 2010 related to the building height map and in particular the 13.6m height limit relating to mixed-use development.</p> <p>Detailed analysis and testing of building heights for differing building typologies, including mixed-use, carried on for Pottsville, Hastings Point and more recently in a review of the Cabarita DCP, has affirmed Council's views that the current building heights under DCP A1 and as carried over into the Draft LEPs are excessive.</p> <p>It should also be noted that the building heights proposed in the Cabarita DCP were taken from the then draft DCP A1.</p> <p>It would therefore follow that if the heights under DCP A1 have come into question and have been reviewed as excessive for the building typologies and Tweed's characteristics then the heights in the Cabarita DCP are also in contention.</p> <p>On that basis, a revised building height scheme is being prepared as part of the Draft LEP post exhibition review and will be reported to</p>

ISSUE	COMMENT
	<p>Council for adoption in due course.</p> <p>It would follow that should the Draft LEP be gazetted that the building heights in the Tweed DCP would also be amended accordingly.</p> <p>This is likely to have a more noticeable affect on the larger building types including residential flat type and mixed-use shop top type buildings.</p> <p><u>In light of the above Council is opposed to any proposal to raise the building heights above that currently applying to the site.</u></p>

OPTIONS:

1. That Council endorses the submission to the Department of Planning for the mixed residential and tourist accommodation at Cabarita Beach, based on the officer's assessment provided in this report.
2. Council resolves to add further issues to the submission, prior to submission being sent to the Department of Planning.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Council has an opportunity to make a submission to the Department of Planning on the proposed Major Project for a mixed residential and tourist development at Cabarita Beach.

Relevant Council officers have assessed the Environmental Assessment on public exhibition. These comments have been assembled into the report and submission.

The purpose of this report is to seek Council endorsement of the issues raised in the submission.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council's letter dated 21/5/2009 providing key issues and assessment requirements to the Department of Planning (DoP) (ECM 22451903)

15 [PR-CM] Development Application DA10/0395 for The Unity Festival at Lot 167 DP 729468, Queensland Road, Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA10/0395 Pt1

SUMMARY OF REPORT:

The applicant, The Unity Festival Inc., has requested a refund of Council's fees associated with the Development Application relating to the subject development. The applicant is a "not for profit" community organisation that was formed in 2009 to develop a multicultural festival to provide a public benefit to the community.

The total amount requested is \$270.00.

The breakdown of Council's fees is as follows:

DA fee	\$245.00
Environment Enforcement Levy	\$25.00
TOTAL	\$270.00

The Unity Festival Inc. has received funding of \$3,000 from Council towards operation of their multicultural festival. The donations policy states: "*That an individual or an organisation shall not be eligible for any more than two donation grants in any consecutive three year period*" and Council can give consideration to providing a further donation as requested.

RECOMMENDATION:

That Council's fees associated with Development Application DA10/0395 for The Unity Festival at Lot 167 DP 729468, No. 37 Queensland Road, Murwillumbah be donated to The Unity Festival Inc.

REPORT:

As per summary

OPTIONS:

1. Council donates a total of \$270.00 to the applicant being the fees associated with DA10/0395.
2. Council declines to donate Council's fees associated with DA10/0395.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The applicants request for a refund of Council's fees associated with the Development Application is supported as the applicant is a 'not for profit' organisation with the subject development providing a public benefit to the community.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

16 [PR-CM] Development Application DA10/0342 for a Proposed Two Storey Outbuilding and Use of an Illegally Constructed Retaining Wall at Lot 19 DP 737064, No. 54 Parkes Lane, Terranora

ORIGIN:

Building & Environmental Health

FILE NO: DA10/0342 Pt1

SUMMARY OF REPORT:

Development Application No.08/0592 proposing the erection of a two storey outbuilding containing storage areas and a pottery studio was refused on 30 July 2008 due to inadequate stormwater drainage. The owner has carried out extensive site works including excavation and filling, and the construction of a masonry retaining wall having a height of 1.4m and length of 35m sited parallel with the rear boundary. The owner has submitted a Building Certificate application BC10/0111 in respect of the retaining wall. The matter of the use of the illegally constructed retaining wall has to be considered together with the Building Certificate application (certificate of non action).

An application has been received to construct a two storey outbuilding consisting of a 144m² garage on the ground floor with a first floor component 53.6m³ in area comprising of a rumpus room and bathroom with a first floor deck 32m² in area attached to the western side, this outbuilding is connected to the deck of the existing dwelling house via a new deck having an area of 64.85m², the erection of two bali huts located to the north east and south east of the existing swimming pool, conversion of the existing double garage into a bedroom and the use of an illegally constructed masonry retaining wall having a height of 1.4m and length of 35m sited parallel with the rear boundary. It is to be noted that the previous DA No.08/0592 included a first floor which had an area equal in dimension to that of the ground floor and that the mezzanine (first floor component) of the current proposal is only 37% of the floor area of the garage component. Also the eastern elevation is less in scale due to the mezzanine being aligned to the western side.

The application was notified to adjoining property owners and five (5) submissions were received from five (5) surrounding properties objecting to the proposal. The objectors' main concerns with the proposal were the bulk and scale of the outbuilding, the impact on views, and impact on privacy.

The issues raised in the objections have been addressed within the body of this report.

On the balance of the assessment of the relevant planning matters, the nature of the allotment, and the circumstances of the case it is considered that the proposed development is suitable for approval, subject to conditions and approval of the building certificate application is to be supported.

RECOMMENDATION:

That Development Application DA10/0342 for a two storey outbuilding, decks, two bali huts, conversion of the existing double garage into a bedroom & the use of the illegally constructed retaining wall at Lot 19 DP 737064, No. 54 Parkes Lane, Terranora 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. Prior to issue of Construction Certificate the applicant is to submit to the PCA a list of the finished building materials and colours for approval. Such materials and colours are to be sympathetic with the rural residential environment.**

[PCC0175]

- 4. A detailed plan of landscaping is to be submitted and approved by the PCA prior to the issue of a Construction Certificate. Such plan is to detail particular species and densities of plants located within the southern, eastern and northern setbacks of the development which upon reaching maturity will minimise impact from the development onto surrounding properties.**

[PCC0585]

- 5. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.**

[PCC0945]

- 6. Stormwater**

Details of the proposed roof water disposal and surface water runoff disposal (i.e including driveway runoff), 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 and indicate connection of stormwater into the private stormwater easement located at the rear of the site.

[PCC1135]

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

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

[PCC1195]

8. Prior to the release of the construction certificate details of the conversion of the existing garage attached to the existing dwelling house into habitable area are to be submitted to the Principal Certifying Authority in respect that the proposed works satisfy the requirements for habitable construction as prescribed in the Housing Provisions Volume Two of the Building Code of Australia 2010.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

9. 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]

10. 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]

11. 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]

12. 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]

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

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

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

[PCW0255]

14. Prior to 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]

15. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or 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. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

16. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

18. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

21. 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]

22. 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]

23. 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]

24. 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]

25. **Excavation**

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

26. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the WorkCover Guidelines on working with asbestos.

[DUR0645]

27. 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]

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

[DUR1045]

29. 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]
30. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
- [DUR2245]
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. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required
- [DUR2565]

37. Smoke alarms shall be installed in the existing dwelling in accordance with Part 3.7.2 of the Building Code of Australia. A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power is to be submitted to the PCA and Tweed Shire Council.

[DURNS01]

38. The existing pool is to be fenced in conformity with the requirements of the Swimming Pools Act, 1992 as amended.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

40. 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]

41. 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]

42. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[POC0475]

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

[POC1035]

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

[POC1055]

45. Prior to the issue of the occupation certificate for the building works associated with DA10/0342, the existing swimming pool is to be fenced in accordance with Swimming Pools Act, 1992 as amended.

[POCNS01]

USE

46. 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]

47. The building is not to be used for any habitable commercial or industrial purpose.

[USE0455]

48. The garage/rumpus must not be used for human habitation or occupation.

[USE0475]

49. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]

REPORT:

Applicant: Mr WF Morley and Mrs P Morley
Owner: Mr WF Morley and Mrs P Morley
Location: Lot 19 DP 737064 No. 54 Parkes Lane, Terranora
Zoning: 1(c) Rural Living
Cost: \$80,000

BACKGROUND:

The property is zoned 1(c) Rural Residential under Tweed Local Environmental Plan 2000 and is located on the eastern side of Parkes Lane Terranora. The property is irregular in shape containing an existing small two storey dwelling house with attached double garage and a swimming pool. The property falls to the rear having a grade of approximately twenty five percent.

Development Application No.08/0592 proposing the erection of a two storey outbuilding containing storage areas and a pottery studio was refused on .30 July 2008 due to inadequate stormwater drainage. The owner has carried out extensive site works including excavation and filling, and the construction of a masonry retaining wall sited approximately 2.5m off the rear boundary without the prior consent of Council. These works resulted in damage to the existing on site sewerage management system. Subsequently a Section 68 application SEP09/0010 was lodged and approved in respect of the approval to install an on site sewerage management system in order to resolve the above mentioned situation.

In support of their application the applicant has stated that the proposed development will improve functionality, and improve living and storage space in association with the existing dwelling house which will continue to be used for single dwelling purposes only. It is also considered that the additions will be generally consistent with the established and desired built form and character of the residential locality and is also not likely to detract on the residential amenity of the locality, particularly the neighbours. In this particular regard it is to be noted that the two storey outbuilding will impact upon the Market Place streetscape. The retaining wall will not significantly change the natural harmony of 'the land and will improve the useable space on this sloping site. It is unlikely that the retaining wall will create adverse storm water implications on the adjoining properties. Stormwater should still naturally fall to the rear of the allotment and there are significant areas of open space and established landscaping for the infiltration and detention of stormwater runoff. It has also been demonstrated that the proposal complies with site constraints and Council statutory requirements. Recent research via Councils' Property Unit has revealed that the subject property is benefited by a drainage easement which drains to the north to Market Parade. See the attached deposited plan which details the above mentioned easement.

SITE DIAGRAM:



Locality Plan
 Lot 19 DP 737064
 No.54 Parkes Lane, Terranora

Figure 1: G:\SHIRING\STANDARD TEMPLATES\BASEMAPS\LocalityPlan_A4R_0610.mxd

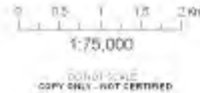
Author: J.Bradwin - Planning Reference Unit

Date Printed: 07 October 2010

Disclaimer: While every care has been taken in the preparation of this data, Council does not warrant, represent or guarantee the accuracy or reliability of this data, and is not liable for any loss or damage, whether direct or indirect, arising from the use of this data. The information is provided for general information only and is not intended to be used as a basis for any decision. The information contained on this document remains valid for 10 days only from the date of input.

Cadastre: 07 October 2010
 Dept. of Lands
 Tweed Shire Council

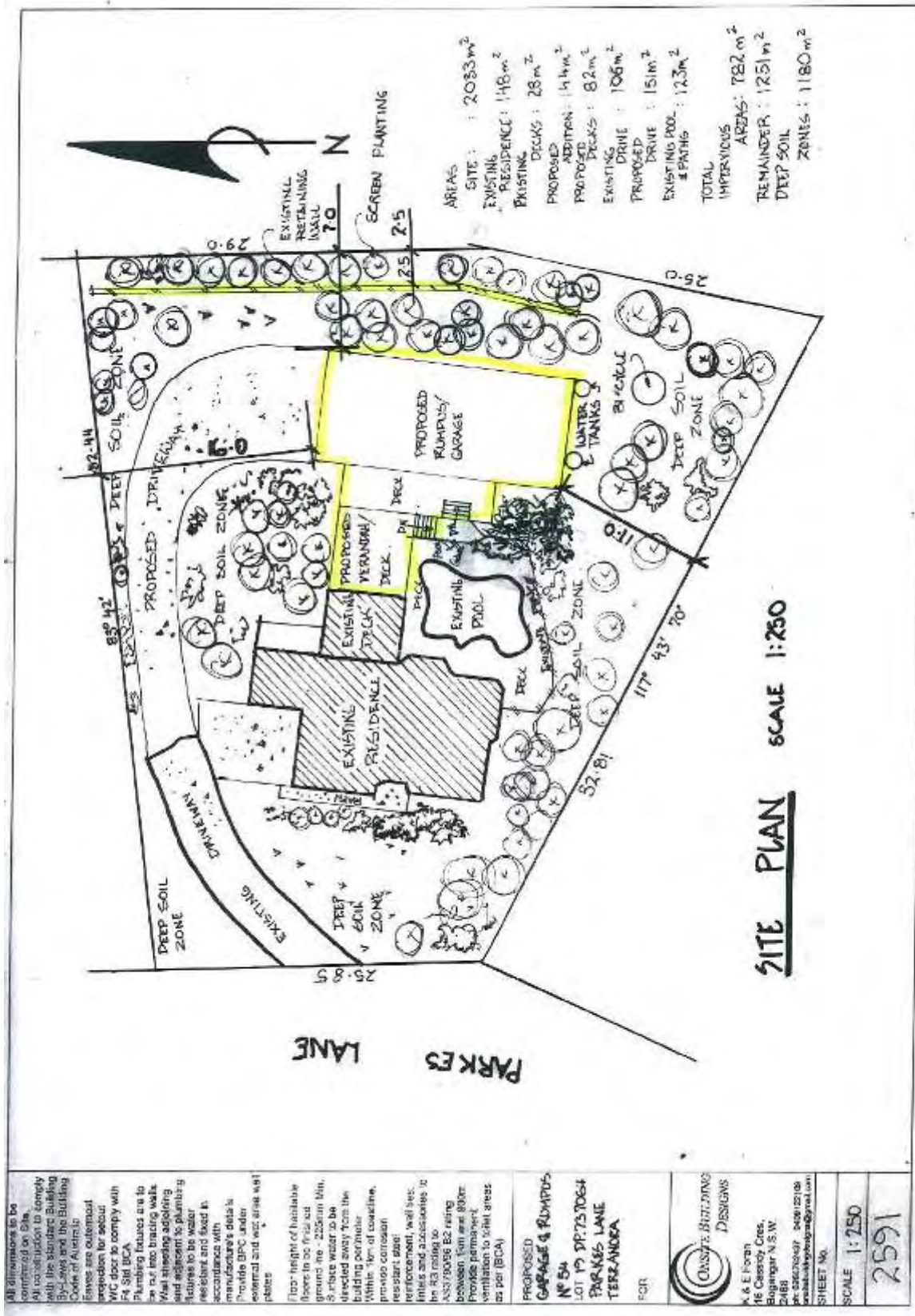
GDA
 Geospatial Systems - NSRS Data-06
 Datum - GDA 94

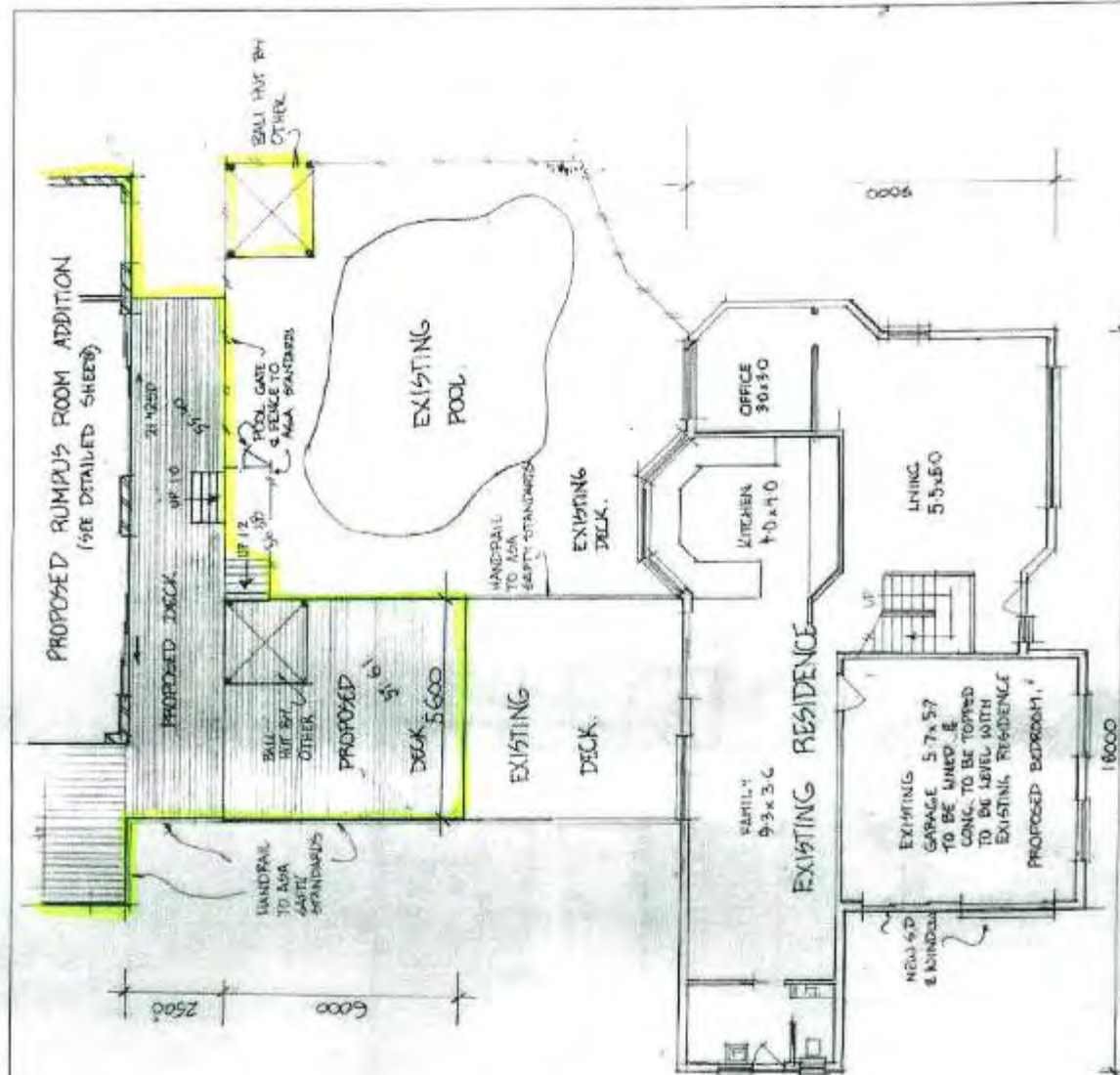


Civic and Cultural Centre
 3 Tumbulpura Road
 Maclean NSW 2464
 PO Box 810
 Maclean NSW 2464
 T (08) 9870 5400 / 1500 282 872
 F (08) 9870 2422
 E planning@twed.nsw.gov.au
www.twed.nsw.gov.au



DEVELOPMENT PLANS:





EXISTING RESIDENCE	TOTAL AREA = 192 m ²
PROPOSED RUMPIUS	AREA = 53.6 m ²
PROPOSED GARAGE	AREA = 144 m ²
TOTAL NEW PROPOSAL =	197.6 m ²
TOTAL FOOT PRINT (EXCLUDING DECKS) =	276 m ²
SITE AREA =	2033 m ²

PLAN SHOWING :-
 EXISTING RESIDENCE & PROPOSED CONNECTING DECK TO PROPOSED ADDITION

dimensions to be referred to site.
 conditions to comply with the proposed Building Code of Australia.
 - doors are outwards
 - doors to comply with 533 BCA
 - existing features are to be retained
 - all sheeting adjoining to be adjacent to plumbing
 - all sheeting to be water resistant and fixed in accordance with manufacturer's details
 - 200mm GPC under internal and wall studs wall studs

door height of habitable rooms to be finished around the 2225mm Min. effective water to be pitched away from the building perimeter within 10mm of concrete.
 - 200mm GPC under internal and wall studs
 - reinforcement, wall ties, ties and accessories to 500mm
 - 500mm B2 rating between 10mm and 500mm
 - 200mm GPC under internal and wall studs
 - 1 per (BGA)

PROPOSED ADDITIONS
 GARAGE & RUMPIUS
 LOT 19 NO 94 PARKES LANE TERRANORA
 FOR MR & MRS MORLEY
 IN SITE DESIGNS
 Floran
 6 Cassidy Cres,
 Loganholme N.S.W.
 488
 P. 08 9466 4442 fax 08 9466 4410
 web www.floran.com.au
 SHEET NO.

SCALE 1:100

2595

NORTH SIDE ELEVATION

SOUTH SIDE ELEVATION

BLACK WOOD

PROPOSED
GARAGE & STORE
 No 54
 LOT 19 DP 757064
 PARKER LANE
 TERRANORA

FOR
Mr & Mrs MORLEY
 ON SITE DESIGNS

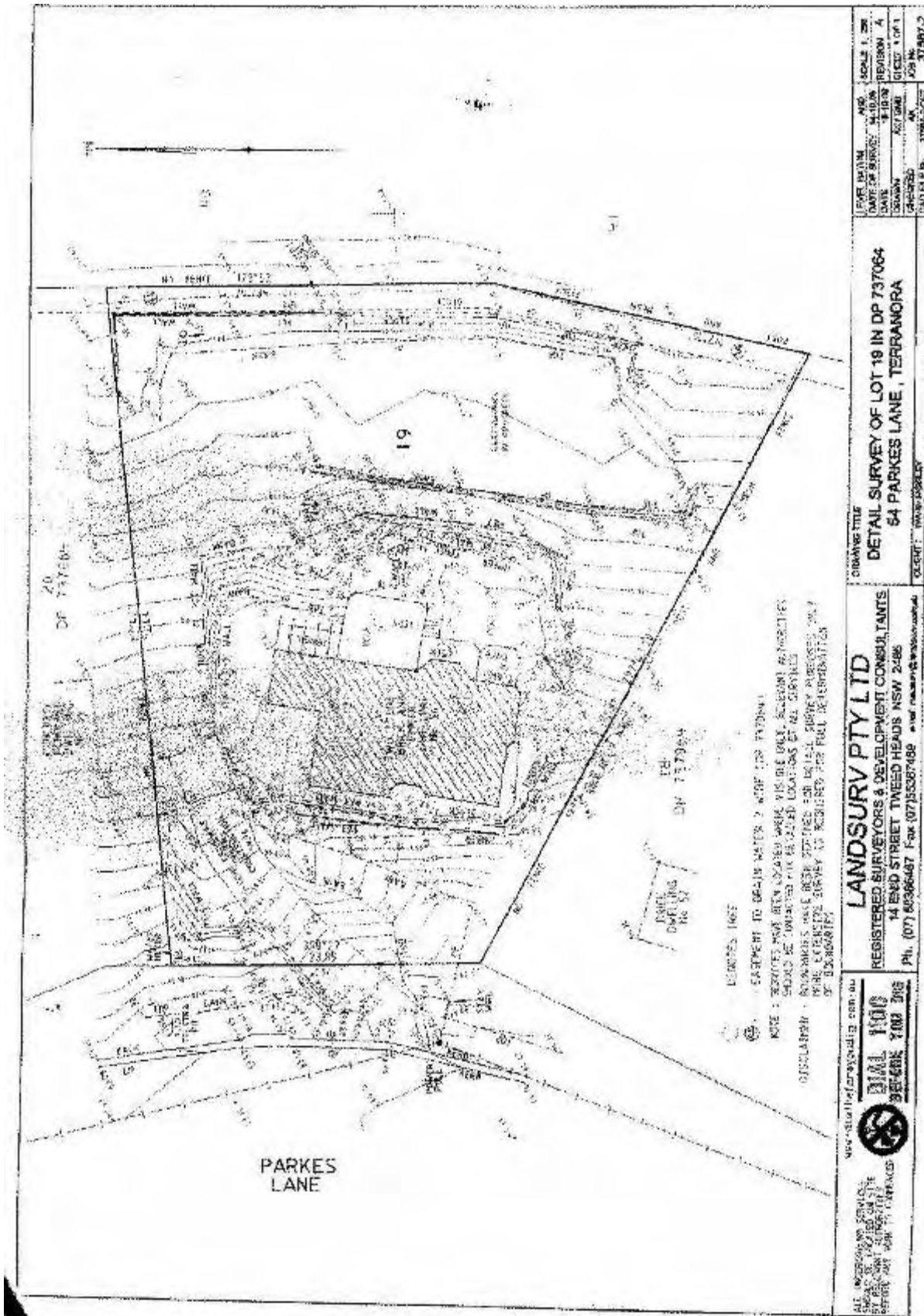
G. Foran
 16 Cassidy Creek,
 Fogangar N.S.W.
 2488
 Tel: 02 9439 3007 Fax: 02 9439 3008
 Email: info@onsitedesigns.com.au

SHEET No. **3**

SCALE 1:100

2591

Dimensions to be confirmed on S80.
 All construction to comply with the standard Building by-Laws and the Building Code of Australia.
 Easements are returned in full to comply with the S80 BCL.
 Plumbing fixtures are to be set into bearing walls. All plumbing and plumbing fixtures to be water sealed and fixed in accordance with manufacturer's details.
 Provide BPC under storm and wet area wall bases.
 Floor height of habitable rooms to be finished ground level - 225mm Min.
 Surface water to be struck away from the building perimeter within 10m of coastline, provide corrosion resistant sheet metalwork, wall ties, weels and accessories to R3 rating to 5537/00/99 R2 rating between 10m and 100m. Provide permanent ventilation to toilet areas as per (BCA).



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

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process a site visit was made by Council's assessing officer of the subject site and surrounding area. Impacts have been discussed with the applicant, and their building designer.

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal satisfies the aims of the Tweed LEP in relation to the desired outcomes of the plan namely the management of growth in a responsible manner.

Clause 5 - Ecologically Sustainable Development

The proposal satisfies the principles of this clause as there will be no anticipated serious or irreversible environmental damage likely as a result of the proposed development.

Clause 8 - Zone objectives

The subject site is zoned 1 (c) Rural Living. The primary objective of the zoning is:

- to enable rural residential development in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.
- to provide rural residential development of a design integration, quality and scale compatible with, and making a positive contribution to, the character of the rural area in the vicinity.

This relates to the provision for rural residential development without adversely affecting the rural character and amenity of the area. The proposed development is consistent with the primary objective of the zone.

The secondary objective of the zone is:

- to enable other development that is compatible with rural residential development

The secondary objective relate to allow some diversity of land uses provided it achieves design outcomes compatible with the primary objectives. The proposed development is consistent with the secondary objective of the zone.

Cumulative Impacts

The proposed outbuilding at two storeys is not consistent with other outbuildings in the area. However the proposal is unlikely to have an unacceptable cumulative impact on the community, locality or area of the Tweed as a whole.

The cumulative weight of objections from the surrounding properties is considered to be relevant and it is considered that the design has addressed reasonably the main collective concerns of bulk and scale and privacy by the design of the outbuilding. The eastern elevation which faces towards Market Place appears to be predominantly single storey due to the first floor component being a mezzanine which has been located towards the western side. Also this outbuilding will comprise of blockwork walls and a colorbond roof. A condition will be included requiring that the walls and roof will be of a finish/colour which will be sympathetic with the immediate rural residential environment. Also whilst there is significant mature trees located in properties around the subject development a condition will be included requiring that the setback areas around the outbuilding are landscaped as indicated on the submitted site plan with trees/shrubs of suitable characteristics which will lessen the impact of the development upon the surrounding properties.

Clause 15 - Essential Services

The site has access to essential services including water supply, electricity and telecommunications. The site has its own on-site sewerage management.

Clause 16 - Height of Building

The proposed development consists of a two storey outbuilding which has a maximum height of 6.5m.

Clause 17 - Social Impact Assessment

Normal domestic impacts can be anticipated from the proposed development. These impacts are not anticipated to have any significant impact on the existing amenity of the area or the existing streetscape other than what could be reasonably expected. The applicant in the statement of environmental effects considers that the building is suitably sized and designed to ensure that the amenity of the locality is preserved.

Clause 35 - Acid Sulfate Soils

The allotment is identified as being class 5 and as the proposal involves minimal excavation no specific requirements are required.

Other Specific Clauses

There are no other relevant clauses which are applicable to this proposal.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Wetlands or Fishery Habitats

The proposed development will not adversely affect any nearby river or stream, coastal or inland wetland or fishery habitat area.

Clause 29A: Natural areas and water catchment

The proposed development includes an erosion and sediment control plan will be implemented which will successfully contain on the site any erosion or sediment caused by the proposed development.

SEPP No. 1 - Development Standards

Not applicable.

SEPP No 71 – Coastal Protection

The subject site falls outside the coastal zone as identified under SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

The Applicant has provided a valid BASIX certificate for the proposed development in accordance with the legislation and the plans.

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

Not applicable.

(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.

Section A1 of the DCP is divided into two chapters.

Chapter 1 Building Types

The Building Type proposed is 'Housing'.

The DCP describes that housing developments generally contain up to two storeys and goes on to set the minimum and maximum standards required for this Building Type.

The DCP envisages primarily up to two storeys but does not prohibit three storeys, although it follows, that they demonstrate compliance with the mandatory controls of the DCP and must be permissible by the number of storeys permitted by the Local Environment Plan 2000 for the locality.

The proposal meets generally the mandatory controls of the DCP and specifically for chapter 1 as outlined below.

Objectives:

- To be well designed and attractive.
- To be of an appropriate scale relative to the existing or desired future pattern of development.
- To provide landscaped and deep soil areas on the lot.
- To provide amenity for residents without compromising the amenity of neighbouring properties.
- To address the street and to make a positive contribution to its established or envisaged streetscape character.
- To maximise the sustainability of the building during its lifecycle.
- To minimise the impact on the natural environment.
- To minimise the impact on the natural landscape through inappropriate or unnecessary cut and fill.

Controls

- a. Dwelling houses in existing urban areas must be consistent with the scale and character of surrounding dwelling houses or as envisaged through an adopted concept plan, locality plan, design statement or the like.
- b. In new subdivision areas dwelling houses are to be designed to conserve any natural landscape features of the site and surrounding area.
- c. In new subdivision areas dwellings must be consistent with any design scheme adopted for that subdivision.
- d. Deep soil areas are to be provided to the front and rear of sites in accordance with this Part.
- e. Entrances are to be clearly visible from the street, where the allotment has a street frontage, and there is to be a clear line of access to the building from the street.
- f. Dwelling houses are to meet the controls as set out in this Part A: Site and Building Design Controls.
- g. Dwelling houses on non urban zoned land shall not, for the purpose of this Plan, be restricted to the deep soil zone, setback and carport, garages and

outbuildings controls where it is demonstrated that compliance with a particular control would be unreasonable in the circumstances.

Chapter 2- Site and Building Design Controls

Design Control 1-Public Domain Amenity

The proposed development by definition is a two storey outbuilding which is within an existing rural residential area. The adjoining properties consist of single and two storey dwelling houses with related agricultural structures. The existing vegetation on the surrounding properties should assist in screening the dwelling house from the Market Parade. Notwithstanding a condition will be included requiring that the setback areas around the outbuilding are landscaped as indicated on the submitted site plan with trees/shrubs of suitable characteristics which will lessen the impact of the development upon the surrounding properties. The height and location of the development will not significantly diminish the public views to any heritage items, dominant landmarks or public buildings from public places.

Accordingly it is considered inappropriate to have the building redesigned.

Streetscape and Public Views and Vistas

No public views or vistas will be affected by the proposal. It is considered that the height and location of the development will not adversely obscure views of major natural features such as the water, ridgelines or bushland from public places. The topography of the site, coupled with the existing vegetation, lack of public viewing areas and the allotment size will not result in the development obscuring public view corridors.

Design Control 2 -Site Configuration

Deep soil zones (DSZs)

The subject site is in a rural residential area and therefore the provisions of the DCP allow for the DSZ requirements to be disregarded. Notwithstanding there is adequate area at the front and rear of the development to accommodate adequate deep soil zones.

Impermeable Site Area

The impervious area of the development is 782m² which equates to 2.6% of the site which is well within the acceptable range and satisfies the provisions of the DCP. This will allow adequate area to enable water to infiltrate the site.

External Living Areas

The proposed development comprises of external living areas and decks which are located more than 4 metres from the property boundaries therefore not requiring privacy screens.

Landscaping

The site is in a non urban locality with an area of 2033m² with the building being setback approximately 35m from Parkes Lane. The natural features of the existing environment provide more suitable enhancement to the site. The submitted site plan indicates landscaping to the southern, eastern and northern sides of the development. A condition will be included requiring the submission of a detailed landscaping plan indicating species and densities which should reduce the impact of the development upon the surrounding properties. This will improve the amenity of the area and further minimise any possible visual impact from the development.

Topography, Cut and Fill

The property is irregular in shape containing an existing small two storey dwelling house with attached double garage and a swimming pool. The property falls to the rear having a grade of approximately twenty five percent.

No cut or fill is proposed. The location of the two storey outbuilding is over an existing flat area which requires no further cut and fill. The existing unauthorised retaining wall at the rear of the property varies in height from 1m to 1.4m. The majority of the wall is 1m high. It is setback a minimum of 2.5m from the rear boundary. The provisions of this design control provide that retaining wall cannot exceed 1.2m. As part of the wall is at 1.4m a variation is requested. Generally the retaining wall will not significantly change or alter the natural fall of the land as it still falls to the rear. In addition there are significant areas of open space and established landscaping that will control and detain stormwater on the site. The variation is considered to be negligible. The wall is setback 2.5m from the rear boundary which complies with the minimum allowed at 1.5m.

Design Control 3 -Setbacks

The DCP contains the following requirements relating to building setback:

- a. Dwelling Houses are to be setback 6 metres from the street boundary.
- b. On corner allotments the setback along the secondary street (the street to dwelling has its secondary frontage) is 3m.
- c. In older established areas and on infill sites Dwelling Houses are to be consistent with the setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings on either side. This setback can be varied up to plus or minus 1m.
- d. Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front facade.
- e. Council may approve the erection of a dwelling or garage, which does not comply with the required building line setback in circumstances, outlined elsewhere within this document, or where –
 1. The levels, depth and shape of the allotment, or
 2. The exceptional conditions of the site such as excessive grades or slope, make it necessary or expedient to do so, and:

- the proposal will not affect the amenity of adjoining properties,
- no valid objections are received from adjoining property owners,
- the proposal will not create an unwanted precedent to the vicinity,
- the structure is located a minimum of 900mm from the side boundary of the property,
- the proposal will not impede on the required pedestrian and traffic sight lines.

The proposed outbuilding will be setback a minimum of 11m from the southern side boundary, 16m from the northern side boundary, 7m from the rear boundary and 35m from the front boundary which satisfies the minimum setback requirements of this design control. Therefore the proposal fully complies with this design control and needs no further consideration.

Design Control 4 -Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP.

As the site has an area of 2033m² more than adequate area will be available for off street car parking. The proposal does not generate the need for additional parking. The new outbuilding will provide undercover vehicular protection as the existing double garage attached to the existing dwelling house is proposed to be converted into a bedroom. Existing vehicular access arrangements to the site will remain unchanged and is considered to be satisfactory. The existing driveway will be extended to the proposed addition. However a garage is proposed to the ground floor of the two storey outbuilding. The garage is located at the rear of the site behind the existing dwelling so raises no streetscape issues in respect of Parkes Lane and complies. It is to be noted that the impact of the development upon Market Parade has been discussed elsewhere in this report.

Design Control 5 -Height

The existing dwelling house is consistent with the Design Control for Building height. As such a variation is requested for Design Control 5 - Height,

The relevant design controls are listed as:

- a. 9 m is the maximum overall building height for Dwelling Houses.
- b. 8.5 m is the maximum wall plate height for Dwelling Houses

The proposal is for a two storey outbuilding with a maximum height of 6.5m so complies. It is to be noted that there are no height requirements in design control 9 relating to outbuildings in non-urban zoning.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The proposed mezzanine has a ceiling height exceeding 2.4m.

Design Control 6- Building Amenity

Due to the circumstances of the site being a moderate sized non urban property it is considered that the development will achieve compliance with the objectives and controls for sunlight access, visual privacy, acoustic privacy, view sharing and natural ventilation.

Access

The proposed two storey outbuilding is to be setback 7 metres from the eastern rear boundary and 11 metres off the southern side boundary. The proposal includes private open space by the provision of decks orientated to the north and therefore will receive sufficient access to sunlight. Due to the nature of the rural area and the building setbacks shadow diagrams have not been included as no other properties will be adversely affected by a loss of sunlight.

Visual Privacy

Due to the size of the rural allotment and the location of the proposal and the physical separation to surrounding dwelling houses overlooking of adjoining properties will be negligible.

The proposed building generally complies with the objectives of this control.

Acoustic Privacy

The sound insulation of this design complies with the objectives of this control and a suitable condition on the consent will be imposed to control air conditioning and other mechanical equipment.

View Sharing

The proposal satisfies this control as each of the neighbouring properties has its own exclusive opportunity to the views from their properties.

Natural Ventilation

The design complies with this control.

Building Orientation

The outbuilding has been sited on the property to optimize views and complies with the objectives of this control.

Building separation

The proposed building has been sited with adequate boundary setbacks and is therefore considered that this control has been satisfied.

Design Control 7 – External Building Elements

Fences and Walls; Front, Side and Rear

There are no fences proposed in this application.

Roof

The roof satisfies the objectives of this section in that it contributes to the contemporary appearance of the building and will provide insulation to the internal spaces.

The design of the roof is consistent with the design requirements. A condition regarding the implementation of non-reflective roof materials has been included in the conditions.

Design Control 8 -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.

Design Control 9- Outbuildings

The proposed development includes the erection of a two storey outbuilding comprising of a garage on the ground floor and a mezzanine level to be utilised as a rumpus with bathroom facilities. It is to be noted whilst this control includes maximum areas, ridge height and eave height these are only applicable to properties having an urban zoning. Due to the zoning of this particular property the design of the outbuilding is to be consistent with the use of the land.

The design and materials used are to be generally consistent with those of the dwelling house, except where it is demonstrated that an alternative provides a better environmental outcome without compromising the general character of the dwelling and surrounding area. Development that will not be visible from the street and that will not unreasonably impact on any neighbouring property may vary the design and material of construction from that of the existing building notwithstanding any material change in character. Also reflective surface finishes are to be avoided. The design of the outbuilding does differ to that of the existing dwelling house however the proposed development is to be located at a lower level and there is the opportunity to lessen the impact by imposing conditions requiring external wall and roof finishes being sympathetic with the rural residential environment and requiring that the setback areas between the building and respective boundaries be landscaped with suitable species which will reduce the impact from the development.

In addition approval is sought for on existing unauthorised retaining wall near the rear boundary which measures 1m to 1.4m in height and is 35m long. No objection is raised to the retention of this structure and approval of the building certificate application is recommended.

Design Control 10- Swimming pools and spas

There is an existing in-ground swimming pool.

Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application

Design Control 12 - Floor Space Ratio (FSR)

As the site has an area of 2033m² the proposal more than satisfies the floor to space ratio requirements. The existing dwelling house and proposed development has a site coverage of 400m² which translates to less than 20% of the site.

A2-Site Access and Parking Code

The proposed development satisfies this control.

A11-Public Notification of Development Proposals

In accordance with A11 the subject application was advertised and five objections were received which are discussed in detail later in this report.

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

Clause 92(a) Government Coastal Policy

The site is located outside a coastal zone and notwithstanding it is considered unlikely that the nature and scale of the proposed development will have any detrimental effects in this location.

Clause 93 Fire Safety Considerations

None required

Clause 94 Buildings to be upgraded

A condition will be included requiring that the existing dwelling house be provided with smoke alarms in accordance with the BCA.

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

Context and Setting

The land has an area of 2033m² with frontage to Parkes Lane. The land falls from the street and existing improvements include a dwelling house and pool. The land is also bound by similar sized residential lots. The design, scale and appearance of the two storey outbuilding are considered to be reasonable given the site characteristics and its rural residential location subject to the imposition of conditions in regard to landscaping and external colours/finishes.

Access, Transport and Traffic

Minimal impact is envisaged.

Flora and Fauna

No significant impacts anticipated as a result of the development.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposal is not inconsistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing rural residential area and utilities of power and telecommunication are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the outbuilding is of a larger scale than what currently exists in the immediate locality, however it is considered that the impact of the development upon the surrounding properties can be minimised by the imposition of conditions in regard to landscaping and external colours/finishes.

Topography

The outbuilding is to be located on a portion of the site that has been levelled previously and will be connected to the existing dwelling house via suspended timber decks due to the topography of the site.

Site Orientation

The active living areas being the timber decks have been oriented to the north to take advantage of solar access.

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

In accordance with Council's notification policy adjoining property owners were notified of the proposal and in response only five objections were received to the proposal.

Each objection and a response are listed as follows:-

- *The proposal has been defined by the applicant as an addition to the dwelling but is quite clearly only connected by a covered walkway therefore is a separate dwelling.*

Response – Whilst this objection is a correct interpretation, it is considered that the proposal is predominantly a two storey outbuilding. Subsequently the applicant's consultant has amended the statement of environmental effects.

- *The statement of environmental effects states "It is considered that the design, scale and appearance of the additions will compliment the existing dwelling and is generally consistent with the established and desired built form and residential character of the residential locality" This is incorrect as*

the structure will dominant the streetscape of Market parade and the external cladding being colour bond is not consistent with the established character of the area.

Response – The development will compliment the existing dwelling house, however the outbuilding does have the potential to impact upon the streetscape of Market Parade. The eastern elevation of the outbuilding presents itself to Market Parade predominantly as single storey due to the reduced eave height in response to the mezzanine being located to the opposing western side. Also there are sufficient setback areas for suitable screen landscaping, together with the colours of the roof and walls being sympathetic with the immediate environment should minimise any impact.

- *The size and design of the structure will detract from the local amenity (especially in market parade) which is semi rural acreage living.*

Response – It is considered that the impact of the development upon the surrounding properties can be minimised by the imposition of conditions in regard to landscaping and external colours/finishes.

- *The unauthorised retaining wall is too high, an eyesore, a blot on the landscape and has a negative effect on the neighbourhood. The wall overshadows my property (6 market parade) and is very unsightly when viewed from my garden.*

Response – .The retaining wall runs north south and any overshadowing is considered minimal. The site plan included with the application indicates that the setback areas around the wall and outbuilding are to be landscaped which should minimise any impact. A condition in this regard will be included.

- *The size of the garage is excessive and is not in keeping with the size of the existing dwelling and surrounding properties.*

Response – Whilst the outbuilding is not consistent with those of the immediate neighbourhood Design Control 9 does not set limitations in respect of heights and area as opposed to urban properties. As mentioned previously any impact can be reduced by appropriate landscaping and external colours/finishes being sympathetic to the rural residential environment.

- *The building has the potential to be used for commercial purposes especially as the owner operates a Plumbing Company. The design of the two storey outbuilding lends itself to be easily converted into a second dwelling.*

Response – This objection is noted and in keeping with Councils' procedures relating to any garage/outbuilding a condition would be included stating that such building is not to be used as a separate domicile, commercial or industrial activity.

- *The proposed building works will have minimal effects upon Parkes Lane But will have a significant negative effect upon Market Parade. There is no mention of external cladding materials which may be steel colorbond and*

therefore a visual blot on the landscape from the end of Parkes Lane and Market Parade and therefore a loss in property values. .

Response – The outbuilding is proposed to be constructed of blockwork walls with a colorbond roof. As mentioned previously any impact can be reduced by appropriate landscaping and external colours/finishes being sympathetic to the rural landscape. Also there is no evidence submitted as to whether or not such development will result in a loss of property values.

- *Retaining walls in this area are made of natural stone not concrete blockwork and therefore out of character*

Response – It is correct that most retaining walls in Terranora have been built of natural stone however we are not in a position to prohibit blockwork retaining walls, especially as an engineers certificate of structural adequacy has been submitted and the proposal includes the setback areas to be landscaped which should minimise any impact.

- *The retaining wall has caused concentrated stormwater flows.*

Response – The subject property is benefited by a drainage easement. Accordingly a condition of consent will be included requiring that roofwater and surface water be connected to this easement.

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

1. Council resolves to approve the development application subject to conditions and approval the building certificate application.
2. Council resolves to refuse the development application.

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 which would incur financial costs to Council in defence.

Should the application be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application would incur financial costs to Council in defence.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

On balance the assessment of the relevant planning matters, it is considered that the proposed development is suitable for approval, subject to conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

- 17 **[PR-CM] Development Application DA10/0495 for a Smash Repair and Tow Truck Business (Holding Yard) at Lots 3 and 4 SP 75111, No. 3/23 and No. 4/23 Enterprise Avenue, Tweed Heads South**

ORIGIN:

Development Assessment

FILE NO: DA10/0495 Pt1

SUMMARY OF REPORT:

Council has received a development application for a smash repair and tow truck holding yard business (Enterprise Collision Centre) in Units 3 and 4 within an established industrial development in Enterprise Avenue, Tweed Heads South.

The combined Gross Floor Area (GFA) of Units 3 and 4 is approximately 672m², inclusive of two (2) 44m² mezzanine levels at the front of each unit.

The proposed hours of operation are 7.00am to 5.00pm Monday to Friday and 7am to 11am on Saturdays. The applicant has advised that works on vehicles will generally occur between 7am and 3.30pm Monday to Friday however the premises will be open for pickups, quotes and cleaning of the workshop until the approved closing times.

The application has been reviewed by Council's Building Surveyor and Environmental Health Officer and appropriate conditions have been applied by each officer, particularly with regard to matters raised in a number of objections submitted by an adjoining owner.

Conditional approval of the application is recommended.

The application is being reported to Council at the request of Councillor Milne.

RECOMMENDATION:

That Development Application DA10/0495 for a smash repair and tow truck holding yard at Lot 3, 4 SP 75111, No. 3/23 and 4/23 Enterprise Avenue, Tweed Heads South be approved subject to the following conditions:

GENERAL

- The development shall be completed in accordance with the Statement of Environmental Effects and plans as follows, except where varied by the conditions of this consent:**

Title	Dated	Submitted to Council
Site Plan - Units 3 and 4	23 August 2010	23 August 2010
Floor Plan (Issue A - as amended in red)	July 2010	28 September 2010

[GEN0005]

2. Future advertising structures/signs to be the subject of a separate development application (where statutorily required).

[GEN0065]

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

[GEN0115]

4. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[GEN0190]

5. No tow trucks are permitted to be stored or held at the premises or onsite.

6. No smashed or wrecked cars are to be stored or held within the road reserve or within the car park area.

7. All vehicles undergoing repair work shall be held entirely within Units 3 and 4 at all times.

[GENNS01]

8. Signage is not permitted to be illuminated at any time or by any means.

9. No retailing of any description is permitted from the subject site.

[GENNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

10. 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]

11. An application for a Building Certificate together with the prescribed fee is to be submitted to Council for all building works carried out without development consent, prior to the issue of an occupation certificate.

[POCNS01]

USE

12. 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]

13. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

[USE0145]

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

* 7.00 am to 5.00 pm – Mondays to Fridays

* 7.00 am to 11.00am - Saturdays

* No operations are to be carried out on Sundays or Public Holidays

*** All waste collections, deliveries and pickups relating to the business are to occur within the approved hours**

[USE0185]

15. A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[USE0395]

16. The use being restricted to the floor area designated on the approved plan.

[USE0415]

17. No items or goods are to be stored or displayed outside the confines of the premises.

[USE0445]

18. All trade materials, product and plant to be kept within confines of the building at all times.

[USE0515]

19. All loading/unloading to take place within the boundary of the subject property.

[USE0525]

20. All commercial / industrial wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.

[USE0875]

21. The premises shall be maintained in a clean and tidy manner at all times.

[USE0965]

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

[USE1035]

23. All containers, whether or not empty, which contain or once contained potentially contaminated materials, mechanical parts and the like shall be stored to the satisfaction of Council's General Manager or his delegate.

[USE1045]

24. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate. No pollutants are permitted to exit the workshop where they may enter Council's stormwater drain.

[USE1055]

25. All bulk waste collection activities shall occur within the property boundary.

[USE1345]

26. All spray painting must be undertaken within a WorkCover NSW approved spray booth that has an exhaust fan and filter. The spray booth must be designed, constructed and maintained in accordance with AS 4114.1 and 4114.2.

[USENS01]

27. All damaged, smashed or wrecked cars are to be held within the confines of the building only.

[USENS02]

28. 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:

-

- **Roofed; and**
- **Provided with a sealed floor.**

[USENS03]

29. The repair and servicing of air conditioners is not permitted at the site.

[USENS04]

REPORT:

Applicant: Mr KB O'Rourke
Owner: Alpha Building Corporation Pty Ltd
Location: Lots 3 and 4 SP 75111 No. 3/23 and No. 4/23 Enterprise Avenue, Tweed Heads South
Zoning: 4(a) Industrial
Cost: \$15,000

BACKGROUND:

On 8 April 2004, Development Consent DA03/1855 was granted for the erection of a factory/industry building known as "Enterprise". The development is comprised of 23 industrial units and 131 car parking spaces.

The main car parking area and pedestrian entry is provided on the southern side of the building adjacent to Enterprise Avenue.

The western building, known as Building A, contains Units 1 - 15, while Units 16 - 23 are located within the eastern building, known as Building B. The two structures are separated by the main central driveway, which provides access for delivery vehicles to the individual loading bays on the northern side of the building.

Council has received a development application for a smash repair and tow truck holding yard business (Enterprise Collision Centre) in Units 3 and 4 within the Enterprise development. This application (DA10/0495) is the subject of this report.

The subject development has previously been approved and carried out from within Unit 15 under Development Consent DA05/0971, however the lease for Unit 15 has expired and the applicant has secured body corporate consent to move the business to Units 3 and 4 (subject to Council consent).

The combined Gross Floor Area (GFA) of Units 3 and 4 is approximately 672m², inclusive of two (2) 44m² mezzanine levels at the front of each unit.

Each unit contains a small kitchenette, roller door and male and female amenities. In addition to these existing facilities, each unit shall contain the following:

Unit 3

- Three vehicle alignment systems
- Reception and office at the ground floor, under the mezzanine level

Unit 4

- Prefabricated spray booth
- Paint store room at ground floor, under mezzanine level
- Wall mounted dust extraction system

Development Consent DA05/0971 (for operation of the business within Unit 15) was limited by conditions prohibiting the storage of a tow truck at the site and prohibiting the storage of

smashed or wrecked cars within the road reserve. Similar conditions have been applied for this application.

The proposed hours of operation are 7.00am to 5.00pm Monday to Friday and 7am to 11am on Saturdays. The applicant has advised that works on vehicles will generally occur between 7am and 3.30pm Monday to Friday however the premises will be open for pickups, quotes and cleaning of the workshop until the approved closing times.

The applicant has advised that two signs (the same as those used previously for Unit 15) will be utilised for each unit (i.e. four (4) signs in total). The business identification signs are consistent with the size and maximum number of signs (5) for business premises prescribed by DCP A4.

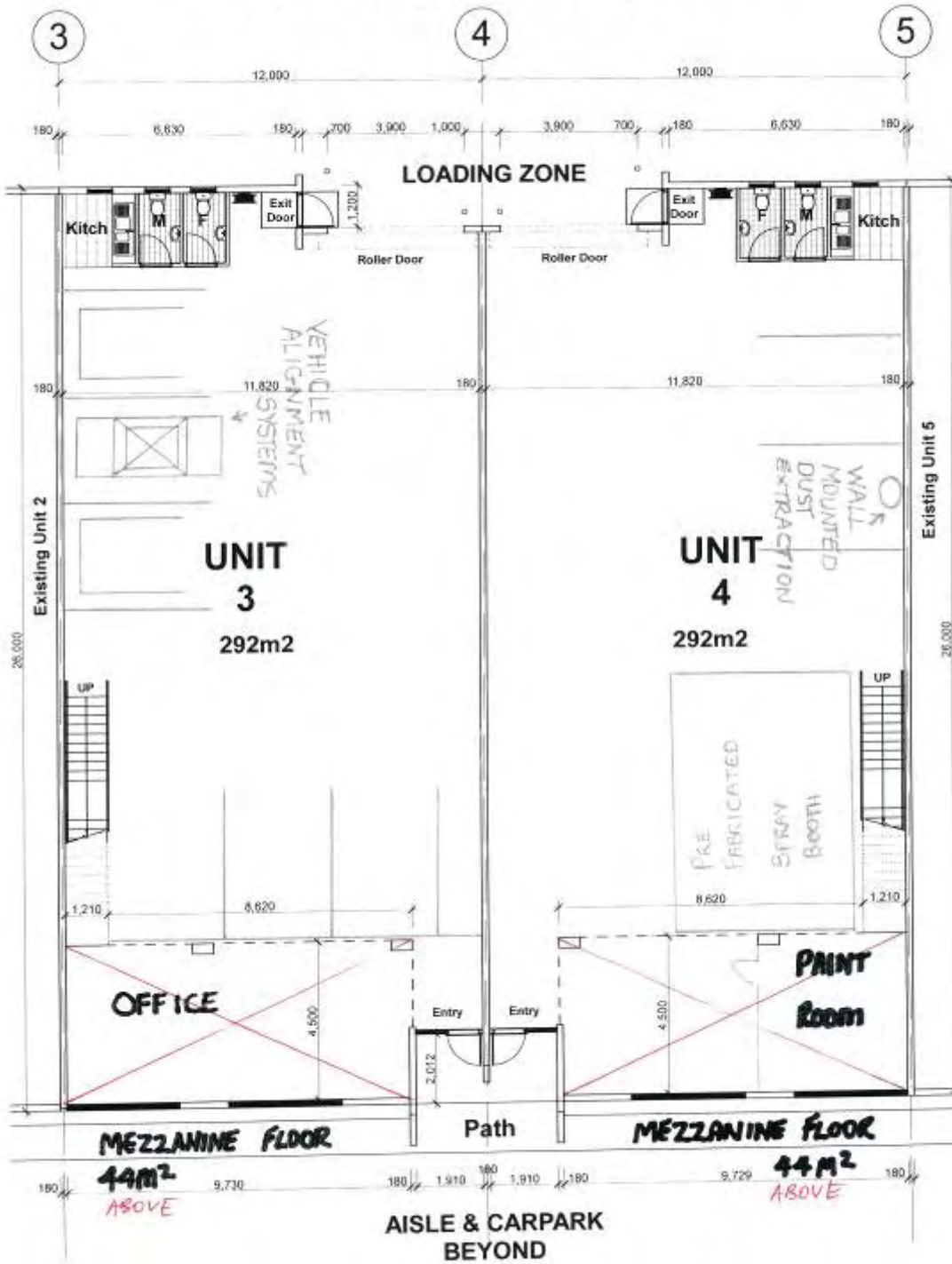
A number of submissions were received during the assessment process from the owner of adjoining Unit 2. These submissions (objections) are addressed in detail further in this report. The application is being reported to Council due to being called up by Councillor Milne after the owner of Unit 2 spoke at the Community Access Meeting of 16 September 2010.

The application has been reviewed by Council's planning, environmental health and building services staff.

It is noted that Council's Building Surveyor previously applied conditions relating to a Construction Certificate. As the fit out has been completed prior to consent being issued, a construction certificate can no longer be issued. The applicant will be required to obtain a Building Certificate for the completed works.

DEVELOPMENT PLANS:

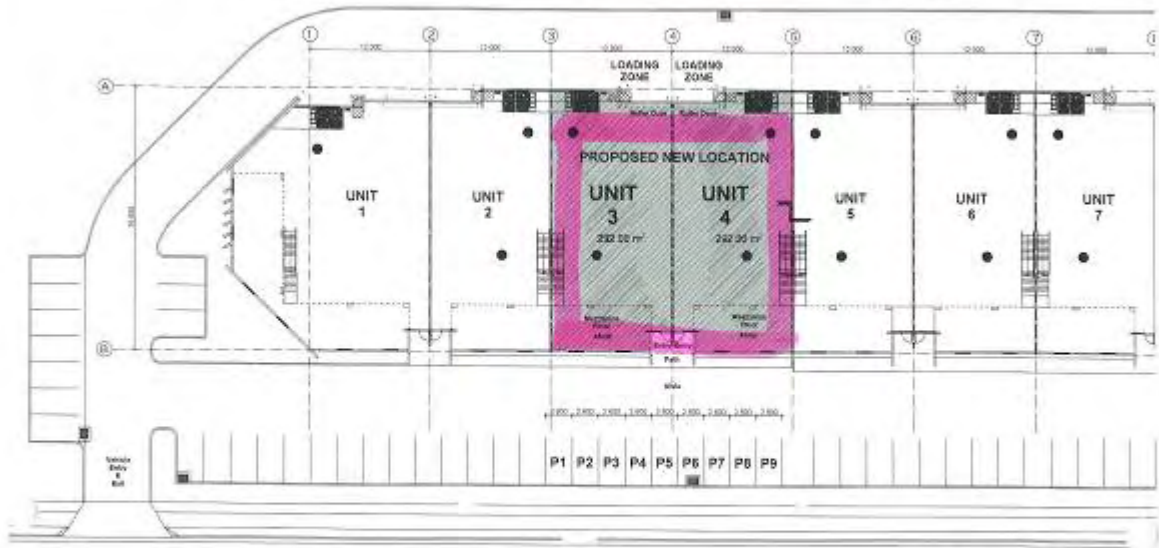
UNITS 3 & 4 ENTERPRISE AVE



FLOOR PLAN
1:100

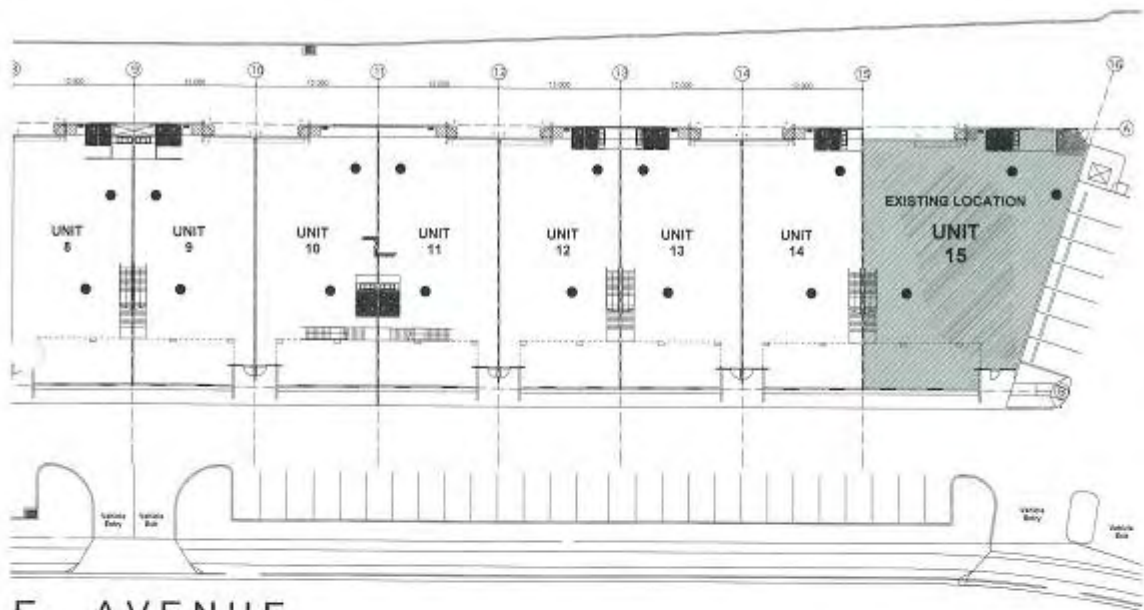
Date: July 2010
Issue: A - DA Approval

UNITS 3 & 4 -- ENTERPRISE AVE -- 23 Aug 2010



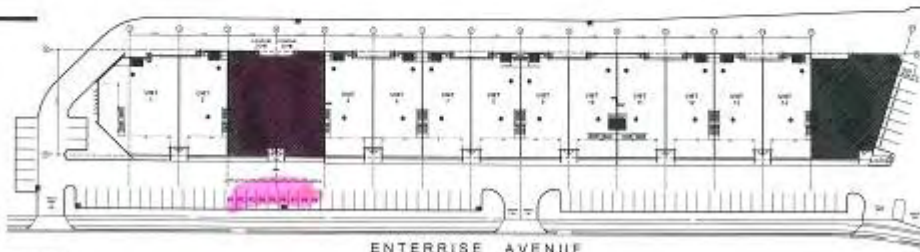
SITE PLAN
1:200

ENTERRIS



E AVENUE

SITE PLAN
1:200



SITE PLAN
1:500

ENTERPRISE AVENUE

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 development application is in keeping with the aims of the plan in that the proposed development is located in a dedicated industrial area and promotes economic activity whilst maintaining the environmental qualities of the area.

Clause 5 - Ecologically Sustainable Development

The proposal does not contravene the principles of ecologically sustainable development due to its relatively minor nature and location in a dedicated industrial zone.

Clause 8 – Consent Considerations

The consent authority may grant consent to development only if:

- a) it is satisfied that the development is consistent with the primary objectives of the zone within which it is located, and
- b) it has considered those 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.

The subject proposal is consistent with the primary objective of the zone, being a permissible use within the 4(a) Industrial zone. The proposal is considered to be consistent with the aims and objectives of the TLEP 2000 as it facilitates the ongoing operation of an existing established business in a zone dedicated to similar 'industrial' development. The proposed development is a desired development type within the 4(a) Industrial zone, due to the unsuitability of such a use in any other location (note – light industry is also permissible in the 3(c) Commerce and Trade zone). The proposal is relatively minor and permissible in the zone and is not considered likely to have any unacceptable cumulative impacts. Approval of this application will not set a precedent due to the permissibility of the use.

Clause 11 – Zone objectives

The objectives of the 4(a) Industrial zone are as follows:-

“Primary objectives

- *To provide land primarily for industrial development.*
- *To facilitate economic activity and employment generation.*

Secondary objective

- *To allow non industrial development which either provides a direct service to industrial activities and their workforce or which, due to its type, nature or scale, is inappropriate to be located in another zone.”*

The proposed smash repair business utilises the subject site for industrial (albeit light industrial) purposes. This is consistent with the first primary objective. The proposal will enable the ongoing viability of an existing productive business, which employs approximately eight persons. This is consistent with the second primary objective. With respect to the secondary objective, it is noted that the proposed development would be unsuitable for any other zone (with the exception of the 3(c) zone which permits light industrial development). Subsequently, it is considered in the best interests of the community that a smash repair business is located with similar businesses in a dedicated industrial zone. As such, the proposal is also considered to be consistent with the secondary objective.

The proposal is consistent with Clause 11.

Clause 15 - Essential Services

All essential services are available at the subject site. The subject application makes no additional demand on services.

Clause 16 - Height of Building

The application is for an internal fitout only and makes no changes to the approved height of the building. It is noted that the subject site is covered by a 3 storey height limit which is not exceeded by the proposed development.

Clause 17 - Social Impact Assessment

The nature and scale of the proposed development does not warrant the preparation of a Social Impact Statement as no significant social or economic impacts are envisaged, aside from ongoing employment and economic returns for the business.

Clause 35 - Acid Sulfate Soils

The subject site is affected by Class 2 and Class 5 acid sulfate soils. The proposed development is for an internal fitout only and does not require any excavation or disturbance of the natural ground level.

Other Specific Clauses

Clause 22 – Development Near Designated Roads

The site on which the existing premises is constructed has frontage (rear) to the Pacific Highway which is a designated road, though no access is achievable.

The proposed use of the building will not alter access arrangements; lighting or visual impacts and is not sensitive to road traffic noise. It will not result in excess traffic generation, create traffic hazards or reduce the capacity or efficiency of the Pacific Highway. As such, the proposal is considered to be consistent with Clause 22.

Clause 32 – Aircraft Noise

The subject land is located within the 20 – 25 contours on the ANEF map. This rating has no ramifications for industrial development on the site as it is not development which is 'sensitive' to road traffic noise listed in Clause 32. The proposal does not contravene Clause 32.

Clause 34 – Flooding

The site is covered by the Probable Maximum Flood (PMF). Given the proposed development is for the fitout and use of a unit within an existing approved factory development it is considered that the application satisfies Clause 34 of the TLEP. Flood free storage is available on the mezzanine level if required.

Clause 47 – Advertising Signs

Two advertising signs are proposed (1 for each unit) which are located on the existing signage panel above the entry to each Unit (consistent with all other units). The signs are 'business identification signs' measuring approximately 1m (high) x 4m (wide).

With respect to the matters prescribed by Clause 47, the signage is considered to be consistent with the objectives for outdoor advertising as it is clear, legible and consistent with surrounding signage. The signage is not illuminated and will not adversely affect the locality in terms of size nor create any adverse impacts with regard to the visual appearance of the building. The number of signs (2) is not excessive and is not considered to contribute to visual clutter or detract from any scenic qualities of the area.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 47 Principles for Commercial and Industrial Development

This clause outlines that land used for industrial and commercial development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. Given the proposed fit out is within an approved factory complex, with well established links to the road transport system it is considered that the proposal is consistent with Clause 47.

SEPP No. 14 - Coastal Wetlands

The subject land is located approximately 50m east of a mapped SEPP 14 wetland. The proposed development does not seek to conduct any of the activities

listed in Clause 7 or 7A on lands mapped under SEPP 14. The development does not contravene the provisions of SEPP 14.

SEPP No. 33 - Hazardous and Offensive Development

The proposed development does not meet the definitions of 'potentially hazardous industry' or 'potentially offensive industry' prescribed by the SEPP. As such, SEPP 33 is not applicable to this development application.

SEPP No. 64 – Advertising and Signage

The proposed development incorporates two (2) advertising signs as business identification.

Each sign is the same as that previously located at Unit 15 and measures 1m x 4m (4m² advertising area each).

Schedule 1 of the SEPP prescribes assessment criteria for signage. The proposed signage is considered to be consistent with Schedule 1 due to its location in an established commercial/industrial area, its consistency with surrounding signage and its minor nature (flush wall sign, no illumination). With particular regard to Schedule 1 of the SEPP, the signage is:

- Compatible with the existing and desired future character of the locality;
- Consistent with the theme of outdoor advertising in the area;
- Does not detract from the amenity of any special areas;
- Does not compromise views or dominate the skyline
- Is sited and designed in such a manner so as to respect the viewing rights of other advertisers;
- Is consistent in terms of scale with the streetscape and surrounding advertising;
- Is consistent with the scale and proportion of the existing industrial building;
- Does not contain illumination and is a relatively 'simple' signage structure; and
- Is not considered to reduce safety of any public road due to its small nature and location in an established commercial area.

The proposed signage is considered to be consistent with SEPP 64.

SEPP No 71 – Coastal Protection

The site is covered by SEPP 71 and is partially identified as a Sensitive Coastal Location. Notwithstanding, the proposed development aims only to make use of a tenancy within an existing large industrial development with minimal perceived ramifications for SEPP 71. However, for completeness, an assessment against the matters for consideration under SEPP 71 is provided below:

- a) *the aims of this Policy set out in clause 2:*

The proposed development is minor and is not considered to contravene any of the aims of SEPP 71 which relate broadly to the protection and management of the natural, cultural, recreational and economic attributes of the New South Wales coast. Specifically, the proposed development will not impact upon visual amenity of the coastal environment, does not require any impacts on native coastal vegetation and will not disturb the marine environment.

- (b) *existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved:*

The coastal foreshore is not located in the immediate vicinity of the subject site and public access is not provided.

- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability:*

The coastal foreshore is not located in the immediate vicinity of the subject site and public access is not provided.

- (d) *the suitability of development given its type, location and design and its relationship with the surrounding area:*

The proposed development is relatively minor, consistent with the zone objectives and shall be contained entirely within an existing building. The design is small scale and the development will maintain the status quo of development at the site.

- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore:*

The coastal foreshore is not located in proximity to the subject site.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities:*

The subject site is not located in the immediate vicinity of the NSW coastline and will have negligible impacts upon the scenic qualities of the coast.

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

The proposed development is not considered to have the potential to impact on measures to conserve animals.

- (h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats:*

The proposed development is not considered to have the potential to impact on measures to conserve fish.

- (i) *existing wildlife corridors and the impact of development on these corridors:*

The proposed development is located within an existing factory and is not considered to impact on wildlife corridors.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards:*

The development is located within an existing established building. Impacts from coastal processes and coastal hazards are considered to be unlikely.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities:*

The site is not located in proximity to any water bodies used for recreational purposes. The development will not create any land use conflicts in this regard.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals:*

To Council's knowledge, the site is not an aboriginal cultural site. The proposed development is located within an existing building and requires no alteration or change to any aspect of the natural environment.

- (m) *likely impacts of development on the water quality of coastal waterbodies:*

Stormwater treatment devices are utilised at the site to treat stormwater prior to its discharge into the environment. Negligible impacts in this regard are envisaged, though more detail with regard to this matter is provided further in this report.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance:*

The proposal is located in an existing building and is not considered to impact upon any heritage, archaeological or historical items.

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities:*

The draft shirewide LEP reinforces the industrial zoning of the site with an IN 1 – General Industrial zone to consolidate areas used for industrial development.

(p) *only in cases in which a development application in relation to proposed development is determined:*

(i) *the cumulative impacts of the proposed development on the environment:*

Subject to conditions of consent, the proposal is not considered to result in any unacceptable cumulative environmental impacts. Further detail is provided in this regard further in this report.

(ii) *measures to ensure that water and energy usage by the proposed development is efficient:*

The proposed development will result in any intensification of use beyond standard 'industrial' use of the site, for which Units 3 and 4 were originally approved.

Based on the above, the proposal is considered to be generally consistent with the provisions of SEPP 71 and the matters of consideration are deemed to be satisfied.

SEPP (Exempt and Complying Development Codes) 2008

The proposed development does not meet the provisions for exempt development change of use (warehouse to light industry – see Subdivision 10A – change of use of premises) due to being located within 100m of a mapped SEPP 14 area.

It is noted that the proposal appears to meet all other requirements in order to constitute 'exempt development' (warehouse to light industry) under the SEPP.

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

The shire wide draft Tweed Local Environmental Plan 2010 zones the subject site IN 1 – General Industrial and prescribes a height limit of 10m. The draft LEP defines the proposed development as light industry, which is consistent with the current LEP.

Light industry remains permissible in the IN – General Industrial zone.

The proposed development would remain consistent with the provisions of the draft LEP.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Under DA03/1855, 131 parking spaces were provided at the site.

Under the provisions of DCP 2, the original application was charged at an industrial development rate of 1 space per 100m² of GFA and an office rate (mezzanine levels) of 1 space per 40m². Accordingly, the original development, which provides for 8,375m² of industrial or warehouse GFA and 1,275m² of office GFA (approx. 15%) required a total of 116 spaces, leaving 15 residue spaces.

On a pro rata basis, 9.4 spaces were available for use by Units 3 and 4 at the time that DA03/1855 was approved, based on the industrial/warehouse and office rates supplied above.

However, DA05/0857 approved the use of Units 3 and 4 for the storage of building materials. Parking was calculated using the current warehouse and office rate as follows:

“ Warehouse Rate – 603.8m² GFA @ 1 space per 300m² = 2.01 Spaces.

- Office Rate – 88m² GFA @ 1 Space per 40m² = 2.2 Spaces.

Total: 4.21 Spaces

Less the 20% concession pursuant to Clause 4.11 of Development Control Plan No. 2 equals 3.68 spaces.

As such, more than ample parking was provided.

The subject application now seeks to change the use back to what was originally approved, being ‘industry’.

A number of development applications have been determined since DA05/0857 changed the use of Units 3 and 4 and many of these have had high parking demands. As such, the following table has been completed which summarises the parking demand of all approved uses at the site and demonstrates that sufficient parking capacity remains for Units 3 and 4 to operate again as ‘industrial’ (i.e. - the ‘surplus’ generated by the change of use of units 3 and 4 from industrial/office to warehouse/office (9.4 – 3.68 = 5.72 spaces) has not been ‘used up’ by other approved development at the centre.

Unit No/s.	Use	Hours of operation	Development Consent	Car parking (on pro rata basis)
1.	Marine Electronics Supply	Not defined – assumed standard business hours, 9am – 5pm PEAK	DA04/1592	7.55m spaces allocated, only 3.42 reqd. SURPLUS OF 4.13
2.	Storage, Distribution and Packaging of Skin Care Products	Not defined – assumed standard business hours, 9am – 5pm PEAK	DA05/0505	5.26 spaces provided, only 3.32 reqd. SURPLUS OF 1.94
3 – 4.	Smash repairs *subject application*	7am to 5.00pm Monday to Friday and 7am to 11am on Saturdays PEAK	DA10/0495 (previously DA05/0857)	9.4 spaces provided based on floor area at ‘industrial’ and ‘office’ rate (mezzanine). 9.4 required based on change back to ‘industrial’ use (8 staff are employed at the business)
5.	Vacant/No record of approval.		---	
6.	Steel manufacturing and Showroom	Not defined – assumed standard business hours, 9am – 5pm PEAK	DA05/0663	5 spaces provided. Use does not change
7.	Vacant/No record of approval.		---	
8.	Vacant/No record of approval.		---	
9.	Vacant/No record of approval.		---	
10.	Cabinetry Business	Not defined – assumed standard business hours, 9am – 5pm PEAK	DA05/1506	4.13 spaces provided, only 3.72 required SURPLUS OF 0.399
11.	Martial Arts Academy	9am to 10pm Monday to Friday 9am to midday Saturday. Traffic report demonstrated 5 onsite spaces sufficient during business hours. No more than thirty-four (34) students are permitted to attend classes prior to 6:00pm Monday to Friday (based on traffic report).	DA06/0265	5 spaces provided. Traffic Engineers satisfied that parking is sufficient given proposed hours of operation. No change to that approved.
12.	Vacant/No record of approval.		---	
13.	Plumbing storage	Not defined – assumed standard business hours, 9am – 5pm PEAK	DA07/1268	4 spaces provided, 4.8 required. REDUCES SURPLUS BY 0.8 SPACES (absorbed by overall site surplus)

Unit No/s.	Use	Hours of operation	Development Consent	Car parking (on pro rata basis)
14.	Indoor Children's Play Centre		DA08/1020	5 spaces allocated on a pro-rata basis. Traffic engineers satisfied parking is sufficient based on applicants justification and conditions. No change.
15.	Previously occupied by Smash Repairs (Enterprise Collision Centre), now moving to units 3 and 4	Vacant	Previously DA05/0971 (smash repairs, now vacant)	5 spaces provided based on floor area. 5 surplus spaces remain as the tenancy is now vacant.
16 – 19.	Reece On-Site Plumbing Storage & Distribution	Not defined – assumed standard business hours, 9am – 5pm PEAK	DA06/1294	23 spaces allocated on pro-rata basis, only 9 required. SURPLUS OF 14 spaces
20 – 23.	In-line Skating Rink	9:00am to 11:00pm Monday to Sunday (typical demand during business hours mainly bus groups with peak demand from 6pm to 11pm).	DA05/0915	25 spaces allocated to units 20-23 on pro rata basis as per applicant's Traffic Report. Traffic engineers satisfied parking is sufficient based on applicants justification. No change.

Based on the above, the total amount of surplus spaces is 34.6. This includes the 15 surplus spaces which were installed under DA03/1855.

It is evident that more than sufficient parking exists for the change of use from a warehouse back to 'industry' for the purposes of a smash repair business.

A3-Development of Flood Liable Land

The site is covered by the PMF (Probable Maximum Flood Level). DCP A3 (Version 1.3) specifies that commercial and industrial development on flood liable land is required to make adequate provision for flood free storage areas for stock and equipment susceptible to water damage. This is available on the mezzanine level of each unit if required.

The proposed development is consistent with DCP A3.

A4-Advertising Signs Code

Two business identification signs are proposed, most consistent with the definition of a 'fascia sign' under the DCP. Each sign measures approximately 1m x 4m (total advertising area of 4m² or 8m² in total).

The DCP specifies that no more than five (5) business identification signs shall be located at any one premise. The proposal remains consistent with this control.

The DCP also specifies a maximum area for signs, based on the frontage of the premises and the following rule: the first 10m of the frontage is multiplied by 1 and each metre thereafter by 0.5. This prescribes the maximum area of signs in square metres.

In this instance, the frontage of Units 3 and 4 is approximately 24.3m. As such, the maximum allowable advertising area is 16.7m $((24.3 - 10) \times 0.5 + 10)$.

The existing signs have an advertising area of 8m² which remains well below the numerical maximum.

In addition, the DCP also prescribes specific development principles and objectives for signage in trade and industrial areas. The existing signage is considered to be consistent with these principles in that:

- It serves as business identification and displays information about the activity conducted on the land;
- It is proportional to the building and scale of the overall development;
- It maintains a reasonably coordinated advertising approach in the immediate area.

The proposed signage (which is existing) is considered to be consistent with DCP A4.

A11-Public Notification of Development Proposals

The development application was not required to be notified or advertised under DCP A11. Notwithstanding, a number of submissions were received from the owner of an adjoining unit. These are addressed further in this report.

B3-Banora Point West- Tweed Heads South

Under the "Layout plan" attached to DCP 3, the subject site is located within Precinct 4, which is nominated as Commerce and Trade/Industrial. The proposed industrial use of the subject tenancy is considered to be consistent with the principles and guidelines of the DCP.

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

Clause 92(a) Government Coastal Policy

The proposed development is minor and contained within an existing building. The proposal does not contravene the Government Coastal Policy.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

Council's Building Surveyor has advised that as the proposal is within a new building, all clause 93 matters are considered satisfied.

Clause 94 Buildings to be upgraded

No changes are made to the building. Clause 94 matters are considered satisfied.

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

Context and Setting

The subject site is located in a dedicated industrial zone and the majority of development located within the 'Enterprise' centre is of light industrial uses, or recreational uses which need large spaces to facilitate operations. It is noted that the objectives of the 4(a) zone allow for non industrial development which is inappropriate to be located in another zone due to its type, nature or scale.

In addition, there is no zone other than the 3(c) Commerce and Trade zone which permits light industrial development – i.e.: the proposed use is the desired form of development for the 4(a) zone.

The following comments have been supplied by Council's Environmental Health Officer with respect to potential impacts of the proposed development. The comments also include a consideration of environmental health related matters raised by the owner of Unit 2 in relation to perceived impacts of the proposed development. These matters are addressed further under 'Submissions' below, however have been included here under the relevant category for completeness.

"Noise

The complex is located within an industrial area away from residential developments and is bounded by the Pacific Highway to the east. The business has operated in unit 15 of the same complex since development consent was granted in 2005. No complaints have been received since this time. The same operation is to continue in the new location.

The proposed hours of operation are 7am to 5.00pm Monday to Friday and 7am to 11pm on Saturdays. Mr O'Rourke advised that works on vehicles will occur between 7am and 3.30pm Monday to Friday however the premises will be open for pickups, quotes and cleaning of the workshop until the approved closing times.

A compressor is located within the building consistent with the previous development.

An objection has been received regarding possible noise generated by the development. The subject site is located within an industrial zone, borders the Pacific Highway and is affected by aircraft noise. The applicant had previous approval within this complex for the same business, and the proposed use is

consistent with neighbouring businesses such as Ranbuild, Northern Rivers Signs and Graphics, AIS Improvements (kitchen and bathroom). The proposed development is considered suitable for the location.

Aircraft Noise

The subject site is located within the 20-25 ANEF contour for Gold Coast Airport. As the development is a commercial/light industrial use and the site is located outside of the 25 or higher ANEF, consideration of AS2021 is not required.

Tow truck

The applicant has advised that the tow truck will not be located onsite. The truck will deliver cars to the site that have been picked up from an accident and delivered to the inside of the building.

Vehicles

Correspondence from T & T Building Pty Ltd dated 23 August 2010 states that the maximum number of vehicles proposed to be stored on site at any one time will be twenty (20). These vehicles will be stored within tenancies 3 and 4.

Air

Dust extraction devices are located within the new units. These are the same arrangement as the previous consent however a total of 4 are now being provided (2 were provided in the previous workshop). These collect the dust directly into bags that can be sealed and disposed via the regular waste service. A spray booth has also been constructed. The spray booth shall comply with the requirements of WorkCover NSW and AS 4114.1 and 4114.2. Mr O'Rourke advises that all filters are professionally cleaned every 3 months and all spray painting is undertaken in the approved spray booth.

No air conditioning servicing will be performed onsite.

The majority of the work will be dry activities (sanding etc). In the case that some wet rubbing is required, the waste liquid will be wiped up from the workshop floor as the applicant intends on maintaining a prestige smash repair business (spotless with sealed flooring). A condition will be applied requiring all activities to take place within the workshop.

An objection to the development has been received. The objector states that the proposed development will create air pollution in the form of chemicals, paints and sprays that will impact their business operations. The applicant advises that all sanding works are undertaken using a commercial dust extraction device as outlined above. All spray painting will be undertaken within the WorkCover NSW approved spray booth. All works are to take place within the building. No complaints had been received when the business was operating in unit 15 where the same activities were being undertaken approximately 120m south of the proposed location. Given the measures to be employed by the applicant, air pollution is not considered a constraint for the development.

Waste

Various liquids are held onsite (both new and waste) including solvent, oils, coolants, paint, thinners, degreasers, grease, brake and radiator fluid. All new liquids are stored within the building. Waste liquids are collected and stored within the building until being removed by private recycling companies. Other wastes include general waste (skip), cardboard (skip), and metal and tyre recycling. These skips and recyclables are located outside the rear of the building consistent with the previous arrangement in unit 15 and the surrounding businesses.

An objection to the development has been received. The objector states that the proposed development will create wastes that may lead to water pollution. It is noted that the proposed development is the same as that previously approved in unit 15. All wastes are to be collected as described above. No complaints have been received regarding the previous operation. Given the measures to be employed by the applicant, waste and water pollution considerations have been reviewed and conditions have been applied.

Complaints

Several complaints have been received by the same objector with respect to both the state of the premises at unit 15 which has been vacated by the applicant and the use of units 3 and 4 for a smash repair business. This was discussed with Director of Planning and Regulation on 6/9/10. Council's Environmental Health Officer attended the site on 7/9/10 to inspect and discuss with Ken O'Rourke, applicant and owner of the smash repair business.

Photos provided by the complainant include many from the inside of unit 15. These photos appear to have been taken just after Mr O'Rourke vacated unit 15. Mr O'Rourke has since had the premises cleaned and removed all recycling products that were present outside the rear of the unit.

Photos were provided of oil spills within several parking spaces near unit 15. It is noted that no numbered parking has been provided and that oil marks within parking spaces are present throughout the complex. Further, Council's Planning and Infrastructure Engineer advised on 7/9/10 that humeceptors are present at the site which separates oil, sediment and the like from stormwater collected from the hardstand areas to prevent potential pollutants such as this from entering Council's stormwater drain.

Photos were provided of scattered waste and what appears to be oil like stains along the fenceline at the rear (eastern) boundary and other waste. It is noted that the waste and staining is present in sections along the entire length of the boundary between units 1 and 15. Mr O'Rourke denies any knowledge of the source of this material. The waste is primarily scattered food wrappers that appear to have blown under the fence from the site. Contact was made with David Porter of Strata Title Management 07 5536 2100 on 7/9/10 regarding the waste and oil like stains. It was noted that spraying of weeds does occur and the stains may be a result of that spraying. Mr Porter is conducting further investigations with regards to these matters and will advise Council of the outcome. No evidence was found linking these matters to the smash repair business.

It was noted during the inspection that Mr O'Rourke's premises was very clean and uncluttered. A waste bin and recycling material (cardboard, metal and tyres) were present at the rear of the site consistent with the other businesses within this complex. Based on this inspection and after reviewing the previous investigation by Council's Compliance Officer, the issues raised within the complaints are not supported".

Based on the detailed assessment carried out by Council's Environmental Health Officer above, impacts of the proposed development are considered to be minor. Appropriate conditions with regard to the above matters have been applied.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development is consistent with the majority of surrounding development and impacts of the development are generally considered to be minor. Subject to conditions relating to the above matters, the proposed development is considered to be suitable for the subject site.

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

The application did not require advertising or notification. However, the occupier of adjacent Unit 2 who operates an organic rosehip oil skincare business (DA05/0505 - Storage, Distribution and Packaging of Skin Care Products) has raised a number of objections to the location of the smash repair business within Units 3 and 4. Each issue raised has been addressed in detail below.

Summary of Submissions	Response
<i>Strata bylaws state that no hazardous or offensive industries are permitted in the complex</i>	The proposed development meets the definition of 'light industry' under the TLEP 2000 and is not considered to be a hazardous or offensive industry.
<i>The occupier of Unit 2 did not receive any paperwork from the body corporate advising that a meeting was to take place to discuss the issuing of consent to the occupiers of unit 15 to move to units 3 and 4 and did not receive any notice of the approval once issued by the body corporate</i>	Council is not involved in negotiations between members of a body corporate. Owners consent from the strata/body corporate is required to enable lawful lodgement of the DA. Owners consent has been supplied for the subject application and the application has been lawfully made.
<i>There is insufficient parking available</i>	The detailed DCP A2 assessment provided demonstrates that ample car parking is available on the site to facilitate the movement of the panel beating business from Unit 15 to Units 3 and 4. Appropriate conditions have been applied with respect to storing all vehicles associated with the smash repairs business within units 3 and 4 at all times.
<i>The previous occupier of Unit 15 has commenced works within Units 3 and 4</i>	This is correct. The previous occupier of Unit 15 has advised that his lease over

Summary of Submissions	Response
<i>without development consent.</i>	Unit 15 had expired and he had no choice but to move prior to consent being issued to keep the business running. It is noted that the Director Planning and Regulation spoke with the owner of Unit 2 on 1 September 2010 and advised that Council will not be seeking that the use be ceased, given that the determination of the DA was close to being finalised.
<i>Conflict between adjoining uses – a panel beater cannot be located next door to an organic skin care business as there are strict guidelines required to be met in order to be classified as ‘organic’. Chemicals, sprays and paint can affect the end production and the certification body may not approve registration.</i>	Detailed assessment completed by Council’s Environmental Health Officer has concluded that there are likely to be negligible impacts on the occupier of Unit 2 by way of chemicals, sprays and paint. The smash repair business is permissible in the zone and surrounding development is a mix of light industrial uses, with some large recreational developments such as a children’s activity centre and martial arts academy. Council is not involved in the organic certification/registration process.
<i>Potential loss of local and overseas business</i>	Based on comments provided by Council’s Environmental Health Officer, there is no evidence to suggest that the location of a smash repair business next to the skin care business may result in any adverse impacts on either business.
<i>Chemicals from smash repairs can enter skin care factory through the doors and air conditioning and contaminate products</i>	A detailed assessment has been conducted by Council’s Environmental Health Officer with regard to dust, waste, fumes and the like. It is noted that dust extraction devices are located within the new units. These are the same arrangement as the previous consent however a total of 4 are now being provided (2 were provided in the previous workshop). These collect the dust directly into bags that can be sealed and disposed via the regular waste service. A spray booth has also been constructed. The spray booth shall comply with the requirements of WorkCover NSW and AS 4114.1 and 4114.2. The applicant advises that all filters are professionally cleaned every 3 months and all spray painting is undertaken in the approved spray booth. Appropriate conditions with respect to waste collection and storage of chemicals have been applied.
<i>Noise is constantly grinding and tapping all day long</i>	The subject site is located within an industrial zone, borders the Pacific Highway and is affected by aircraft noise. The applicant had previous approval

Summary of Submissions	Response
	<p>within this complex for the same business, and the proposed use is consistent with neighbouring businesses. The proposed development is considered suitable for the location and is not considered to generate excessive or offensive noise.</p>
<p><i>Where will the waste go?</i></p>	<p>The applicant has advised that all new liquids are stored within the building. Waste liquids are collected and stored within the building until being removed by private recycling companies. Other wastes include general waste (skip), cardboard (skip), and metal and tyre recycling. These skips and recyclables are located outside the rear of the building consistent with the previous arrangement in Unit 15 and the surrounding businesses. Conditions have been applied with regard to the storage and collection of waste products. Notably, the following condition has been applied: 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: -</p> <ul style="list-style-type: none"> • Roofed; • Provided with a sealed floor; and • Bunded so as to hold 110% of the total quantity of goods stored.
<p><i>When Unit 2 was purchased, it was sold for retail/commercial/industrial operation from interior design studios to wholesale sporting goods and light manufacturing</i></p>	<p>The development is located in an industrial zone. Retailing is not permitted from this zone other than minor ancillary sales. All uses permissible in an industrial zone are able to be considered by Council via the development assessment process. This includes light industrial and industrial development. There are no restrictions on use at the site. It is not considered that Council should be accountable for flaws in the purchaser's due diligence.</p>
<p><i>Some workers within Unit 2 are allergic to chemicals</i></p>	<p>Based on comments provided by Council's Environmental Health Officer, there is no evidence to suggest that chemicals are likely to enter Unit 2 by any method.</p>
<p><i>Chemicals will affect wildlife through water pollution</i></p>	<p>There is no evidence to suggest that any chemicals used by the operator of the smash repair business have entered the environment. There are no reported incidents of wildlife being harmed as a result of any development on the site. There are humeceptors present at the site which collect and separate oil, sediment</p>

Summary of Submissions	Response
	and debris from stormwater prior to it entering Council's stormwater drain. Conditions have been applied with regard to the storage and disposal of chemicals.
<p><i>There is mess everywhere:</i></p> <p><i>Grease</i></p> <p><i>Piles of dust, this pollutes the air and affects my organic certification</i></p> <p><i>Rubbish and waste thrown over the fence</i></p> <p><i>Huge garbage and waste piles of junk</i></p> <p><i>Tow trucks consistently in and out, blocking all parking</i></p> <p><i>Constant noise</i></p> <p><i>No hygiene in practice</i></p>	<p>Adequate provisions appear to be in place with respect to waste and conditions have been applied with regard to a trade waste licence and disposal of all wash water, oil, grease and other products to the satisfaction of Council.</p> <p>Council's Environmental Health Officer and planning officer has investigated the claim of rubbish and waste thrown over the fence. The waste is primarily scattered food wrappers that appear to have blown under the fence, and are present along the entire length of the rear fence. This matter has been relayed to strata title management who are conducting further investigations. No evidence was found linking this matter to the smash repair business.</p> <p>During the site inspections conducted by both Council's Environmental Health Officer and Planner, the workshop environment in Units 3 and 4 was very clean and no 'huge garbage and waste piles of junk' were present. Conditions have been applied with respect to waste disposal.</p> <p>Conditions have also been applied with respect to the tow truck being prohibited from being stored on site.</p> <p>Noise is an expected feature of an industrial zone. A standard condition has been applied requiring all necessary precautions to be taken to minimise noise pollution.</p> <p>The hygiene of individual employees is not a matter of Council's concern. A condition has been applied requiring the premises to be maintained in a clean and tidy manner at all times.</p>

All matters raised above within Council's jurisdiction are considered adequately resolved via conditions of consent. None are considered to form reasons for refusal of the application.

(e) Public interest

Subject to the proposed conditions of consent, the proposal generally complies with Council regulations and WorkCover's requirements for the installation of facilities such as a spray painting booth. Adequate parking is available and the recommended conditions are considered sufficient to address objections raised by an adjoining neighbour. The subject site is a designated industrial zone and based on the proposal's consistency with the objectives of this zone, the proposal is considered to be in the public interest.

OPTIONS:

1. Approve the application in accordance with the recommended conditions.
2. Refuse the development application for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

An option exists for Council to issue a Penalty Infringement Notice (PIN) for commencing the development without consent. The current value of the penalty is \$1500 for an individual and \$3000 for a Company. In this case an individual PIN is likely to be the most appropriate option. However it is not recommended to issue a PIN in this instance as the business was operating without incident on the same site, the move was necessitated by the lease arrangements, the business owner has been co-operative with Council and there has not been any significant impacts resulting from the business. If Council wished to impose a penalty the following is recommended in addition to the recommendation:

"The owner of the business the subject of DA10/0495 be issued with a Penalty Infringement Notice for undertaking development without consent."

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development represents a suitable use of an existing tenancy within a dedicated industrial area. Detailed assessment has been undertaken of a range of matters, including objections raised during the assessment process by Council's planning, environmental health and building services staff and detailed conditions have been applied. The proposed development is not anticipated to have significant environmental impacts.

The proposed development is recommended for conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

THIS PAGE IS BLANK

18 [PR-CM] Equestrian Pad Compliance Matter - Lot 7 DP 826941. No. 308 Tomewin Road, Dungay

ORIGIN:

Development Assessment

FILE NO: PF5510/1295

SUMMARY OF REPORT:

In accordance with Council 's resolution on 20 July 2010 the owners of Lot 7 DP826941, No. 308 Tomewin Road, Dungay were requested to lodge a development application for the building of an equestrian pad on their property, and that failure to do so would result in Council pursuing the matter legally. The sixty day time period for lodgement of the development application lapsed on 1 October 2010. A development application has not been received.

RECOMMENDATION:

That Council engages its solicitors to commence appropriate proceedings against the owners of Lot 7 DP 826941, No. 308 Tomewin Road, Dungay to require a development application to be lodged with Council for the equestrian pad.

REPORT:

The owners of Lot 7 DP 826941 were advised on 2 August 2010 of Council's resolution of 20 July 2010 which was-

1. *Council advises the owners of the subject site that a review of the completed equestrian pad has revealed a fill height of greater than that previously considered by Council and that accordingly the owners are requested to lodge a development application for the current configuration of the fill pad (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development)*

Failure to undertake Option 2 as detailed above (within 60 days from the date of notification) will result in council pursuing this matter legally.

2. *ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of level professional privilege.*

A development application has not been lodged with Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal expenses will be incurred if the recommendation is adopted. It is not possible at this stage to quantify the expenses of any legal action, as this depends on whether or not the current owners are willing to lodge a development application.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

19 [PR-CM] Failing Retaining Wall Between No. 2 Kerry Court and No. 18 Tyrone Terrace, Banora Point

ORIGIN:

Building and Environmental Health

FILE NO: DA2843/5 Pt1 and DA5668/80 Pt1

SUMMARY OF REPORT:

Following earlier approvals by Council, a development at No. 2 Kerry Court, Banora Point was completed in 2001 and consists of a residential duplex structure comprising two, part one/part two storey units, and retaining wall at the rear. The property immediately adjoins another residential property No. 18 Tyrone Terrace at the rear.

In February 2010, Council received a complaint from one of the strata owners of No. 2 Kerry Court that part of the retaining wall located between this property and No. 18 Tyrone Terrace was failing, and called upon Council to take action to rectify the situation.

Following investigations by Council officers, advice was provided to the complainant that the liability and repair was a civil matter, and that no further Council action was warranted at that stage.

In March, Council received correspondence from the owner of the adjoining property No. 18 Tyrone Terrace, which contained additional engineering and legal advice regarding the retaining wall, as well as more general concerns about the safety risks of the failing structure. The owner subsequently engaged a surveyor to provide a plan of the location of the retaining wall, and its relationship with the boundary alignments of adjoining properties. The survey demonstrated that the retaining wall was located entirely within the property of No. 2 Kerry Court.

In response to this additional information, the Council officers issued a "show cause notice" to the owners of No. 2 Kerry Court in June, and requested them to supply a structural engineers report on the structural adequacy of the retaining wall, and to urgently carry out any repairs as necessary.

Despite a number of written requests, Council has not received a satisfactory response from the owners of No. 2 Kerry Court to rectify the failing wall.

Given the immediate safety concerns of the adjoining owner at No. 18 Tyrone Terrace, it was considered appropriate to bring this matter to Council's attention and to continue to take appropriate action to seek a response from the owners of No. 2 Kerry Court.

RECOMMENDATION:

That:

- 1. ATTACHMENTS 1-3 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because they contain personnel matters concerning particular individuals (other than councillors).**
- 2. Council receives and notes this report on the failing retaining wall between No. 2 Kerry Court and No. 18 Tyrone Terrace, Banora Point and supports the Council officers' continuing compliance action including the next step of the service of a *Notice of Intention to Serve an Order* on the owners of 2 Kerry Court, Banora Point in respect of the failing retaining wall on rear of their site; and**
- 3. Council supports that a further report be submitted to Council should there not be a satisfactory response from the owners of No. 2 Kerry Court, Banora Point within a reasonable timeframe.**

REPORT:

SITE DIAGRAM:



Locality Plan

Lot 25 DP 875952 - No.2 Kerry Court, Banora Point
 Lot 23 DP 875952 - No.18 Tyrone Terrace, Banora Point

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy or reliability of the information, or the accuracy, reliability, completeness or suitability for any particular purpose and declines all responsibility and all liability (including indirect business liability) in connection with all reports, plans, drawings, documents and/or computer generated data, and notes that any use of the information is at the user's own risk. The information is provided for general purposes and is to be used for general purposes only. It should not be used for any other purpose without the prior approval of the Council. The information contained on this document remains valid for 12 days only from the date of supply.

Cadastral: 09 October 2010
 Dept. of Lands & Survey
 GDA Coordinate System - MGA Zone 56
 Datum - GDA 84
 Scale: 1:40,000
 Date: 09/10/2010

Civic and Cultural Centre
 100 King Street
 Tweed Heads NSW 2486
 Tel: (08) 6678 2400 / (08) 6678 2472
 Fax: (08) 6678 2428
 Website: www.tweed.nsw.gov.au
 Email: planning@twsh.nsw.gov.au



BACKGROUND

Previous Council Approvals for Development at No. 2 Kerry Court, Banora Point

Tweed Council has issued the following approvals in respect of a development at No. 2 Kerry Court Banora Point, consisting of a residential duplex structure comprising two, part one/part two storey units, as well as a retaining wall at the rear of the property:

Development Application (0697/2000DA) – consent issued 12 July 2000

Construction Certificate (04236/2000CC) – approval issued 26 July 2000

Occupation Certificate (0436/2000CC) – approval issued 1 February 2001

Strata Subdivision Certificate (2/01) – approval issued 13 February 2001

Description of the Failing Retaining Wall

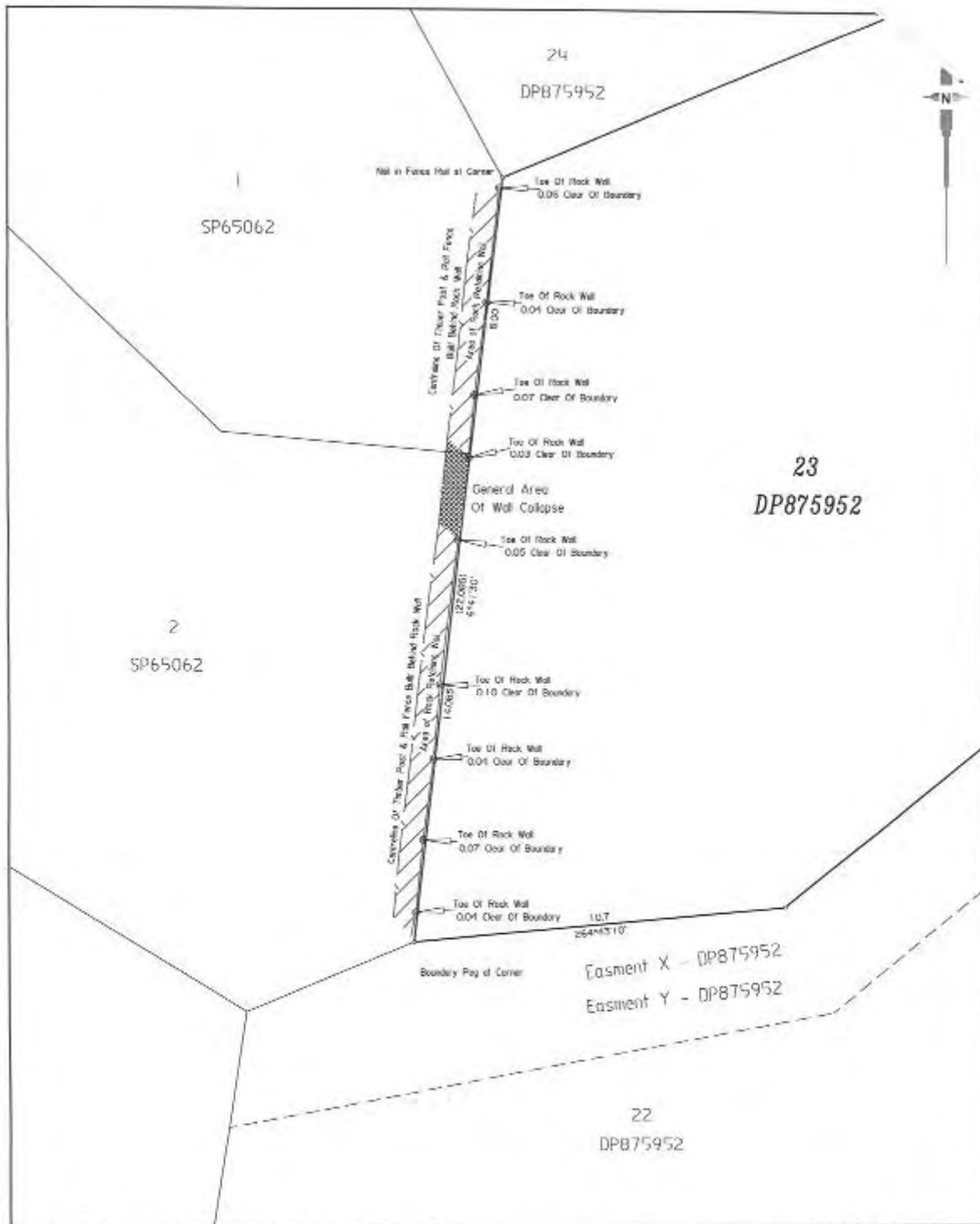
A retaining wall was erected along the rear boundary of No. 2 Kerry Court as part of the approved duplex development.

The retaining wall is constructed of rocks without mortar with a nominal minimum rock diameter of 400mm. The height of the wall ranges between 600mm high where footing width is a minimum of 450mm wide and 250mm below natural ground level to 1200mm high where footings are 600mm wide and again 250mm below natural ground level.

The wall retains compacted fill. Between the rear of the wall and the fill is a layer of geotextile fabric (or approved equivalent) and a layer of drainage gravel. No drainage pipe at the base of the wall is identified on any plans. A spoon drain sits behind the retaining wall and on top of the retained area. This drain is constructed of concrete and measures 600mm wide and 225mm deep according to plans.

A recent survey of the retaining wall and its relationship with the boundary alignment of adjoining properties was prepared on behalf of the owner of the adjoining property No. 18 Tyrone Terrace, and has since been referred to Council. A copy of this survey is provided in Figure 1.

FIGURE 1 – SURVEY PLAN



STEWART McINTYRE & ASSOCIATES PTY LTD CONSULTING SURVEYORS 21 PHILIPPINE PARADE PALM BEACH, QLD. 4221 PHONE 55983334 FAX 55981522	TITLE Location Of Rock Retaining Wall Adjoining the Western Boundary Of Lot 23 On DP875952		SURVEYOR R.S.	DATE 22/04/10
	PARISH OF TERRANORA COUNTY OF WARD		DRAWN R.S.	FIELD BOOK
CLIENT Mr R Adams			Job No. 106028N	
SCALE 1:100	LEVEL DATUM AHD	DRAWING NO. 10602		

Chronology of Dealings between Council and Affected Property Owners

February 2010

Council received a complaint from one of the strata owners of No. 2 Kerry Court that part of a retaining wall located between this property and No. 18 Tyrone Terrace was failing, and called upon Council to take action to rectify the situation. There is a relatively steep drop in slope from No. 2 Kerry Court down to No. 18 Tyrone Terrace.

As part of the failing of the retaining wall, at least two large rocks approximately 800mm in diameter dislodged from the wall and came to rest approximately twenty metres away in the rear yard of No. 18 Tyrone Terrace. No damage was caused to any of the structure on that property but considerable distress was suffered by the elderly occupant.

Following investigations by Council officers, advice was provided to the complainant that the liability and repair was a civil matter, and that no further Council action was warranted at that stage.

March 2010

Council received correspondence from representatives on behalf of the owner of No. 18 Tyrone Terrace, providing information on engineering and legal issues relating to the failed retaining wall, and seeking Council action to remedy the situation. A copy of this correspondence is provided as a confidential attachment to this report.

April 2010

Following the receipt of a survey prepared on behalf of the owner of No. 18 Tyrone Terrace in April that demonstrated that the retaining wall was located within the property of No. 2 Kerry Court, Council officers issued a "show cause notice" to the owners in June, and requested them to supply a structural engineers report on the structural adequacy of the retaining wall, and to urgently carry out any repairs as necessary.

June 2010

Council received correspondence from the owners of No. 2 Kerry Court, raising complaints about Council's actions on this matter. Copies of this correspondence as well as officers' letter are provided as a confidential attachment to this report.

August 2010

Council issued a further "show cause notice" to the owners of No. 2 Kerry Court, providing a deadline of 1 October 2010 to supply a structural engineers report on the structural adequacy of the retaining wall, and to urgently carry out any repairs as necessary. No satisfactory response has been received to date.

Further Council Action

Given the lack of response from the owners of No. 2 Kerry Court, it will be necessary to take stronger action, commencing with the intention of serving a Notice of Intention and an Order. Failing a satisfactory response to this action, legal action may then need to be initiated. Council will be updated on any progress on this matter.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Dividing Fences Act has no jurisdiction regarding retaining walls and is apparently not applicable under these circumstances.

The Department of Local Government website identifies liability for retaining walls as being a civil matter under Common Law.

No part of this retaining wall borders the *public domain* or Council land

No financial implications potentially affecting Council have been identified.

POLICY IMPLICATIONS:

It is suggested that in light of this and other similar matters that a policy for dealing with failing retaining walls on private property within the Shire be investigated and reported to Council, particularly given the number of retaining walls within the Shire as well as the topography and rainfall levels of the Shire.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. **Confidential Attachment** Correspondence from Mr Ronald Adams, owner of No. 18 Tyrone Terrace, Banora Point dated 26 March 2010 (ECM 22493448)
 2. **Confidential Attachment** Correspondence received from G & P Boreland and W & J Rowley, owners of Units 1 and 2, No. 2 Kerry Court, Banora Point dated 8 and 29 June (ECM 22493464)
 3. **Confidential Attachment** Correspondence from Council to the owners of No. 2 Kerry Court, Banora Point dated 8 August 2010 (ECM 22493470)
-

THIS PAGE IS BLANK

20 [PR-CM] Cobaki Lakes Concept Plan for Residential Community Development and Project Application for Central Open Space and Lake System - Council Submission to the Department of Planning

ORIGIN:

Development Assessment

FILE NO: GT1/52 Pt16

SUMMARY OF REPORT:

Concept Plan

The Department of Planning is currently assessing a Part 3A Major Project application for a Concept Plan for residential subdivision at Cobaki Lakes (MP06_0316). The Concept Plan includes residential subdivision, town centre, neighbourhood centre, schools, environmental protection and open space areas.

The assessment of this project has been reported to Council on several occasions (refer background below) including review of the Environmental Assessment with the original Concept Plan, a Preferred Project Report (PPR), including modifications to the Concept Plan) and a Development Code for future development in Cobaki Lakes.

The Department of Planning provided Council with an addendum to the PPR for the Concept Plan on 23 July 2010 for comment.

The Addendum to the PPR includes major changes to the Concept Plan layout and was provided at the same time as the PPR for the Project Application for the central drainage channel and open space in Cobaki Lakes (see below).

Council officers have assessed the Addendum and provide herein a summary of comments.

The main issues associated with the Concept Plan Addendum are inter-related with the issues raised in relation to the PPR for the Project Application (outlined below).

Project Application

Council received the Environmental Assessment for the Project Application for Cobaki Lakes central lake and open space precinct early this year and provided comments to the Department of Planning in March 2010.

The Project Application originally proposed subdivision, detailed design and construction of the central open space (including a lake) and saltmarsh rehabilitation within the Cobaki Estate.

Council received a copy of the PPR for the Project Application for comment at the same time as the Addendum to the PPR for the Cobaki Lakes Concept Plan. The Department of

Planning required comments on both documents within approximately four weeks (this included a two week extension). Given the magnitude of resource and cost implications the projects have on Council over time (in terms of future maintenance and management of roads, infrastructure, environmental reserves and open space areas), as well as the complexity of issues to review, Council officers were not able to meet the timeframe. At its meeting in August 2010, Council resolved to advise the Department of Planning that responses to both the Cobaki Lakes Concept Plan PPR Addendum Plan and Cobaki Lakes Project Application PPR will be provided after proper assessment of issues were undertaken. This has also allowed Council experts to seek clarification from the proponent on technical issues and come to agreement on various engineering and urban design solutions.

Summary of Issues

The Concept Plan has been modified to address the majority of Councils concerns through removal of the lakes. This negates many concerns relating to stormwater, water quality, acid sulphate soil and environmental impact.

Sandy Lane (or Sandy Road) has been relocated to the west to provide a more useable structured open space area to the south.

The applicant has also partly addressed Councils concerns relating to the requirement for a masterplan for the whole site through a proposed statement of commitment requiring a masterplan to be submitted with each future subdivision application. Wording modifications are suggested to clarify that the masterplan should apply to the whole estate.

Issues associated with stormwater management (primarily the central drainage channel) have been discussed in depth with the developer since receipt of the Addendum and the PPR for the Project Application. The applicant has amended their trunk drainage system and proposed stormwater concept plan acceptable to Council's engineers, subject to further conditions (details are described in the attached correspondence).

Stormwater conveyance has been modified to limit impact on the Saltmarsh area and surrounds. The level of the central drain has been raised to limit disturbance to acid sulphate soils and groundwater.

The Project Application for the central drainage corridor (or central precinct) no longer includes stormwater treatment measures which conflicted with conveyance functions of the drain. Each precinct of future urban development will be required to provide its own off-line treatment measures with future applications. The open drain will primarily be designed and constructed as a grassed swale with a rock lined channel along the invert. Maintenance considerations are essential for Council.

Notwithstanding, the abovementioned changes, outstanding issues relating to both the Concept Plan Addendum to the PPR and the PPR for the Project Application are summarised below:

- There are concerns with the new location of the schools, particularly the northern site;
- There are concerns with the proposed Revised Saltmarsh Rehabilitation Plan which lacks sufficient detail, does not address flooding and tidal issues and does not reflect

the modified stormwater concept. The applicant has identified that this will be amended.

- There are concerns with proposed habitat compensation off-set areas which are proposed off-site, particularly for Freshwater Wetlands and Wollum Froglets. The applicant has advised that a Planning Agreement is proposed between the Department of Planning, the proponent and the Department of Environment Water and Climate Change to ensure that suitable off-site areas are agreed upon. Council officers consider that a suitable Planning Agreement should be in place prior to any loss of habitat areas through works associated with the Project Application for the Central Open Space and Drainage Precinct.
- There are concerns that Freshwater Wetland habitat compensation areas proposed within the central drainage corridor are unsuitable given the conflict with open space uses, footpath and cycleways as well as stormwater conveyance functions. The ability for Council to provide suitable management of these areas is questionable given conflicting maintenance objectives of environmental, drainage and open space areas.
- Officers have concerns with the detail provided in the Revised Revegetation and Rehabilitation plans, particularly the Revised Saltmarsh Rehabilitation Plan, Revised Freshwater Wetland Rehabilitation plans. The applicant has identified that further detailed rehabilitation plans will be required in conjunction with future development applications.
- There is concern that the northern most structured open space area has insufficient width to accommodate useable sports fields. There is also concern that proposed parks do not have sufficient road frontage.
- As previously raised, there are concerns in relation to the length of management period of environmental protection areas proposed prior to dedication to Council. It is considered that these areas should be managed by the developer for a period of ten years and not dedicated to Council for management until various Performance Criteria are met.
- Officers request that provision is made to allow future Council maintenance and management through proposed Environmental Protection areas, particularly the east west fauna corridor (including Freshwater Wetland Habitat) and the saltmarsh rehabilitation area.
- Conditions are recommended to ensure suitable erosion and sediment control plan is provided which includes measures for the construction phase of the subject central drainage precinct, measures for future subdivision and construction of adjoining precincts.
- The amended stormwater conveyance downstream of Sandy Road is generally acceptable except for concerns relating to: capacity of the formed drain / frequency of overtopping into the saltmarsh areas; drain alignment; ownership and ongoing management; access and maintenance of the existing channel and its outlet arrangement to Cobaki Creek and compatibility with the saltmarsh rehabilitation plan.

- The flood assessment is generally satisfactory although it does not include velocity or flow data. This is of concern to Council officers due to potential safety issues with members of the public in dual use drainage / open space areas. Conditions are proposed to ensure safety.

A number of conditions requiring additional information and amended plans are proposed in the attached correspondence to address the abovementioned outstanding issues.

Implementation of the attached conditions are critical particularly for Council acceptance of proposed drainage, open space and environmental protection areas.

RECOMMENDATION:

That Council:

- 1. Endorses the attached draft submission to the Department of Planning on the Addendum to the Preferred Project Report for Cobaki Lakes Concept Plan and the comments on the Preferred Project Report for the Project Application for the central open space and drainage corridor for Cobaki Lakes.**
- 2. Does not accept dedication or maintenance of open space, drainage corridors, environmental protection areas and other infrastructure unless the recommended conditions in the attached correspondence are applied and implemented to the satisfaction of the General Manager or his Delegate.**

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:

Concept Plan

The Cobaki Lakes Concept Plan and the Environmental Assessment (EA) were placed on public exhibition by the Department of Planning between 7 December 2008 and 16 February 2009. Council provided a submission to the Department of Planning in February 2009, raising major concerns with the proposed lake system.

The applicant subsequently prepared a Preferred Project Report (PPR) responding to the matters raised in the submissions. The PPR sets out amendments to the Concept Plan, the Statement of Commitments.

On 9 November 2009, Council received a copy of the PPR from the Department of Planning, who requested that Council advises whether the PPR satisfactorily addresses concerns raised in the Council submission.

In January 2010, Council provided a submission on the PPR to the Department of Planning. It is noted that Council's submission expressed concerns with dedication of the lakes based on the cost of maintenance, limited design details and potential environmental impacts. Concerns were also raised with the design of proposed open space (casual and structured areas) not being in accordance with Council's standard requirements (Development Control Plan A5 – Subdivision Manual). Considerable concerns were raised in relation to the proposed revegetation and rehabilitation plans for the areas proposed to be rezoned to Environmental Protection and dedicated to Council, including the Saltmarsh and Freshwater Wetland Areas.

The PPR included a detailed Development Code containing design controls for future development including exempt and complying development.

The Cobaki Lakes Development Code was placed on separate public exhibition from 13 January 2010 to 26 February 2010.

Council officers reviewed the Cobaki Lakes Development Code and prepared a summary of issues and a draft submission. This was presented to the Council at its meeting 16 February 2010, however the Council did not adopt the recommendation until the following meeting.

In June 2010, following extensive discussions with the Department of Planning and the proponent, Council officers provided further comment to the Department of Planning on the Development Code.

Council has now received an Addendum to the PPR for comment.

Project Application – Central Open Space and Drainage Corridor

Council received a copy of a Project Application for Cobaki Lakes on 12 January 2010 for which the Minister of the Planning is the approval authority. This is a more detailed application for the central drainage and open space corridor. Unlike the Concept Plan, if approved, this allows development to commence. Council reviewed the Environmental Assessment for the Project Application and provided comments to the Department of Planning in March 2010. Council raised concerns in relation to the lake system and stormwater conveyance.

Council has now received a copy of the PPR for comment which provides significant amendments to the proposal in Council's previous submission.

The Project Application is referred to as the central drainage and open space precinct.

ADDENDUM TO THE PREFERRED PROJECT REPORT FOR THE CONCEPT PLAN

Summary of Modifications

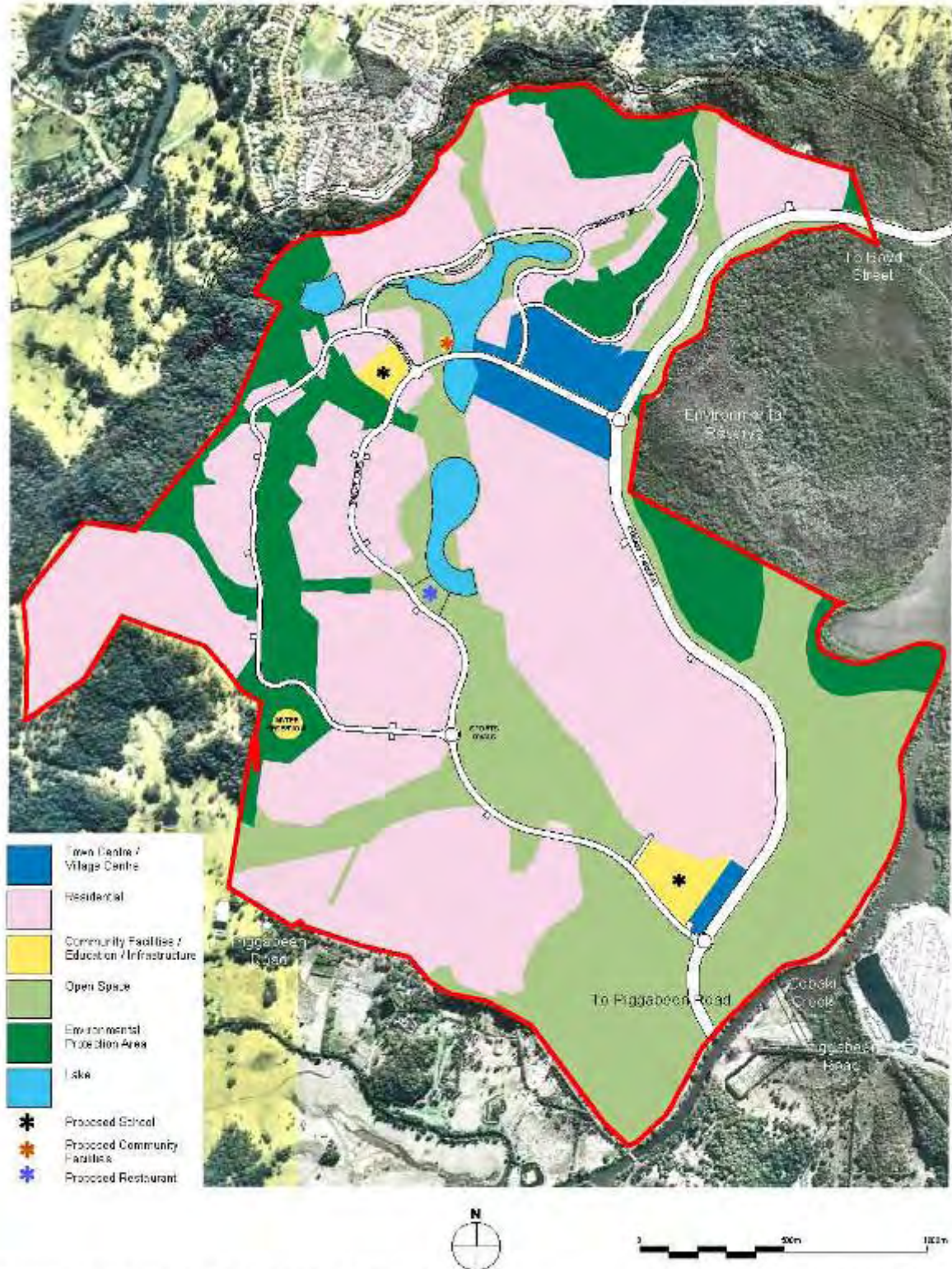
The Concept Plan provides for land use areas for residential development, a town centre, neighbourhood centre, community facilities, two schools, environmental protection areas and open space areas within the Cobaki Estate. Further development applications (or project applications) are required to implement the Concept Plan should it be approved by the Minister.

The Addendum to the PPR for the Concept Plan includes the following modifications to the Concept Plan:

- deletion of the main lake
- Deletion of the nominated restaurant
- Relocation of the northern school site
- Amendment to the southern school site and neighbourhood centre
- Change to the town centre precinct boundary
- Relocation of east-west environment protection corridor (fauna corridor)
- Additional area of structured open space
- Widening of part of Cobaki Parkway reserve
- Realignment of part of Sandy Road
- Withdrawal of release areas staging plan
- Final Tweed LEP zoning amendments
- Final covenant protected areas
- Final Development Code
- Revised rehabilitation plans and revegetation plans, particularly for the Saltmarsh, Freshwater Wetland and
- Amendments to the statement of commitments to reflect amended plans.

SITE DIAGRAM:

Original Concept Plan



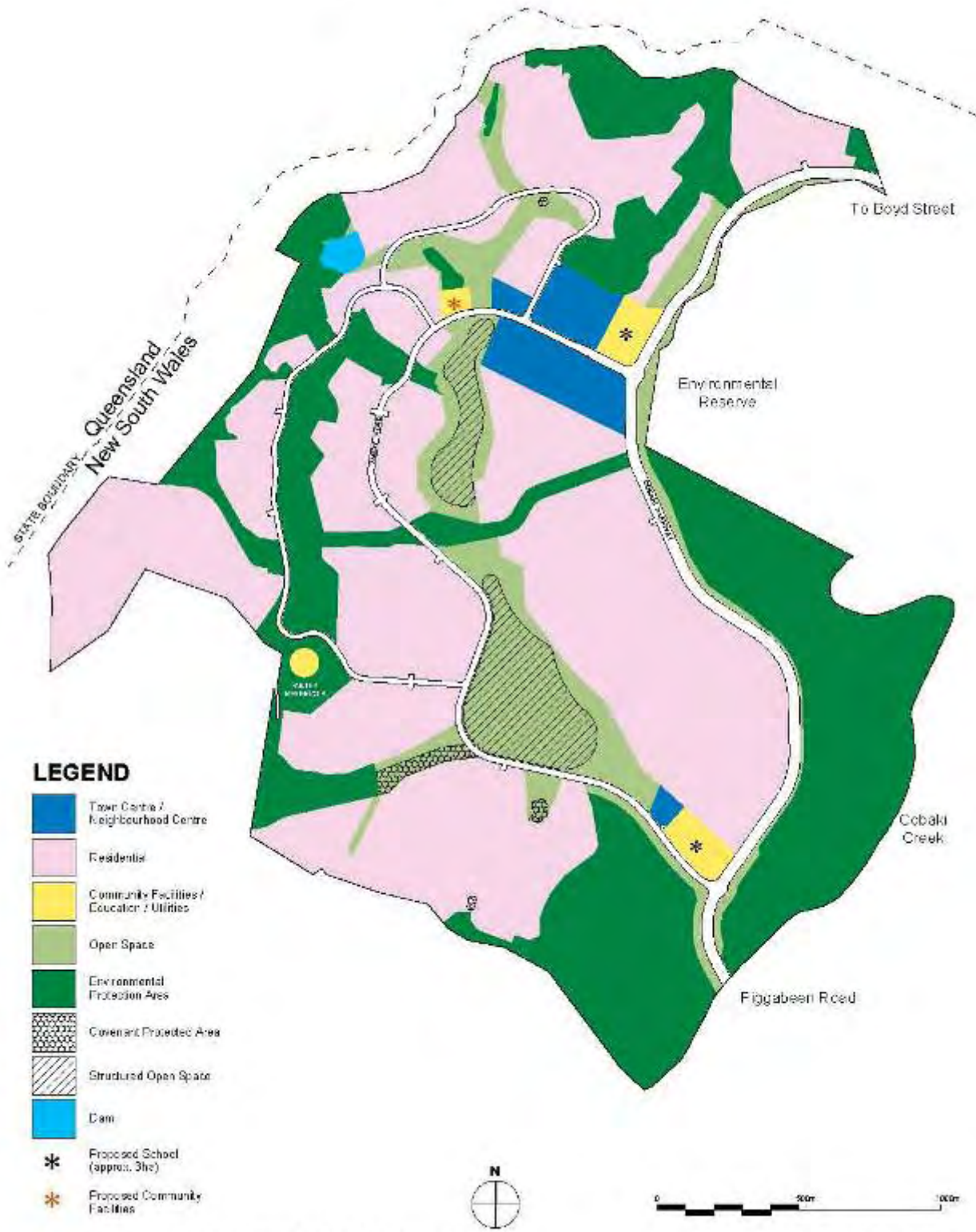
Concept Plan for LEDA MANORSTEAD PTY LTD

of COBAKI LAKES, NSW

Scale: 1:12000 @ A3 ■ LED006 / SK 01.01 ■ Friday, 15 August 2008 ■ Issue 11 **DFa**

Addendum to the PPR for the Concept Plan – Modified Plans

Concept Plan



LEGEND

- Town Centre / Neighbourhood Centre
- Residential
- Community Facilities / Educator / Utilities
- Open Space
- Environmental Protection Areas
- Covenant Protected Area
- Structured Open Space
- Dam
- * Proposed School (approx. 3ha)
- * Proposed Community Facilities

Concept Plan for LEDA MANORSTEAD PTY LTD

of COBAKI, NSW

Scale: 1:12000 @ A3

■ LED006 / SK 01.01

■ Tuesday, 14 September 2010

■ Issue PP

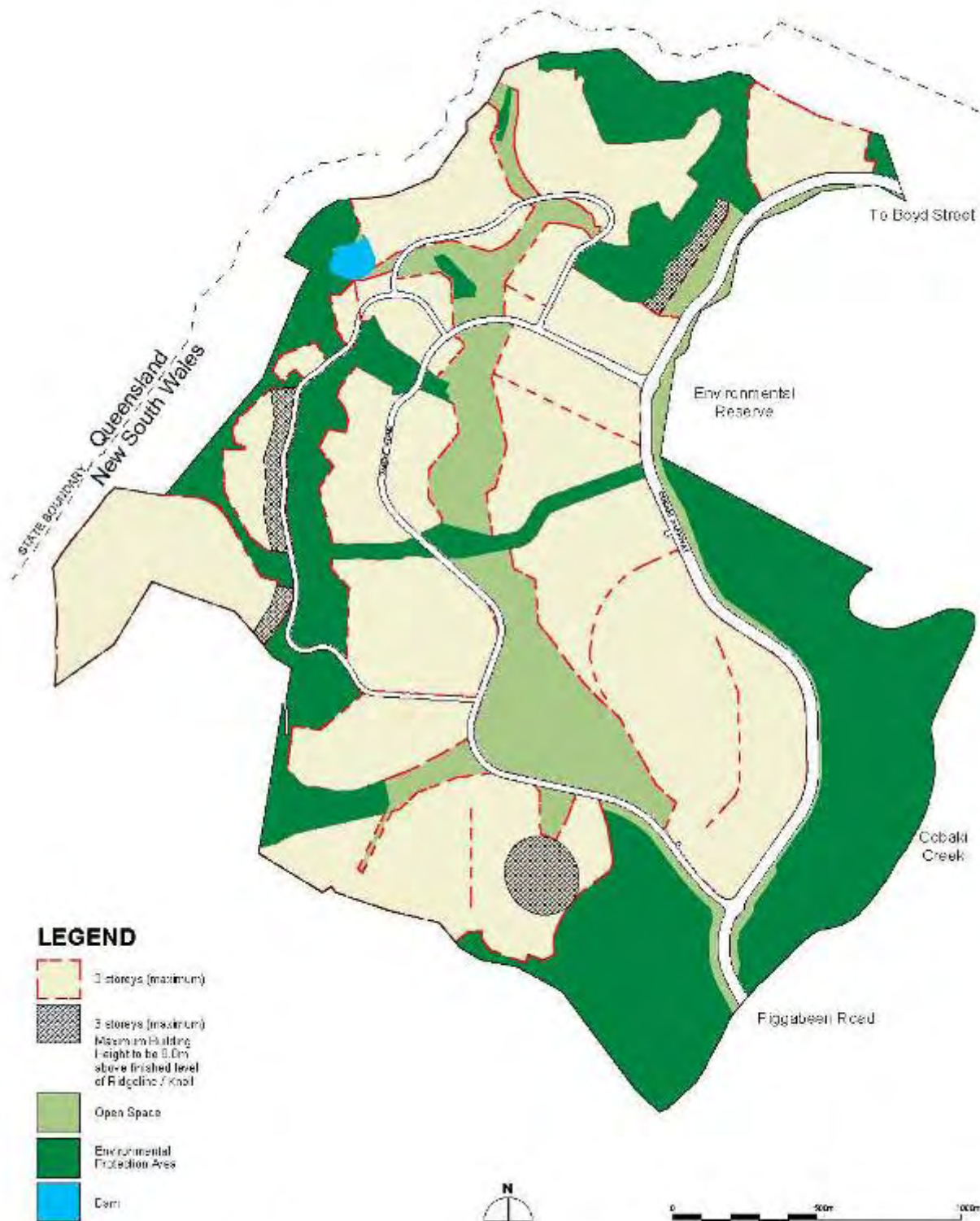


Development Matrix

Concept Plan Domain	Development Uses	Total Area		Urban Design Principles
		Lea Gained Land	Processed Road Closures	
<p>Town Centre Neighbourhood Centre</p> <ul style="list-style-type: none"> • Business premises • Carpark • Child care centre • Community facility • Educational establishment • Entertainment facility • Environmental facility • Food and drink premises • Funeral chapel • Health services facility • Home business • Hotel or motel accommodation • Information and education facility • Medical centre • Night Club • Office premises • Place of worship • Pub • Recreation deck • Recreation facility (indoor) • Residential care facility • Residential uses in Development Code • Restaurant • Retail premises • Roads • School • Shopping • Service station • Sewage sanitation system • Shop • Telecommunication facility 	17.64 ha	0.36 ha	<ul style="list-style-type: none"> • Urban form controlled by Plan of Development in Precinct approval • Building height controlled by Development Code • Mixed uses are encouraged • Provide adequate off-street parking • All required parking located within site • Create low volume routes • Buildings facing main streets are encouraged to have active frontages • Pedestrian friendly streetscape with courtyards • Create interesting buildings with articulated facade • Screen or conceal passive facades and service areas • Screen visual impact of transport with landscaping • Incorporate public art and public streetscape • Must demonstrate sensitive interface with surrounding development • Screen facades facing main roads must be an intentional use • Landscapes needed to maintain visibility of street uses • Incorporate passive surveillance and public safety principles 	
<p>Residential</p> <ul style="list-style-type: none"> • Carpark • Child care centre • Community facility • Environmental facility • Exhibition Village • Home based child care • Home business • Recreation area • Recreation facility (outdoor) • Residential care facility • Residential uses in Development Code • Roads • Service station • Sewage sanitation system 	259.47 ha	4.06 ha	<ul style="list-style-type: none"> • Urban form controlled by Plan of Development in Precinct approval and the Development Code • Create diversity of housing choice • Design must outline residential density, privacy and solar access • Strong streetscape character with articulated setbacks • Incorporate child care/recreation areas • Garage structures not dominate streetscape • Incorporate passive surveillance and public safety principles • Incorporate public open space within walkable radius of each dwelling 	
<p>Community Facility / Educational Infrastructure</p> <ul style="list-style-type: none"> • Carpark • Child care centre • Community facility • Educational establishment • Environmental facility • Health services facility • Information and education facility • Kiosk • Office premises (project office – temp usage) • Place of worship • Recreation area • Recreation facility (indoor) • Recreation facility (outdoor) • Roads • School • Telecommunication facility • Water storage facility 	8.04 ha	0.38 ha	<ul style="list-style-type: none"> • Locate school buildings with integrated parking and shared facilities • Provide adequate off-street parking • Screen facilities to be shared between schools and community • Must demonstrate sensitive interface with surrounding development • Enhance community education on surrounding environment 	
<p>Public Open Space</p> <ul style="list-style-type: none"> • Carpark • Community facility • Environmental facility • Food and drink premises • Kiosk • Recreation deck • Recreation facility (indoor) • Recreation facility (outdoor) • Roads 	85.64 ha	1.41 ha	<ul style="list-style-type: none"> • Include range of active and passive uses • Incorporate community facilities appropriate to residents needs such as sports, recreation and shopping • Screen facilities to be shared between schools and community • Incorporate stormwater path and treatment 	
<p>Environmental Protection Area</p> <ul style="list-style-type: none"> • Environmental facility 	188.27 ha	5.77 ha	<ul style="list-style-type: none"> • Incorporate low-impact commercial uses for additional service workers • Provide linkages in accordance with the Pedestrian and Cycle Network Plan 	
<p>Den</p> <ul style="list-style-type: none"> • Carpark • Environmental facility • Recreation area • Recreation facility (outdoor) • Water body (tidal) • Water recreation structure 	na	na	<ul style="list-style-type: none"> • Provide low-impact public access • Provide linkages in accordance with the Pedestrian and Cycle Network Plan 	
Total Area		693.26 ha	12.48 ha	

Note: Areas are subject to final design and survey

Height Controls



LEGEND

- 2 storeys (maximum)
- 3 storeys (maximum)
Maximum Building Height to be 8.0m above finished level of Ridge-line / Knoll
- Open Space
- Environmental Protection Area
- Dam

Height Controls for LEDA MANORSTEAD PTY LTD

of COBAKI, NSW

Scale: 1:12000 @A3

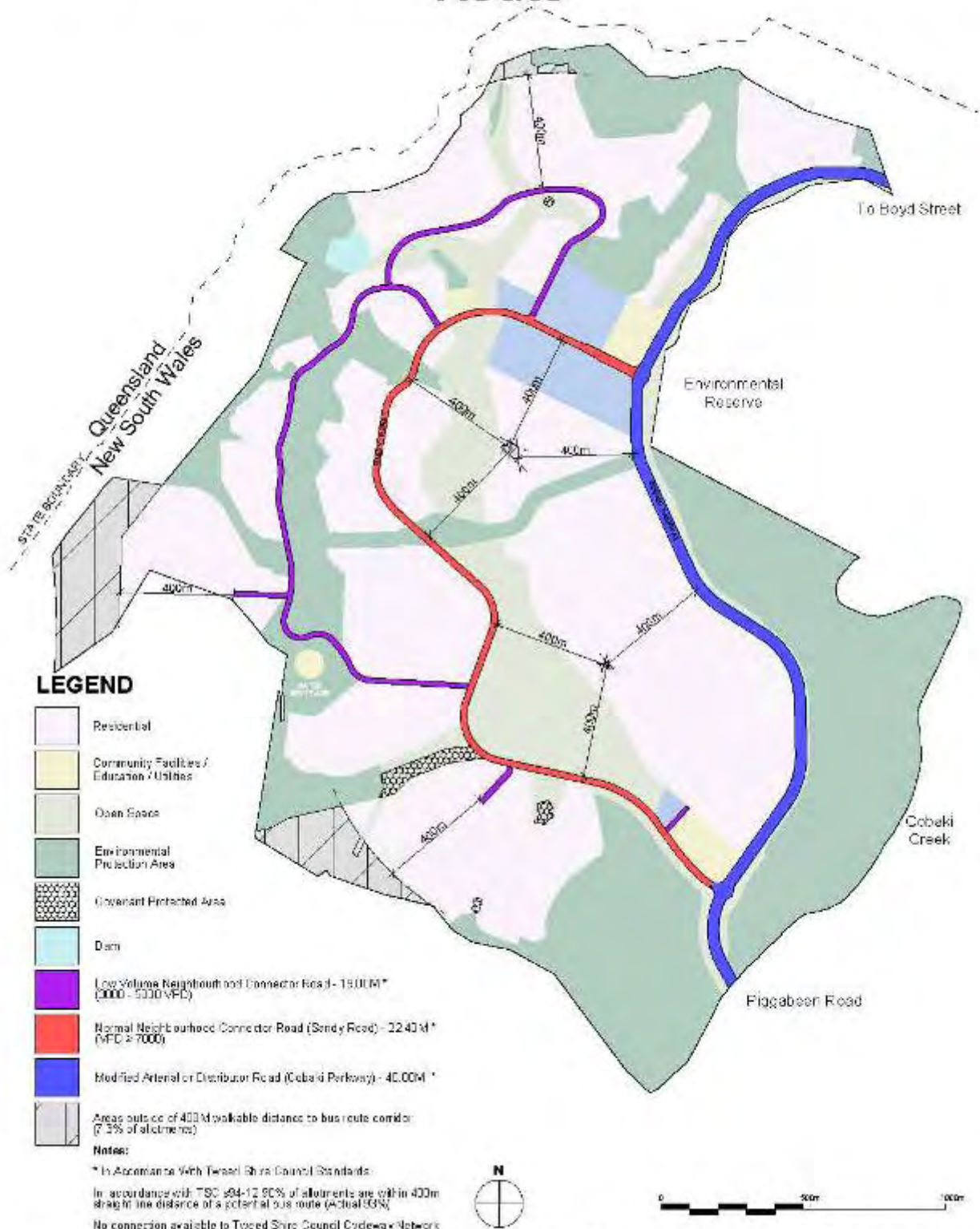
LED006 / SK 01.03

Tuesday, 14 September 2010

Issue EE

DP2

Access Network Plan and Potential Bus Route



Access Network Plan and Potential Bus Route for LEDA MANORSTEAD PTY LTD

of COBAKI, NSW

Scale: 1:12000 @ A3

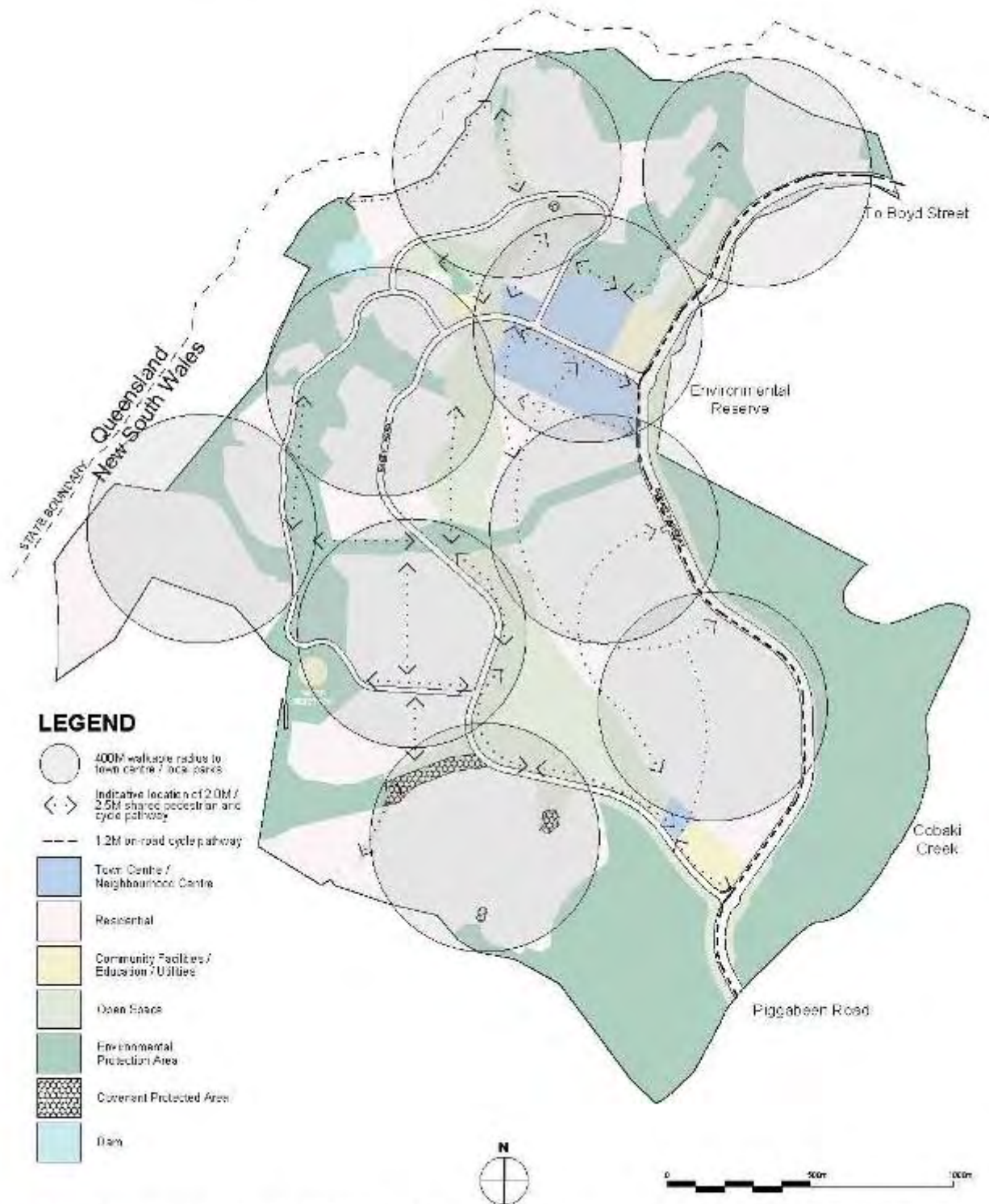
LED006 / SK 01.05

Tuesday, 14 September 2010











Issue 00

DFa

Open Space Network Plan



LEGEND

-  400M walkable radius to town centre / local parks
-  Indicative location of 2.0M / 2.5M shared pedestrian and cycle pathway
-  1.2M on-road cycle pathway
-  Town Centre / Neighbourhood Centre
-  Residential
-  Community Facilities / Education / Utilities
-  Open Space
-  Environmental Protection Area
-  Current Protected Area
-  Dam

Open Space Network Plan for LEDA MANORSTEAD PTY LTD

of COBAKI, NSW

Scale: 1:12000 @ A3

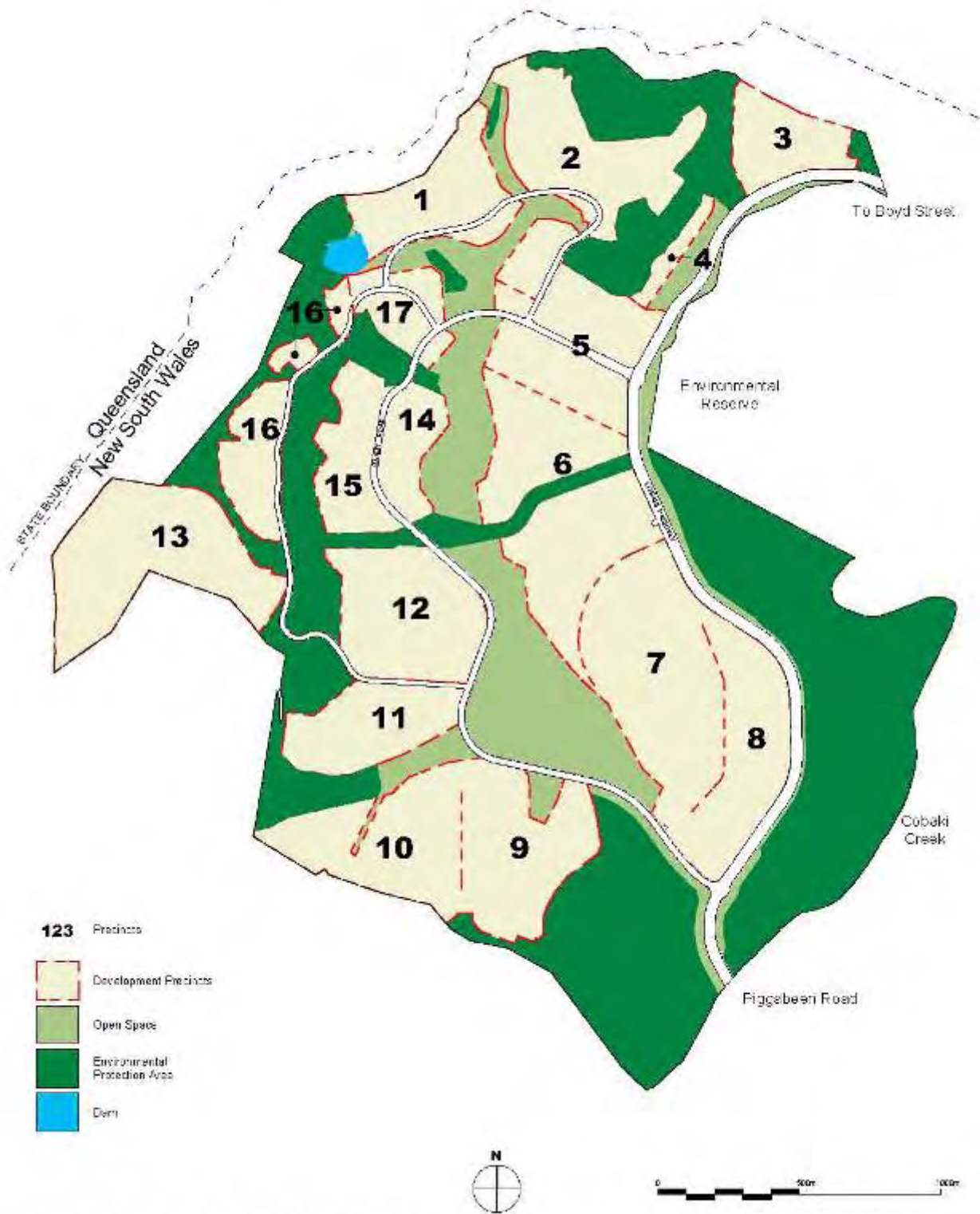
LED006 / SK 01.07

Tuesday, 14 September 2010

Issue 0

DP4

Precinct Location Plan



- 123** Precincts
- Development Precincts
- Open Space
- Environmental Protection Area
- Dam

Precinct Location Plan for LEDA MANORSTEAD PTY LTD

of COBAKI, NSW

Scale: 1:12000 @ A3 ■ LED006 / SK 01.09 ■ Tuesday, 14 September 2010 ■ Issue AA **DFa**

COMMENTS ON THE PPR ADDENDUM FOR THE CONCEPT PLAN

Council officers have previously reviewed the Concept Plan PPR and comments were reported to Council and forwarded to the Department.

The Addendum and modifications proposed to the Concept Plan PPR impact some of Council's key issues with the PPR. The implications of the Addendum on Council's issues are outlined below. Unless otherwise noted below, previous comments made on the PPR remain applicable.

Water Quality and Acid Sulphate Soil Concerns

Concerns were raised in relation to water quality, acid sulphate soils and potential impacts on the water quality of Cobaki Broadwater.

The Addendum includes removal of the lakes and raising of the drainage channel levels. This addresses concerns in relation to water quality and acid sulphate soils.

In terms of the Cobaki Broadwater and management of erosion, sediment and stormwater quality, Council officers have been liaising extensively with the developer since receipt of the Addendum to ensure that best practice stormwater management is achieved as part of the Project Application for the central drainage system. Refer further discussion below.

Future Maintenance of Environmental Protection and Open Space Areas

It is proposed that environmental protection and open space areas are to be dedicated and managed by Council after a two year rehabilitation period. Given the on-going cost implications for Council, it is critical that agreement is sought on the ongoing management of environmental areas. It was previously recommended that:

- the developer remain responsible for management and rehabilitation of dedication areas until agreed performance standards are achieved;
- Transfer of lands to Council is carried out as soon as practical after commencement of the development;
- Arrangements are made to ensure that sufficient funds are generated from the development to allow Council to manage areas set aside for environmental purposes in perpetuity (precise mechanism to be defined eg. Lump sum payments, special rate etc.).

This issue remains valid and it is recommended that:

- the Saltmarsh and Freshwater Wetland Rehabilitation areas are maintained by the applicant for a minimum period of ten years;
- Council will not accept responsibility for the Saltmarsh or Freshwater Wetland Rehabilitation Areas until Council approved performance criteria for rehabilitation are met; and
- Arrangements are made to ensure that Council has access to areas zoned Environmental Protection for future management of infrastructure and for environmental rehabilitation purposes.

Conditions are proposed to achieve these outcomes.

Rezoning

Proposed rezoning was previously not supported due to ecological impacts.

The Addendum does not modify rezoning except to accommodate for cadastral corrections, relocation of the east / west fauna corridor and widening of Cobaki Parkway.

Comments previously provided on rezoning remain applicable, although Council has no concerns with proposed modifications relating to cadastral corrections. The proposed rezoning to accommodate the relocation of the east / west corridor appears to be suitable given it provides greater connectivity to Environmental Protection zoning to the west. However, it is recommended that the rezoning does not prevent future Council maintenance of infrastructure within the corridor.

The proposed zoning for the central open drainage corridor as Open Space is acceptable provided it is not used as Freshwater Wetland EEC offset area and the Freshwater Wetland Rehabilitation Plan is amended accordingly.

A condition is recommended to ensure that rezoning does not prevent maintenance or limit Council's ability to manage and maintain Council infrastructure and drainage corridors in the future.

Landforming

Council raised concerns with the Concept Plan PPR as it failed to provide a single coherent landforming or stormwater management plan. This is critical at the concept plan stage as it influences the viability of the development, achievable density and ultimate urban form. The landform and its constraints should inform the design of the urban form and proposed infrastructure.

The Addendum partly deals with this concern as the stormwater management system for the estate has been redesigned with the removal of the lakes but no significant changes were provided. The trunk drainage system for the estate is being developed in detail with the Project Application for the central drainage and open space precinct. This has resulted in a recommendation to ensure the Concept Plan is amended to widen the road reserves at the southern end of the estate to accommodate drainage infrastructure through to Cobaki Creek.

Stormwater

Concerns were previously raised with the Concept Plan PPR as it did not include a stormwater plan demonstrating that adequate drainage infrastructure can cater for external and internal runoff catchments. The PPR did not define how all of the elements in the stormwater management system will work together in an effective manner and reflect the final landform.

The Addendum partly deals with this concern as the stormwater management system for the estate has been redesigned with the removal of the lakes but no significant changes were provided. The trunk drainage system for the estate is being developed in detail with the Project Application for the central drainage and open space precinct. This has resulted in a

recommendation to widen the road reserves at the southern end of the estate to accommodate drainage infrastructure through to Cobaki Creek.

A stormwater management plan for the whole estate is proposed within the masterplan mentioned above. This approach is acceptable subject to wording modifications.

Proposed Lakes – Maintenance

Concerns in relation to ongoing maintenance of the lakes have been removed with deletion of the lakes from the proposal.

Open space

Sizing of open space areas was previously raised as a concern. These areas were constrained by Sandy Lane and indicated as Freshwater Wetland. The proposed shape of the sportsfields was of concern and not considered to provide efficient and maximum use for structured open space. There was also concern with conflicting conservation and open space objectives.

The proponent has modified the alignment of Sandy Road to provide more useable open space area in the southern structured open space portion. Concern with the size and shape of the northern structured open space area remain and are discussed conditions are recommended to ensure that proposed structured open space areas comply with Councils standards or dedication will not be accepted.

It is not considered that the central drainage and open space corridor is suitable for Freshwater Wetland habitat off-set as stated below. A condition is proposed in this regard and if implemented, will resolve conflicting maintenance objectives.

Vegetation Management Plan and Site Restoration Plan

The Vegetation Management Plan provided with the PPR was considered inadequate. A detailed site restoration plan for the whole site was requested to ascertain if offset targets for loss of Coastal Freshwater Wetland EEC, Lowland Rainforest EEC, Swamp Sclerophyll EEC, Swamp Oak EEC, saltmarsh EEC and other vegetation would be achieved. Further 5 A assessment was requested for threatened species and EEC located on the site.

The Addendum identifies that site specific Regeneration / Revegetation Plans will be prepared and submitted with subsequent Development Applications for future precincts. The applicant should ensure that where environmental protection areas are adjacent to precinct areas, a Regeneration / Revegetation Plan for that area is provided with the DA for that precinct.

The Addendum has included additional Section 5A assessment for the Cobaki Parkway 'missing link' (from the intersection at Sandy Road to the southern boundary) only.

In terms of the offset habitat compensation areas, Council has received advice from DECCW that DECCW has proposed a Statement of Commitment which requires the proponent to enter into a Planning Agreement with DECCW and DOP that suitable off-site offsets will be sourced and secured by the applicant.

There is inconsistency and discrepancies between the Revised Rehabilitation Plans these should be amended prior to approval of the Concept Plan. A condition is recommended in this regard.

Saltmarsh

Council was supportive of the proposal to rezone the Saltmarsh areas as Environmental Protection, however the following concerns were raised with the Saltmarsh Rehabilitation Plan:

- on-going maintenance costs and length of developer maintenance period;
- potential impacts of stormwater on the Saltmarsh;
- Rehabilitation of the eroded part of Cobaki Creek bank;
- Wetland dynamics and boundaries between saltwater and freshwater;
- Concerns with proposed species selection for replanting;
- Impacts of climate change on the saltmarsh as landward movement is not possible due to proposed roads and residential development;
- Concerns with impacts from adjoining construction and development;
- Additional issues relating to proposed revegetation of Swamp Oak and mixed species which may result in increased movement of mosquito into urban areas in Cobaki Lakes.

A Revised Saltmarsh Rehabilitation Plan was provided in the Addendum. As the Addendum indicates the removal of the lakes, the need to transfer saltwater from Cobaki Creek to the lake in order to manage water quality has been removed and concerns in relation to salinity and acid sulphate soils have also been removed.

In terms of stormwater, the original Saltmarsh Rehabilitation Plan (SRP) indicated stormwater dispersing over the saltmarsh, however the SRP has been amended to remove all references to a final stormwater site discharge point. An amended Stormwater Quality Concept Plan provided with the Addendum indicates stormwater discharging from the central open space drainage channel from Cobaki Parkway via Dunns Drain and then into Cobaki Creek. This is considered more appropriate given the constraints with discharging at Cobaki Parkway (including topography and major disturbance required to ASS). The Revised SRP should be amended to reflect the stormwater management proposed in the Stormwater Quality Concept Plan and should also allow ongoing maintenance of the drain. The Revised SRP should also note any Swamp Oak and Saltmarsh EEC vegetation that will be affected by this stormwater discharge point and impacts on EEC offsetting. The applicant has indicated that the SRP is being amended accordingly.

It is noted that discharge of the bulk of stormwater from the site into Dunns Drain should reduce concerns relating to nutrient input into the saltmarsh rehabilitation area.

It is still considered that inadequate information has been provided on site hydrology and how changes to stormwater and tidal inundation will affect the saltmarsh rehabilitation area. Further information is requested in this regard.

The revised SRP identifies that Freshwater Wetland EEC within the saltmarsh rehabilitation area will be lost as a result of increased tidal inundation. This is of concern given there are losses of Freshwater Wetland EEC in the central open space corridor and inadequate

offsets proposed. The applicant has advised that off-sets are currently being negotiated with the Department of Environment Climate Change and Water.

Additional plant species to be utilised in creation of EECs through revegetation has been provided in the Addendum however additional information on relative planting densities should also be provided. Detail should also be provided to ensure off-set areas proposed will be revegetated to become representative of the communities over time.

In terms of concerns relating to tidal gates and access to tidal gates, the applicant has identified this will be subject to a assessment. It is acknowledged that an additional development application and or assessment will be required for future rehabilitation work in the saltmarsh area. The Revised SRP should reiterate this and require future assessment to address saltmarsh response to removal of cattle, weed control and drain filling.

A condition is recommended to ensure greater detail on saltmarsh rehabilitation is provided addressing concerns above. This will be required prior to works commencing in the Project Application for the Central Open Space and Drainage Corridor Precinct.

Freshwater Wetland Rehabilitation Plan

There were concerns with the Freshwater Wetland Rehabilitation Plan provided in the PPR, particularly the location of roads, bike and pedestrian pathways in the proposed Freshwater Wetland habitat areas.

The Addendum includes a Revised Freshwater Wetland Rehabilitation Plan which states that the central open drainage system will enable creation of 19.52ha of Freshwater Wetland EEC. This is contrary to advice provided by the proponent in workshops with Council officers.

It is not considered that the central open drainage corridor is a suitable area for Freshwater Wetland habitat given its primary function will be stormwater treatment and conveyance and maintenance will be undertaken with that in mind. A condition is recommended in this regard.

The revised Plan identifies that 2.25ha of Freshwater Wetland EEC will be created offline from the stormwater management system within the east – west minor open drainage channel (the east west fauna corridor). The creation and long term viability of these small fragmented wetland 'ponds' is questionable due to their location within an urban context. No buffer is proposed to these areas and on-going maintenance may be problematic. A fauna underpass is proposed, however more detail should be provided on how connectivity and ecological function will be maintained within the Freshwater Wetland and Wallum Froglet habitat areas. Details should be provided on target fauna (for crossing designs) and previous crossing used with the Wallum Froglet.

The plan does not provide details on mitigation measures to reduce impacts from non-native fauna on Wallum Froglets. Details are not provided on how management will be funded. Unless some acceptable funding arrangement is identified, it is likely that Council will not have funds to manage these identified threats.

Conditions are recommended requiring additional information on the Wallum Froglet habitat, notwithstanding, it is acknowledged that DECCW is assessing habitat and off-set issues.

As above, it is recommended that the proposed Freshwater Wetland EEC and Wallum Froglet habitat to offset clearing be maintained for a minimum of 10 years (15 years is preferable). Conditions are proposed which address this issue. It is not considered Council should accept responsibility for these areas until Council approved performance criteria are met.

Further performance criteria have been included in the Revised Freshwater Wetland EEC however additional performance criteria should be provided in consultation with Council.

School

The Addendum modifies the location of the school to the intersection of Cobaki Parkway and Sandy Road.

The proposed location of the northern school location is not supported given traffic and access concerns. More appropriate locations would be to the west of Road 2 at the intersection of Sandy Road and Road 2. Both schools should be located away from Cobaki Parkway frontages, located in areas closer to urban centroids that have multiple road and pedestrian / cycleway accesses to facilitate on-site drop off zones without disrupting through traffic or altering speed zones, parking or intersection treatments on Cobaki Parkway.

It is recommended that the Concept Plan is amended to address this concern.

Cobaki Parkway and Roads

The construction of Cobaki Parkway will require significant fill embankments of up to 3 - 8 metres. Council will not support the inclusion of large batters on the western side of the Parkway beyond the standard road verge. Batters to the west of Cobaki Parkway should remain in the ownership and responsibility of the developer - easements will be required.

Additional detail is required in relation to trunk stormwater drainage corridor provided adjacent to the road embankment on both sides of Cobaki Parkway.

The Addendum does not acknowledge or amend the comments previously provided by Council on the Statement of Commitments, particularly to provide an alternative connection between Sandy Road and Piggabeen Road.

The statement of commitments should clarify that all roads and civil infrastructure are to be designed and constructed in accordance with Tweed Shire Council's Local Environment Plan, Development Control Plan and Development Design and Construction Specifications 'current at the time' of each development application being lodged.

The widened road reserves (indicated in the Project Application) required for drainage are not shown on the amended Concept Plan.

An amended Traffic Report is requested which addresses these issues.

Development Code

The Addendum states that it included a final version of the Development Code for Cobaki Lakes. Council officers have not had an opportunity to view the Development Code and the

Concept Plan should not be approved without an acceptable code. Council requests the opportunity to comment on the finalised draft code.

A condition is recommended in this regard.

Masterplan

The Addendum proposes an additional commitment to provide a Masterplan with all future applications for subdivision of each development precinct to provide context for each precinct. The proposed statement of commitment should be modified so that it clearly refers to a masterplan covering the whole of the estate - not just the area subject of a precinct plan. It should also include main pedestrian and cycleway connections as well as areas of open space. The commitment should require the developer to incrementally update the indicative masterplan in accordance with subdivision as the planning certainty evolves. It should reference distribution of both structured and casual open space across the estate and trunk stormwater drainage (including conveyance and water quality facilities).

Statement of Commitments – Miscellaneous

- It should be reiterated that the statement of commitments should reflect Council's adopted Demand Management Strategy mandating minimum 5000litre rainwater tanks connected to a minimum of 160m² metres of roof area and plumbed to supply toilet flushing, laundry cold water taps and outdoor uses for standard housing types and a requirement that maximises rain water tanks for multiple dwelling housing, commercial, industrial and small lot dwelling development.
- A statement of Commitment is required stating that the containment cell (in relation to the remediation of Turners Cattle Dip Site) is located within the road reserve generally in accordance with the Gilbert and Sutherland Plan Drawing Number GJ0872.4.0 dated 21 September 2009.
- It is considered that a statement of commitment should be included addressing impacts on amenity due to airport aircraft training which occurs over the site. This should include the requirement to notify all future land holders and residents of the potential annoyance, preferably through an instrument on the title such as an 88B instrument.
- Until planning agreement has been entered into by the applicant DECCW and DOP, which clearly sets out off-site habitat offset requirements, no EEC habitat should be cleared from the site.

THE PREFERRED PROJECT REPORT (PPR) FOR THE PROJECT APPLICATION

Summary of Modifications

Council has previously provided comment on the Project Application for the Cobaki Lakes central lake and open space system. The Project Application seeks approval for earthworks (minor cut and substantial fill), structured open space and parkland areas, revegetation and rehabilitation of environmental protection areas, establishment of freshwater wetland and fauna corridors, revegetation and rehabilitation of saltmarsh areas including tidal flow management, roads and culverts crossing the central open space, trunk sewer and water services and subdivision.

Unlike the Concept Plan, approval of the Project Application will allow works to commence.

The PPR for the Project Application for the central open space and drainage system, provides a response to submissions received during the public exhibition period. The PPR modifies the proposal to reflect the changes outlined in the Concept Plan above. It includes the following modifications:

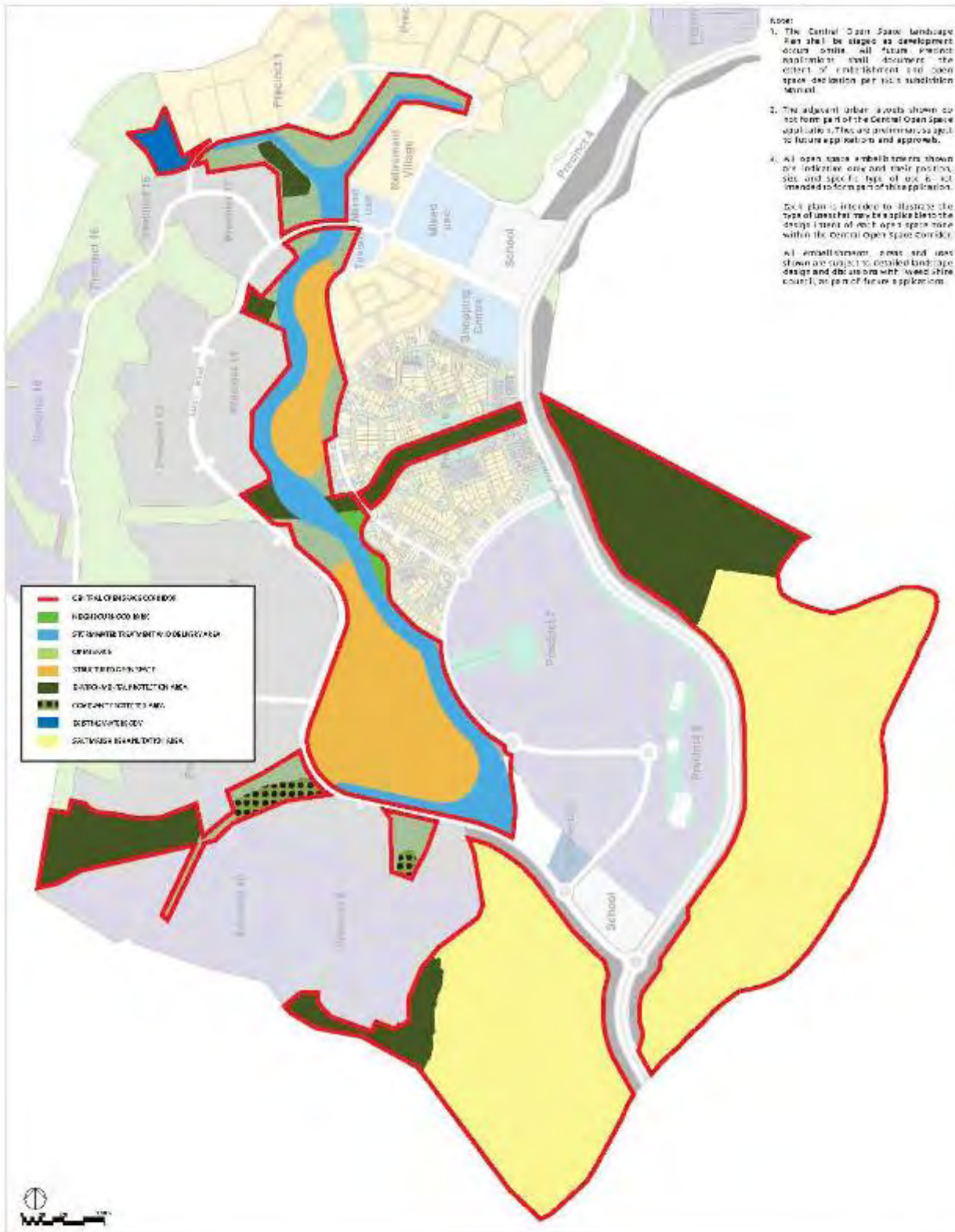
- Removal of the lakes
- Amended stormwater regime
- Relocation of the east west fauna corridor
- Revised flooding and flood impact assessment
- Realignment of Sandy Lane (Sandy Road) to allow for more useable open space areas, and
- Revised Site Regeneration and Revegetation Plan, Revised Saltmarsh Rehabilitation Plan, Revised Freshwater Wetland Rehabilitation Plan,

The PPR for the Project Application specifies that works include “*minor cut and substantial fill, structured open space and parkland areas, revegetation and rehabilitation of environmental protection areas, establishment of freshwater wetland and fauna corridors, revegetation and rehabilitation of saltmarsh areas, including associated tidal flow management, roads with culverts crossing the central open space, road with culverts together with trunk sewer and water services predominantly across saltmarsh areas and subdivision*”. Despite this statement, the Project Application works is essentially limited to landforming for the central drainage channel, sports fields and landforming for the roads at the southern most intersection of Sandy Road and Cobaki Parkway through to Cobaki Creek. The Project Application also includes basic landscaping and rehabilitation of the saltmarsh.

The plans submitted with the PPR identify that landscape works and open space embellishments will be staged and additional works and embellishments will be required with future precinct development applications.

The Project Application works are referred to herein as “central open space and drainage precinct”.

PPR for the Project Application – Central Open Space and Drainage Precinct



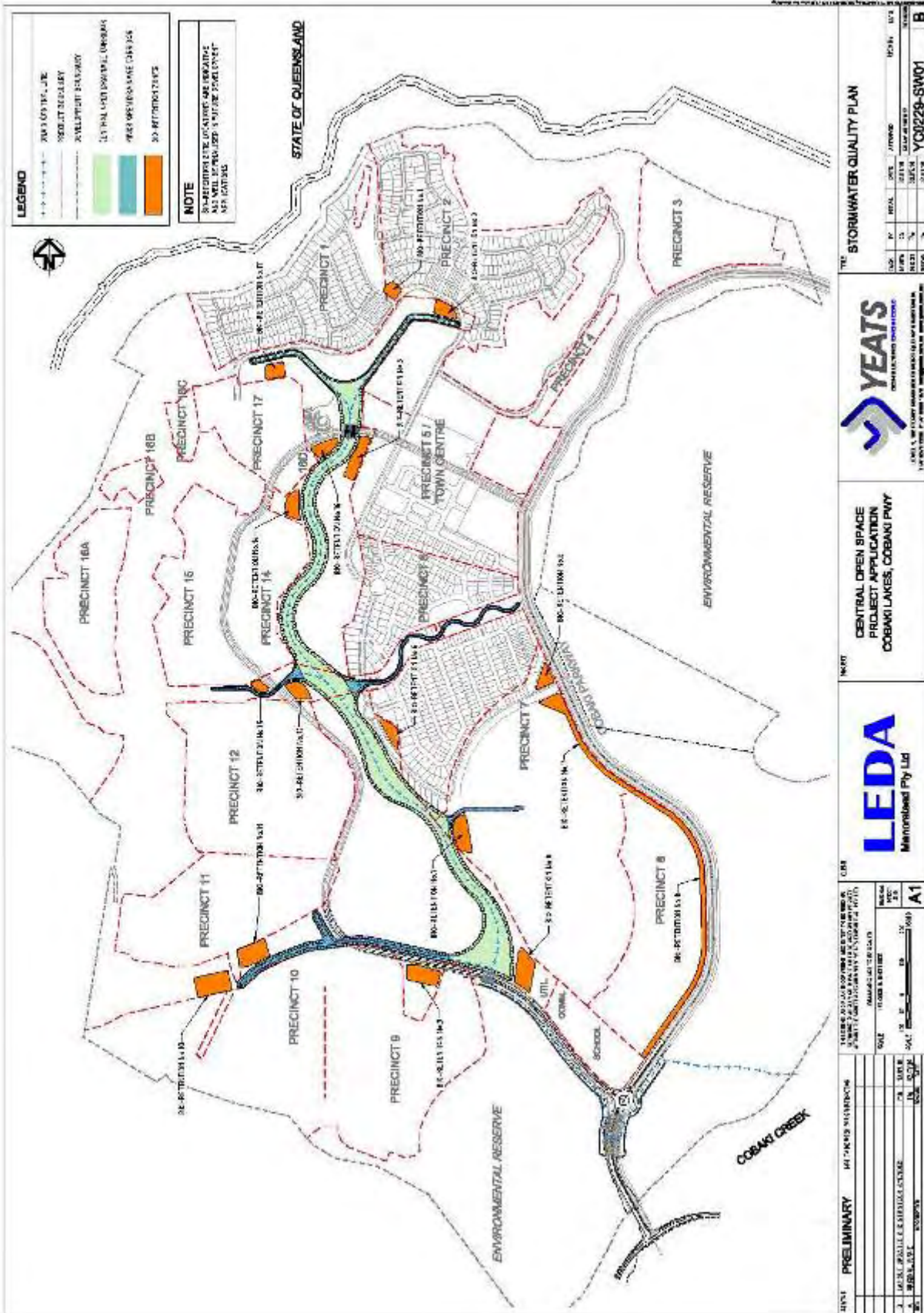
PLACE Design Group Pty Ltd
 Level 1, 202 Midtown Street
 Parklands Village, QLD 4006 AUSTRALIA
 T + 617 2852 3932
 F + 617 2852 4769

COBAKI LAKES
 CENTRAL OPEN SPACE – LAND USE AREAS

DATE: 27/10/2009
 SK01 - 06



 <p>PLACE Design Group Pty Ltd Level 1, 203 Wickham Street Bundaberg Valley, QM 4006 AUSTRALIA T + 617 2932 2932 F + 617 2932 4765</p>	<h2 style="margin: 0;">COBAKI LAKES</h2> <h3 style="margin: 0;">CENTRAL OPEN SPACE - LANDSCAPE PLAN</h3>	<p>DATE: 30/06/2010 SK01 - 01</p>
---	--	---



COMMENTS ON THE PPR FOR THE PROJECT APPLICATION

Many of the comments in relation to the Concept Plan Addendum are related to issues with the Project Application. A number of conditions are proposed addressing issues summarised below.

Environmental Health

- Turners Cattle Dip site is located within the area identified as the proposed central open space and riparian corridor. Statement of Commitments require the remediation of the site prior to completing the construction of the lake. This is no longer valid as the lakes have been deleted from the project and amended statement of commitments should be incorporated requiring remediation of Turners Cattle Dip Site prior to issue of construction certificate for the central drainage system. Conditions are recommended in this regard.
- Additional areas of contaminated land are located near a long narrow portion of proposed open space in the south-western portion of the site. An additional condition should be provided ensuring that potentially contaminated land in this area is investigated and remediated prior to dedication to Council.
- A condition is recommended to ensure that potential impacts on Acid Sulfate Soils or groundwater are investigated and managed prior to issue of construction certificate.

Ecological

- The Project Application includes the revised environmental reports for site regeneration, revegetation, freshwater wetland and saltmarsh. These plans have been discussed in detail above. It is recommended that they are amended to reflect the amended stormwater and drainage regime, amended off-site habitat areas and inconsistencies between each plan are removed.
- More details on rehabilitation of the saltmarsh area, including management of tidal flood gates and hydrology should be provided as part of the Project Application.
- It is recommended that a condition is incorporated into the PPR which requires additional details of the tidal regime (including tidal flood gate management systems) proposed for the saltmarsh, as part of an amended saltmarsh rehabilitation plan. Council approval of this is required prior to construction works associated with the PPR given the stormwater system is interconnected with saltmarsh rehabilitation.

Stormwater Quality Concept Plan

The applicant's consultant engineers have provided a Stormwater Quality Concept Plan (SQCP) with the PPR. As a result of workshops on drainage matters with Council officers, Revision 02 of this plan has been provided. The following comments and conditions relate to this revised version.

The central precinct works consist mainly of earthworks to provide the Estate's stormwater conveyance system. Compared to the Environmental Assessment, the revised plan raises the level of the central drain to avoid groundwater and excavation of acid sulphate soils.

Stormwater treatment measures are no longer proposed within the open drain through the central precinct. It has been agreed that treatment requirements conflicted with conveyance functions of this drain, and that each precinct of future urban development would be required to provide its own off-line treatment measures. As such, these treatment measures will be subject to separate applications, and the subject project application no longer includes stormwater treatment facilities.

The stormwater management for the Estate includes rainwater tank capture and reuse at lot level (at the source). This has benefits for potable water demand, and mitigates transmission of pollutants in the stormwater train by mitigating flows.

To maximise the conveyance function and minimise the long term maintenance issues for Council, the open drain will primarily be designed and constructed as a grassed swale, providing long residence times with flat longitudinal grade and shallow flow depths. A simplified rock lined channel along the invert is proposed. This will keep the rest of the cross section dry for low flow events, and with the addition of lateral sub soil drains, will allow slashing and other maintenance activities to occur in the grassed sections without bogging.

The SQCP does not discuss conveyance capacity of the open drain. A separate Revised Local Flooding and Flood Impact Assessment Report (RFIA) has been provided, which provides the results of various hydraulic models.

Gross pollutant basins will be provided at all drainage outlets to the open channel system. These will be rock lined to dissipate flow energy and minimise scour and erosion at these points. Again, these will be the subject of separate applications for the urban precincts.

The SQCP provides MUSIC modelling results for this treatment train to determine if water quality objectives are achieved.

Council officers are looking to update D7 to adopt facets of the Water By Design Guidelines (WBD) developed in South East Queensland. WBD sets "Design Objectives for Water Management" in terms of percentage reductions from post development untreated to treated flows. The SQCP demonstrates the treatment train complies with these revised WQOs, including total nitrogen:

Parameter	Post-Development (Untreated kg/yr)	Post Development (Treated kg/yr)	% Reduction	WBD WQO (%)	Objective Achieved?
TSS	333,000	44,400	87	80	Yes
TP	830	247	70	60	Yes
TN	5,060	2,780	45	45	Yes
Gross Pollutants	72,500	0	100	90	Yes

It is considered that the SQMP does provide best practice water sensitive urban design for the Cobaki development. Having said this, none of the precinct based treatment devices are included in the Project Application and will require further assessment as part of future precinct applications.

Civil Drawings

The applicant's engineering consultants have provided a set of revised civil drawings in Attachment J to the PPR.

No significant concerns are raised with the civil drawings. Any issues are addressed by recommended conditions.

Erosion and Sediment Control

An erosion and sediment control plan (ESCP) should be provided, including all information required by Development Design Specification D7 - Stormwater Quality, and complying D7-Annexure A "Code of Practice for Soil and Water Management on Construction Sites".

The ESCP should considered measures in place for the construction phase of the subject central drainage precinct, as well as the measures required for the future subdivision construction of adjoining precincts, as well as the house building phase of each precinct. This will involve large time frames, and may involve a management system combining the developer's and Council's resources, bonds, sacrificial works and the like.

Of particular note, the ESCP must address:

- Diversion of clean upstream runoff around development sites
- Staging of ground disturbance works and revegetation
- Overflow/bypass arrangements to cater for the Q100 event without erosion, scouring or structural damage to erosion-sediment control devices, or re-mobilisation of previously captured sediment
- Sediment basin sizing and supporting calculations
- Monitoring and actions to address any non-compliance.

It is recommended that this be provided through conditions.

Stormwater Conveyance Downstream of Sandy Road

The EAR previously recommended diffuse discharge of stormwater from a floodgated culvert structure under Sandy Road located at the downstream end of the open channel drainage. This water would be directed across salt marsh areas and eventually discharge to Cobaki Creek. This was promoted as a final treatment measure, however it presented Council with concerns in terms of ongoing maintenance and ecological impact.

The PPR still refers to diffuse discharge to a salt marsh "polishing zone", however the engineering drawings now show a low flow stormwater channel downstream of the Sandy Road culverts. This drain runs along the southern side of the Sandy Road formation, within the road reserve, then under Cobaki Parkway via a large culvert structure. The drain then turns in a northerly direction to link to an existing agricultural drain that discharges to Cobaki Creek.

Concerns raised with this system include:

- Capacity of the formed drain / frequency of overtopping into salt marsh areas (approximately Q2?)
- The u-turn in the drain alignment (OK if only Q2)

- The ownership and ongoing management, access and maintenance of the existing channel, and its outlet arrangement to Cobaki Creek (e.g. easements, management plans)
- Compatibility with the saltmarsh rehabilitation plan.

These concerns have been raised with the applicants in various workshops, and Council is satisfied that subject to amendments to the salt marsh rehabilitation plans to address drainage through this area, the proposed system will operate satisfactorily, subject to conditions.

Flooding

A design flood level of RL 2.9m AHD has been adopted for the Estate, which is in line with Council's predicted climate change affected regional 100 year ARI flood event (0.9m sea level rise and 10% rainfall intensity increase to the year 2100). This complies with recent amendments to Development Control Plan Section A3 - Development of Flood Liable Land.

The Revised Local Flooding and Flood Impact Assessment Report (RFIA) examines the local flood impact of the development within the central open space precinct drainage systems, to confirm that adjoining urban land has adequate flood immunity.

Unfortunately these results are not clear, but indicate that the open drain through the central precinct has capacity to convey runoff events up to the 10 year ARI event. Larger events will inundate the remaining central drainage precinct area (structures and casual open space), which provides flood storage and additional flow cross section for these major storms.

Results of flood modelling demonstrate a flood gradient for the design flood (100 year ARI) through the central precinct, which needs to be taken into account in the landform design and the application of suitable flood planning levels for adjoining development. The regional design flood level (with climate change) of RL 2.9m AHD applies to the southern portion of the site, however due to the local flood gradient, a design flood level of RL 3.4m AHD would apply in the vicinity of the northern Sandy Road culvert crossing (e.g. community facilities, town centre), and up to RL 3.7m AHD in the upper tributaries for the northern precincts. Fill levels have been iteratively revised to reflect this flood gradient, so are satisfactory.

Provision of filled sports fields to RL 1.9m AHD (that is DFL - 1m) meets Council's DCP-A5 requirements for structured open space. The northern structured open space area indicatively includes tennis courts and other facilities that require a higher level of flood protection and therefore a higher design flood level, ideally to the same 100 year ARI event as adjoining urban land. Additional filling will have flow on effects to flood levels and flow conveyance in this area, so needs further consideration with future applications for such facilities.

The flood assessment does not include velocity or flow data. This is of concern to Council due to potential safety issues with members of the public in these dual use drainage / open space areas. Conditions are recommended to ensure safety is addressed if velocity data presents high risk.

Staging

A proper understanding of staging for the central precinct, particularly the drainage aspects, is critical to the overall orderly development of Cobaki Estate. Despite previous requests,

this still has not been adequately discussed in the PPR. Conditions will be recommended to resolve the following issues:

- The staging of construction of the central drainage, including provision of erosion and sediment controls
- The prerequisite works required for the central drainage to allow upstream precincts to be developed
- The staging of construction of drainage structures (culverts, floodgates) and road access to the central drainage and open space areas, including maintenance accesses.
- Compatibility of drainage staging with environmental rehabilitation areas, and any prerequisites
- Handover of works to Council / bonding arrangements

Ownership and Management

The PRR states that the works in the Project Application are to be dedicated to Council in stages two years after works are completed in each stage.

Council officers do not consider that any infrastructure should be handed over until it is servicing urban land. A condition is recommended in this regard.

OPTIONS:

Option A

1. That Council endorses the attached draft submission to the Department of Planning on the Addendum to the Preferred Project Report for Cobaki Lakes Concept Plan and the comments on the Preferred Project Report for the Project Application for the central open space and drainage corridor for Cobaki lakes.
2. That Council does not accept dedication or maintenance of open space, drainage corridors, environmental protection areas and other infrastructure unless the recommended conditions in the attached correspondence are applied and implemented to the satisfaction of the General Manager or his Delegate.

Option B

That Council proposes an alternative draft submission to the Department of Planning on the Concept Plan and Project Application for Cobaki Lakes.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The Department of Planning has requested that Council review the Addendum to the Concept Plan PPR and the PPR for the Project Application and advise if concerns outlined in previous submissions have been addressed.

Various internal experts have assessed the PPR for the Project Application and the Addendum to the PPR for the Concept Plan and comments have been collated into the attached draft correspondence.

The purpose of this report is to summarise outstanding issues as well as seek Council endorsement of the attached draft correspondence.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft letter of submission to the Department of Planning on the Cobaki Lakes Concept Plan (ECM 22568034)
-

- 21 [PR-CM] Class 1 Appeal Lodged in Relation to Consent Conditions applied to Development Application DA06/0897.01 for an Amendment to a Nine (9) Lot Subdivision Involving Alterations to the Approved Lot Sizes, Realignment of the Road and the Staging of the Development into Two (2) Stages at Lot 1 DP 601049; Lot 1 DP 1084992, No. 15 Tanglewood Drive, Tanglewood**

ORIGIN:

Development Assessment

FILE NO: DA06/0897 Pt1

SUMMARY OF REPORT:

On 24 August 2007, development consent (DA06/0897) was granted for a nine (9) lot subdivision (of proposed Lot A under DA06/0832) at No. 15 Tanglewood Drive, Tanglewood. The main issue for consideration under this original approval related to the conservation/habitat value of the site. Of particular importance was the question of whether or not unauthorised clearing and other alleged pre-emptive activities were undertaken to avoid environmental constraints that may have otherwise limited the development potential of the land. The file records note that Council was unable to find sufficient evidence to proceed with prosecution, despite a comparison of aerial photographs of the property showing a distinct reduction in vegetation coverage between 2000, 2001 and 2006.

An application to amend the consent to allow alteration of lot sizes, realign the road, modify some of the conditions applied by the NSW Rural Fire service and stage the development was lodged with Council on 20 December 2007. Officer inspections at that time raised concerns over further clearing.

In 2009 a draft Council report was formulated, using aerial photographic evidence to indicate that extensive clearing had been undertaken on the subject site - Lot 1 DP 1084992 (and to a lesser extent neighbouring Lot 1 DP 601049 now under the same ownership) at 15 Tanglewood Drive Tanglewood between 2004 and 2007.

The report recommended options such as: commencing legal proceedings relating to non-compliance with consent conditions and construction of a dwelling without consent; investigating joint action with the Department of Environment and Climate Change; or failing legal action, Council could negotiate a significant restoration plan and program with the owners to restore the remnant vegetation on the site.

On 10 July 2009, the draft report was sent to the applicant seeking their response, comment or clarification of the issues raised within the report to ensure factual information prior to it's consideration by Council.

The applicant failed to respond to the issues raised until 13 October 2009 when, during an on-site visit, a letter was provided from the local DECCW Compliance Officer effectively authorising at least some of the original clearing. The applicant's planning consultant was

adamant that no further clearing had occurred beyond 2005 and no definite evidence was available to the contrary.

Following a negative response from DECCW in regard to potential joint action; in light of the letter tabled by the applicant, and after verbal agreement was reached with the applicant's representative as to improvement in ecological outcomes for the development, the Council report was withdrawn.

Ecologist comments provided in relation to the S96 included the following comments:

The submitted amendments overall are likely to result in less clearing of native vegetation than presently approved due the general reduction in asset protection zones. The amendment also provides opportunity to add additional ecological protection measures agreed with the applicant, including prohibition of dogs and cats from the subdivision. This is an important aspect due to the high surrounding habitat value (including part of Cudgen Nature Reserve) and was not previously conditioned.

The Section 96 approval was then issued on 19 March 2010, incorporating amended conditions which were understood to be agreed by the owner and applicant.

Council has now been served notice of a Class 1 Appeal against the imposition of conditions in the approval of an application to modify a development consent under Section 96(6) of the Environmental Planning and Assessment Act. The first call-over with the Court has been set down for Monday 1 November 2010 and Council's position on defending the Appeal to enable engagement of solicitors is requested.

RECOMMENDATION:

That Council instructs its solicitors to defend the Class 1 Application (Case No. 10794/10 relating to the premises at Lot 1 DP 601049; Lot 1 DP 1084992, No. 15 Tanglewood Drive, Tanglewood filed by Storey and Gough Lawyers in the Land and Environment Court on 30 September 2010.

REPORT:

Applicant: Peter Tagget via Planit Consulting
Owner: Mr PF Tagget and Heavens Door Pty Ltd
Location: Lot 1 DP 601049; Lot 1 DP 1084992; No. 15 Tanglewood Drive, Tanglewood
Zoning: 1(c) Rural Living; 6(b) Recreation; 7(l) Environmental Protection (Habitat); 7(d) Environmental Protection (Scenic/Escarpment)

BACKGROUND:

The site is presently zoned 1(c) Rural Living, 6(b) Recreation, 7(d) Scenic Escarpment and 7(l) Habitat under Tweed LEP 2000. Exhibited (2004) draft LEP Amendment No. 21 proposed to rezone the majority of the site to 7(a) Environmental Protection and this is reflected in the proposed draft exhibited LEP 2010 zoning of E2 Environmental Conservation.

The site has a long and complex history. The original larger lot was subdivided into two lots, approved by development application DA04/0311 in January 2005. Of note is the previous legal action between the respective owners of these two lots (Lot 1 DP 1084992 and Lot 1 DP 601049) in relation to access provision. Both lots are now within the same ownership.

The flora and fauna assessment accompanying DA04/0311 noted that the site provided habitat for threatened species, including the Glossy Black Cockatoo and Koala. The site is mapped under the Tweed Koala Habitat Atlas as Secondary Habitat Class A and contains two species known as Primary Koala food trees, being Tallowwood (*Eucalyptus microcorys*) and Small-fruited Grey Gum (*Eucalyptus propinqua*), with trees estimated in 2003 to be 20 to 50 years of age. An assessment in 2003 under State Environmental Planning Policy No. 44 (Koala Habitat) concluded that the site contained "core" koala habitat as defined under this policy.

Consent for this two-lot subdivision specifically prohibited a dwelling in an area known as Site 1 due to threatened species (Koala, Glossy Black Cockatoo) habitat and this was reflected in a restriction as to user on the title of the land under Section 88B of the Conveyancing Act 1919. It appears that a dwelling now exists on Site 1 without consent (Figure 3, illustrated by the northern red square). Council's Building Surveyors have advised the owner "that until such time that the conditions of consent in relation to the subdivision (referring to a subsequent subdivision application discussed below) have been satisfied and a Subdivision Certificate issued, final determination of the Development Application for the dwelling house and the application for a Building Certificate cannot be made".

Lot 1 DP 1084992 has been the subject of numerous complaints to Council from neighbours alleging illegal clearing over a period of years; resulting in a report to Council in November 2005 and subsequent remediation action. Officer assessment in 2006 (in response to a complaint) determined that at that time the part of the site investigated represented "potential" koala habitat under SEPP 44, although insufficient evidence was found to justify "core" Koala habitat on that part of the site, although scats indicated at least transient use of the site by Koalas. The officer also reported that the site contained feeding habitat and sightings of the threatened Glossy Black Cockatoo. The Eucalypt Open Forest and Woodland on the site was recognised of high habitat value for a suite of forest dependent flora and fauna species.

On 24 August 2007, development consent (DA06/0897) was granted for a nine (9) lot subdivision (of proposed Lot A under DA06/0832). The approval incorporated a formal access road (servicing each of the proposed allotments for services including power and telecommunications). The road, which terminates at the eastern boundary (between Lots 6 and 7) was also intended to provide formalised access to the approved five (5) lot subdivision on the adjoining land (Lot 1 DP 601049) to the south (see Figure 1 below) via the existing Crown Road.

FIGURE 1: Previously approved plan of subdivision (DA06/0897)

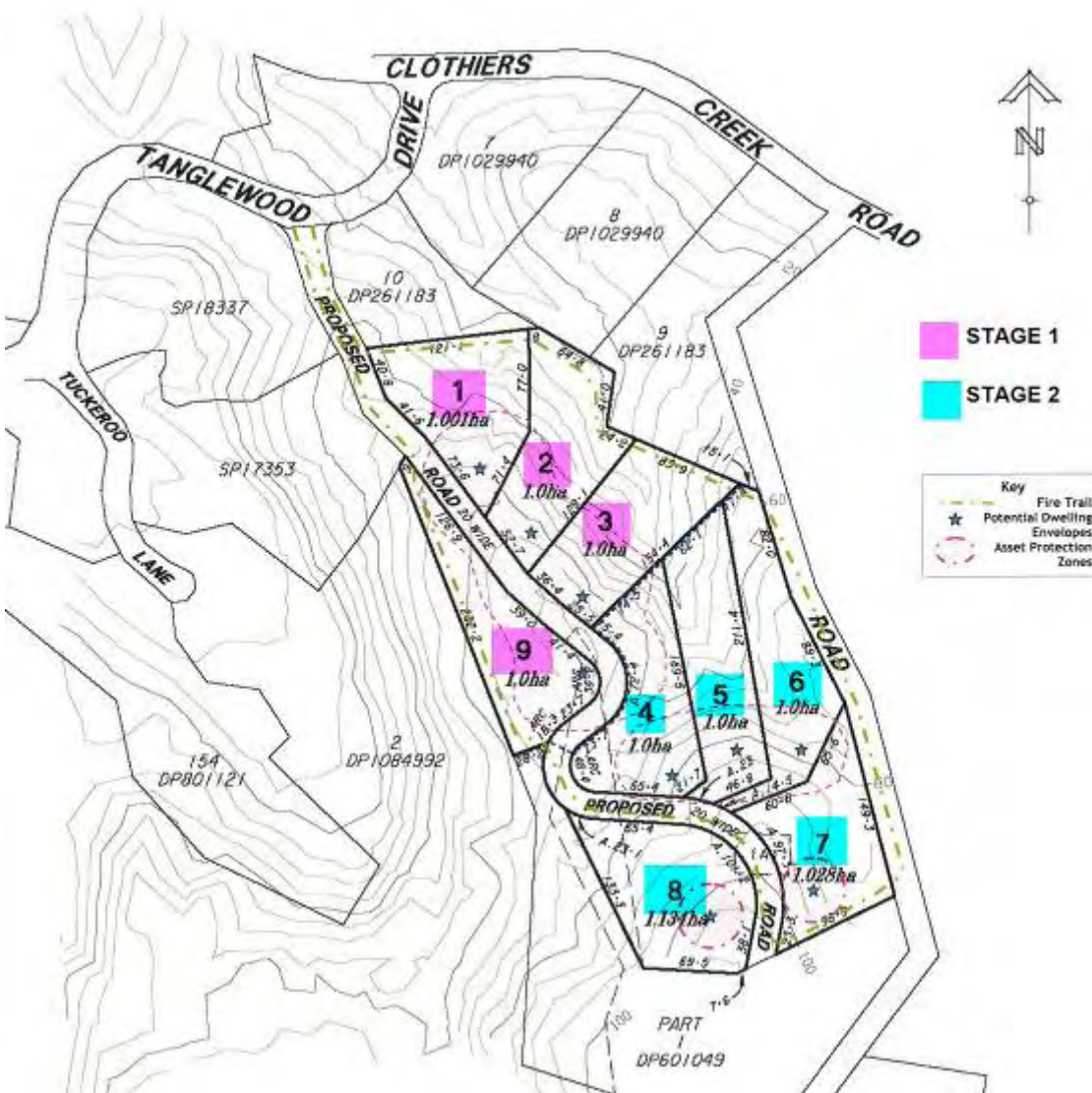


The main issue for consideration under DA06/0897 related to the conservation/habitat value of the site. Of particular importance was the question of whether or not unauthorised clearing and other alleged pre-emptive activities were undertaken to avoid environmental constraints that may have otherwise limited the development potential of the land. Council's Specialist Planner / Ecologist's flora and fauna assessments noted that the site provided habitat for threatened species, including the Glossy Black Cockatoo and Koala.

The file records note that Council's Compliance Officer was unable to find evidence sufficient to undertake prosecution, despite a comparison of aerial photographs of the property showing a distinct reduction in vegetation coverage between 2000, 2001 and 2006. The outcome was that approval was granted, subject to rehabilitation works outside of the nominated asset protection areas, as well as a Koala Habitat Plan of Management.

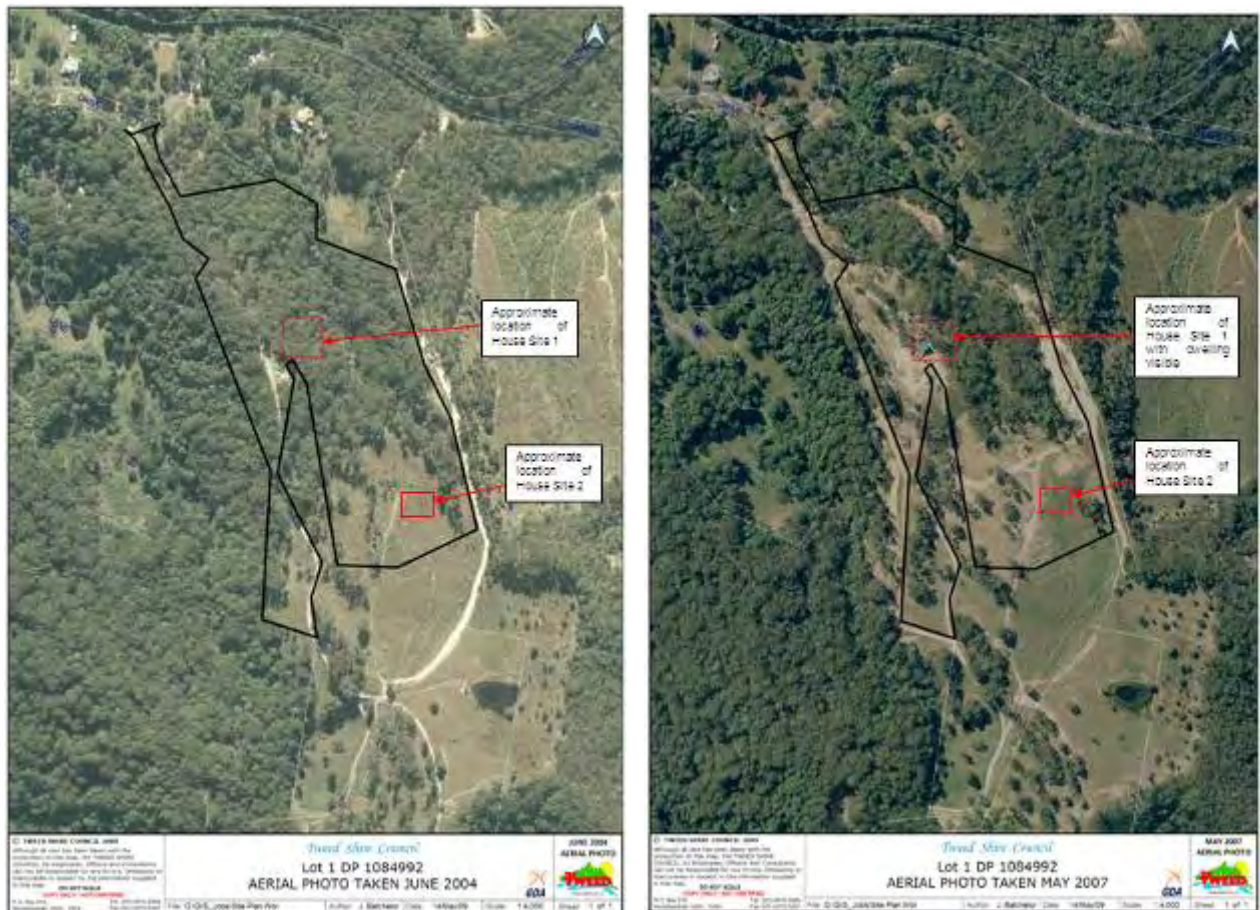
An application to amend the consent was lodged with Council on 20 December 2007. The modification sought to: realign the road; allow alteration of lot sizes; amend Rural Fire Service asset protection zone and reticulated water requirements; remove the condition requiring that the boundary adjustment with the lot to the south be finalised prior to the issue of the construction certificate, and to stage the development (Figure 2).

FIGURE 2: Amended plan of subdivision (DA06/0897.01)



Officer site inspections for the purpose of assessing the S96 application raised concerns over further apparent clearing on the site. In early 2009, a draft council report was formulated, using aerial photographic evidence to indicate that extensive clearing had been undertaken on the subject site - Lot 1 DP 1084992 (and to a lesser extent neighbouring Lot 1 DP 601049 now under the same ownership) at 15 Tanglewood Drive Tanglewood between 2004 and 2007 (see Figure 3 below).

FIGURE 3: Comparison of 2004 & 2007 aerial photography of the subject site



The report recommended options such as: commencing legal proceedings relating to non-compliance with consent conditions and construction of a dwelling without consent; investigating joint action with the Department of Environment and Climate Change; or failing legal action, Council could negotiate a significant restoration plan and program with the owners to restore the remnant vegetation on the site.

On 10 July 2009, the draft report was sent to the applicant seeking their response, comment, or clarification of the issues raised within the report in order to ensure factual information prior to it's consideration by Council.

The applicant failed to respond to the issues raised until 13 October 2009 when, during an on-site visit, a letter was provided from the local DECCW Compliance Officer effectively authorising the original clearing under the Native Vegetation Act. The applicant's planning consultant was adamant that no further clearing had occurred beyond 2005 and no definite evidence was available to the contrary.

Following discussion with DECCW indicating joint action was unlikely for an area subject to development consent; in light of the letter tabled by the applicant, and after verbal agreement was reached with the applicant's representative as to improvement in ecological outcomes for the development, the Council report was withdrawn.

Negotiation seeking to improve ecological outcomes for the site was undertaken with the applicant's planning consultant on-site on 16 October 2009. Verbal agreement was understood to have been reached with the consultant in relation to exclusion of cats and dogs from the site, rehabilitation of all areas outside immediate use zones and provision of a Koala Plan of Management separate to rehabilitation plans. In return, Council Officers agreed to delay the timing for provision of required restoration and threatened species plans until after the Construction Certificate had been issued in order that the owner could obtain funding for the proposal and thus fund rehabilitation as well. The Ecologist's understanding from that meeting is that she was assured that very little further clearing (in particular of Koala food trees) would be required to complete the subdivision as the roads and most of the asset protection zones were already in place.

Ecologist subsequent assessment of the S96 included the following comments:

"The submitted amendments overall are likely to result in less clearing of native vegetation than presently approved due the general reduction in asset protection zones. The amendment also provides opportunity to add additional ecological protection measures agreed with the applicant, including prohibition of dogs and cats from the subdivision. This is an important aspect due to the high surrounding habitat value (including part of Cudgen Nature Reserve) and was not previously conditioned."

The Section 96 approval was then issued on 19 March 2010, incorporating detailed amended conditions, the intent of which were understood to be agreed by the owner and applicant.

The required Construction Certificate has since been delayed because of further information requests and has not yet been issued. One of these requests related to the added condition number 5.5, repeated below.

5.5 No Primary Koala food trees Tallowwood (Eucalyptus microcorys), Small-fruited Grey Gum (Eucalyptus propinqua) and Forest Red Gum (Eucalyptus tereticornis) or Glossy Black Cockatoo feed trees Forest Oak (Allocasuarina torulosa or A. littoralis) may be removed without separate approval from the Director Planning and Regulation or delegate.

The locations of these trees are to be identified, marked and mapped on site prior to commencement of construction. These trees must be protected throughout the development site during construction works and the operational phases of the development.

In response to this condition, Council's Development Engineer requested a Tree Plan to illustrate any trees named above that would be required to be removed for the road alignment. Consideration of the tree plan on-site revealed that the currently constructed gravel road is not in the alignment approved by the development consent and that the approved alignment would result in substantial loss of large (including old growth) and small trees, particularly within the gully area. Council's Ecologist has subsequently tried to negotiate amendment of plans to reflect the road's current alignment.

Council has now been served notice of a Class 1 Appeal “against the imposition of conditions in the approval of an application to modify a development consent under Section 96(6) of the Environmental Planning and Assessment Act”. The first call-over with the Court has been set down for Monday 1 November 2010 and Council’s position on defending the Appeal to enable engagement of solicitors is requested.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will be required to engage legal representation regarding the Appeal. Costs will be incurred as a result of the Appeal.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Section 96 Assessment Report - Development Application DA06/0897.01 (ECM 22497630)
 2. Ecologist comments and condition amendments (ECM 22497622)
-

THIS PAGE IS BLANK

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

ORIGIN:

Director Planning and Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

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

REPORT:

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

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

DA No.	DA10/0066
Description of Development:	two (2) lot subdivision
Property Address:	Lot 10 DP 1034435 No. 285 Clothiers Creek Road, NUNDERI
Date Granted:	24/9/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(b2) Agricultural Protection and 1(c) Rural Living
Justification:	Creation of a rural residential allotment of 5.99ha which contains a minor portion of 1(b2) zoned land and majority of 1(c) zoned land. Minimum allotment size for 1(b2) land is 40ha. Therefore a variation request to allow the proposed allotment with minor portion of 1(b2) zoned land to remain undersized. Land use of this 1(b2) portion (non-agricultural) has remained consistent since at least 1962.
Extent:	Land zoned 1(b2) = approx. 1.08ha which is 2.7% of 40ha, which results in a 97.3% variation of the development standard.
Authority:	Tweed Shire Council

DA No.	DA10/0255
Description of Development:	19 lot subdivision comprising of four (4) stages
Property Address:	Lot 56 DP 1030322 Collins Lane, CASUARINA
Date Granted:	28/09/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	7(f) Environmental Protection (Coastal Lands) and 2(e) Residential Tourist
Justification:	The proposal includes lots within the 7(f) zoned area of less than 40ha.
Extent:	0.003%
Authority:	Director General of the Department of Planning

DA No.	DA10/0283
Description of Development:	resubdivision of 16 lots into 23 lots
Property Address:	Lots 1-16 Section 8 DP 14895 Casuarina Way, KINGSCLIFF
Date Granted:	23/09/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	7(l) Environmental Protection (Habitat) and 2(e) Residential Tourist
Justification:	Clause 20(2)(a) requires 40ha for land zoned 7(l). Proposed Lots 25-35 and Lots 37 and 38 will contain small slithers of land zoned 7(l) under the 40ha.

Extent:	Following consideration of the application concurrence was granted to vary Clause 20(2)(a) of the Council's LEP to permit the creation of proposed Lots 25-35 and Lots 37 and 38 to contain land partially zoned 7(l) which is below the 40ha standard. The proposed lots will continue to allow the development of residential land to be developed for residential purposes. It is understood that no development will occur on the 7(l) land.
Authority:	Director General of the Department of Planning

DA No.	DA10/0382
Description of Development:	Boundary alteration
Property Address:	Lot 2 DP 129075 No. 224 Tyalgum Road; Lot 1 DP 129075, Lots 11 & 15 DP 44722; No. 250 Tyalgum Road, Lots 12 & 16 Tyalgum Road Eungella
Date Granted:	24/09/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural
Justification:	The application will result in the creation of lots below the development standard for Zone 1(a) - Rural. The lot sizes are already below the minimum development standard of 40 hectares and as such will not result in the fragmentation of land or loss of viable agricultural land as the land is already residential in character. The consolidation of the smaller lots will result in an improved situation and reduce the fragmentation of lots in the rural zone. On this basis it is considered that the objection to SEPP 1 is reasonable.
Extent:	Greater than 10%
Authority:	Director General of the Department of Planning

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

THIS PAGE IS BLANK

