



TWEED
SHIRE COUNCIL

Mayor: Cr Warren Polglase

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

Agenda

Planning and Regulation Reports

Ordinary Council Meeting

Tuesday 20 July 2010

held at Murwillumbah Cultural & Civic Centre
commencing at 4.30pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

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7 [PR-CM] Draft Tweed Local Environmental Plans - Update on Negotiations with Department of Planning - Status Up-date Strategy for Moving Forward

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2000 Pt10

SUMMARY OF REPORT:

This report provides an update of recent actions and seeks Council's endorsement for Council officers to further pursue with the NSW Department of Planning (DOP) a series of major outstanding issues relating to the Draft Tweed Local Environmental Plan 2010 and Draft Tweed City Centres Local Environmental Plan 2009.

This report was preceded by a meeting in Sydney in May 2010 between Council and Department staff and a Councillor workshop, which was also attended by Department staff on 8 June, both of which related to the implementation of the State Government's Standard Instrument Order (local environmental plans) 2006 and the impacts arising from the standardisation of the Tweed LEP, which is considered to be undermining the 'local' connection of the LEP to the Tweed Shire.

As identified through the submissions on the recent public exhibition of the Draft LEPs and the meetings with the DOP, both the Tweed community and Councillors have expressed strong concerns with the Standard Template's imposition of unsatisfactory LEP controls in respect of the proposed environmental zones, the related environmental assessment and compliance clauses, height and floor space ratio, and lack of certainty for future rural lands development.

Whilst the DOP has shown a willingness in the recent meetings to compromise on previous policy and LEP drafting positions, there are still some critical issues to be responded to, prior to a decision being made to the extent of any required Draft LEP changes and subsequent requirements for re-exhibition.

It is expected that further advice will be received from the DOP in upcoming weeks which will inform a further report to Council, providing Council with the broader context of a comprehensive review of the public exhibition submissions, and subsequent recommendations for Council for a preferred course of action in advancing any changes and public exhibition of the Draft LEPs.

RECOMMENDATION:

That:

- 1. The report on Draft Local Environmental Plan – Update on Negotiations with Department of Planning - Strategy for Moving Forward be received and noted.**
- 2. Council supports Council officers in their pursuit of appropriate and necessary resolution to the issues raised in this report relating to the draft Tweed Local Environmental Plans.**

REPORT:

On 12 May 2010 Council officer's met with senior Department of Planning staff to discuss the implementation issue arising from the transition of the Tweed Local Environmental Plan into the State Government's Standard Instrument Order (local environmental plans) 2006 'template'.

Attached to this report is a copy of the Agenda raised at that meeting.

The issues raised in the Agenda were presented by Council and Department of Planning staff at the Councillors workshop of 8 June 2010. This provided the Department staff an opportunity to address the concerns raised in-line with the response received from the Deputy Director-General, Mr Tom Gellibrand, on 3 June, which is also attached to this report.

FUTURE FUNDING OPTIONS – LEP BACKGROUND STUDIES

Further funding was announced on 15 June 2010 by the Director-General of Planning, Mr Sam Haddad, under the NSW Government's 2010/11 budget, supporting \$2.9 million to assist in the delivery of new comprehensive LEPs; \$2 million to deliver planning policy to help create well-designed and vibrant communities around public transport, and \$2 million to review and update greenfield land release sequencing and policy, over a 2-year period.

Council officers will be seeking additional funding once the application and procedural arrangements have been finalised by the Department, for a range of projects to assist with delivering improved accessibility and lifestyle choice in the Tweed housing market, including rural land residential investigation.

DRAFT TWEED LEP 2010 & TWEED CITY CENTRES PLAN 2009 - STATUS

The draft Plans were publicly exhibited for an extended period of about 90 days and approximately 400 public submissions were received. About 55 of those submissions relate specifically to the draft Tweed City Centre Plan.

Following the close of exhibition and the subsequent Council-Department meetings and Councillors workshop work has begun on reviewing the submissions, re-strategising the environmental protection zoning and redrafting local clauses to address key local issues.

The Deputy Director-General (DDG) reaffirmed the Department's commitment to work with Council to resolve the issues raised and to expedite the gazettal of the draft LEPs. Council officers welcomed the renewed commitment by the DDG to assist with the drafting of an LEP that would strengthen the aim, objectives and implementation of the Tweed's broader strategic planning framework however, have raised concern about the Department's preference to proceed with the draft LEPs irrespective of identifiable concerns and issues with the 'template' on the basis that they may be resolved by a further and later planning proposal.

No further correspondence has been received from the Department since the Councillor workshop of 8 June and Council officers are still working toward preparing additional information to support the concerns raised.

It is anticipated that a further report on the public submissions will be reported to the August Council meeting. It is likely that revised Plans addressing how the issues raised have been addressed will be completed by September at the earliest.

REFRESHER AND STATUS OF KEY AREAS OF CONCERN

Reference to the May 12 meeting agenda provided as Attachment 1 highlights and provides a brief discussion on range of key issues. For the purposes of this report several of the more prominent issues and how Council officers are responding to them is discussed below.

Environmental Protection and Regulation of Land Clearing

The Draft LEP 2010 sought to implement Council's adopted approach to environmental protection and management that was originally devised and reflected in the Tweed LEP 2000 and draft LEP Amendment 21 of 2005.

Between 2006/2007 extensive discussions took place between Council officers and the Department of Planning (DoP) in attempting to advance Tweed's environmental protection and management objectives. Throughout these discussions, the DoP actively sought to impose the Standard Template model clauses upon Council, and to limit Council's use of local clauses in its Draft LEP. This effectively undermined the original intent and objectives of the earlier environmental protection and management (EPM) approach.

Council officers were of the view that there was no mandate or sufficient time to enable the EPM strategy to be reworked and instead formed the view that the better option, taking into consideration the compressed timeframe being imposed by the Minister among others, was to permit the public exhibition process to proceed and to allow that process to further expose the issues, and as expected this occurred very early in the exhibition process.

Following the close of public exhibition and further discussions with the Department, which has resulted in their partial support for a redesign of the EPM strategy approach, Council officers are now well placed to broaden the use of the environmental protection zonings provided under the template and to recapture the intent of the initial EPM strategy.

The basis of the new zoning strategy will be to recoup the 5600ha of environmentally zoned land lost under the draft Plan; the retention of the increased environmentally zoned areas along the Tweed Coast, and the additional extension of the environmental zoning on steep lands. The approach being investigated is seen to have the overarching advantage in that zoning will better reflect the environmental and vegetation qualities of the land, which should result with the high quality attributes being protected under the most stringent environmental zone (E2 environmental conservation) and the introduction of two additional environmental zones to reflect less significant but important lands. Correspondingly, there is a sliding scale of permitted land-uses reflective of the objectives of each zone.

The additional issue arising under the implementation of the 'template' is the removal of Council's ability to regulate clearing of native vegetation on non-urban land. The Department of Planning is currently seeking legal opinion on this issue to establish the lawfulness of the existence and concurrent operation of two separate and independent statutes operating to control the same subject matter (native vegetation). In the meantime Council officers are proceeding on the basis of the current basis of coexistent provisions.

Council officers acknowledge that there are limitations with the current environmental mapping and investigations and that further studies will need to be undertaken as part of the Stage 2 draft LEP. The Department has indicated that further funding may be available in the next round of Planning Reform Funding, which is likely to take effect in the second half of 2010. This is discussed above.

Rural Lands Investigation

The rural lands subdivisional lots size has been a contentious and important issue for many Tweed residents and landowners. The investigation of reviewing the viability, necessity and relevance of the minimum lot size on rural land is widely accepted as requiring a rural lands strategy, which was beyond the scope of works prepared in support of the Stage 1 draft LEP.

As discussed above, future and further funding has been allocated in the NSW Government's budget to assist with the implementation of councils draft LEPs under the Planning Reform Funding scheme. Council officers will be making application when appropriate to seek funding for a range of background studies to assist in the preparation of the Stage 2 draft LEP, which is seen to be the 'comprehensive' component.

In the meantime, Council officers are investigating options under the current template zoning hierarchy. One option being assessed is the implementation of a reduced lot size based on the existing lots size pattern and distribution in combination with the soil classification mapping. In particular, owing to previous planning schemes under the Tweed IDOs and Tweed LEP 1987 a significant number of properties along the major collector roads were lawfully subdivided to sizes significantly below the current 40ha prescription. About 65% of rural zoned properties are currently less than 10ha with about 85% less than 40ha. Of note, the majority of those smaller properties are located adjacent to a major collector road.

Utilising the standard instrument order to better effect it is possible to zone specified rural land as "RU4 Rural Small Holdings" rather than the current blanket approach to implementing "RU2 Rural Landscape". The template approach with lot size mapping also enables a range of lot sizes to be allocated, unlike the present system of prescribing the lot size (linked to the use for residential dwellings) in the land-use table, which limits it to a single minimum lot size.

The effect of this approach is to realign the Tweed LEP with the development pattern that has actually occurred on the ground resulting from intentional past planning schemes. This is a legitimate process that can align the planning scheme with the existing and future intended use of rural land in a way consistent with how other, in particular residential and commercial, zoned land is managed. This process if adopted will enable a better and more accurate holistic reflection of the current use and pattern of development across the Shire, however, it will still necessitate a rural lands investigation study to be undertaken.

It is expected that a strategy will be formulated for a future report to Council in September.

Height of Buildings

As highlighted by way of example in the background discussion of this report the height of buildings provisions and methodology being pursued by the Department of Planning, and not necessarily by the legislation (Standard Instrument Order (local environmental plans) 2006), presents several difficulties for the Tweed.

Council officers have provided a very clear argument to the Department on the issues and concluding that it would be inappropriate for Tweed to proceed in-line with the Departments current views, in particular with respect to the ambiguity in the drafting of the relevant provisions and the reliance on the existing ground level as a measure for the height of buildings.

Council's Urban Designer is preparing additional illustrative material to further aid the Department with its appreciation of the issues being raised.

In the meantime, Council officers are reviewing the heights under the Tweed DCP generally, which informed the heights used in the draft Tweed LEP. In particular more recent and detailed work on the locality plans for Area E, Cabarita, Pottsville and Hastings Point, have highlighted that the building heights provided by Council's consultant in the preparation of the Tweed DCP Section A1 – Residential Housing Code, are not reflective of the actual heights required to achieve the prescribed building types.

In relation to the draft Tweed Head City Centre LEP the Department of Planning is reviewing the building heights under that draft LEP, resulting from objection from Gold Coast Airport because on potential building intrusion into operational airspace. This is matter is further discussed below.

It is expected that a revised strategy will also be reported to a future Council meeting in September.

General Administrative Elements of the Standard Instrument

As highlighted in the attached meeting agenda of 12 May there several areas of the standard instrument that require further assessment. Most notably is the dictionary of terms which provides the definitions of land-use terms and there hierarchal relationship and connection.

The Department of Planning released a consultation draft in March 2010 based on potential draft amendments to the standard instrument. It has also been releasing, progressively, additional "model" clauses for use a 'local' clauses. Council officers have reviewed the draft 'potential' amendments and advised the Department many of the administrative nuances and ambiguities will be removed if those amendments are made.

Council officers expressed their view categorically at the Councillors workshop of 8 June that it would be inappropriate to proceed with a draft LEP until such time that the standard instrument was amended. In this regard, Council officers are conscious of the potential difficulties that Council's Planning Department and development industry will encounter with its day-to-day implementation and management.

Aircraft Operations - Noise

This issue predominantly relates to the draft Tweed City Centres LEP. Notwithstanding the advice and recommendation of Council officers the Department of Planning, who took responsibility for drafting the LEP as part of the Cities Task Force project, failed to include the relevant aircraft operations provisions. In addition, the Gold Coast Airport (GCA) has raised objection to the suitability of the revised provisions provided in the standard instrument.

The Department of Planning in consultation with the relevant Commonwealth aviation authority is reviewing the clauses. The Department is also consulting directly with GCA on the request of Council officers with the view to reaching a negotiated resolution that the Council will be in a position to support.

Public Consultation - Exhibition

It is evident from the volume and depth of the public submission received during the public exhibition period of the draft Tweed LEPs that there is significant interest in the planning process being undertaken and its potential outcome. More specifically the complexities of adapting the Tweed LEP 2000 to the new Standard Template format are creating significant concerns for the local community.

This is particularly evident with the some significant draft changes presented to the environmental protection zones.

Given the significance of these concerns, and the likely substantive changes required, it is the officers view that there will be a need to re-exhibit the draft Tweed LEPs.

CONCLUSION:

The review of the public submission and key areas of concern with the standard instrument is progressing. Because of the need to reallocate resource to other key areas of responsibility with the Planning Reforms Unit the review is expected to several months.

It is expected that an update on the public submission review will be reported to the Council meeting in August with a further more detailed report on the proposed strategies in September.

The issues raised in this report and previously with the Department of Planning and Councillors are very significant and require a careful and considered approach and resolution. Council officers have expressed the view that there is nothing to be gained by progressing the draft Tweed LEPs on the basis of the provisions and rational that has been vigorously pursued by the Department to-date.

The Deputy Director-General, Mr Tom Gellibrand, and reaffirmed that Department's commitment to work constructively with Council to achieve the gazettal of the Tweed LEPs. Council officers have welcomed the renewed commitment on the basis that those issues raised are properly considered and resolved to ensure that the Tweed's planning scheme is both reflective and capable of implementing the Tweed's broader strategic policy.

Based on the level of amendment required to align the draft Tweed LEPs with the Tweed's planning needs the re-exhibition of the draft Plans is seen as a necessary ingredient, particularly with respect to gauging the community's acceptance to the proposed amendments.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There is resource and financial implications arising from the continuation of the preparation of the draft Tweed LEPs however, there is a corresponding commitment from the Planning Reform Unit to manage those implications.

POLICY IMPLICATIONS:

The draft Tweed LEPs should not result in adverse policy implication but should improve on the overall efficiency and relevance of the Council's strategic planning policy.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (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 Agenda – Meeting with Department of Planning 12 May 2010 (ECM 18888785)
 2. Letter dated 3 June 2010 from Deputy Director-General, Tom Gellibrand (ECM 18889836)
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8 [PR-CM] Planning Reform Work Program

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt10

SUMMARY OF REPORT:

This report seeks Council's endorsement of the Planning Reforms work program 2010/2013 and associated amendments to Council's Fees and Charges 2010/2011.

This report was preceded by a Councillor workshop relating to the revision of the works program held on 8 June, which also included a presentation of issues on the Draft LEP 2010 by both Council officers and Department of Planning staff.

The report acknowledges the competing resource commitments and limitations that were raised at the June workshop and arising from Council's commitment to improving strategic land-use planning for the Tweed, as well as the need to allocate resourcing for shorter-term development through planning proposals originating from the private sector.

The report concludes that it is essential to maintain the works program, which was first adopted by Council on 16 June 2009, to assist with the ongoing resource allocation to key strategic projects, and for providing greater certainty in the timing and allocation of resources for accepting private planning proposals. It is an essential project management tool and assists staff in providing greater certainty through more accurate estimates of resource capability for any major developer in their preparation of commercial scheduling and planning for future projects and forecasts.

RECOMMENDATION:

That:

- 1. Council endorses the Planning Reforms - Work Program 2010/2013 identified as Tables 1-3 in this report, and**
- 2. Council advertises the fees and charges identified within Table 4 of this report relating to planning proposals in accordance with Section 610F of the Local Government Act, 1993.**

REPORT:

As part of the on-going project management of Council's strategic land-use planning resources the Planning Reform Unit works program is reviewed annually and where appropriate revised to reflect and 'match' resource-to-commitment. The work program was first adopted by Council on 16 June 2009 and a mid-term status update was reported to the Council meeting of 20 October 2009.

Preceding this report a Councillor's workshop was held on 8 June 2010 to enable Council officers to provide an up-date on the work program and how project commitment targets were being met as well as providing an overview of the current funding allocation for existing and future projects; a copy of the workshop agenda is attached to this report for reference. In particular, Council officers discussed both the impact and on-going commitments to the Draft Tweed LEP 2010 and potential future funding options arising under the State Government's Planning Reform Funding Project.

Further funding was announced on 15 June 2010 by the Director-General of Planning, Mr Sam Haddad, under the NSW Government's 2010/11 budget, supporting \$2.9 million to assist in the delivery of new comprehensive LEPs; \$2 million to deliver planning policy to help create well-designed and vibrant communities around public transport, and \$2 million to review and update greenfield land release sequencing and policy, over a 2-year period.

Council officers will be seeking additional funding once the application and procedural arrangements have been finalised by the Department, for a range of projects to assist with delivering improved accessibility and lifestyle choice in the Tweed housing market, including rural residential investigation.

In the meantime, the revised works program has taken into account four key project constraining and opportunity factors:

- i. total PRU staff resources
- ii. committed resource allocation
- iii. existing funding & commitments
- iv. potential future funding

Based on those four elements and the feedback from the June Councillor's workshop the tables below provide a proposed work program for the period 2010-2013.

Table 1 Work Program (1 July – 30 June) 2010/2011 - Estimated Project Delivery

PROJECT CATEGORY	PROJECT TITLE	BUDGET ALLOCATION	STATUS ESTIMATE
High order strategic Plans	Draft Stage 1 LEP 2010	\$3,021	Continuation – 60% complete
	Draft Tweed Heads LEP	\$17,035	Continuation – 60% complete
	Review of Tweed DCP – "alignment" with new LEP	NIL	On hold – insufficient resources to undertake review – 0% complete. This may need to be deferred to the 2011/2012 program.
Locality Based Plans	Draft Tweed Heads "Cities Taskforce" Masterplan & DCP	Combined funding with Tweed Heads LEP	Continuation – 90% complete

PROJECT CATEGORY	PROJECT TITLE	BUDGET ALLOCATION	STATUS ESTIMATE
	Draft South Tweed DCP	Per the above	Continuation – On hold pending completion of Tweed flood risk management strategy. Recommencement will be subject to staff resources but unlikely before early 2011.
	Draft Hastings Point Locality Plan and Development Control Plan.	\$9,911	Continuation – about 70% complete.
Development Control Plans	New Draft DCP – Tree Preservation Orders	NIL	Continuation – about 80% complete & waiting further advice from NRM.
	New Rural Tourism DCP	\$53,748	Conception stage – project to be outsourced and project managed. Current staff resourcing indicates that commencement unlikely before early 2011.
	Kingscliff Locality Plan	\$117,153	Following Pottsville, Hastings Point and Cabarita, Kingscliff is seen to be an important continuation of the Council's coastal strategic urban planning – project is to be part-outsourced with bulk of project undertaken in-house. Based on current staff resources commencement unlikely before early 2011.
	Rural land-use strategy Local growth management strategy Affordable housing strategy Adaptable housing strategy		Projects subject to funding and additional staff resourcing. Funding may become available under the Department's Planning Reform Funding early 2011. These projects would likely commence, subject to a funding / resource commitment, in the third quarter of 2011, and would form the basis of the Stage 2 LEP.
	New Telecommunications Infrastructure DCP	NIL	Preliminary draft prepared - Waiting instruction from Infrastructure Coordination Committee.
	New Draft DCP - Biodiversity	NIL	Drafted by NRM – 40% complete
	New Draft DCP – Area E (Terranora)	NIL \$29,158 provided by landowners group related to their own Draft DCP for the purpose of peer review by Parson Brinkerhoff – Draft DCP was rejected now being prepared internally – no review required beyond public consultation.	Continuation – background studies and design work about 85% complete – project 50% complete..

PROJECT CATEGORY	PROJECT TITLE	BUDGET ALLOCATION	STATUS ESTIMATE
	Draft DCP Brothels Code	NIL	Preliminary draft Plan prepared – project 60% complete – pending further assessment / instruction.
Draft LEPs (Major)	Draft LEP 69 – Seabreeze Estate (Stage 2 rezoning)	Rezoning applications (planning proposals) are subject to prescribed fees under the Council's Fees and Charges	With the DOP pending issue of s 65 for public exhibition – project 60% complete.
	Draft LEP 85 – Pottsville Industrial Lands	See above	Substantive issues assessment – project 40% complete.
	Residential rezoning – “Riva Vue Estate” Murwillumbah	See above	Stage 1 of 3 project commencement 10% complete.
	Residential rezoning – Marana Street, Bilambil Heights (Royal Terranora Resort)	See above	Stage 1 of 3 project commencement 10% complete.
	Enterprise Avenue, Tweed Heads South	See above	Stage 1 of 3 project commencement 10% complete.
	Boyd's Bay Garden World	See above	Stage 1 of 3 project commencement 10% complete
	Extension of Hundred Hills, West Murwillumbah (Stocklands)	See above	Review of preliminary planning proposal complete – waiting lodgement of revised planning proposal.
	Mooball Urban Release	See above	Council resolution to bring forward rezoning under TUELRS 2009* – pending receipt of planning proposal.
	Border Park Race Course	See above	Short-term release area – TUELRS 2009* - pending receipt of planning proposal.
Draft LEP (Minor)	Draft LEP 35 – Billabong caravan Park (expansion of existing site)	See above	On-hold waiting further assessment by Applicant – project 40% complete.
Review of existing policy documents	NIL.		Insufficient resources for existing policy review or up-date.
	TDCP – s A1 – Residential and Tourist Code	NIL	Continuation – review of Part A – project 10% complete moving into next stage of industry consultation.
	TDCP s A11 – Public Notification	NIL	Continuation - On-hold pending resource allocation.
Ongoing commitments	Implementation of the Tweed Urban and Employment Land Release Strategies	Reviews originating from external sources as subject to a prescribed fee of \$1000.00 + \$95 per hour after 4hrs	Consideration of proponent led amendments are subject to Council resolution.
	S 149 Certificates	NIL	Continued GIS resources provided to assist on matters of s.149 certificates.

PROJECT CATEGORY	PROJECT TITLE	BUDGET ALLOCATION	STATUS ESTIMATE
	Cartography / GIS services	NIL	Council reports – all mapping Cadastre shift / maintenance Flood data & s.94 mapping General GIS mapping / assistance across organisation PRU project mapping & 3D rendering Data manager - LEP and related areas comprising bulk of Council's GIS data.
	NSW Government Land (Housing and Industrial) Monitor	NIL	Ongoing development of Monitoring system in accordance with DoP Monitoring Requirements.
	Development applications	NIL	Continuation of PRU resources provided to assist DAU/BAU with strategic planning, urban design and heritage conservation matters.
	Landowner requests of broader community significance	NIL	Currently one project - Investigation of potential planning proposal for a community titled (agriculture retention) development – preliminary investigation stage.

Note:

- *Tweed Urban and Employment Lands Strategy 2009.
- Total allocation of funding is \$200,868 comprising all available project funds (excluding \$29,158 provided by landowners of Area E and \$10,712 for the community based heritage study.
- The grant funding allocated to the preparation of a community based heritage study, which was prepared but which did not proceed was mainly expended with only \$10,712 remaining. Additional further funding would be required to undertake a community based heritage study.

Table 2 Work Program (1 July – 30 June) 2011/2012 - Estimated Project Delivery

PROJECT CATEGORY	PROJECT TITLE	STATUS ESTIMATE
High order strategic Plans	Draft Stage 1 LEP 2010	Gazettal anticipated prior to June 2011.
	Draft Tweed Heads LEP	Per the above.
	Review of Tweed DCP – “alignment” with new LEP	Project commencement by August.
Locality Based Plans	Draft Tweed Heads “Cities Taskforce” Masterplan & DCP	Completion anticipated prior to June 2011 with work commencing on Tweed Heads South component in concert with LEP by September.
	Draft South Tweed DCP	Per the above.
Development Control Plans	New Rural Tourism DCP	Completion expected by Feb 2012, subject to start-up date.
	Kingscliff Locality Plan	Completion expected by April 2012, subject to start-up date.
	Rural land-use strategy Local growth management strategy Affordable housing strategy Adaptable housing strategy	These projects would likely commence, subject to a funding / resource commitment, in the third quarter of 2011; on that basis completion of all projects, except rural lands strategy, could be expected by June 2012.
	New Telecommunications Infrastructure DCP	Anticipated completion by June 2011 or indefinite deferral.

PROJECT CATEGORY	PROJECT TITLE	STATUS ESTIMATE
	New DCP Pottsville Industrial Land	Requirement of rezoning and subject to gazettal – anticipated start-up from September – Proponent funded.
	New DCP Seabreeze Estate	Requirement of rezoning and subject to gazettal – anticipated start-up from July – Proponent funded.
	New DCP “Riva Vue Estate” Murwillumbah	Requirement of rezoning and subject to gazettal – anticipated start-up from September – Proponent funded.
	New DCP Enterprise Avenue, Tweed Heads South	Requirement of rezoning and subject to gazettal – anticipated start-up from September – Proponent funded.
	New DCP “Boyds Bay Garden World”	Requirement of rezoning and subject to gazettal – anticipated start-up from September – Proponent funded.
	New DCP “Marana Street, Bilambil Heights (Royal Terranora Resort)”	Requirement of rezoning and subject to gazettal – anticipated start-up from September – Proponent funded.
	New DCP “Border Park Race Course”	Requirement of rezoning and subject to gazettal – Proponent funded.
	New DCP “Mooball Urban Release”	Requirement of rezoning and subject to gazettal – Proponent funded.
Draft LEPs (Major)	Draft LEP 69 – Seabreeze Estate (Stage 2 rezoning)	<p>Projects scheduled to be completed prior to 2012/2013 programming.</p> <p>Rollovers are expected based on anecdotal evidence of past rezoning assessments, but are not determinable at the time of preparing the works programme.</p>
	Draft LEP 85 – Pottsville Industrial Lands	
	Residential rezoning – “Riva Vue Estate” Murwillumbah	
	Residential rezoning – Marana Street, Bilambil Heights (Royal Terranora Resort)	
	Enterprise Avenue, Tweed Heads South	
	Boyds Bay Garden World	
	Extension of Hundred Hills, West Murwillumbah (Stocklands)	
	Mooball Urban Release	
	Border Park Race Course	Subject to receipt of planning proposal and project start-up.
		Per the above.
Draft LEP (Minor)	Draft LEP 35 – Billabong caravan Park (expansion of existing site)	Completion by June 2011 otherwise identified for termination.
Review of existing policy documents	NIL.	Insufficient resources for existing policy review or up-date.
	TDCP s A11 – Public Notification	Continuation – Project re-start by September.
Ongoing commitments	Implementation of the Tweed Urban and Employment Land Release Strategies	Consideration of proponent led amendments is subject to Council resolution.
	S 149 Certificates	Continued GIS resources provided to assist on matters of s.149 certificates.
	Cartography / GIS services	<p>Council reports – all mapping</p> <p>Cadastre shift / maintenance</p> <p>Flood data & s.94 mapping</p> <p>General GIS mapping / assistance across organisation</p> <p>PRU project mapping & 3D rendering</p> <p>Data manager - LEP and related areas comprising bulk of Council’s GIS data.</p>

PROJECT CATEGORY	PROJECT TITLE	STATUS ESTIMATE
	NSW Government Land (Housing and Industrial) Monitor	Ongoing development of Monitoring system in accordance with DoP Monitoring Requirements.
	Development applications	Continuation of PRU resources provided to assist DAU/BAU with strategic planning, urban design and heritage conservation matters.
	Landowner requests of broader community significance	TBA.

Table 3 Work Program (1 July – 30 June) 2012/2013 - Estimated Project Delivery

PROJECT CATEGORY	PROJECT TITLE	STATUS ESTIMATE
High order strategic Plans	Draft Stage 2 LEP 2012	Project start-up.
	Review of Tweed DCP – “alignment” with new LEP	Completion by July, subject to start-up.
Locality Based Plans	Draft Tweed Heads “Cities Taskforce” Masterplan & DCP	Completion on Tweed Heads South component by February.
	Draft South Tweed DCP	Per the above.
Development Control Plans		
	Rural land-use strategy Local growth management strategy Affordable housing strategy Adaptable housing strategy	These projects would likely commence, subject to a funding / resource commitment, in the third quarter of 2011; on that basis completion of all projects, except rural lands strategy, could be expected by June 2012. Projects subject to detailed timeline assessment but expected rollover of some projects.
	New DCP Pottsville Industrial Land	Completion by Sept.
	New DCP Seabreeze Estate	Completion by July
	New DCP “Riva Vue Estate” Murwillumbah	Completion July-Sept
	New DCP Enterprise Avenue, Tweed Heads South	Completion July-Oct.
	New DCP “Boyds Bay Garden World”	Completion by August.
	New DCP “Marana Street, Bilambil Heights (Royal Terranora Resort)”	Completion July-Oct.
	New DCP “Border Park Race Course”	Completion – TBA.
	New DCP “Mooball Urban Release”	Completion – TBA.
Draft LEPs (Major)		
	Draft LEP 85 – Pottsville Industrial Lands	Per the above.
	Residential rezoning – “Riva Vue Estate” Murwillumbah	Anticipated completion by August.
	Residential rezoning – Marana Street, Bilambil Heights (Royal Terranora Resort)	Per the above.
	Enterprise Avenue, Tweed Heads South	Per the above.
	Boyds Bay Garden World	Per the above.

PROJECT CATEGORY	PROJECT TITLE	STATUS ESTIMATE
	Extension of Hundred Hills, West Murwillumbah (Stocklands)	Per the above.
	Mooball Urban Release	Subject to receipt of planning proposal and project start-up.
	Border Park Race Course	Per the above.
Draft LEP (Minor)		
Review of existing policy documents	NIL.	Limited review to be determined on basis of availability of resources.
	TDCP s A11 – Public Notification	Completion by March.
Ongoing commitments	Implementation of the Tweed Urban and Employment Land Release Strategies	Consideration of proponent led amendments are subject to Council resolution.
	S 149 Certificates	Continued GIS resources provided to assist on matters of s.149 certificates.
	Cartography / GIS services	Council reports – all mapping Cadastre shift / maintenance Flood data & s.94 mapping General GIS mapping / assistance across organisation PRU project mapping & 3D rendering Data manager - LEP and related areas comprising bulk of Council's GIS data.
	NSW Government Land (Housing and Industrial) Monitor	Ongoing development of Monitoring system in accordance with DoP Monitoring Requirements.
	Development applications	Continuation of PRU resources provided to assist DAU/BAU with strategic planning, urban design and heritage conservation matters.
	Landowner requests of broader community significance	TBA.

Based on the projected body of work commitments and priorities illustrated in the proposed work program it is evident that the Planning Reform Unit's staff base is not sufficient to undertake the following projects as previously indicated:

- Draft LEP 76 – Heritage
- Draft Tyalgum Locality Plan
- Fingal Locality Plan
- Chinderah Locality Plan
- Chillingham Locality Plan
- Mooball Locality Plan
- DCP Employment lands (Business Parks)
- DCP (Master-planning principals)
- DCP (Urban Design)
- DCP Densification and Re-development (urban infill)
- DCP Landscaping
- DCP Heritage DCP

These projects will need to be reprioritised on later reviews of the works program and scheduling of some projects may commence in 2013, with the lesser probability of an earlier commencement should one or more planning proposals fail to proceed.

Murwillumbah LPDCP – Deferred (South Precinct)

During the drafting of the Murwillumbah locality based DCP it became clear that certain areas, most notably south Murwillumbah in and around Prospero Street, are subject to flood inundation and in accordance with Council's flood policy cannot have their development intensity up-lifted through rezoning.

Council officers are of the view that the planning work should be commenced as a priority once the Tweed Risk Flood Management Strategy is finalised and provides greater certainty on potential planning outcomes.

The project is not identified in the work program because there is no certainty as to when the Strategy will be adopted or what the ultimate conclusions will be.

Additional staffing to fulfil the planning policy maintenance program and to commence additional strategically important projects, including those identified above, would comprise at minimum one additional urban designer, two strategic planners and a full-time junior planner (12 month rotation), above the Unit's current funded positions.

Potential Impact Associated with the Proposed Work Program

The work program is limited by several factors as highlighted above. Ultimately there will always be a limit on capacity and correspondingly on the body of work commitments.

Tweed Council is currently performing very well and making good progress with its new strategic planning within the confines of its current strategic planning resources. In the context of the development pressure on the Council for the release of further greenfield sites and the demand for greater environmental protection and preservation Council is not making the same level of progress as it could, particularly in the areas of maintaining and reviewing the currency and relevance of its existing land-use policies and in the formulation of new policies, such as those listed above.

The impact of the current capacity and programming is that policy will likely continue to lag behind development pressures and demands than it otherwise should, that is, it will largely remain reactive and outdated opposed to proactive and current. This will impact on the ability to provide certainty to the development industry and may have a detrimental impact on both the delivery of projects (housing and employment) and the end cost of the product (dwelling-houses, residential lots, commercial office space and the like) to the market.

To assist in minimising those impacts discussed above and consistent with the work program strategy presented to Council in 2009 the number of privately proposed planning proposals on the work program has been significantly increased. These new proposals were previously deferred for up to three years to enable Council to implement the new standard instrument LEP, which was initially predicted to take 6-12 months but that has so far taken over three years, however the latency potential and demand in those proposals now requires action and progress so that new development can continue to maintain appropriate levels and diversity in the Tweed's residential housing market in particular and not least to keep downward pressure on cost (affordability).

The necessity to process planning proposals as a means of project control is not seen to be outweighed by the need to undertake key strategic planning policy, like those listed above, as there is a perceived parity, as such there are no foreseeable strategies for expediting the

commencement of some of the identified strategic projects. Council officers will nonetheless endeavour to progress the work priorities expeditiously so as to limit the commencement of those key projects.

Planning Proposal Related Fees & Charges – Need for Additional Fees

Planning Reforms has adopted a new approach to the management and processing of planning proposals, which were introduced as part of the legislative amendments to the Part 3 (Plan Making) of the Environmental Planning and Assessment Act 1979, which took effect on 1 July 2009.

The new process requirement, which has been made very clear to all proponents of planning proposals and which is consistent with the intent of the legislative amendments, is essentially aimed at streamlining LEP amendments with the intent of reducing the time and costs involved. This is achieved in several ways most notably by the requirement to limit the information particular and pertinent to the specific proposal, and the deferral of expensive investigative and detailed studies, where practical, to Stage 2, which will then proceed a resolution of the Council to amend the LEP. Refer Figure 1 – Revised Process for Stage 1 Planning Proposals below.

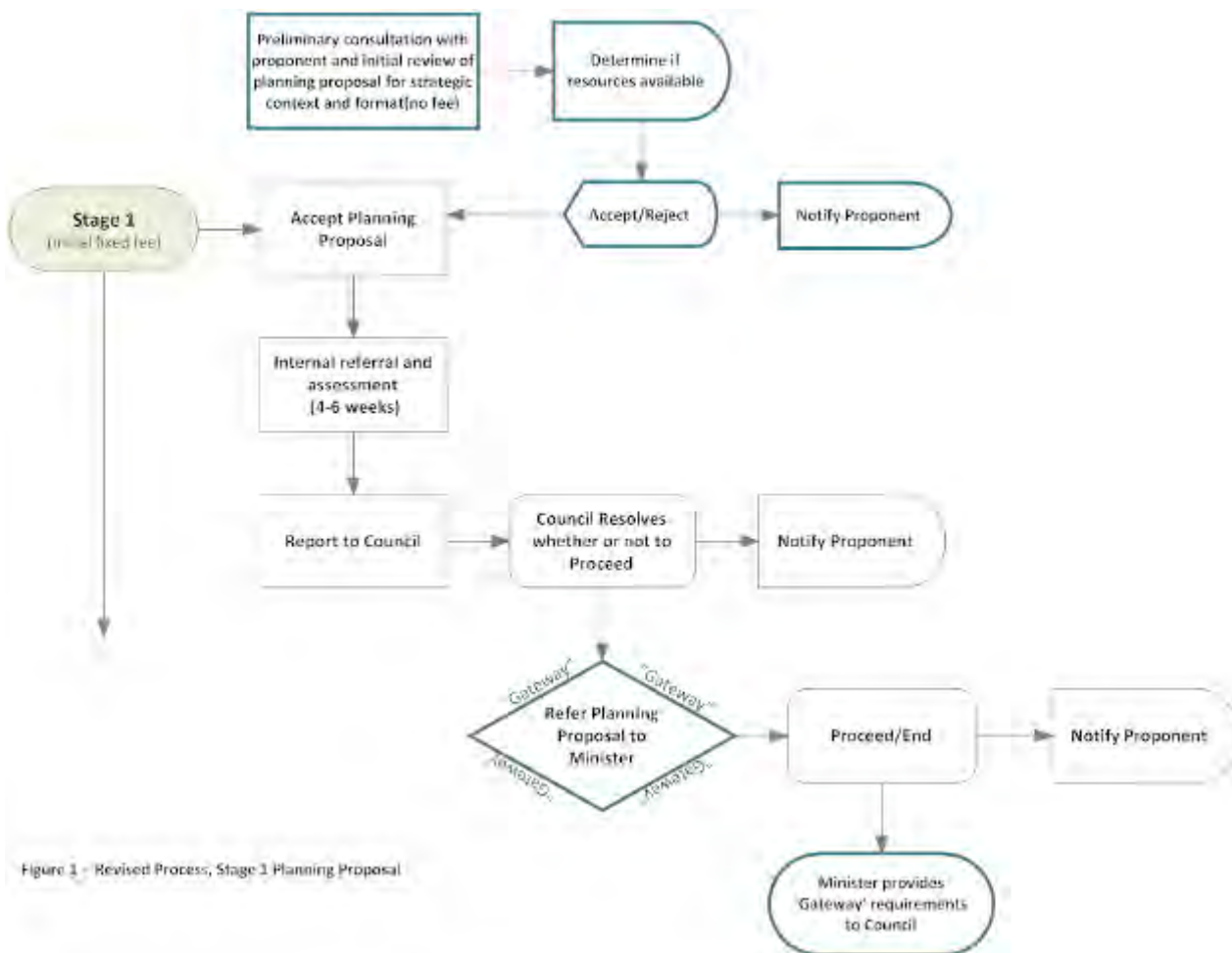


Figure 1 - Revised Process, Stage 1 Planning Proposal

This new process places far greater emphasis on two important commitments. Firstly, on the part of the Council, it requires an efficient process with the commitment to turn initial assessment and reporting around within a reasonable timeframe. Council officers have committed to a 4-6 week assessment timeframe with immediate reporting to the next available Council meeting. The second commitment is on the proponent, which essentially requires a proper evaluation of the proposal and identification and articulation of the substantive and importantly the critical issues.

To enable the new planning proposal process to work, and ultimately to enable consideration of the proposals at all, the acceptance of planning proposals is contingent on both parties meeting their respective commitment. This means that the proponent is to take greater responsibility for identifying the potential issues, scoping the likely impact of those issues, which may include prior consultation with Council officers or any number of other agencies, and responding to those issues in a planning proposal sufficiently for Council to determine if the proposal has merit and is suitable to proceed.

The greater responsibility on the parties in the identification of critical issues is highlighted in the new process requirements, illustrated in Figure 1 above, which removes the ability of a proponent to rely on Council staff for the identification of issues and relevant policy considerations. This marks a significant shift away from earlier practices of extensive and often protracted requests for additional information and subsequent ancillary meetings, instead, as stated above, it places greater emphasis on the pre-application processes.

The new process not only assists Council staff in their determination of a proposals strategic justification but it represents the only short-term solution to managing private planning proposals. In the most basic terms the new process is premised on the assessment and recommendation of the proposal as submitted, save for some minor clarification.

This process naturally has its advantages and disadvantages.

In favour of the process, planning proposals will be accepted and processed where it may otherwise have not been possible because of insufficient resourcing. It also provides a more expedient process for securing resolution from the Council about whether a particular amendment is supported. This in-turn should provide greater certainty and is more responsive to the private sector's needs, particularly with respect to investment in the particular project.

The process does however require a far greater commitment in the preparation of the planning proposal by the proponent, which is arguably something that should exist in any event. The benefit for a proponent for that commitment is essentially the reward of expediency, which in commercial terms is likely to be quite significant or advantageous.

A notable limitation with the process is likely to be those occasions where an issue is genuinely not revealed either by omission or oversight, opposed to any sort wrongdoing or inattention, and in which case there is likely to be an adverse consequence. The consequence is in essence a 'penalty' which has the effect of manifesting in two distinct forms depending on which party it befalls. If the proponent was to wear the cost penalty it is likely to accrue in an adverse resolution against proposal and the cessation or 'not-proceeding' with it, whereas, if the Council wears the penalty it will take the form of a cost infringement which would most likely arise through the reassessment of additional information (hence additional staff resources).

It is the inability to recoup the cost of any additional assessment undertaken by the Council that gives rise to the need for an amendment to the Fees and Charges Schedule.

The proposed amendment will ensure that any additional cost burden will remain to be borne by the proponent. This will ensure that the amendments to the Fees and Charges initially adopted by Council in April 2009, which are premised on full cost recovery, will remain in-tact.

The following table highlights Council's current fees and charges and the proposed amendments highlighted in **bold**. These should encourage the proponent to take greatly responsibility and accountably in preparing a planning proposal, as well as, serving to limit Council's liability for any additional cost.

Table 4 – 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		

The fees in Table 4 above are consistent with the basic principle that the community, through Council, should not be accountable for the cost of processing planning proposals of

a commercial nature through the betterment or up-lifting of changes to the Tweed LEP in favour of identified parcel(s) of land, that is, cost recovery for services rendered.

CONCLUSION:

As discussed in this report there are limitations on the capacity of Council's strategic planning resources with a corresponding need to ensure that the work program is reflective of, not necessarily constrained, by its ability to undertake key priority projects.

By 'priority' this reports relies on the underlying premise that all of the strategic policies identified are to varying degrees a priority of the Council, but acknowledging that when the projects are juxtaposed there will typically be those that have some sort of 'edge' or 'advantage' over another, which places them ahead, generating in effect a queue headed by the those projects better representing or referred to as the 'priority' projects.

The proposed work program 2010/2013 has been designed in the light of the need to match the resources with the projects that are likely to yield the most benefit. These projects comprise two distinctive types; those generated by the Council and those generated externally. Both have their place and are equally relevant to the management and growth of the Tweed. The work program aims to balance the resource allocation to accommodate the priority elements arising from both areas. This has resulted with an increase in the number of commercially driven planning proposals and the reduction or deferral of several strategic land-use policies.

This realignment of priorities and resource allocation is seen to be justified on the basis that without greater stimulus and investment in the private sector through housing and employment generating development any number of adverse impacts will potentially materialise. They may include upward pressure on the cost of housing, missed opportunities for employment, and a furthering of the social economic divide, which for many Tweed families will mean that they will need to relocate elsewhere or their children will have limited opportunity to work and live in the Tweed and within established family and community networks.

At the same time, the strategic planning projects selected for inclusion in the work program are those seen to provide the most benefit in assisting and playing their role in ensuring a better and more secure future for the present and future residents of the Tweed and the protection of its environment.

The proposed amendments to the Fees and Charges are seen to be minimal to the overall efficiency and cost associated with commercial planning proposals, but, essential to ensuring that the Council's strategic planning resources are not unduly restricted or impacted by proponents who fail to achieve their commitment to the process.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Forward budget estimates may arise from Council's endorsement of the Planning Reforms work program as key strategic projects are taken up.

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. Councillor Workshop Agenda Paper presented by the Coordinator Planning Reform
8 June 2010 (ECM 18828736)
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9 [PR-CM] Planning Proposal PP10/0001 - Lot 10 DP 1084319 Boyds Bay Garden World Site

ORIGIN:

Planning Reforms

FILE NO: PP10/0001

SUMMARY OF REPORT:

This report seeks Council's consideration of a planning proposal for rezoning of Lot 10 DP 1084319 – "Boyd's Bay Garden World Site", Tweed Heads West, and a recommendation endorsing referral of the proposal to the Department of Planning for a "Gateway" Determination.

The Boyds Bay Garden World Site lies immediately to the west of the Pacific Highway Tweed Heads West, and has been identified as potential employment lands in the Tweed Urban and Employment Land Release Strategy 2009 (TUELRs) with timing for commencement of rezoning of medium term; 10 to 20 years.

At its meeting of 15 December 2009 Council resolved to bring forward the timing of commencement of rezoning of the site from medium term (10 – 20 years) to short term, 0 – 10 years, following consideration of a request from Planit Consulting Pty Ltd.

The report identifies several challenges to the development of the site and in particular in the determination of the ultimate use and zoning of the land. In concluding it is clear that there is a need for greater detail and assessment of the constraints and limitation of the site to cater for the capacity of the development and ultimately the zoning sought. The report also highlights the necessity for greenfield sites to be master-planned prior to planning proposals (rezoning) occurring. This latter point will form the basis of a future report to Council.

RECOMMENDATION:

That:

- 1. Planning Proposal PP10/0001 for a change of land-use zone classification from Rural 1(a) to 3(c) Commerce and Trade rezoning be supported in principle on Lot 10 DP 1084319 Parkes Drive, Tweed Heads West and that the proposal be referred to the Department of Planning for a gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979*.**
- 2. The applicant of planning proposal PP10/0001 be advised that the actual rezoning classification of the land, if supported by Council, will be determined following assessment of any detailed site studies required after receipt of the initial gateway determination to proceed.**

REPORT:

BACKGROUND

On 1 July 2009 the Environmental Planning and Assessment Amendment Act 2008 and Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009 implemented procedural changes to the way local environmental plans are prepared and among other things broadened the Minister's power to delegate plan making functions to authorities other than councils.

A detailed report on the legislative (Plan Making) amendments was reported to the Council Meeting of 21 July 2009. For the purposes of this report the following definitions are provided for assistance:

Planning Proposal - refers to the document that explains the intended effect of a proposed LEP.

Gateway – refers to the process whereby the Minister considers a planning proposal; whether it should proceed or not, and provides a determination on the process, including level of public consultation required, type and scope of specialist studies, and referrals to other public authorities.

The amendments fundamentally do not change the level of assessment required, but rather the timing of when reports should be prepared and assessment required. The new system is designed to speed-up the time it takes for a Council to resolve to amend the LEP, and reduces the level of detailed investigation (and cost) required for that initial determination, also referred to as "Stage 1". Like the superseded system, there are three main steps in the process, as summarised below:

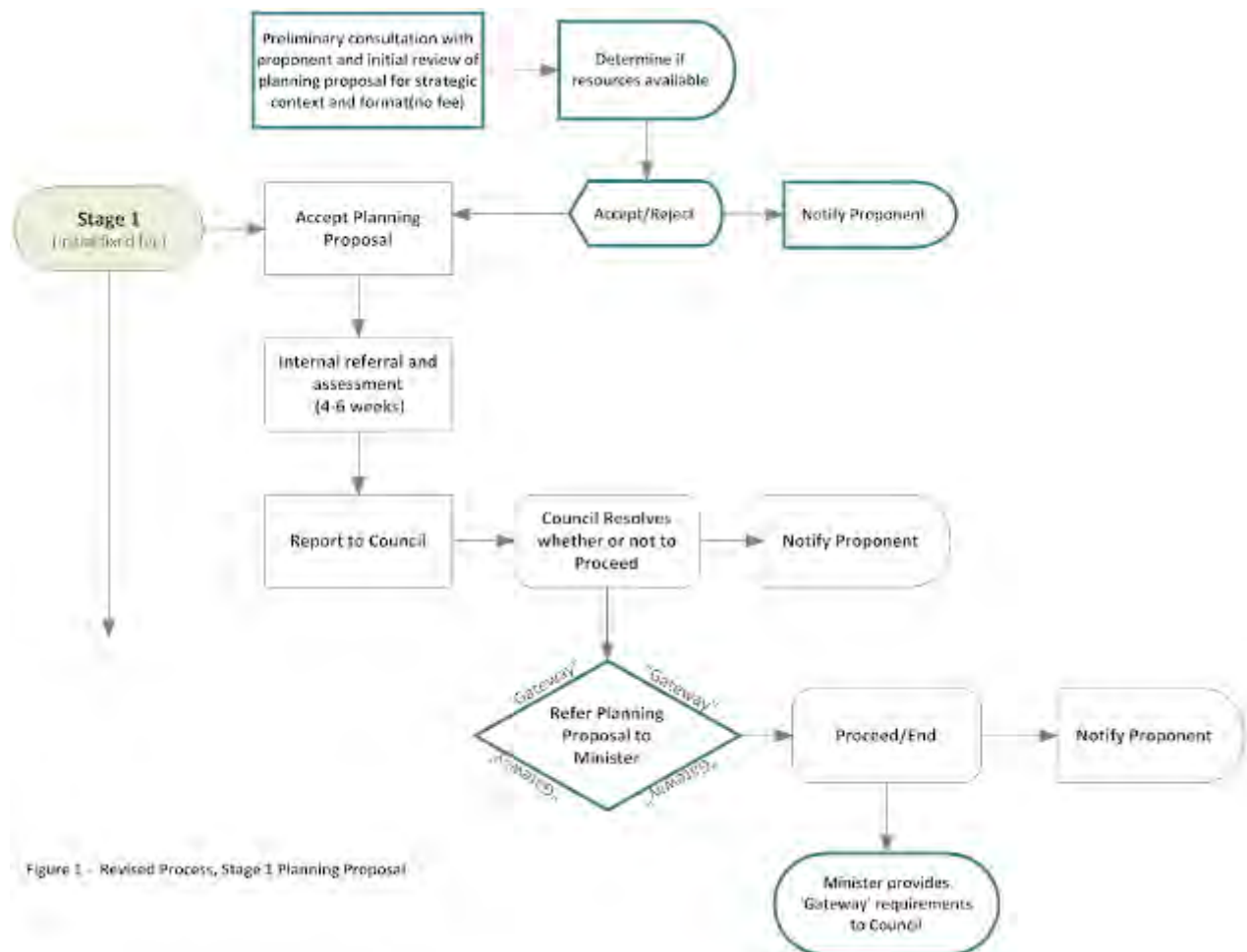
Stage 1 *Submission and Preliminary Assessment:* Council resolves to prepare a draft LEP Amendment – based on assessment of essential information, not necessarily detailed studies and reports, sufficient to demonstrate; A) a strategic justification, and; B) a relative degree of certainty that the proposal will likely proceed.

Stage 2 *Report, Further Assessment and Community Consultation:* The completion of detailed investigations and / or preparation of studies by the proponent; assessment by Council staff, and public exhibition. It is the work undertaken in this Stage, with the exception of public exhibition, that previously occurred 'up-front' prior to a Council resolution to amend the LEP. The purpose of the change in process is to avoid unnecessary expense and time on proposals that have little chance of securing a recommendation in support of the proposed amendment.

Stage 3 *Final Planning Proposal to be Made:* This is largely an administrative and short duration component of the process. By this stage all assessment, public consultation and reporting has been finalised. The remaining tasks include the gazettal of the Plan by the Minister through the NSW Government Gazette, and internal administrative tasks updating the LEP and section 149 processes.

The Planning Reforms Unit has adopted a new approach to the management and processing of planning proposals which takes into account, and is consistent with the legislative amendments to Part 3 (Plan Making) of the *Environmental Planning and Assessment Act 1979*.

This new process is essentially aimed at streamlining LEP amendments with the intent of reducing the time and costs involved. This is achieved in several ways most notably by the requirement to limit the information pertinent to the specific proposal at lodgement, and the deferral of expensive investigations and detailed studies, where appropriate, to Stage 2, which follows on from a resolution of the Council to amend the LEP. The following diagram illustrates the Stage 1 Planning Proposal process adopted by the Planning Reforms Unit.



Planning proposals are meant to be a concise statement of the intended effect of a proposal and set out the justification for making that plan without the need to prepare the full range of technical reports up-front. This does not mean however that they need not be technically competent, but unlike the superseded process, planning proposals will have greater flexibility and adaptability enabling them to 'evolve' during the course of processing the proposed LEP, in line with the Department of Planning's Guidelines on preparing planning proposals.

This and future Council reports on Planning Proposals will follow the format and use the headings provided by the legislation and DOP guidelines.

SITE AND PLANNING HISTORY - BOYDS BAY GARDEN WORLD

This application represents one of the first planning proposals to be lodged with Council since the implementation of the 'Gateway' process.

The Boyds Bay Garden World Site lies immediately to the west of the Pacific Highway Tweed Heads West, and has been identified as potential employment lands in the Tweed Urban and Employment Land Release Strategy 2009 (TUELRs) with timing for commencement of rezoning of medium term; 10 to 20 years.

The site is identified within the 'Town and Village Growth Boundary' of the Far North Coast Regional Strategy 2006 (FNCRS) although not specifically identified as employment land. The Department of Planning (DoP) has stringently enforced no variations to settlement patterns proposed east of the Pacific Highway however, the Strategy does make provision for development proposals to the west of the Highway under certain circumstances.

At the Council meeting of 15 December 2009 Planit Consulting on behalf of Maro Developments and Leisure Brothers were successful in seeking a revision of the timing of commencement of rezoning of the site from medium term (10 – 20 years) to short term, 0 – 10 years. The Council's resolution stated:

- 1. Council endorses the proposed amendment Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years), as outlined in the submission received by Council from Planit Consulting on 9 September 2009, relating to the Boyds Bay Garden World site, Lot 10, DP 1084319, Tweed Heads.*
- 2. Approval of Point 1 above will be subject to the proponents providing a more detailed response to the main outstanding issues identified in this report, including further prior consultation occurring with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority, as part of any future Planning Proposal application to rezone this site.*

The site has a number of significant constraints relating mainly to its close proximity to the Gold Coast Airport and immediately adjoining the Tweed Waste Water Treatment Plant and the Pacific Highway.

The potential of the site for 'business park' development will be heavily impacted by constraints mentioned above, and will require particular attention to ensure that the layout of the site, and landuses proposed fully address these constraints to the satisfaction of Council post receipt of a gateway determination to proceed.

THE PLANNING PROPOSAL

On 5 May 2010 Planit Consulting lodged a Planning Proposal for the site seeking to have the site rezoned from Rural 1(a) to B5 Business Development under draft Tweed LEP 2010, or 3(c) Commerce and Trade under Tweed LEP 2000.

The site, formerly a 'drive-in' picture theatre is currently utilised as a retail and wholesale plant nursery known as the Boyds Bay Garden World (See Figures 1 and 2 below). The site is heavily disturbed and adjoins Council's Tweed Heads Waste Water Treatment Plant and is located at the southern end of the Gold Coast Airport and within the 25-30 ANEF aircraft noise zones.

A concept plan has been prepared for the site as seen in Figure 3; however this concept does not at this stage represent the final concept which will more than likely be modified once detailed studies are undertaken as suggested in the planning proposal and this report.

FIGURE 1: SUBJECT SITE AND LOCAL CONTEXT ADJOINING COUNCIL'S WASTE WATER TREATMENT PLANT AND PROXIMITY TO GOLD COAST AIRPORT



FIGURE 2: SUBJECT SITE AND LEP 2000 ZONING

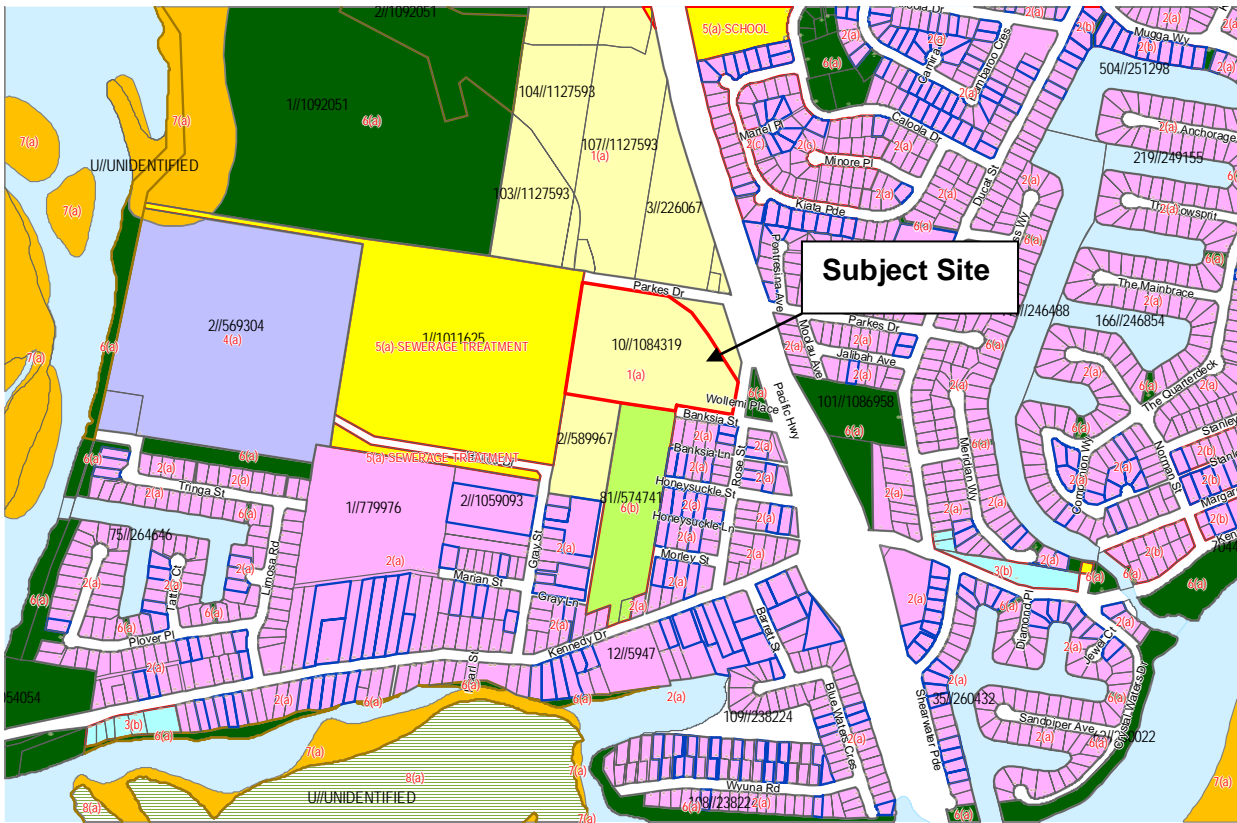


FIGURE 3: CONCEPT PLAN



Council has advised all proponents that the format for all planning proposals are to be set out using the same headings and language / terms provided the legislation and the Department of Planning's guidelines, as indicated below:

- **Part 1:** Objectives or Intended Outcomes,
- **Part 2:** Explanation of Provisions,
- **Part 3:** Justification,
- **Part 4:** Community Consultation.

The DOP guidelines clearly identify the requirements of each section, which Council will utilise in determining completeness of the initial proposal. All information relevant to this proposal should be presented under one of these 4 parts, and where appropriate supported by relevant attachments.

PART 1: OBJECTIVES OR INTENDED OUTCOMES

This is intended to be a concise statement of what is planned to be achieved, and will eventually form the basis for the drafting of the LEP.

The planning proposal for the site seeking to have the site rezoned from Rural 1(a) to B5 Business Development under draft LEP 2010, or 3(c) Commerce and Trade under Tweed LEP 2000.

At this stage, the proposal has not provided sufficient information to determine the most suitable zoning for the site; however, the substantial nature of constraints affecting the site will make it difficult for the site to be developed fully for commercial and trade purposes.

Detailed studies and preparation of site plans identifying the composition and location of proposed land-uses will be essential in satisfying Council that site constraints have been fully and adequately addressed, and the zoning sought is the most appropriate zoning for the site.

PART 2: EXPLANATION OF PROVISIONS

This is intended to be a full and clearly expressed statement of how the objectives or intended outcomes are to be achieved by means of new controls on development imposed by the LEP.

Commercial and industrial uses commensurate with a Business Park are not permissible in the 1(a) zone under Tweed LEP 2000. As such the proponent is seeking the introduction of the B5 Business Development zone under Draft Tweed LEP 2010.

The IN1 industrial zone under Draft Tweed LEP 2010 has been considered by the proponent but determined to be not acceptable because office development typical in Business Parks is prohibited. However, given the constraints of the site, and the lack of sufficient detail regarding the types of 'business' proposed it is difficult at this stage to determine whether B5 Business Development, or IN1 General Industrial, or a combination of both would be more appropriate.

Need for a Masterplan

Given the complex nature of constraints on the site, the potential for these constraints to have a defining influence on the nature of development possible on the site, and the diversity of adjoining land-uses, including as yet un-determined uses on other land in the Airport Precinct Area 2, there is a greater need for the preparation of a masterplan for the Airport Precinct. The Tweed Urban and Employment Land Release Strategy 2009 (TUELRS) states that Council is supportive of master-planned business and employment parks. Development of a masterplan for the Airport Precinct Area 2 will be an essential component in the final justification of the proposal, and will be a requirement of post-gateway determination in Stage 2.

Where rezoning for additional commercial development is proposed, the TUELRS requires consideration of the Tweed Retail Strategy as well as the Employment Lands Strategy; given that retail and office development are typically both permitted in commercial or business zones. A retail economic analysis will be required providing an assessment of the impact of any further commercial development on other established commercial centres in the Tweed.

The following table lists a sample of the land-uses permissible or prohibited within B5 and IN1 zones under Draft LEP 2010 which may be considered under the current proposal.

Table 1: Comparison of a sample of 'permissible with consent' and 'prohibited' development within proposed B5 and IN1 zones under Draft Tweed LEP 2010.

Draft LEP 2010		
B5 Business Development	Zone	IN1 General Industrial
Light industries; Passenger transport facilities, Self storage facilities, Take-away food and drink premises, and Warehouse or distribution centres.	Permissible with consent	Industries, Kiosks, Light industries, Storage premises, Take-away food and drink premises, and Warehouse or distribution centres.
Air transport facilities, food and drink premises, Freight transport facilities, Storage premises, and Wholesale supplies.	Prohibited	Bulky goods premises, business premises, Office premises, Passenger transport facilities, Retail premises, and Self storage units.

Given the mixed-use nature of business parks, the proponent will need to demonstrate how a range of landuses such as those suggested above will be accommodated in the final concept plan and planning proposal.

The proponent is seeking to pursue rezoning of the land concurrent with the preparation of a Development Control Plan (DCP) that addresses all relevant matters with a focus on future development forms however there has been no agreement reached on the scope of a draft DCP or as to who will be drafting the Plan.

PART 3: JUSTIFICATION FOR THE PLANNING PROPOSAL

The justification, as required by the *Environmental Planning and Assessment Act 1979*, sets out the case for changing the zone and development controls on the land affected by the proposed LEP. While it is not envisaged, in the majority of cases, that technical studies will be undertaken prior to the gateway determination, it is however essential that major site constraints be identified and where necessary studies and investigations undertaken to justify different aspects of the planning proposal. The four key components to justifying the proposal in accordance with the legislation are:

- i. Need for the planning proposal;
- ii. Relationship to strategic planning framework;
- iii. Environmental, social and economic impact, and
- iv. State and Commonwealth interests.

i. Need for the Planning Proposal

The objective of the planning proposal is *“to permit the redevelopment of the Boyd’s Bay Garden World Site for the purposes of a Business Park that satisfactorily addresses matters relating to residential amenity, airport operations and conflicts and the needs of adjoining owners.”*

Alternative uses for the site and adjoining land within Airport Precinct (Areas 1 and 2) have previously been investigated, as reported in the TUELRS which noted that the TEDC had commissioned a report in 2001 which specifically assessed the options for land in Airport Precinct (Areas 1 and 2), in a local and regional context and concluded that the site had potential for development and particularly for boat building, food and beverage manufacturing, storage and distribution, herbal industries, airport parts and manufacturing, and turf farming. The proposal is generally consistent with the potential future uses identified for the site, however, the potential for development of a business park incorporating commercial uses cognisant of site constraints will require further substantiation.

ii. Relationship to strategic planning framework

While no specific study has been completed addressing this site, the site is within the Town and Village Growth Boundary for Tweed Heads as identified within the FNCRS, and has been identified as potential employment lands in the TUELRS as mentioned above.

Under both LEP 2000 the 3 (c) Commerce and Trade zone, and Draft LEP 2010 B5 Business Development, light industry development is permissible, but may not be the most appropriate use of the site given the nature of constraints affecting the site.

The proposal has not adequately addressed the local and regional significance of the site and will need to undertake further studies and report on the ability of the site to fit in with existing strategies and not compete with other established commercial and retail centres in the Tweed.

iii. Environmental, social and economic impact

While a number of significant constraints have been identified affecting the site, the justification on environmental grounds is sufficient to recommend referral to the Department of Planning for an initial gateway determination.

Of those constraints identified during initial consultation within Council and externally with the Gold Coast Airport Limited, and the Roads and Traffic Authority, the following issues have been identified as having potential significant impacts upon the site:

1. Proximity to Council's Tweed Heads Waste Water treatment Plant:

The site adjoins the eastern boundary of Council's Tweed Heads Waste Water Treatment Plant (WWTP). Council's DCP A5 Subdivisions Manual has a general recommendation for the size of a buffer zone surrounding a sewage treatment plant. It provides for a buffer of 400m from primary and secondary process units for housing, tourism and community facilities and an absolute buffer of 200m in which no development should be allowed other than open air uses like car parking and open storage yards. Buildings between 200m and 400m associated with industrial, commerce or trade must be designed with ventilation facing away from the sewage treatment plant and office or retail components should be air conditioned.

Virtually the whole of the subject site is within the 400m buffer of the old treatment plant's process units and about half of the site is within the 200m buffer. On this criterion, the western end of the site does not appear to be suitable for development except for open air uses requiring only limited occupation of any work stations in that area. The eastern end of the site could be suitable for appropriately designed buildings with suitable treatment of office and retail areas. The site may not be suitable for food preparation businesses.

The DOP's Draft NSW Best Practice Odour Guideline (April 2010), for treatment of odour from sewage systems has changed the way in which the impact of WWTPs is assessed, and rather than placing a buffer, a setback around the plant, now seeks to have odour controlled on site and indicates that the design of the treatment plant should be such that the odour level at the boundary of the containing industrial zone should be no more than 2 Odour Units. If the treatment plant boundary is the edge of the industrial zone as proposed, the level of treatment required may be prohibitive.

On the basis of DoP Guidelines, it would seem that an industrial zoning such as IN1 would be more appropriate than the proposed B5 Business Development zoning.

While the proponent's report and concept plan show potential road linkages into Council's WWTP, suggesting a change in use of Council's land in the future, it has the WWTP is scheduled to be recommissioned and retained as a waste water treatment plant.

2. Proximity to Gold Coast Airport:

Correspondence from GCAL, provided with the proposal, states that in view of the extremely close proximity of the airport runway and flight path to the subject land, there are several mandatory restrictions (defined as "controlled activity") which would necessitate securing approval from the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government, with any such application being subject to assessment by GCAPL, CASA and Airservices Australia. Given the proximity of the site to the runway,

no relaxation could realistically be anticipated in this instance. GCAL conclude that the site is severely constrained, and raise the following issues:

Heights: Preliminary height limits (including any structures) within the airport's operational airspace on the site's western boundary cannot exceed 14.46 metres AHD (for Air Navigation Services – Airport Operations), and 13.75 metres AHD (for Obstacle Limitation Surface). Filling of the site will have potential impact upon the type of buildings ultimately developed.

Light emissions: Localities within the airport's prescribed airspace in close proximity to the runway are subject to mandatory and severe limitations on levels of illumination which are allowed to be emitted. Reflected sunlight can also constitute a controlled activity in the Lighting Zone area which will require all roofs of buildings and other elements that could adversely reflect sunlight to be entirely constructed of non-reflective materials, across the whole site.

Emissions, Turbulence: Activities which may result in air turbulence capable of affecting normal flight of aircraft (exceeding 4.3 metres per second), or emit smoke, dust or other particulate matter, or steam or other gas would not be permissible.

Public safety: A Public Safety Zone (PSZ) extends from the end of the runway for a distance of 1 kilometre will impact the site; the site is just 50 metres outside the southern limit of the zone it has been suggested that restrictions relevant to the PSZ be borne in mind when considering development of the site. It would not be appropriate for land in this locality to be used for hazardous purposes, such as storage of fuel, explosives or chemicals etc. Activities which would attract large numbers of people, such as businesses with high workforce numbers or which attract substantial numbers of customers such as major retail facilities or places of assembly, sporting venues and the like should be discouraged.

Aircraft noise: the site is almost entirely within the ANEF 25-30 zone for aircraft noise. Within this zone the land use of "light industry" is acceptable, thus requiring no acoustic treatment. However, land-uses falling within the category of "commercial buildings" (e.g. Offices, retail) are defined as "conditionally acceptable", indicating that measures should be taken in the design and construction to minimise indoor sound levels.

Reports addressing each of these issues will be required.

3. Traffic:

The site adjoins the Tugun Bypass (Pacific Highway) and is expected to impact traffic movements associated with the intersection with the Pacific Highway and local road network.

The Roads and Traffic Authority has advised that the road network in the vicinity of the site is sensitive to increases in traffic generation and that a traffic study will be required addressing the surrounding traffic network and that the site is not considered in isolation.

4. Engineering and infrastructure:

The provision of water, sewerage and drainage infrastructure is believed to be possible; however a detailed engineering and infrastructure assessment and report will be required post gateway determination.

5. Flooding:

The site is typically 1.0 to 3.0 metres AHD and will require filling to the nominated height of approximately 3.0 metres AHD. The extent of fill will impact both adjoining land and potential building heights permissible on the site, as related to height limitations imposed by Gold Coast Airport Limited. A detailed flood impact assessment will be required.

6. Contamination:

The site has been heavily disturbed and previously utilised as a drive-in picture theatre, but is now the site for an extensive gardening retail and wholesale centre. The potential for past land-uses to generate contamination of the soil has not been investigated. A site contamination investigation and remediation strategy if appropriate will be required post gateway determination.

7. Ecological:

The proponent reports that the site presents little in the way of ecological constraints given its previous history of use, however they have advised that a detailed ecological assessment will be undertaken in accord with the requirements of council and the Department of Environment, Climate Change and Water.

8. Social and economic impacts:

While the site lies within the Town and Village Growth Boundary it was not specifically identified as Employment Lands in the Far North Coast Regional Strategy 2006. The proponent has acknowledged that a socio economic assessment will be undertaken.

As previously mentioned, a retail economic analysis will be required. Of particular concern is the strategic context of the site and potential impacts on established commercial or industrial centres in the Tweed Heads (West and South) area.

iv. State and Commonwealth interests

Gold Coast Airport Limited has identified a number of agencies who will required notification, including The Department of Infrastructure, Transport, Regional Development and Local Government, Gold Coast Airport Limited, the Civil Aviation Safety Authority (CASA), and Airservices Australia. Any future proposal should also be referred to the Roads and Traffic Authority.

PART 4: COMMUNITY CONSULTATION

The gateway determination by the Minister will specify the community consultation that must be undertaken on the planning proposal. The consultation will be tailored to the specific nature of the proposal; for low impact planning proposals which are consistent with the pattern of surrounding land use zones, strategic planning frameworks and present on issues with regard to infrastructure servicing the exhibition period will normally be 14 days.

This proposal does not fall within the broad definition of 'low impact' and is likely to incur an exhibition period of at least 28 days.

CONCLUSION:

The site is heavily constrained with absolute restrictions which at this stage have not been fully considered in preparing the concept plan presented with this planning proposal. However, the site has been identified as being potentially suitable for a range of development activities ranging from low intensity turf farming to manufacturing, storage and distribution.

The potential of the site for development as a Business Park cannot be fully assessed and appropriate zoning determined until such time as detailed investigations, studies and reporting have considered how site constraints will be addressed in finalising the composition of development on the site. Proximity to Council's waste water treatment plant, Gold Coast Airport and the Pacific Highway will require particular attention and will need to be fully addressed to the satisfaction of Council post receipt of a gateway determination to proceed.

The planning proposal must undertake a range of studies as identified in this report and demonstrate an ability to accommodate constraints and opportunities within both local and regional contexts without adversely impacting existing commercial and retail centres within the Tweed.

It is recommended that Planning Proposal PP10/0001 be referred to the Department of Planning for a gateway determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If adopted, the recommendation contained within this report would result in a resource implication for the Planning Reforms Unit, however Council has a fees and charges structure to enable the application to be managed internally or through external consultants and ensures cost recovery.

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. Aerial photograph showing boundary of ANEF 2020 aircraft noise zones, and buffers from the Tweed Waste Water Treatment Plant (ECM 18881302)
 2. Letter from Gold Coast Airport Pty Ltd (ECM 18881303)
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10 [PR-CM] Planning Proposal PP10/0002 - Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights (Royal Terranora Resort)

ORIGIN:

Planning Reforms

FILE NO: PP10/0002

SUMMARY OF REPORT:

This report reviews a planning submission which seeks referral to the Department of Planning for a Gateway Determination to amend Tweed Local Environmental Plan 2000, for Lot 30 DP 850230, 61 Marana Street, Bilambil Heights, formally known as Royal Terranora Resort.

This application is one of a few being considered by Council as part of the new Planning Proposal process set by the Department of Planning, the background of which has been explained in a previous Council report for planning proposal PP10/0001 for Lot 10 DP 1084319, Boyds Bay Garden World Site, Tweed Heads West.

The planning proposal requests to commence the process for rezoning of the land from 6(b) Recreation to R1 – General Residential. As part of the initial assessment, Council has identified an overarching issue relating to traffic capacity within Kennedy Drive catchment, which is deemed to impede the progression of the planning proposal to the Gateway determination under Department of Planning (DoP) guidelines. The recommendation suggests that the planning proposal does not progress based on the level of information provided by the proponent and the assessment of that information. This is in line with the agreed method of assessing and reporting on the stage 1 planning proposals in an expedited timeframe. This does not preclude the matter being investigated further, however the onus is on the proponent to provide additional information to the Council which will be assessed in accordance with the amended fees and charges schedule being considered under the current Council agenda.

RECOMMENDATION:

That:

- 1. Planning Proposal PP10/0002 for Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights not be referred to the Department of Planning for a gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* based on insufficient capacity within the Kennedy Drive catchment to accommodate urban growth exceeding that which already has potential under existing Local Environmental Plan 2000 zonings west of Cobaki Bridge.**

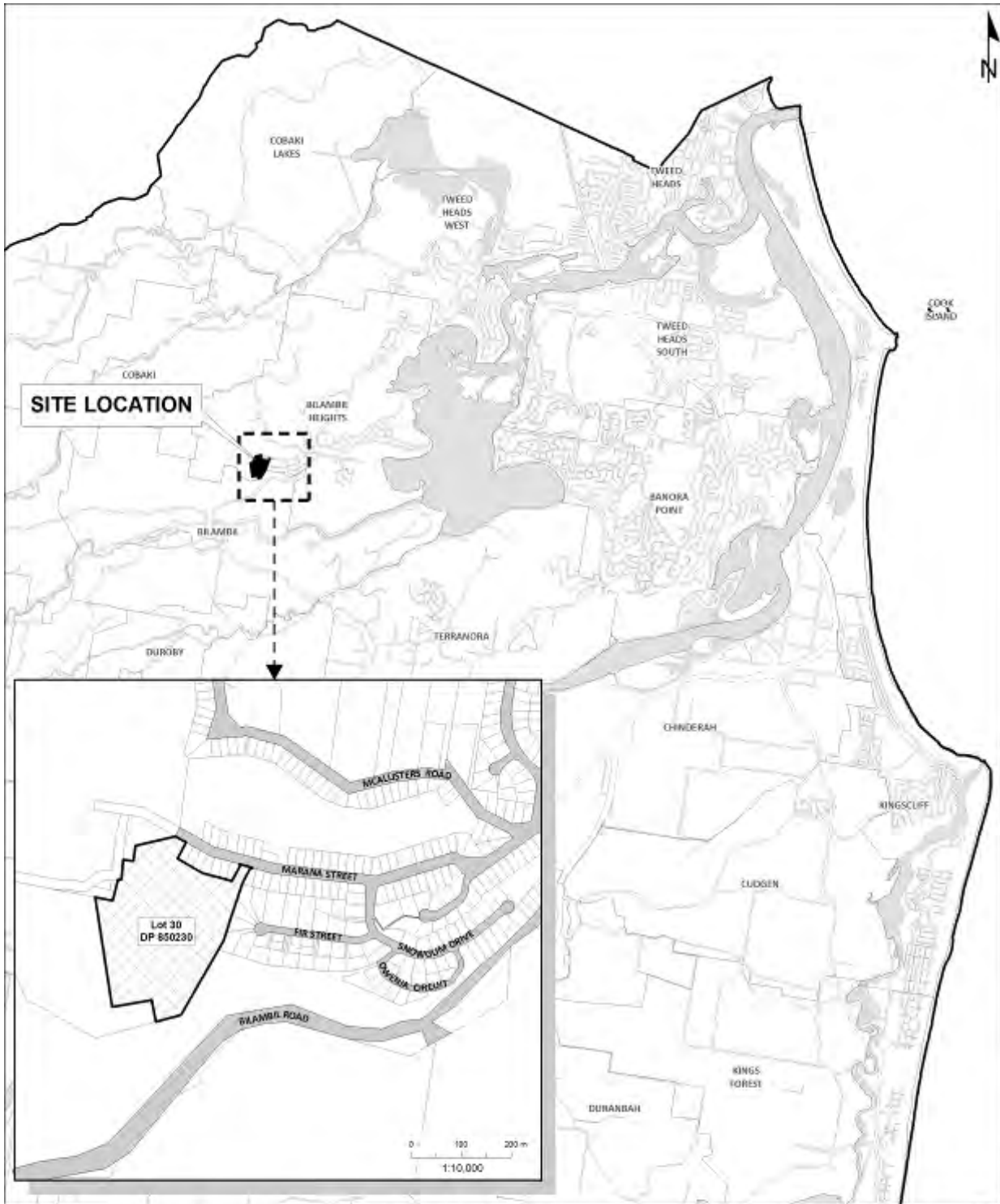
2. **The proponent be advised that additional traffic assessment is required and should be submitted as an addendum to the planning proposal that clearly demonstrates the capacity of the catchment. Any addendum information requiring reassessment is to be subject to the draft fees and charges recommended in Planning Reforms Work Program report listed in the Council agenda of 20 July 2010.**

REPORT:

BACKGROUND

The site is located off Marana Street at the western periphery of Bilambil Heights urban area. Bounded to the north east by 2(a) Low Density Residential development, the majority of the site is bounded by land zoned 6(b) – Recreation and 7(d) Environmental Protection. The site is approximately 6.793 ha in area and is zoned 6(b) Recreation under Tweed LEP 2000.

FIGURE 1: LOCALITY SITE PLAN:



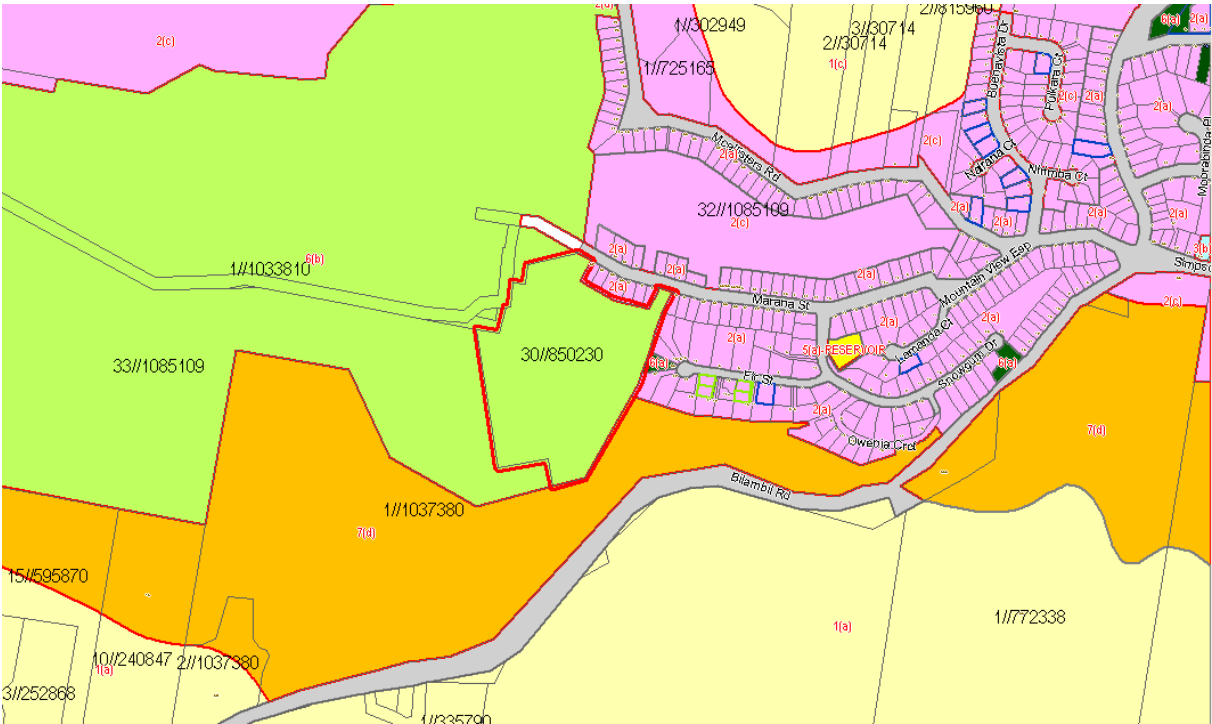
LOCALITY PLAN
 Lot 30 DP 850230
 No. 61 Marana Street, Bilambil

<p>Filename: c:\year\planning\mxd\A4P_B&W SitePlan.mxd Author: J Batchelor - Planning Reforms Unit Date Printed: 24 June, 2010</p>	<p>GDA Coordinate System - MGA Zone 56 Datum - GDA 94</p>	<p>CA Cadastre: 25 June, 2010 © Dept. of Lands & Tweed Shire Council</p>	<p>Civil and Cultural Centre 3 Tambouran Road Manildra NSW 2484 PO Box 910 Manildra NSW 2464 T: (02) 6670 2400 / 1300 292 872 F: (02) 6670 2483 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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FIGURE 2: AERIAL PHOTOGRAPH:



FIGURE 3: LEP 2000 ZONE MAP:



SITE AND PLANNING HISTORY – “MARANA STREET”




The site history demonstrates development consent approved for tourist accommodation (48 Units), restaurant and associated facilities. These facilities were part of the now closed Royal Terranora Resort, a timeshare facility that ceased active operation several years ago.

The site is identified within the Town and Village Growth Boundary of the Far North Coast Regional Strategy 2006 (FNCRS) and is in the vicinity of the wider Bilambil urban release area. The FNCRS acknowledges that land within this growth boundary area is to be utilised for urban development, however qualifies that when considering the release / rezoning of land must be integrated with the supply of relevant infrastructure and transport provision.

FIGURE 4: FNCRS TOWN AND VILLAGE GROWTH BOUNDARY MAP:



FAR NORTH COAST REGIONAL STRATEGY

-  Town and Village Growth Boundary
-  Employment Lands
-  Urban Release Areas

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Author: J Batchelor - Planning Reforms Unit

Date Printed: 05 July, 2010

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THE PLANNING PROPOSAL

On 13 May 2010 Planit Consulting lodged a Planning Proposal for the site seeking to have the site rezoned from 6(b) Recreation to R1 General Residential (or 2(c) Urban Expansion under Tweed LEP 2000).

A preliminary plan has been prepared for the site as seen in Figure 5, however it is noted by the proponent that this preliminary plan is for information purposes only.

FIGURE 5: PRELIMINARY PLAN:



<p>Teranora Resort - Masterplan Concept 3</p> <p>Green Ridge Estate</p>	<p>DATE: 14/07/10</p> <p>DRAWN: JH</p> <p>CHECKED: AL</p> <p>SCALE PROVIDED:</p>	<p>NO: 1001</p>	<p>Prepared by: PLANIT CONSULTING</p> <p>Project: Teranora Resort - Masterplan Concept 3</p> <p>Address: 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/p>	<p>PLANIT CONSULTING</p>
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Part 1: Objectives or intended outcomes

This is intended to be a concise statement of what is planned to be achieved, and will eventually form the basis for the drafting of the LEP.

The planning proposal endeavours to have the site rezoned from 6(b) Open Space to allow for development higher density forms of residential development. The proponent acknowledges that the likely future development is yet to be finalised, however is likely to accommodate *'attached dwellings, multi dwelling housing, residential flat buildings semi detached dwellings and dwelling houses.*

The preliminary plan (guide only) also indicates some potential commercial activities over the site.

Whilst DoP Guidelines stipulate that Part 1 is not to demonstrate the mechanisms of how to achieve the objectives, the proponent has indicated that R1 General Residential (2(c) Urban Expansion under Tweed LEP 2000) is the desired zone.

Part 2: Explanation of the Provisions

This is intended to be a full and clearly expressed statement of how the objectives or intended outcomes are to be achieved by means of new controls on development imposed by the LEP.

Part two of the proponents planning report is unclear in that it recommends two zones, both R1 – General Residential (2(c) Urban Expansion under LEP 2000) and R3 – Medium Density Residential (2(b) under LEP 2000). The draft mapping included within the planning statement depicts R1 – General Residential. The draft mapping indicates a maximum height of 13.6m which is consistent with the Tweed Draft LEP 2010 standards instrument mapping.

Part 3: Justification for the Planning Proposal

The justification, as required by the *Environmental Planning and Assessment Act 1979*, sets out the case for changing the zone and development controls on the land affected by the proposed LEP. While it is not envisaged that, in the majority of cases, that technical studies will be undertaken prior to the gateway determination, it is however essential that major site constraints be identified and where necessary studies and investigations undertaken to justify different aspects of the planning proposal.

The following heads of consideration are outlined by the Department of Planning.

Section A - Need for the Planning Proposal

Is the planning proposal a result of any strategic study or report?

This planning proposal is not the result of any strategic study or report.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

From the proponent's perspective, to achieve the objectives outlined in Part 1, a planning proposal would be the appropriate, most time efficient means of achieving intended outcomes. From Council's perspective however, in accordance with the provisions of the FNCRS, release of Greenfield land should be in accordance with Local Growth Management Strategy (LGMS), prepared by Council in order to identify land both within Town and Village Growth Boundary and elsewhere in the Shire which is capable of accommodating additional urban, commercial and industrial uses in accordance with the settlement planning guidelines. It is the position of the PRU, given the supply of undeveloped 2(c) Urban Expansion Land in the Bilambil Heights Area that any further rezoning within the Bilambil Heights Area should not be undertaken until the finalisation of a LGMS.

Is there a net community benefit?

The purpose of the Net Community Benefit test is to help assess the merits of the planning proposal and DoP recommends that the proponent prepare the assessment for endorsement by the local planning authority prior to submission to DoP as part of the Gateway test. No net community benefit assessment has been prepared at this preliminary stage. Should the merit of the application be revisited by Council at a later stage, the proponent will be required to liaise with Council's Planning Reforms Unit as to the requirement or otherwise for a net community benefit assessment.

Section B - Relationship to strategic planning framework

Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub regional strategy?

The subject site is located within the Town and Village Growth Boundary, which in accordance with the strategy specifies land to accommodate urban development. The relevant principles are as follows:

'Council will prepare a local growth management strategy prior to zoning further land for urban, commercial and industrial uses in accordance with the settlement planning guidelines'

'Planning for urban land must be integrated with the supply of relevant infrastructure and transport provision'

The subject site is at the periphery of the Town and Village Growth Boundary, therefore can be considered for urban purposes through the Gateway Process. Notwithstanding, the planning proposal is deemed to have constraint with respect to traffic capacity within the catchment.

Is the planning proposal consistent with the local council's community strategic plan, or other local strategic plan

Council's Strategic Plan, Tweed 4/24, adopted in September 2004 sets priorities for urban development. This plan notes the major release areas within the Tweed Shire, being those lands that have the benefit of an urban zoning and are yet to be developed, specially land at Kings Forest, Cobaki, Bilambil Heights. 4/24 further demonstrates that there are known

road infrastructure impediments to both Bilambil Heights and Cobaki Lakes. The subject site is not within these urban zoned areas.

Priority 36 of the plan states, in respect of infrastructure priorities:

'complete essential improvements to major road links including access to Cobaki Lakes and Bilambil Heights, and upgrading of Minjungbal Drive, South Tweed Heads.'

A detailed assessment of road infrastructure issues is discussed below. However, the subject planning proposal presents significant road infrastructure issues given the adopted approach to the management of vehicle trip capacity in the Kennedy Drive catchment.

Is the planning proposal consistent with applicable state environmental planning policies?

Based on a desktop review the PP appears to be predominately consistent with applicable SEPPs.

Is the planning proposal consistent with applicable Ministerial Directions s.117 directions?

Based on a desktop review the PP appears to be predominately consistent with applicable s117 directions.

Notwithstanding criteria 6 and 7, the planning proposal has demonstrated localised infrastructure issues which constrain the progression of the planning proposal to the next stage.

Section C - Environmental, social and economic impact

The purpose of Stage 1 of the process is to determine if there are any significant constraints which restrict the progression of the planning proposal to the next to a point where Council deems it inappropriate to recommend referral to the Department of Planning for an initial gateway determination.

The initial assessment undertaken by Council Officers has resulted in the identification of a significant issue with respect to traffic capacity within the Kennedy Drive catchment, which at the present time represents the only viable access to service trips generated from a development within the Bilambil Heights area. The assessment below also reviews other relevant considerations and makes recommendations for what the proponent would need to do at subsequent stages in the event of satisfying traffic capacity issues.

As a result of the traffic capacity issue, it is recommended that the planning proposal not proceed to the next stage of assessment. Given the commitment of the PRU (in consultation with the industry), the underlying principle which enable planning proposals to be considered, is that the proponent will identify and report substantive issues affecting or potentially impacting on the progression of the proposal, or as a consequence of the proposal result in significant adverse impact to the wider locality. This is a resounding requirement of DoP's own guidelines and forms the basis within which the PRU commits to a expedited turn around of planning proposals. Should the proponent wish to undertake further analysis, the option is open to resubmit additional information, in accordance with the

fees and charged outlined in the preceding report, which makes recommendations to Council regarding the fees and charges relating to planning proposals.

Traffic:

Currently, the site relies on vehicle access via Kennedy Drive given there is at present, no alternative access to the Bilambil Heights area which is viable for increased traffic volume. Council undertakes a monitoring program of the Kennedy Drive catchment which essentially looks at the overall capacity of the catchment to accommodate vehicle trip, with 'spare' capacity held in credits for use as development applications are lodged with Council.

In June 2007, Council resolved, in respect of future development west of Cobaki Bridge, that the current remaining capacity for the area be allocated to development applications on a 'first come, first served' basis. At the present time, the available spare capacity is almost exhausted. What spare capacity does remain is to be safeguarded for land that has the benefit of an urban zoning under the current LEP.

The proponents planning report states the following in relation to traffic demand:

'It is noted that a detailed traffic report will be required to be prepared that demonstrates that existing road infrastructure has sufficient capacity to cater for the additional demand generated. In that preliminary findings suggest that there are no significant issues relating to road capacity issues.'

It is acknowledged that the initial stage of the planning proposal assessment process, does not stipulate any requirement for full and detailed studies to be submitted in an attempt to streamline and expedite LEP amendments, particularly with respect to the initial stage where Council considers whether or not to make an amendment. This requires however, a full and proper evaluation of the proposal by the proponent in order to identify and articulate the substantive issues which may impair the progression of the proposal to the gateway process.

The Kennedy Drive catchment capacity issue is well documented and widely known. Tweed's strategic 4/24 acknowledges that road infrastructure servicing for existing urban zoned land in Bilambil Heights is to be rectified prior to commencement of development at those sites. Therefore, given all lands are presently serviced by Kennedy Drive and Cobaki Bridge with no alternative, there remains no evasion of this issue.

From a strategic perspective, Council must promote sequential and orderly development of land to ensure proper management of infrastructure and delivery of services, road infrastructure, no exception. As such, it would be out of sequence to either allocate credits to non urban zoned land (particularly at this initial stage of assessment) over development which may present itself to Council in the future on land with the benefit of an urban zoning under the current LEP. Further, existing 2(c) land west of Cobaki Bridge currently being considered under part 3A of the EP&A Act (Major Projects) are currently constrained due to similar road capacity issues. As such, it would be disorderly to for Council to perpetuate this issue by proceeding with the rezoning of land for urban purposes, with no alternative solution to the existing capacity problem.

The applicant has highlighted in correspondence to the PRU the following:

'the subject land is already zoned for development. The current zoning does not place restrictions on the intensity of the development and an application could be lodged for a variety of land uses. It appears unreasonable to not support what is essentially a change in zoning rather than an upzoning, based on the Kennedy Drive issue.'

The proponent further stipulates that: *'We are not seeking approval for a specific concept at this stage, and we are aware that if the rezoning is successful that a future DA will still be required – it would be at that stage that the issue of regional traffic issues would be assessed.'*

Whilst this position is noted, it fails to acknowledge fundamental strategic planning and strategic infrastructure planning principles. It is erroneous to categorize the current 6(b) – Recreation zoning with the R1 General Residential Zone and simply defer matters to the Development Application stage, given that the latter zone has the capacity for substantially higher development yield and land use intensities.

Council is required to acknowledge capacity issues at the current stage given the known short fall in the Kennedy Drive catchment, firstly in order to safeguard any spare capacity for land which has the benefit of an existing urban and to guide and promote the sequential release of Greenfield land.

Based on the traffic capacity issues, it is recommended that the subject planning proposal not proceed to the gateway stage.

Engineering and infrastructure:

The provision of water, sewerage and drainage infrastructure is believed to be possible, however a detailed engineering and infrastructure assessment and report would be required post gateway determination. It should be noted, from the assessment of Council's Strategic and Assets (water and sewer) Engineer, that *'the reservoir (to service the subject site) has been considered to be fully committed but a revision of Council's Design Standard allowing for a reduction in demand across the Shire, will result in there being some additional capacity in terms of equivalent persons which would permit the proposed increase which has been estimated to be approximately 215 ep. This would however result in the reservoir being fully committed.'*

This is of relevance given that the initial plan provided in conceptual only. Should the planning proposal proceed and be successful, the proponents objectives for the site, the yield of development under the R1 – General Residential Zone. (with the suggested 13.6m maximum height limit) could, in theory, be substantially greater than that estimated from the proposed concept plan.

It is noted by Council's Strategic and Assets Engineer that, in respect to sewer, significant upgrade would be required to accommodate approved and proposed development in the area, (which includes the subject development) and contribution to those works would be required. It is expected that sewer capacity can be successfully be updated and would therefore, in its own right, not be an impediment to the planning proposal progressing.

Stormwater and Landforming:

Council's Infrastructure Engineer has reviewed the proposal and provided the following comments:

'Stormwater Management (water quality and quantity) and erosion and sediment control will be important, and establishing a lawful point of discharge will be essential for development of the site.

Bulk earthworks and landforming design are necessary details for sloping sites such as these (with slopes greater than 18^o) as it directly influences the acceptability of road design, future driveway access, boundary treatments (e.g retaining walls), service provision (eg sewer and water), stormwater management for minor and major events, and the suitability of future dwelling types (eg slab on ground vs pole homes).

These holistic site planning principles need to be addressed early in any development process. They would not ordinarily be an impediment to the proposal progressing.

Ecology:

The planning proposal was referred to Council's ecologist. At this preliminary stage, it is recognized that there are a number of threatened flora and fauna species within the vicinity of the site. Whilst this is not an impediment to the progression of the planning proposal, Council should note that it would be expected that the proponent would undertake flora and fauna studies at a subsequent stage. Comments as follows:

Due to the recorded locations of forty different threatened flora and fauna species within a two kilometre radius of the Planning Proposal site, Council considers a Baseline Ecological survey is necessary to determine the ecological suitability of the site for the proposed zone and potential future development. A guide to the expected process to undertake a Baseline Ecological Survey is attached.

Council may also request referral to the DG of DECCW in accordance with Clause 34A (2) of the EP&A Act due to Council's opinion that (due to the high number of records of threatened species and an endangered ecological community proximal to the subject site) that threatened species, populations or ecological communities or their habitats may be adversely affected by the proposed instrument. Such referral should only be made (in accordance with S34A (4)) after a decision is made under Section 56 that the matter should proceed.

Social and economic impacts:

The overarching traffic capacity issue results in the development being deemed an unacceptable social and economic impact at the present time. Whilst other matters have been canvassed within the report, this issue (coupled with the proponent's failure to provide appropriate justification at the present time) warrants the planning proposal unacceptable for progression. Wider social and economic impacts associated with the proposed development would need to be considered in the event of the catchment issue being resolved to Council's satisfaction.

Section D - State and Commonwealth interests

Is There Adequate Public Infrastructure for the Planning Proposal?

Despite the issue of local road infrastructure capacity issues, preliminary review suggests that adequate water and waste water capacity is available to the subject. It is likely that electricity and telecommunication infrastructure is achievable. As such, there is, at this preliminary stage, no state infrastructure impediment to the planning proposal. Subsequent stages of assessment will review school and health facilities in the wider Bilambil area.

What are the Views of State and Commonwealth Public Authorities Consulted In Accordance With the Gateway Determination

The application is yet to proceed through the gateway and has not yet been referred to any State or Commonwealth Authorities. Should the application progress in the future, it is likely that a number of State agencies would need to be consulted, namely DECCW in regard to flora and fauna issues.

Part 4 - Community consultation

Given the constraints to the progression of the plan, the level of community consultation is undetermined. Should the application progress to the next stage in the future, a review of this based on information at Council's disposal at that time.

CONCLUSION

On the basis of desktop review, the PP is considered to contain insufficient strategic assessment and merit to warrant its referral to NSW Department of Planning for a gateway determination, based firmly in traffic capacity issues within the Kennedy Drive catchment. Whilst a high level merit assessment has been undertaken, this singular issue (and its lack of proper address by the proponent deems the proposal unacceptable at the present time.

Should the proponent wish to revisit the issue and provide additional information to Council, a supplementary assessment can be undertaken. However this should be facilitated in line with Council's amended fees and charged schedule, considered in the current agenda. This ensures that the Planning Reforms Unit is able to manage the process of efficient assessment and turn around of planning proposals, as agreed to between Council and the wider development industry.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

If adopted, the recommendation contained within this report would result in a resource implication for the Planning Reforms Unit, however Council has a fees and charges structure to enable the application to be managed internally or through external consultants and ensures cost recovery.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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**11 [PR-CM] Planning Proposal PP10/0003 - Stage 1 Part Lot 237 DP 1139108
Rous River Way, Murwillumbah (Riva Vue Estate)**

ORIGIN:

Planning Reforms

FILE NO: PP10/0003

SUMMARY OF REPORT:

This report seeks Council's consideration of a planning proposal to amend Tweed Local Environmental Plan 2000 as it relates to part Lot 237 DP 1139108, Rous River Way, Murwillumbah. The planning proposal seeks to enable part of the lot to be developed for residential purposes, with ancillary open space areas.

Preliminary assessment of the planning proposal indicates that the proposal is predominately consistent with applicable State Environmental Planning Policies and Section 117 Ministerial Directions. The proposal is generally consistent with the Far North Coast Regional Strategy, however further consideration towards the principles of this strategy will be required as part of the Stage 2 assessment, following a 'Gateway' determination approval by the Department of Planning.

The report concludes that the planning proposal is suitable for referral to the Department, and this is to be supported with an identification list of the additional supporting studies required for the Stage 2 gateway determination assessment.

RECOMMENDATION:

That:

- 1. Planning Proposal PP10/0003 for a change of land-use zone classification to enable Lot 237 DP 1139108 to be developed for the purposes of a *low density residential estate of similar character to the approved adjoining Riva Vue subdivision* be supported in principle and that the proposal be referred to the Department of Planning for a gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979*.**
- 2. The applicant of the planning proposal PP10/0003 is to be advised that the actual rezoning classification of the land, if supported by Council, will be determined following assessment of any detailed site studies required as part of the Stage 2 gateway determination process.**

REPORT:

On 1 July 2009 the Environmental Planning and Assessment Amendment Act 2008 and Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009 implemented procedural changes to the way local environmental plans are prepared and processed.

A further more detailed discussion on the new Part 3 (Plan Making) process is provided in the 'Boyd's Bay Garden World Planning Report, which precedes this Item on today's Council's Business Agenda for 20 July 2010.

The format of this Council report is based on the format provided by the legislation and DOP guidelines for planning proposals.

AGRICULTURAL LAND STATUS – FARMLAND PROTECTION STATUS

The subject lands are currently zoned 1(b2) Agricultural Protection under the Tweed LEP 2000, with a prescribed minimum lot size of 40ha.

The land is not classified under the Farmland Protection Project (FPP) or caught by the s 117(2) Ministerial Directions, in particular Direction 5.3 (Farmland of State and Regional Significance on the NSW Far North Coast), as any of the following:

- I. State significant farmland
- II. Regionally significant farmland
- III. Significant non-contiguous farmland.

The FPP seeks to protect important farmland from urban and rural residential development by mapping farmland and developing planning principles. Ultimately its aim is to keep agricultural land available for farming and to minimise farming/residential land-use conflicts.

The Northern Rivers Farmland Protection Project Final Recommendations Report 2005 states that these lands should generally not be considered for land-use change through rezoning, and is implemented to that effect through the Ministerial s 117(2) Directions.

The subject land is identified on the FPP maps as "other rural" land notwithstanding the zone classification under the Tweed LEP. There are no similar restrictions either under the FPP recommendations or the Ministerial Directions applying to this classification.

Notwithstanding that the agricultural aspect of subject land is not protected beyond the Tweed LEP zone classification there is still a substantial need for the agricultural suitability of the land to be thoroughly assessed in order to properly underpin any determination in support of a change in rezoning.

This aspect of the assessment is also a necessity in responding to the Ministerial Direction 117(2) 1.2 (Rural Zones) and 1.5 (Rural Lands), and subsequently, SEPP (Rural Lands) 2008 which required comprehensive assessment of the rural land status against the rural land zoning. This report demonstrates the need for further assessment of this issue as part of the Stage 2 planning proposal evaluation process.

SITE AND PLANNING HISTORY

There is an extensive site history outline in the report accompanying the planning proposal, detailing previous submissions for rezoning of this land since 2007. However these requests, due to the Council's position were not progressed beyond s.54 stage. Land adjoining the subject land to the east has had the benefit of rezoning, and is now a low density residential subdivision known as Riva Vue (both 2(a) and 2(c)) approved under 05/0308, these stages are partially constructed.

A road has already been constructed within the subject site. The proponent forwards that this road was constructed to link Joshua Street at the northern boundary of the site to the Murwillumbah Sewerage Treatment Plant. Rous River Way will ultimately connect to the West End Street Extension to form part of the Byangum Road bypass.

Lot 237 is located to the west of Murwillumbah Town Centre, adjacent to the Rous River. The site area is approximately 14ha in total and is currently zoned 1(b2) – Agricultural Protection.

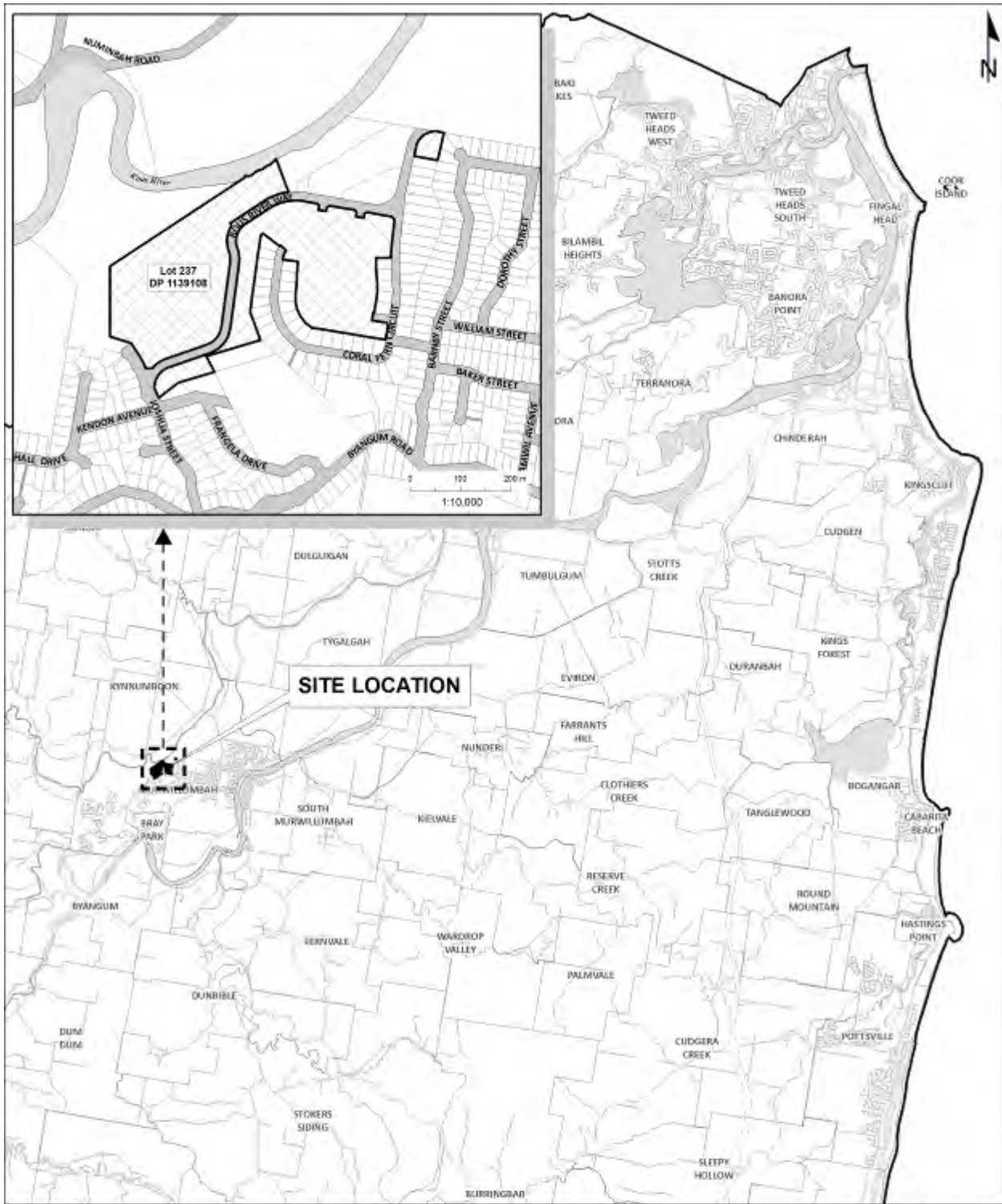
The subject site abuts a new residential subdivision development that was approved in 2005 (DA05/0308). A new road extension to Rous River Way has been constructed and dedicated to Council as part of that development. Part of the road and the batter support for it are located in the subject agriculturally zoned land.

A report to the Council Meeting of October 2008 reported unlawful filling of part of the site, which was later resolved by way of s 96 development application modification to the parent applicant DA05/0308.

The Council's consideration of the modification application raised the issue of development within the agriculturally zoned land and was the subject of significant debate. This planning proposal is likely to raise similar concern or issue within the community as did that application.

The status of the lands agricultural classification is discussed above.

FIGURE 1: SITE LOCALITY PLAN



LOCALITY PLAN
 Lot 237 DP 1139108
 Rous River Way, Murwillumbah

Filename: z:\esr\planning\mxd\A4P_B&W_SitePlan.mxd Author: J Batchelor - Planning Reforms Unit Date Printed: 24 June, 2010

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GDA Cadastre: 25 June, 2010 © Dept. of Lands & Tweed Shire Council
 Coordinate System - MGA Zone 56 Datum - GDA 94

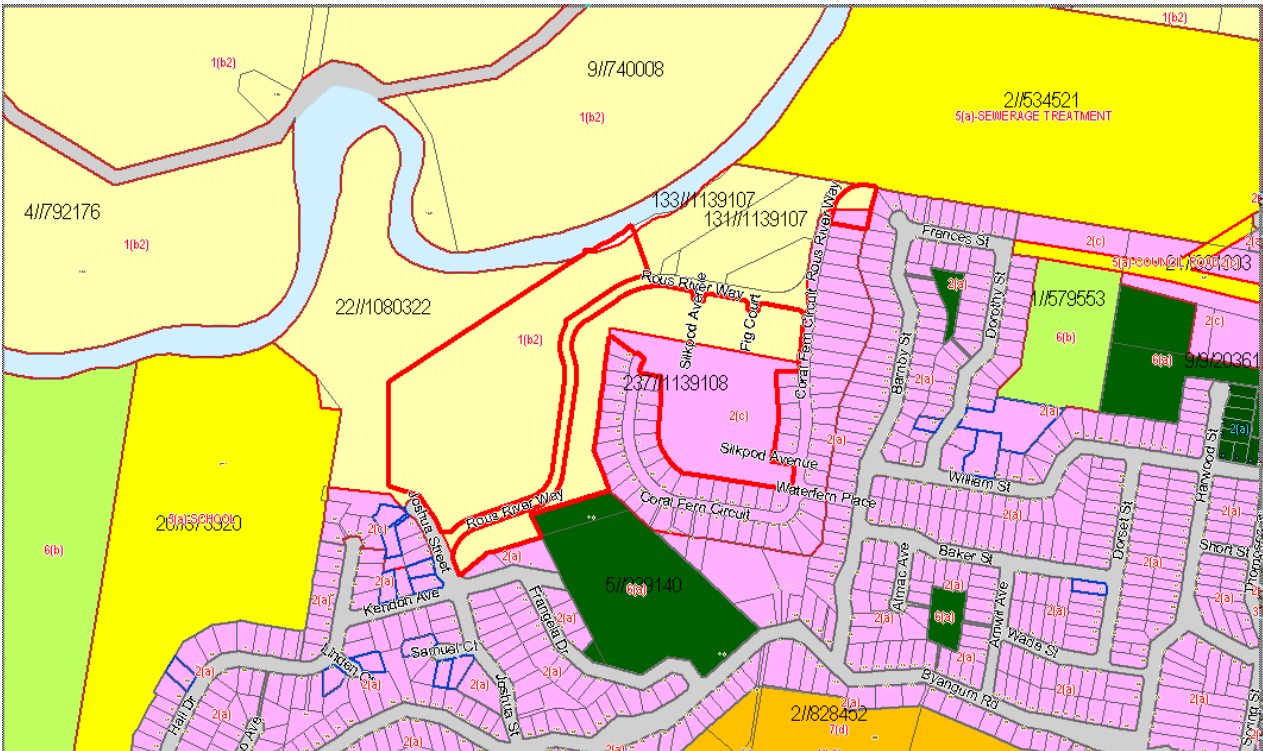
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TWEED SHIRE COUNCIL

FIGURE 2: AERIAL PHOTO



FIGURE 3: LEP 2000 ZONE MAP



THE PLANNING PROPOSAL

Part 1 A Statement of the Objectives or Intended Outcomes of the Proposed Local Environmental Plan

This is intended to be a concise statement of what is planned to be achieved, and will eventually form the basis for the drafting of the LEP.

The planning proposal describes its intended outcomes as follows:

'The objective of this planning proposal and any Draft Local Environmental Plan is to enable part of Lot 237 DP1139108 to be subdivided to create a low density residential estate of a similar character to the approved adjoining Riva Vue subdivision.'

The NSW Department of Planning's 'A Guide To Preparing Planning Proposals' states that the objectives or intended outcomes constitute the actual 'proposal' and if at any stage they are varied during the course of the planning proposal, the entire amended planning proposal will need to be resubmitted to the Minister to enable a decision to be made as to whether to issue a revised gateway determination. In light of these provisions, whilst the submitted planning proposal contains draft proposed zonings (which are discussed within Part 2 of this report) the assessment of the proposal should have greater regard to the above intended outcomes statement as a variety of zones could be used to accommodate the desired outcome.

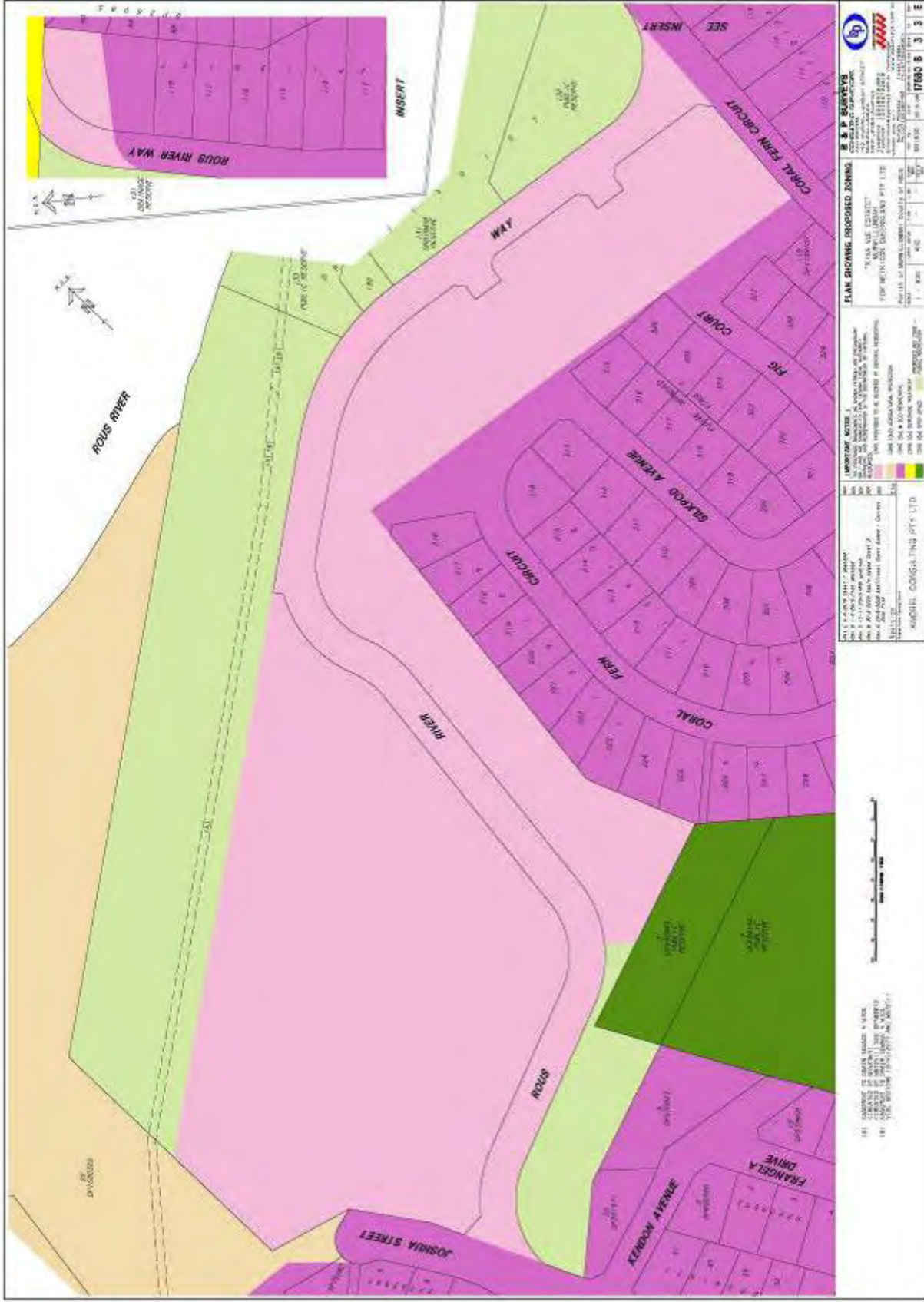
Part 2 Explanation of the Provisions

To enable the prescribed objective, the planning proposal seeks to amend the zoning map of the Tweed LEP as per Figure 4 . A basic summary of the changes sought is contained in Table 1 below:

Table 1 – Desired changes to the Tweed LEP 2000

Property (Lot/Sec/DP)	Tweed LEP 2000 Zoning	Draft Tweed LEP 2010 Zoning	Proposed Zoning
237//113910 8	1(b2) – Agricultural Protection	RU1 Primary Production	R1 General Residential

FIGURE 4: PROPOSED ZONING MAP



Part 3 Justification for the Proposal

Section A – Need for a Planning Proposal

Is the planning proposal a result of any strategic study or report?

The planning proposal is not a result of any specific or adopted strategic study or report prepared at either a local or regional level. The subject site is not located within the existing urban footprint (Town and Village Growth Boundary) identified within the Far North Coast Regional Strategy (FNCRS).

Is the planning proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Given the subject site falls outside the town and village growth boundary of the FNCRS and is zoned Rural, rezoning of this land should not be undertaken until the adoption of a Rural Lands Strategy by Council. However, until this is completed, nothing prohibits a proponent from lodging a planning proposal over any land within the Shire. For the proponent to achieve their current objectives, a planning proposal process is the best means at the present time. SPEAK WITH IAIN

Is there a net community benefit?

The proponent has made an assessment of the net community benefit associated with the subject planning proposal. A preliminary review of this has been undertaken. Further assessment of this will be required as part of the Stage 2 process.

Section B - Relationship to Strategic Planning Framework

Is the Proposal Consistent with the Objectives and Actions Contained Within the Applicable Regional or Subregional Strategy (including the Sydney Metropolitan Strategy and Exhibited Draft Strategies)?

Preliminary review of the FNCRS indicates that the defined Town and Village Growth Boundaries in the strategy are intended to accommodate the Region's urban housing and employment needs until 2031.

The Strategy states:

“These areas are to accommodate uses including housing, tourism, industry, business, infrastructure, community facilities and open spaces. Where demonstrated by a local environmental study that a minor adjustment to the Town and Village Growth Boundary is necessary with it, some minor variations may be considered. The strategy goes on to state that ‘any development proposed for Greenfield sites in non coastal areas that is located outside the Town and Village Growth Boundary will be subject to satisfying the Sustainability Criteria.’”

Whilst the subject site is not located within the Town and Village Growth Boundary, it does nevertheless abut the boundary. The FNCRS does not prohibit investigation of sites outside this boundary in non-coastal areas (West of the Pacific Highway) being considered for urban development. Whilst a more detailed assessment will be required in subsequent stages of

the planning proposal process, there is nothing within the Strategy to prevent this planning proposal progressing to the gateway determination.

Is the Planning Proposal Consistent with Applicable State Environmental Planning Policies?

Preliminary review indicates that the planning proposal is generally consistent with applicable SEPPs. Further assessment and consultation will be required within Stage 2 with respect to (but not limited to) SEPP (North Coast REP 2008), SEPP 55, SEPP (Rural Lands) 2008.

Is the Planning Proposal Consistent With Applicable Ministerial Directions (Section 117 Directions)?

Preliminary review indicates that the planning proposal is generally consistent with applicable s117 Directions, further review and consultation will be required in respect to certain directions, however there is nothing within these that impedes progression of the application to Stage 2.

Section C - Environmental, Social and Economic Impacts

Is There any Likelihood That Critical Habitat, Threatened Species, Populations or Ecological Communities, or Their Habitats, Will be Adversely Affected As a Result of the Proposal?

A review of the planning proposal indicates that there are no significant flora and fauna constraints at the site. The proponent has submitted a Flora and Fauna Assessment that was completed in 2005. It acknowledges that adequate buffer areas will need to be determined however an updated flora and fauna assessment will need to be requested and provided as part of the Stage 2 assessment.

Are There Any Other Likely Environmental Affects As a Result of the Planning Proposal and How Are They Proposed to be Managed?

Preliminary review indicates that the proposal would not likely result in any other significant environmental impacts, however further detailed consideration of studies will be required, particularly an updated Flora and Fauna Assessment. Ultimately the true extent will not be ascertainable until the more detailed assessment as part of Stage 2 is undertaken.

How Has the Planning Proposal Adequately Addressed Any Social and Economic Effects

The proponent has addressed the social and economic impacts of the development within the planning proposal a preliminary review of this assessment deems the proposal satisfactory to move through to Stage 2 for further assessment. It is noted however that the proponent makes an assessment of potential s.94 contributions, per allotment, which now due to Ministerial Directions (specifically in relation to s.94 capping) not achievable. Further assessment regarding s.94 contributions at the site will be undertaken in Stage 2, however it should be noted for reference purposes that \$20,000 cap implemented by the State Government may impact on the proposal.

Other Environmental, Social and Economic Considerations resulting from internal referrals.

Strategic and Structural Planning Considerations

A preliminary review of the proponents planning submission has been reviewed with no significant issue being raised with respect to progression of the proposal to the gateway determination and Stage 2 assessment. However, as part of Stage 2, the proponent will be required to update the relevant studies submitted to date, to reflect contemporary Federal, State and local policy positions, as well as more accurately reflect the current rezoning proposal in its own right, as opposed to the wider Riva Vue rezoning area, a portion of which is now being developed.

Early discussion with the proponent regarding the assessment of a number of matters will need to be undertaken and this is likely to be based on the broader planning framework for the subject rezoning, including, but not limited to:

- The assessment by the proponent regarding the rezoning of agricultural land in the context of the FNCRS, relevant SEPP's and s117 Directions and local policy framework.
- The overall framework of the site, a DCP, structure plan, masterplan or the like to canvass areas such as lot and road layout, yield, buffer zones, public open space and connectivity;
- Clearer definition of the boundary area of the subject application, indicative plans includes Council Lots (130-133: 2 x Public Reserves, drainage reserve and a sewer pump station) within the rezoning map and other diagrams submitted. A cautionary approach is applied here to canvass Council's position with regard to future applications;
- S94 Developer contributions in the context if the capped maximum amount per lot;
- Strategic consideration of proposed land forming, stormwater management, water and sewer servicing, traffic and access and the like.

Traffic:

The proposal was assessed by Council's Traffic and Transport Engineer and Council's Development Assessment Engineer and no major concerns were raised in regard to access and traffic management in principle. It was requested that as part of the Stage 2 assessment:

'the proponent submit a traffic assessment of the proposal demonstrating the ability of the local road network to cope with increased traffic load and any adverse impact that may result. As part of this, the proponent will be required to prepare a road layout plan for the proposal that depicts the appropriate lot layout as per TSC A1 and A5'.

Engineering and infrastructure:

The planning proposal was referred to Council's Strategic and Assets Engineer and Council's Development Assessment Engineer and no objection was raised to the planning proposal progressing the next stage. The water and sewer supply are deemed appropriate for progression to Stage 2. However, as part of Stage 2, Council will require the proponent to prepare a Water and Sewer Servicing plan for the site to ensure investigation of the

capacity of existing water and sewer servicing infrastructure in the area, where and how to connect to existing systems, and determining if any major upgrades area required.

Flooding, Stormwater and Landforming:

Flooding:

The planning proposal has been referred to Council's Planning and Infrastructure Engineer and Council's Development Assessment Engineer. The following response outlines comments raised:

"The subject land is flood liable, and must be filled to make it suitable for future residential subdivision development. DCP-A3 has recently been revised following an update to the Tweed Valley Flood Study. Flood mapping shows that the current 100 year ARI flood level is RL 4.9m AHD, with a potential increase due to climate change up to RL 5.1m AHD.

Under DCP-A3, the climate change design flood level of RL 5.1m AHD applies, as the future residential subdivision will be defined as a "greenfield" development, as it exceeds 5 hectares in area, and expands on the existing stages of the Riva Vue Estate. This corresponds with the applicant's fill proposal, and requires up to 3m of fill to be applied to the site.

A flood impact assessment has been provided with the planning proposal (Annexure 6). Written in 2004, it relates to the impacts of filling the eastern portion of the Riva Vue Estate, and does not include the subject areas in its assessment (refer Figure 3.2, page 3-3). A 2-dimensional flood model is now also available to the proponents to better model the impacts of fill. As such, in order for the rezoning to be supported, a new flood impact assessment should be provided, to demonstrate no significant adverse impact on local flood behaviour or adjoining land.

The site adjoins high land above the probable maximum flood level (PMF = RL 9.3m AHD), so emergency response for the residential subdivision can be adequately managed by the provision of evacuation routes for floods exceeding the 100 year ARI event.

Stormwater:

An overall Stormwater Management Plan must be prepared for the site, in accordance with Council's 'Tweed Urban Stormwater Quality Management Plan', DCP A5 and Development Design Specification D5. Matters to be addressed include (but are not limited to):

- *Discharge point(s) for the site – is it intended to utilise the existing constructed wetland (address existing capacity and ability for expansion if so) or seek a separate discharge point to the Rous River?*
- *Water quality issues to be addressed for any new discharge point to the Rous River.*
- *Utilise Water Sensitive Urban Design methods when nominating the stormwater design philosophy for the site.*

The proponent should note the following, which will need to be addressed as part of the Stage 2 assessment.

Trunk Drainage open channels. The proposal has ignored the consequences of proposing residential lots over an area that has an existing large open drainage channel – which is also under-performing (blocking up) as a result of prior subdivision works (channel re-routing). The applicant will be required to investigate the cause of existing drainage problems that currently affect the site, devise a resolution that is acceptable to Council (likely to be an open channel with low-flow pipes - within easements or a Drainage Reserve), incorporate same in any DCP being created for the site, and implement it.

Ecology:

A full review of the Flora and Fauna Assessment will be undertaken within Stage 2 of the assessment process. However the following was provided as comment:

“A preliminary review of the planning proposal has been undertaken an NRM do not have any objections or additional requests for information at this time. The most important issues with respect to natural resource management on the site will be related to management of the riparian buffer along the Rous River. This should be a minimum of 50m, appropriately planted with a suite of native species and maintained by the applicant.”

It is noted that the Flora and Fauna Assessment submitted with the Planning Proposal was prepared in 2005. It will be necessary that an updated Flora and Fauna Assessment in accordance with current Federal and State legislation be submitted as part of the Stage 2 assessment.

Contamination

Council’s Environment and Health Officers have requested additional information be provided in accordance with SEPP 55 and Section 3.4 of Council’s Contaminated Land Policy as part of the Stage 2 process.

Social and economic impacts:

Section D – State and Commonwealth Interests

Is There Adequate Public Infrastructure for the Planning Proposal?

Preliminary review indicates that adequate water and waste water capacity is available to the subject site, as well as electricity and telecommunication. Further consideration to the requirement for educational and health infrastructure will be undertaken as part of Stage 2.

What are the Views of State and Commonwealth Public Authorities Consulted In Accordance With the Gateway Determination

The application is yet to proceed through the gateway and has not yet been referred to any State or Commonwealth Authorities this will occur as part of the Stage 2 process.

Part 4 – Community Consultation

The Department of Planning's guide to preparing planning proposals addresses the process requirements for determining the level of community consultation which should be specified when seeking a Gateway Determination. It can, in theory, be specifically tailored however the general guide is a 14 day exhibition for a low impact proposal and a 28 day exhibition for all other proposals.

Based on the scale of this planning proposal, Council officers are of the view that a minimum 28 day exhibition period should be sought.

CONCLUSION:

The preliminary Stage 1 review indicates that there is sufficient strategic context and certainty to warrant Council's resolution to amend the Tweed LEP and to submit the planning proposal for a gateway determination with Department of Planning.

In addition, the Department is to be advised of the need for further detailed studies relating to the proposal that includes, but may not be limited to:

1. An updated flood impact assessment that utilises Council's Tweed Valley Flood Model 2009 to demonstrate no significant adverse impact on local flood behaviour or adjoining land;
2. an updated Flora and Fauna Assessment in accordance with current Federal and State legislation, specifically referencing the current Planning Proposal area;
3. Water and Sewer Servicing plan for the site to ensure investigation of the capacity of existing water and sewer servicing infrastructure in the area, where and how to connect to existing systems, and determining if any major upgrades area required.
4. An overall Stormwater Management Plan must be prepared for the site, in accordance with Council's 'Tweed Urban Stormwater Quality Management Plan', DCP A5 and Development Design Specification D5. Matters to be addressed include (but are not limited to):
 - Discharge point(s) for the site – is it intended to utilise the existing constructed wetland (address existing capacity and ability for expansion if so) or seek a separate discharge point to the Rous River?
 - Water quality issues to be addressed for any new discharge point to the Rous River.
 - Utilise Water Sensitive Urban Design methods when nominating the stormwater design philosophy for the site.
5. Address the provisions of SEPP 55 and Council's Contaminated Lands Policy;

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If adopted, the recommendation contained within this report would result in a resource implication for the Planning Reforms Unit, however Council has a fees and charges structure to enable the application to be managed internally or through external consultants and ensures cost recovery.

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] Consideration of Pursuit of Costs - Land and Environment Court Matter - Tweed Shire Council ats Those Best Placed Pty Ltd - No. 49 Upper Crystal Creek Road, Crystal Creek

ORIGIN:

Building & Environmental Health

FILE NO: DA08/0966 Pt2

SUMMARY OF REPORT:

On 27 May 2010, Justice Biscoe presented his judgement that the Class 4 matter in the NSW Land and Environment Court, Those Best Placed Pty Ltd v Tweed Shire Council be summarily dismissed. The judgement arose from an order moved by Tweed Council's legal representatives, HWL Ebsworth, seeking that the above proceedings be summarily dismissed on the ground that no reasonable cause of action was disclosed by the applicant.

The Class 4 action was initiated by the owners of property No. 49 Upper Crystal Creek Road, Crystal Creek, primarily in respect of Council officer actions taken in refusing a development application (DA08/0966) for the construction of a shed which contained a bathroom and toilet, on the land. Other more broader questions of Council conduct were identified in the LEC action relating to Council's related assessment of the provision of an onsite sewerage management system on the site.

On the basis of this judgement, it is recommended that Council endorse the pursuit of costs against the Class 4 applicants to seek to address the sizeable costs incurred by Council in defending the LEC action.

RECOMMENDATION:

That:

- 1. Council, in respect of the Class 4 Land and Environment Court proceedings – Tweed Shire Council ats Those Best Placed Pty Ltd – No. 49 Upper Crystal Creek Road, Crystal Creek, instruct its solicitors HWL Ebsworth to pursue the applicants for the costs incurred by Council in defending this action.**
- 2. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege**

REPORT:

On 27 May 2010, Justice Biscoe presented his judgement that the Class 4 matter in the NSW Land and Environment Court, Those Best Placed Pty Ltd v Tweed Shire Council be summarily dismissed. A copy of this judgement is attached to this report. The judgement arose from an order moved by Tweed Council's legal representatives, HWL Ebsworth, seeking that the above proceedings be summarily dismissed on the ground that no reasonable cause of action was disclosed by the applicant.

The Class 4 action was initiated by the owners of property No. 49 Upper Crystal Creek Road, Crystal Creek, primarily in respect of Council officer actions taken in refusing a development application (DA08/0966) for the construction of a shed which contained a bathroom and toilet, on the land. Other broader questions of Council conduct were identified in the LEC action relating to Council's related assessment of and the provision of a suitable onsite sewerage management system on the site.

A Confidential Attachment contains advice from Council's solicitors HWL Ebsworth regarding the processes required to advance the pursuit of costs against the Class 4 applicants.

On the basis of the advice from HWL Ebsworth, the definitive nature of the judgement, the sizeable costs to Council, both in the enormous amount of staff time allocated by Council staff in dealing with the owners of the subject site, and defending the LEC action, it is recommended that Council endorse the pursuit of costs against the Class 4 applicants.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Clear legal advice on this matter has been provided through both the LEC judgement and Council's solicitors, and it is therefore considered appropriate in this instance for Council to endorse the pursuit of costs against the Class 4 applicants.

POLICY IMPLICATIONS:

NIL

OPTIONS

That Council:

1. Instruct its solicitors to pursue costs related to this matter; or
2. Instruct its solicitors not to pursue costs related to this matter.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au 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. Copy of the judgement of Justice Briscoe dated 27 May 2010 in respect of the Class 4 Land and Environment Court matter Tweed Shire Council ats Those Best Placed Pty Ltd – No. 49 Upper Crystal Creek Road, Crystal Creek (ECM 18939325)
 2. **Confidential Attachment** Copy of advice dated 30 June 2010 from Council's solicitors HWL Ebsworth relating to the costs retrieval for the Class 4 Land and Environment Court matter Tweed Shire Council ats Those Best Placed Pty Ltd – No. 49 Upper Crystal Creek Road, Crystal Creek (ECM 18939340)
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13 [PR-CM] Consideration of Further Modification of Contribution Payment Options for Development Application DA08/1171.01 for an Amendment to Development Consent DA08/1171 for the Addition of a Deck to Existing Cabarita Surf Life Saving Club at Lot 7010 DP

ORIGIN:

Director Planning & Regulation

FILE NO: DA08/1171 Pt1

SUMMARY OF REPORT:

At its meeting of 15 June 2010, Council resolved actions on two separate items relating to the Development Application DA08/1171.01 for an Amendment to Development Consent DA08/1171 for the Addition of a Deck to Existing Cabarita Surf Life Saving Club at Lot 7010 DP 1055324; Lot 2 DP 1083851 Pandanus Parade, Cabarita Beach.

Item 10

Council resolved to approve a Section 96 application of items relating to the Development Application DA08/1171.01 for an Amendment to Development Consent DA08/1171 for the Addition of a Deck to Existing Cabarita Surf Life Saving Club, subject to modified conditions, including those conditions requiring payment of Section 64 and Section 94 contributions to Council.

Item 11

Following the approval of the Section 96 application of Item 10, Council resolved:

"In terms of the required Section 94 and Section 64 contributions relating to the Section 96 Application for amendment to Development Consent DA08/1171.01 for the addition of a deck to an existing surf life saving club at Lot 7010 DP 1055324; Lot 2 DP 1083851 Pandanus Parade, Cabarita Beach:

1. *Council invites the Cabarita Beach Surf Life Saving Club to make application to enter into a loan with Council for \$56,730.76 (being 50% of the current Tweed Roads Contribution Plan, Shirewide Car Parking and Section 64 contributions) at terms of 7% over 10 years with a minimum of two executives of the Club providing personal guarantees against the debt. Subject to satisfactory arrangements being made in relation to the proposed loan arrangement above, Council will make a donation of \$56,730.76 being 50% of the current contributions as detailed in Conditions 3A and 4A of Development Consent for DA08/1171.01; and*
2. *Council officers bring back a report identifying the sources of funding to be donated to the Cabarita Beach Surf Life Saving Club."*

Following the above resolution, representatives of the Club requested a meeting with the Mayor, Councillor Polglase, Councillor van Lieshout and the General Manager, to seek clarification of Council's resolution. This meeting was held on Friday, 2 July 2010 at Council, whereby the Club representatives put forward a request to modify certain terms of the above resolution, including a deferral of the commencement of loan payments and a change to the details of the Club's guarantee to make the repayments. The Club representatives were advised to put the details of their request for modification of consent in writing to Council. It should be pointed out that there was no request put forward at this meeting for Council to consider an interest free loan for the contribution payments.

The Club followed up from the July meeting with a letter to Council dated, 6 July 2010, seeking further amendments to Council's 15 June 2010 resolution, including a request that the Club do not make interest payments on the proposed loan repayments.

In light of the previous assessment by Council officers and Council's subsequent resolution of 15 June 2010 Council Meeting, it is recommended that Council determine the Club's latest request for amended contribution payment arrangements. Three options have been put forward in the recommendation for Council to consider.

RECOMMENDATION:

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

OPTION 1

Recommends no change from the Item 11 resolution of 15 June 2010 Council Meeting.

OPTION 2

Recommends to modify the Item 11 resolution of 15 June 2010 Council Meeting in the following manner:

1. That:

- (a) The Cabarita Beach Surf Life Saving Club enter into a loan with Council for \$56,730.76 (being 50% of the current Tweed Roads Contribution Plan, Shirewide Car Parking and Section 64 contributions) at terms of 7% over 10 years. In terms of a suitable guarantee for the loan, Cabarita Beach Surf Life Saving Club shall be responsible for preparing and seeking agreement with Council on a binding legal agreement, and, or mortgage caveat. Subject to satisfactory arrangements being made in relation to the proposed loan arrangement above, Council will make a donation of \$56,730.76 being**

50% of the current contributions as detailed in Conditions 3A and 4A of Development Consent for DA08/1171.01;

- (b) The 10 year period of the above loan be fixed, and that Council will not increase the base contribution payment of \$56,730.76 or the related interest rate of 7% over the life of the loan; and**
 - (c) Notwithstanding the terms of Condition 3A of Development Consent for DA08/1171.01, which requires payment of required Section 94 payments prior to the issue of a Construction Certificate, that Council agrees that repayments on the loan identified in the above Point 1(a) shall not commence until a period of 18 months after the date that an Occupation Certificate is issued in respect of Development Consent for DA08/1171.01; and**
- 2. Council officers bring back a report identifying the sources of funding to be donated to the Cabarita Beach Surf Life Saving Club.**

OPTION 3

Recommends to support the same arrangements as Option 2, with the exception that proposed loan of \$56,730.76 be provided interest free for the entire 10 year period of the loan, and be subject to no additional payments to Council.

REPORT:

Following the above resolution, representatives of the Club requested a meeting with the Mayor, Councillor Polglase, Councillor van Lieshout and the General Manager, to seek clarification of Council's resolution. This meeting was held on Friday, 2 July 2010 at Council, whereby the Club representatives put forward a request to modify certain terms of the above resolution in the following manner:

- A modification to enable the Club to defer the commencement of payments for a limited period to enable the Club to adequately establish the new commercial operations;
- the preparation of a legal agreement to replace the personal indemnity of the loan on Club executives; and
- the alteration to Condition 3A of the modified consent to enable the Club to proceed in obtaining Construction Certificate (CC) approval and to construct the new deck facilities in the winter off-season, without requiring the payment of Section 94 contributions prior to the issue of the CC.

The Club representatives were advised to put the details of their request for modification of consent in writing to Council. It should be pointed out that there was no request put forward at this meeting for Council to consider an interest free loan for the contribution payments.

By letter dated, 6 July 2010, (a copy of the letter is attached to this report), and following on from the July meeting, the Cabarita Surf Club has requested Council to consider the following amendments to the contributions arrangements endorsed by Council through its resolution for Item 11 of the Business Paper of 15 June 2010 Meeting:

- “1. *That Council grant a loan of \$57,730.76 to the Club and that no interest be charged on such amount;*
2. *The Club be considered as an eligible business enterprise under Council's Section 94 Plan No. 23 Offsite Parking and as such we should be able to make 10 yearly payments with no interest;*
3. *In lieu of Directors guarantees, the Club is willing to offer a suitable legal and binding agreement and or mortgage/caveat with the Tweed Shire Council to satisfactorily guarantee the payment of the loan;*
4. *That payment of the loan is due to commence 18 months after the issue of the Certificate of Occupancy for the proposed deck; and*
5. *That the amount of \$57,730.76 be fixed for the period of 10 years and Council will not increase the levy.*

Subject to the above the Club is happy to proceed with this matter and will instruct the Club's lawyers to prepare necessary documentation upon receipt of conformation from you.”

(It should be noted that the amount referred to in the Council resolution is \$56,730.76 and not \$57,730.76 as indicated by the club).

Council Officers' Assessment of the Club's Request for Amended Contribution Arrangements

In light of the previous assessment by Council officers and Council's subsequent resolution of 15 June 2010 Council Meeting, it is recommended that Council determine the Club's latest request for amended contribution payment arrangements. Three options have been put forward in the recommendation for Council to consider.

Whilst the officers are supportive of the amendments outlined at 2 July meeting of Council and Club representatives, it is considered that the Club's request for further financial concessions in respect of interest-free loan repayments is unreasonable and without adequate justification, and one which would further compromise the integrity of Council's Section 94 and Section 64 Contribution Plans.

As a point of clarification, the reference made in point 2 of the Club's letter of 6 July to an "eligible business enterprise" under Tweed Contributions Plan No. 23 is not relevant in Council's consideration of the revised contribution payment arrangements. The proposed additions to the Club under Council development consent DA08/1171.01 do not qualify for the defined "eligible business enterprise":

"Eligible Business Enterprises (EBE) are defined as retail, commercial and light industrial activities to be established in rented premises with a GFA of not more than 1,000 m². Final determination of the eligibility of a business into this category will be at the discretion of the Director Planning and Regulation."

Notwithstanding, the Council officers acknowledge the point made by the Club that the Tweed Roads Contribution Plan (CP No. 4) and Offsite Parking (CP No. 23) provide the option of deferred or periodic payment of contributions, albeit for development applications with generally different circumstances to the Club's development consent DA08/1171.01

Clause 9.4 of CP No. 4 (TRCP) states that Council will generally not accept deferred or periodic payment of contributions, however, payment is at the sole discretion of the Council.

Clause 2.11 of CP No. 23 (Offsite Parking) provides circumstances where deferred or periodic payments may be permitted, most notably: when works-in-kind or a planning agreement is accepted, or if the development is defined as an Eligible Business Enterprises, or if payment Prior to issue of Construction Certificate is unreasonable or unnecessary in the circumstances of the case. The policy provides a condition essentially requiring the total amount levied to be divided by 10 with each payment made annually for the next 10 years.

Notwithstanding the officers' views, Council has been provided with three options to consider to determine the Club's request.

OPTIONS:

Three options have been put forward in the recommendation for Council to consider.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

A detailed assessment of the legal and financial implications of the concessions provided by Council to Cabarita Surf Club in terms of the required contributions for the approved DA08/1171.01 has been carried out by Council officers in this report, and previous related reports to Council. It is important that Council ensures that the terms of any modification of contribution payment arrangements are confirmed through a subsequent legal agreement to be prepared by the Club.

POLICY IMPLICATIONS:

There are some possible precedent implications for Council in endorsing the contribution concessions granted to the Club.

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. Copy of a letter dated 6 July 2010 from Cabarita Surf Club to Tweed Council seeking a modification to Council's resolution of 15 June 2010 relating to the required contribution requirements for DA08/1171.01 (ECM 18894004)
-

14 [PR-CM] Development Application DA05/0223.07 for an Amendment to Development Consent DA05/0223 for a Restaurant at Lot 1 DP 553728, No. 4 Wharf Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/0223 Pt2

SUMMARY OF REPORT:

In late 2008, Council was made aware of unauthorised building works at the existing approved restaurant adjacent to the Jack Evans Boat Harbour. An investigation into the works was undertaken, with the proprietor of the premises being advised that an application to modify Development Consent DA05/0223 was required. This was to be accompanied with a Building Certificate application for the unauthorised works, as well as a Construction Certificate for any further building works.

An application to modify the original approval by way of internal and external building modifications and use of the premises (known as the “ibar”) was subsequently lodged by the applicant. Unauthorised use (lap dancing) was also included in Council’s assessment of the development. The application was refused by Council at its meeting of 16 June 2009, including resolution to initiate legal action with regard to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

On 17 November 2009 a report was presented to Council to highlight the fact that the issues arising with the premises had evolved and required reconsideration. It was also prepared to update Council on the best way forward with regard to finalising all outstanding matters and included a summary of the legal advice received on the matters raised above. Council resolved to request the occupier of the premises to lodge an additional S96 application to modify Development Consent DA05/0223 and building certificate application, incorporating all unauthorised building works on the subject site, within 21 days.

A S96 application and Building Certificate application were lodged on 8 January 2010. A lack of response to requests for additional information resulted in a report being put to Council in March 2009 recommending refusal. The determination of the application was deferred as a result of the applicant submitting additional information the day before the March Council meeting. A final request for further information was issued in May 2009. Having no response to this final request, the application is once again recommended for refusal. This report highlights the issues raised by the proposed development and provides reasons for refusal of the proposed modifications.

RECOMMENDATION:

That:

- A. Development Application DA05/0223.07 for an amendment to Development Consent DA05/0223 for a restaurant at Lot 1 DP 553728, No. 4 Wharf Street, Tweed Heads be refused for the following reasons:**
- 1. The proposed modification is not considered to be in accordance with the provisions of Clause 8 and 11 of the Tweed Local Environmental Plan 2000, relating to consent considerations and zone objectives.**
 - 2. The proposed modification is not considered to be in accordance with the provisions of Section 96(1)(a) of the Environmental Planning & Assessment Act 1979, in that it is not substantially the same development as that originally approved under DA05/0223.**
 - 3. The proposed modification is not considered to be in the public interest.**
- B. Council re-initiates legal action through Council's Solicitors in relation to:**
- 1. Unauthorised building works;**
 - 2. The premises being used in a different manner from the original consent; and**
 - 3. Seeking orders for the proprietor to lodge a S96 application with regard to the trading hours of the premises, pursuant to Conditions 6 and 7 of the consent.**
- C. Council notifies the Office of Liquor, Gaming and Racing in writing that the premises is no longer operating as a restaurant and is therefore no longer complying with the provisions of the existing on-premises licence for the originally approved restaurant.**

REPORT:

Applicant: Mr A Wright
Owner: Mr AB Warner and Mrs AM Warner
Location: Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads
Zoning: 3(e) Special Tourist (Jack Evans Boatharbour)
Cost: Nil

BACKGROUND:

The subject site is located adjacent to the Chris Cunningham Park and Jack Evans Boat Harbour, opposite Centro Tweed (Tweed Mall) on Wharf Street, Tweed Heads. The existing single storey building was previously a Tourist Information Centre, as well as the sales office for the Latitude 28 proposal, which is now the Ultima site.

On 8 June 2005, Council's Development Assessment Panel issued development consent DA05/0223 for a restaurant known as "*Wright on the Water*" at 4 Wharf Street, Tweed Heads. The original approval was for the installation of a commercial kitchen to run a Steakhouse Restaurant from the existing building. The approval was for two stages of development. Stage 1 involved: the installation of a kitchen and bar within the existing building; the replacement of part of the northern and eastern external walls with retractable doors; and the installation of the services and refuse enclosure on the southern side of the building. Stage 2 incorporated: the construction of a 4.5m wide roofed terrace along the northern and eastern elevations for alfresco dining; and an additional unisex disabled toilet.

Following an investigation by Council's Compliance Officer with regard to a complaint regarding unauthorised construction activities in December 2008, the Lessee of the premises lodged a S96 application on 19 March 2009 to modify the original approval by way of internal and external building modifications.

On 16 June 2009, Council resolved to refuse the proposed modifications and initiate legal action in relation to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

On 17 November 2009 a report was presented to Council as an update on the best way forward with regard to finalising all outstanding matters and included a summary of the legal advice received on matters relating to: unauthorised building works; the use of the premises; and outstanding contributions fees.

Council resolved to request the occupier of the premises (known as the ibar) to lodge a S96 application to modify development consent DA05/0223 and building certificate application, incorporating all unauthorised works on the subject site. If such applications were not lodged within 21 days of the notice from Council, it was resolved to seek further legal advice about appropriate cause of action in regard to the unauthorised building works. It was also resolved that outstanding contribution fees relating to DA05/0233 not be pursued and that only the contributions paid to date are recognised as credit for any future development of the subject site.

Following an extension to the date of submission (until 8 January 2010), the S96 application and building certificate application were lodged on 8 January. The proposed modifications are:

The applicant has advised of the following modifications:

- Replace the approved external masonry deck with a timber deck, by way of constructing the timber deck above and over the existing masonry deck. In addition, there has been an increase to the size of the timber deck by an additional 18.5m² and includes a handrail and stairs;
- The additional deck area (adjacent to the servery) is a smoker's area and will not be used for dining. The designated smokers area extends to the stairs and incorporates an area of 54m²;
- Extend the roof area over the deck area to cover the entire deck (except for the smoker's area). The roof is now pitched;
- The internal dining area has been reduced in size and the bi-fold doors removed and replaced with solid walls;
- The foyer area has been increased;
- The bar and kitchen area layout has been modified;
- Waiting area deleted and a reception area included;
- Unisex toilet added;
- Increase area of the approved service and refuse area on southern side of the building from 6m² to 43m², to be used for storage, refuse, cool room and cleaners amenities;
- Relocate the cool room from within the main building to the service and refuse area noted above;
- Include an outdoor BBQ area over the external deck area;
- Continue 24 hour trading, requiring the modification of Condition 6; and
- Delete Condition 13 in relation to the prohibition of live or amplified music.

Limited floor plans and elevations (same as previous S96) were provided. Detailed construction drawings of the disabled toilet; and floor plans / details of food related areas were not provided and the prescribed advertising fee of \$540 was not provided. As a result of a lack of detail, a further information letter was sent to the applicant on 15 January 2010. Advertising fees of \$540 were again requested; detailed food area drawings were requested (as per Council's Environmental Health Unit's requirements); the submitted floor plans / elevations were not acceptable.

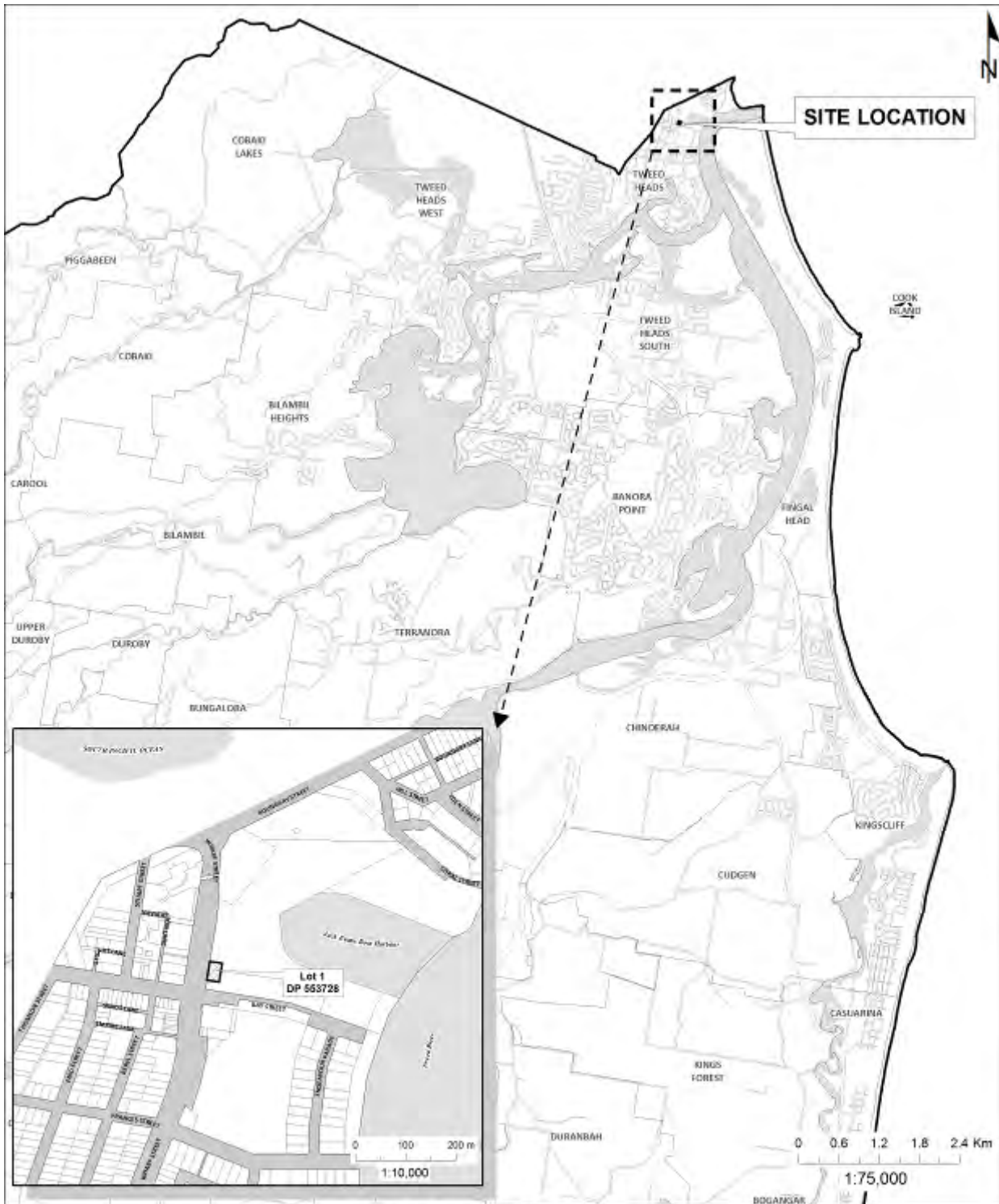
As such, revised floor plans were requested, requiring clearly dimensioned details, indicating the extent of the existing / proposed roof area over the terrace etc. A site plan was also required, along with scaled and dimensioned elevations. Clarification of colour scheme and signage was requested, as well as additional justification as to how the proposal is substantially the same as the original approval. A period of 28 days was given for the outstanding information to be submitted (lapsing on 15 February 2010).

As a result of no detail being provided by the applicant, a report was put forward to the Council meeting of 16 March 2010, recommended for refusal. A late submission of the outstanding information (on the day before the Council meeting) resulted in a resolution to defer the decision on the development, to allow an assessment of the proposal to be undertaken.

Although the majority of the detail was provided by the document, an additional request for information was issued on 25 May 2010 in order to finalise the assessment. The detail required was in relation to amended plans in relation to cool room requirements, relocation / redesign or rear security gate, clarification of new signage at the front of the building, identification of screened bulk storage bin location and confirmation of carparking.

The letter gave the applicant 21 days to provide such information (which lapsed on 15 June 2010). Whilst this final request for information was not onerous in terms of detail to be provided, the applicant has not yet provided a response. As a result of continued failure to provide detail within the prescribed time, this report has been prepared recommending the refusal of the proposed changes (unauthorised building works) and the re-initiation of legal proceedings against the unauthorised works.

SITE DIAGRAM:



LOCALITY PLAN

**Lot 1 DP 553728
No. 4 Wharf Street Tweed Heads**

Filename: z:\yrs\planning\mxd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 February, 2010

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Coord. data System - MGA Zone 56
Datum - GDA 94

Cadastral: 24 February, 2010
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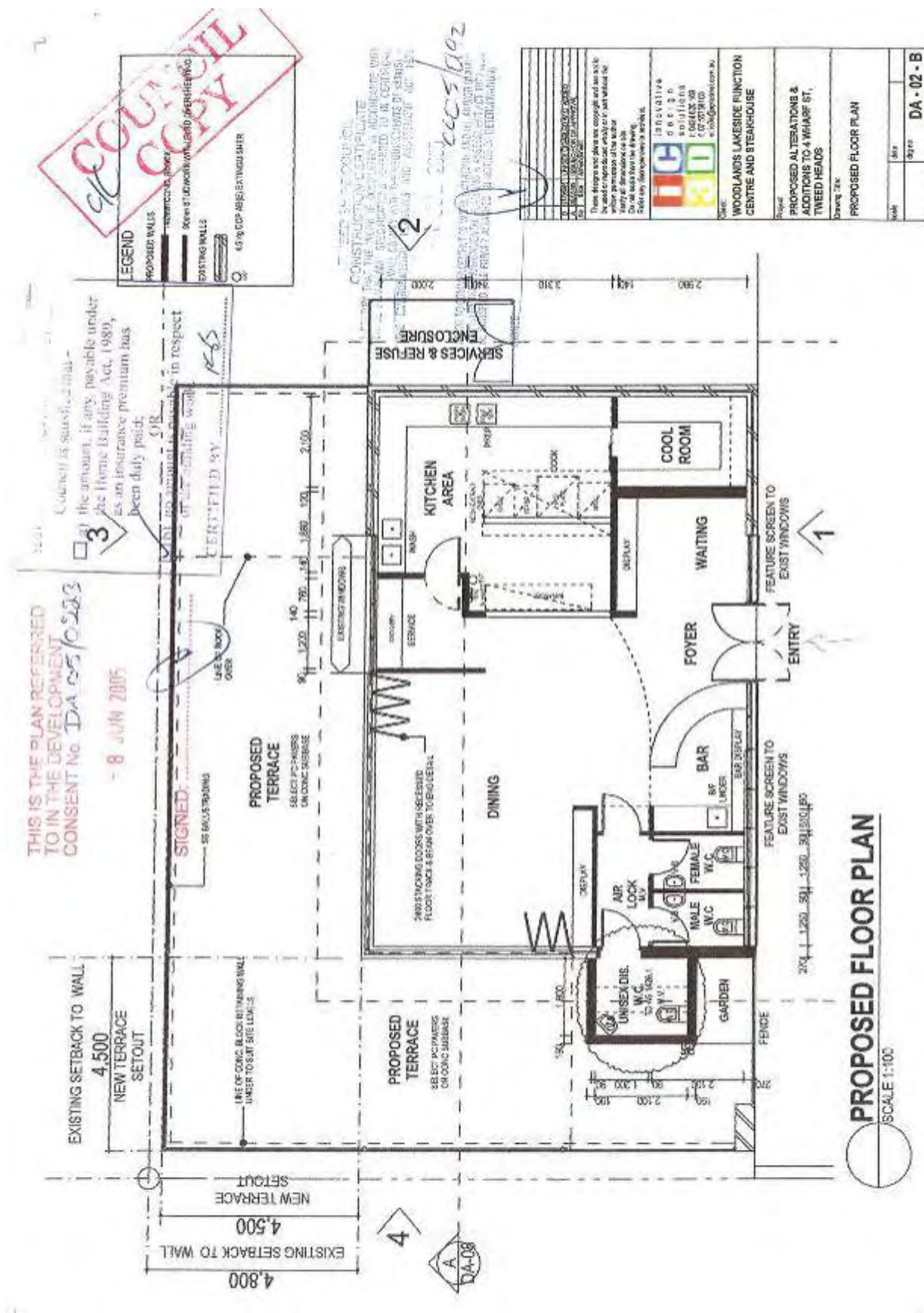
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TWEED
SHIRE COUNCIL

APPROVED LAYOUT PLAN OF RESTAURANT:



THIS IS THE PLAN REFERRED TO IN THE DEVELOPMENT CONSENT No. DA 05/0283 - 8 JUN 2005

3) the amount, if any, payable under the Home Building Act, 1989, as an insurance premium has been duly paid.

4) the amount, if any, payable under the Home Building Act, 1989, as an insurance premium has been duly paid.

SIGNED: [Signature]

CERTIFIED BY: [Signature]

EXISTING SETBACK TO WALL 4,500

NEW TERRACE SETOUT 4,500

EXISTING SETBACK TO WALL 4,800

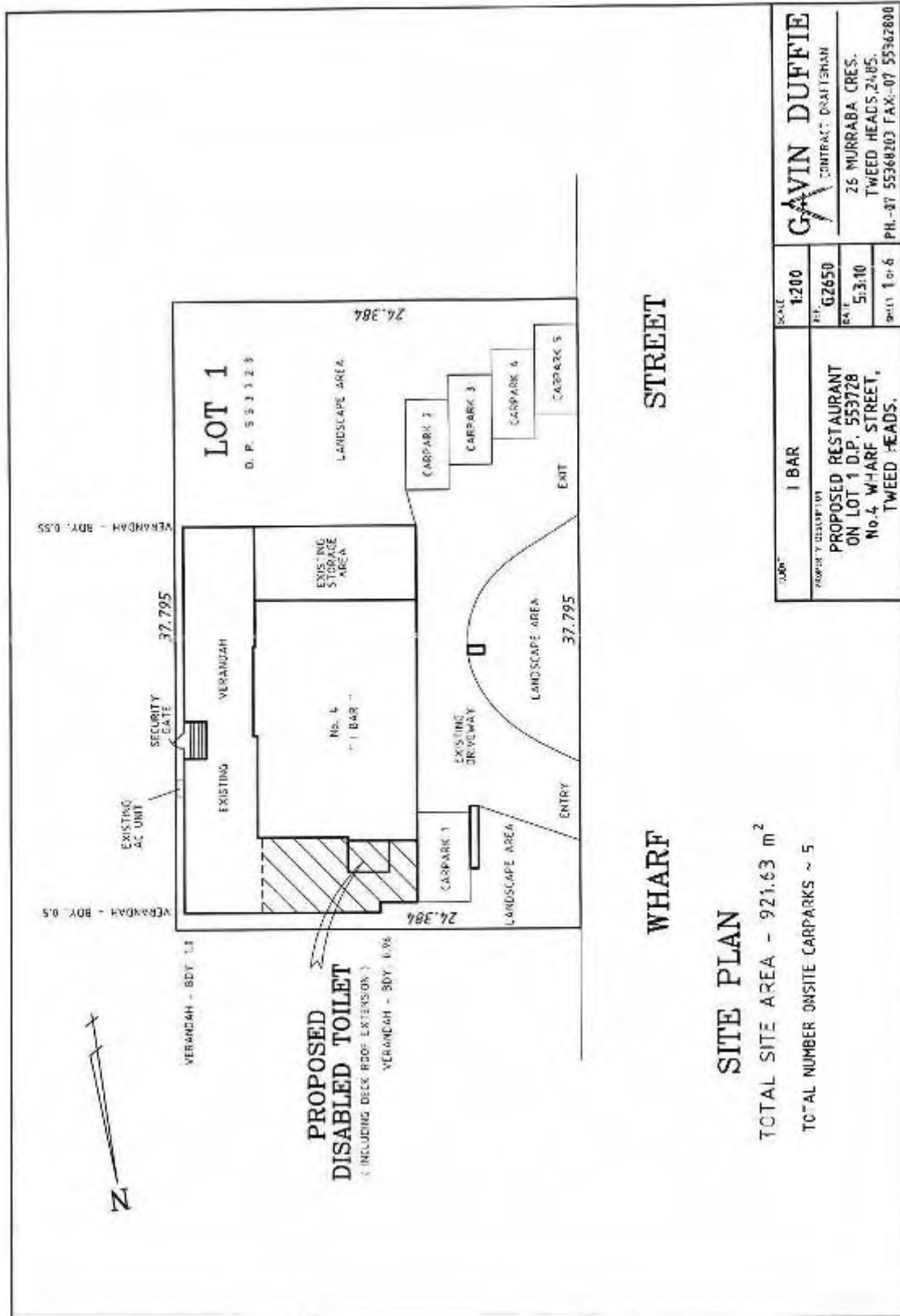
NEW TERRACE SETOUT 4,500

EXISTING SETBACK TO WALL 4,500

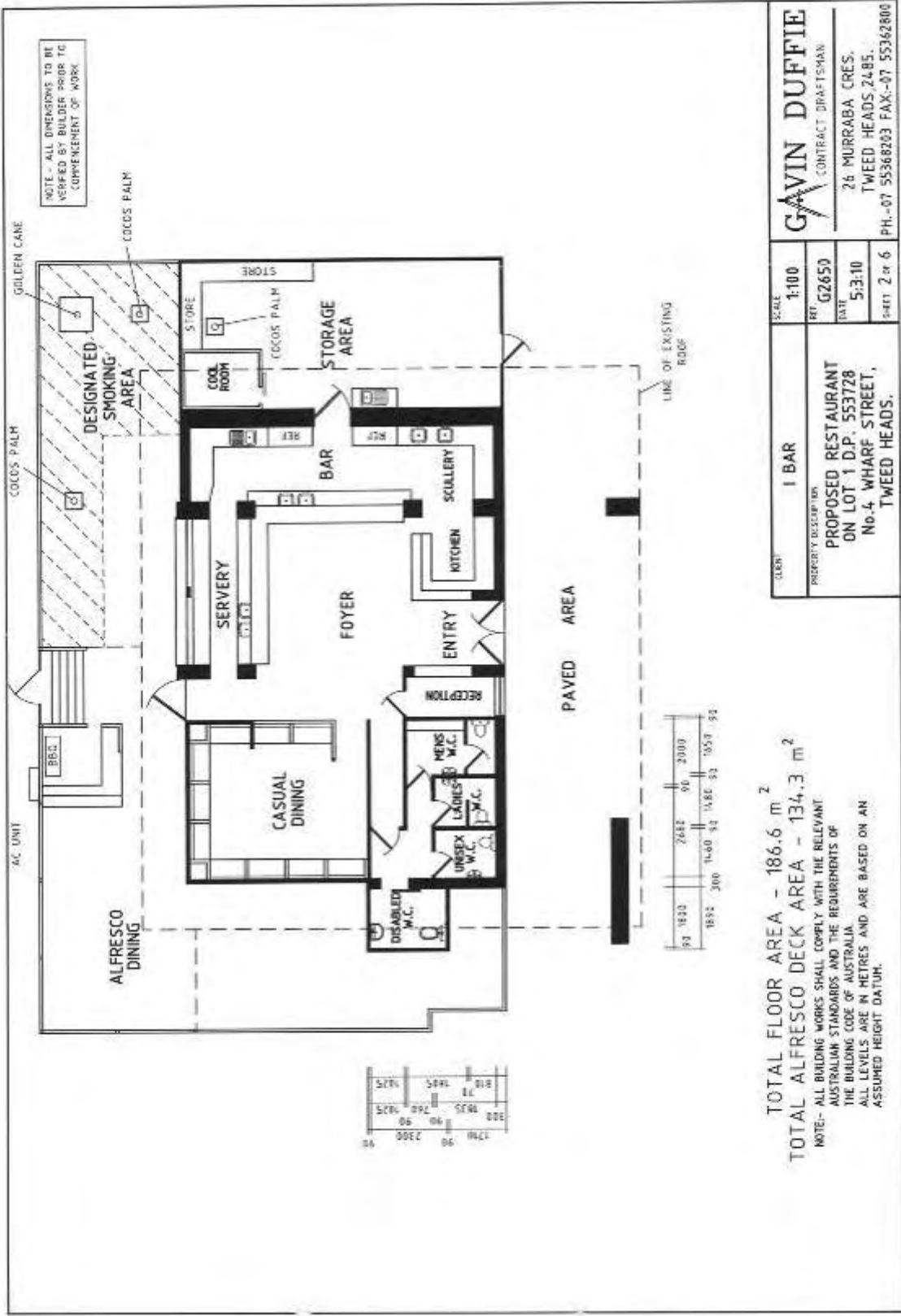
PROPOSED FLOOR PLAN

SCALE 1:100

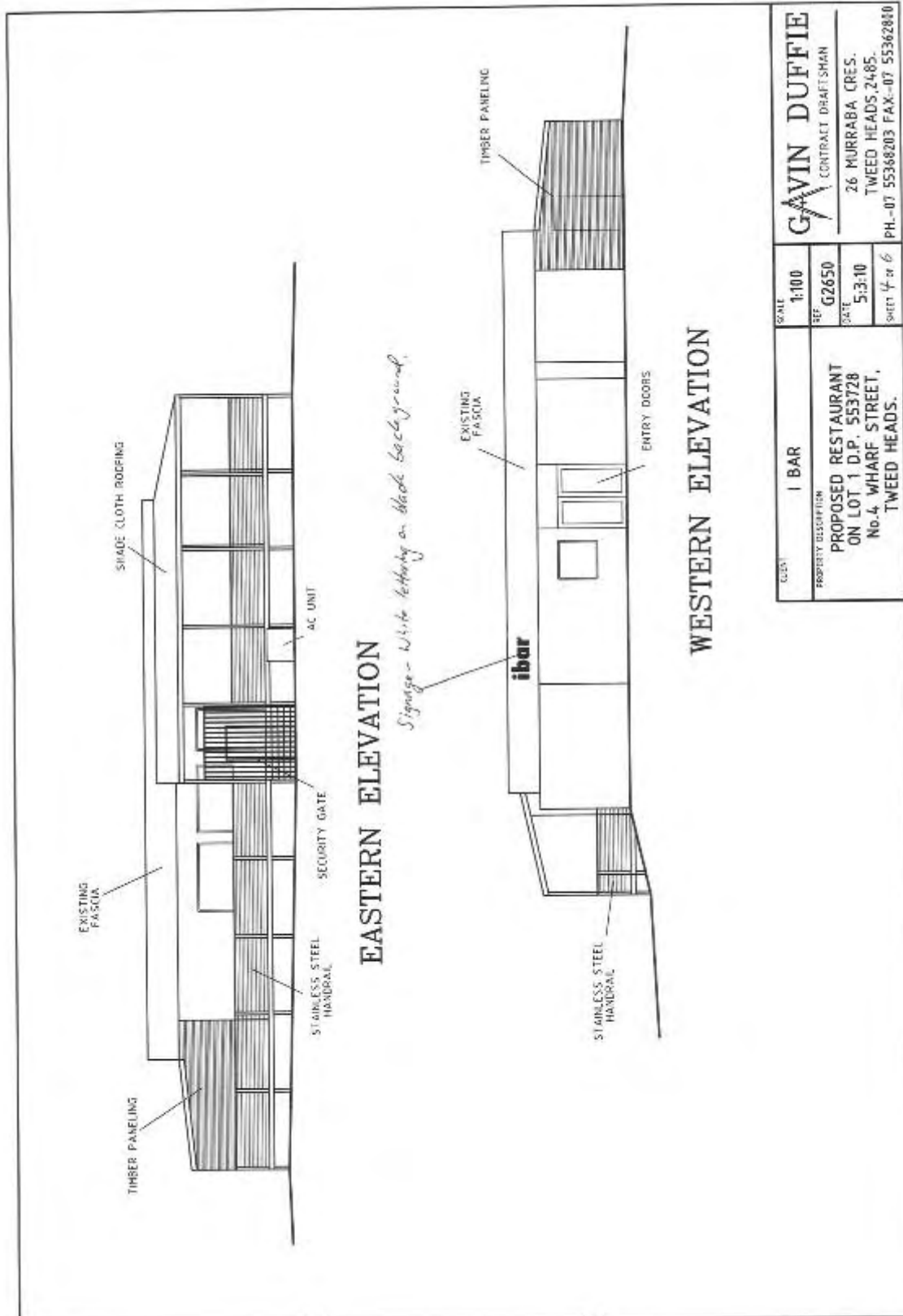
PROPOSED SITE PLAN:



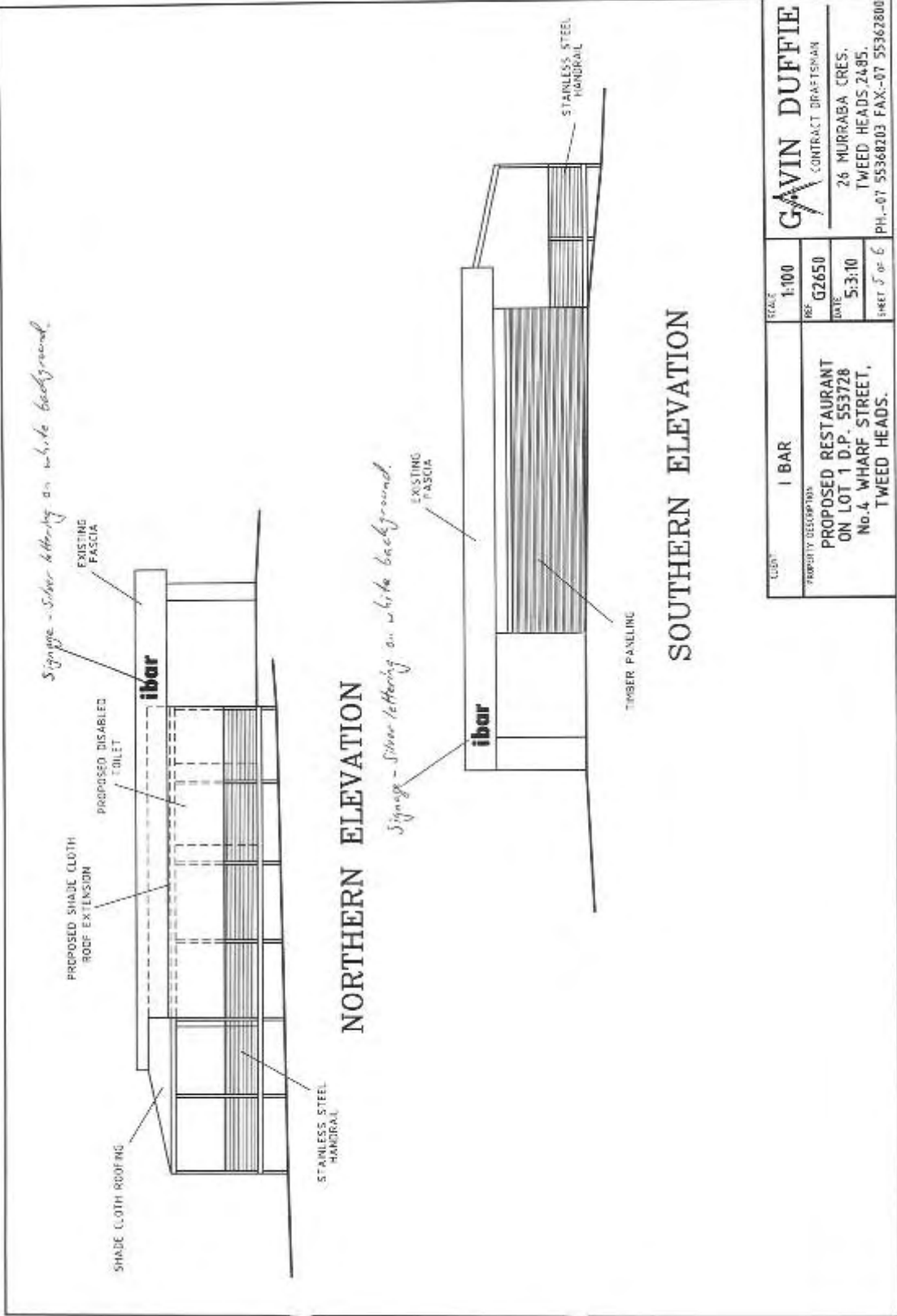
PROPOSED INTERNAL LAYOUT:



PROPOSED ELEVATIONS:



CLIENT	I BAR	SCALE	1:100
PROPERTY DESCRIPTION	PROPOSED RESTAURANT ON LOT 1 D.P. 553728 No. 4, WHARF STREET, TWEED HEADS.	REF	G2650
		DATE	5.3.10
		SHEET	4 of 6
GAVIN DUFFIE		CONTRACT DRAFTSMAN	
		26 MURRABA CRES. TWEED HEADS 2485. PH.-07 55368203 FAX.-07 55362810	



CLIENT	I BAR	SCALE	1:100
PRIORITY DESCRIPTION	PROPOSED RESTAURANT ON LOT 1 D.P. 553728 No.4, WHARF STREET, TWEED HEADS.	REF	G2650
		DATE	5.3.10
		SHEET # OF 6	PH.-07 55368203 FAX.-07 55367800

GAVIN DUFFIE
CONTRACT DRAFTSMAN
26 MURRABA CRES.
TWEED HEADS 2485.
PH.-07 55368203 FAX.-07 55367800

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

Unauthorised Building Works

Council's Development Assessment Unit, Building Services Unit and Environmental Health Unit are unable to carry out a final assessment of the proposed modifications due to a lack of final detail in some instances. As such, the unauthorised building works cannot be regularised as was the intention of requesting the submission of this S96 application in November 2009. Consequently, the Building Certificate application and Sewer application (lodged in conjunction with the S96) cannot be approved.

Use

The existing consent for the premises is for a restaurant, which is defined under the Tweed LEP 2000 as a "refreshment room" and has a primary purpose of serving a meal. Although the applicant has stated that the proposal will remain as originally approved, the current use of the premises is not considered to be a restaurant. Rather, it is a bar, which is best defined as a "hotel" under the provisions of the Tweed LEP 2000, having a primary purpose of serving alcoholic beverages.

The originally approved development was clearly a restaurant, having: a large 30m² commercial kitchen and internal coolroom; a small 6.6m² bar area; internal dining area and external terrace. In contrast, the proposed development incorporates: only a 12m² preparation area identified as a "kitchen"; a large 30m² bar area; an internal casual dining area; and an external "alfresco dining" area. See comparison of internal layouts below, with the kitchen area shown in pink and bar area shown in blue.

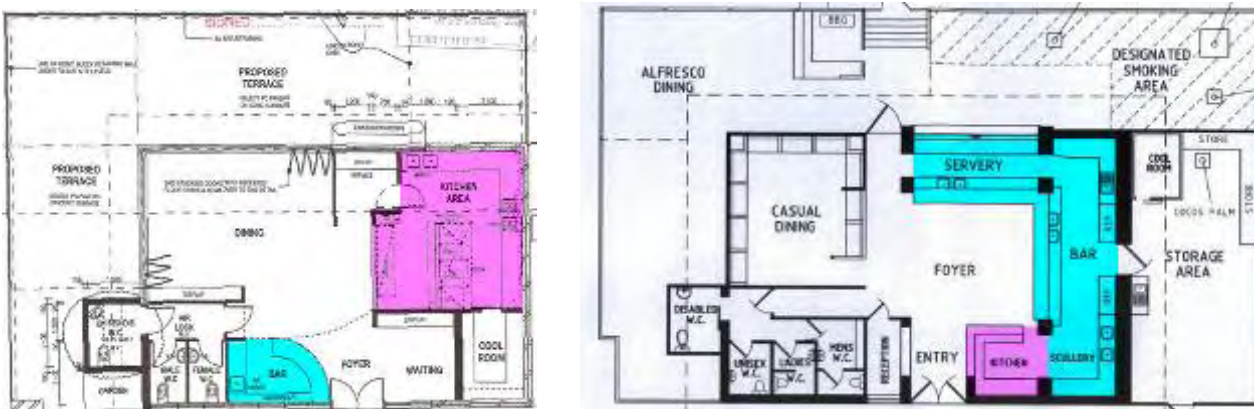


Figure 1 & 2: Approved Layout (left) and current layout (right)

It appears that the applicant has nominated the internal and external areas as "dining areas", in an effort to appear as a restaurant. This would allow the proposed development to proceed as a S96 application, if it could be substantiated that the development is "substantially the same" as originally approved. However, the lack of kitchen facilities to prepare meal results in the current use being considered as a bar. This is supported by the applicant's statement that all food is prepared off site, kept in the freezer and heated in a microwave. This scenario is not considered to constitute a restaurant and is merely a consequence of the applicant having to provide a meal with the sale of alcohol, in accordance with the existing On-Premises Licence.

Whilst it is acknowledged that some food is sold at the premises (pizzas), the main issue is that the primary purpose has changed from the serving of meals to that of the serving of alcohol. Therefore, the proposed modifications cannot be considered to be substantially the same as the original approval and a new development application is required for the proposed use of the premises.

In terms of licensing requirements, the Office of Liquor, Gaming & Racing note that new liquor laws in NSW (taking effect in July 2008) stipulate that premises with an On-Premises licence (restaurant) must...*'continue to operate under the primary purpose of serving meals. A restaurant liquor licence does not operate where the primary purpose of the business or activity of a restaurant is the sale or supply of liquor'*.

In light of the above, it is recommended that the Office of Liquor, Gaming & Racing is notified in writing that the premises is no longer operating as a restaurant and is therefore no longer complying with the provisions of the existing on-premises licence for the originally approved restaurant.

Clause 11 of the TLEP 2000– Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 3(e) Special Tourist (Jack Evans Boatharbour) under the provisions of the LEP. The primary objective of the zone is to:

'Provide for tourist orientated commercial, retail, service, residential and waterfront facilities and activities and public buildings which support and are an integral part of the renewal of certain areas in the vicinity of the Jack Evans Boatharbour, but only at a scale which enhances the character of the locality'.

A restaurant is defined as a Refreshment Room, which is permissible with consent under the provisions of the Tweed LEP 2000. The applicant has proposed modifications the original approval for a restaurant on the subject site. However, as noted above, the proposed use of the existing building is not considered to be a restaurant. Rather, it is considered to be a bar, which is best defined as a hotel. Although a hotel is permissible with consent, the applicant has failed to provide sufficient evidence that the proposed development is consistent with the zone objectives. Although the proposed modifications state that the use of the site is that of a restaurant, the nature of the activities within the premises (such as exotic caged dancers) is not considered to enhance the character of the locality.

Similarly, scantily clad women standing out the front of the premises in an effort to encourage customers into the premises of an evening is not considered to be the desired image of the Tweed, particularly as the site is at the gateway to the Tweed when travelling from the north.

The proposed Jack Evans Boatharbour Revitalisation Project is currently under construction. The Boatharbour project will create a diverse, vibrant, culturally rich, recreational and tourism centrepiece for the Tweed Heads Town Centre. It is unlikely that the proposed development would enhance the character of the 'centrepiece' of Tweed Heads, nor is the proposed development likely to entice tourists to visit the Tweed Heads Tourist Information Centre (located directly adjacent to the subject site). As such, the proposed development is not considered to meet the objectives of Clause 11 and the S96 application is not supported.

Clause 8 – Consent Considerations

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

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

As noted above, Council Officers are not satisfied that the development is consistent with the primary objective of the 3(e) zone, thereby the proposal is not considered to be consistent with Clause 8(a) of the LEP and the application is recommended for refusal.

Other relevant clauses of the TLEP have been considered elsewhere in this report.

In addition to the above, the officers are not satisfied that the proposed development would not have an unacceptable cumulative impact on the locality or the community as a whole. As such, the proposal is not considered to meet the provisions of Clause 8(c) of the LEP.

Trading Hours

As noted above, the applicant has requested that the 24 hr trading continue indefinitely. This would require a modification to Condition 6 of the consent which states:

- 6. *The use of the premises (i.e. 24 hour trading) as proposed is permitted for an initial period of twelve (12) months ONLY from the date of issue of any such approval.*

The purpose of originally limiting the 'restaurant' to a 12 month period of 24 hr trading was to enable Council an opportunity to assess any issues associated with the extended hours of operation, with regard to the enclosed deck area particularly after 12 midnight, and modify the hours of operation if necessary.

In February 2010 the applicant submitted a copy of a letter (dated 30 March 2006) which was supposedly lodged in 2006 requesting confirmation from Council that the 24 hour trading will continue after the initial 12 month period had expired. Council's records (electronic filing system and hard copy file) do not have any evidence of the applicant lodging any such letter in 2006. In any event, if Council had received such a letter, the applicant would have been advised in writing that a S96 was required to modify Condition 6, rather than simply submitting a letter. Condition 7 of the development consent clearly indicates the process required:

- 7. *Ninety (90) days prior to the expiry of the initial twelve (12) month period, the Applicant shall lodge with Council for consideration by the Director of Planning and Environment a Section 96 application nominating the hours of operation proposed after the expiry of the initial twelve (12) months. Such application will need to address any issues associated with the enclosed deck area particularly after 12 midnight.*

The non-lodgement of a S96 (90 days prior to the expiry of the initial 12 months), results in the proprietor of the premises not being compliant with Condition 7 of the development consent.

It is recommended that the hours of operation be amended to that of **9.00am - 12.00 midnight, Monday to Saturday and 10.00am - 10.00pm Sundays**. The revised trading hours is considered to be appropriate for a restaurant in this location. It is also noted that the Office of Liquor, Gaming and Racing limits standard "restaurant" trading hours to:

5.00am – 12.00 midnight Monday to Saturday and 10.00am – 10.00pm Sundays. As a comparison to other similar uses in the same locality, Council records indicate that the Ivory Hotel (located further south along Wharf Street) is restricted to 7.00am – 11.00pm Monday to Wednesday, 7.00am – 12.00 midnight Thursday to Saturday; and 7.00am – 10.00pm Sunday. Therefore, the recommended changes to the hours of operation for this development are considered to be consistent with other similar natured development.

As noted in a previous Council report for this development, the Tweed/Byron Local Area Command provided comment on the existing premises. In summary, issues were raised particularly with regard to anti social behaviour impacting upon the community in general, as a result of the unrestricted hours of operation of the subject premises. The police also recommended trading hours of 9.00am to 12 midnight, largely to help reduce the number of incidents at this location outside the recommended trading hours.

Verbal conversations between Council's staff and the proprietor of the ibar reflect that the premises is effectively "catching" patrons from surrounding licensed premises in Tweed / Coolangatta when they close for business (i.e. after midnight). If the trading hours if the ibar were to be modified to 9.00am to 12 midnight, it seems likely that the majority of anti social behaviour in the vicinity of the subject site could significantly reduce.

Noise

Final comments have not been provided from Council's Environmental Health Unit as a result of the applicant not submitting final details for the proposal. The Environmental Health Unit would normally have commented on issues such as: noise; servery/bar/kitchen/coolroom requirements pursuant to the Food Regulations; smoke free areas; and hours of operations.

The original approval was conditioned such that no live or amplified music was permitted without the prior approval of Council. With no noise report to support live or amplified music, the condition was applied to ensure the amenity of existing and future residents within nearby residential development on the western side of Wharf Street (Ultima) and to the east (Seascape). This concern remains valid.

It is acknowledged that the applicant no longer wishes to delete Condition 13, which prohibits live or amplified music on the premises. As such, a noise report is not required for this S96. However, noise issues relating to trading hours and potential impact on the community in general would still require assessment.

Signage

Council has recently received complaints from the public with regard to inappropriate signage at the front of the subject premises. The sign structure is not exempt development and therefore requires development consent. A search of Council records reveals that the wording on the sign was originally advertising "\$4.95 Pizzas" (See Figure 3 below). However, the sign was revised in May 2010 to say "New - Exotic Caged Dancers", which result in complaints to Council.

The applicant has since been requested to incorporate the new signage into this current S96 and provide an assessment in terms of compliance with Council signage policy (DCP A4 – Advertising Signs Code), but to date the applicant has not provided any details in this regard. It is noted however that Council records indicate that the sign has since been revised to "New - Pizzas and Adult Party Bar". A site inspection on 24 June revealed that the sign structure has now been removed from the site.



Figure 3: Recent unauthorised signage at front of premises

Waste

The originally approved site plan indicates a “services and refuse enclosure” at the southern end of the building. The proposed development does not identify any area for bin storage, yet the Statement of Environmental Effects notes a “service and refuse area” on southern side of the building. The bulk bin is currently left out the front of the site in the car park area, which is in full view of passing traffic and is not considered to be acceptable. The request for revised plans requires the applicant to clearly identify where the bulk waste bin are proposed to be stored on site. The area is required to be screened in accordance with Council’s Waste Storage Code. No response has been received in this regard.

Rear Security Gate

The proposed site plan indicates an existing security gate at the rear of the premises, at the bottom of the terrace stairs, leading out into the adjacent reserve. The design and size of the gate results in the gate swinging out into the adjoining reserve when opened. The applicant has been requested to locate the security gate structure so that it is located completely within the boundary of the subject site. This may require the gate to be removed and replaced with two smaller gates (rather than one large swinging gate), or be replaced with a sliding gate, which runs along the edge of the terrace. The gate in its current form is not acceptable in terms of potential public liability if the gate is opened into the reserve and collides with someone standing within the public reserve. No response has been received in this regard.

Carparking

Council’s records indicate that the original consent was modified in October 2005 to allow for the serving of food and drinks from the subject site during special events at Jack Evans Boat Harbour and Chris Cunningham Park. The approved area for the special events is between an existing masonry wall and the deck area, identified on the most recently submitted plans as Carpark 1. The applicant has been requested to confirm what the proposed use in this location is. No response has been received in this regard. No other assessment has been undertaken with regard to car parking requirements, as a result of the proposed modifications not being supported.

Site Suitability

As noted above under zone objectives, the proposed use of the subject site is not considered appropriate for the surrounding area. The use is not considered to meet the objectives of the zone in that it does not enhance the character of the adjacent Jack Evans Boatharbour.

Draft Tweed City Centre LEP 2009

The subject site is defined as B3 – Commercial Core under the provisions of the draft Tweed City Centre LEP 2009. As noted above, the proposed development is considered to be a bar, given the primary purpose of the development is the serving of alcohol. A bar is best defined as a “pub”, which is permissible with consent under the draft LEP.

Draft Tweed City Centre DCP 2009

The subject site is located within the Jack Evans Boat Harbour Precinct. The DCP incorporates controls for special areas, including the Jack Evans Boat Harbour. The objectives of the special controls in this area note the following:

‘Jack Evans Boat Harbour will be the recreational and tourism centrepiece for the Tweed City Centre. This currently underutilised but strategically located public space will be transformed into a lively and diverse leisure hub for Tweed Heads, that provides a focus for activities for residents and visitors of all age groups, both day and night’.

The provisions of the draft DCP highlight that the subject site is important in terms of being adjoined to the showpiece of Tweed. In that regard, it is imperative that Council ensures that any development and / or activities are considered to be in keeping with the desired objectives and controls for this specific area.

Legal Advice

Marsden Lawyers have provided legal advice on the matter to date, and on Council’s instructions, have deferred taking any legal action against the proprietor, until advised otherwise by Council. Legal action sought to-date has been in the form of Class 4 proceedings in the Land and Environment Court, seeking orders and declarations with respect to the unauthorised works undertaken on the premises.

Marsdens have noted that it is difficult to provide an estimate of their fees, however in their experience the costs incurred in taking Class 4 proceedings are in the order of \$20,000 plus GST (based on the matter proceeding to a hearing of one (1) days duration). Marsdens have noted that this estimate may vary depending upon complexity of issues which arise in the proceedings and the actual length of the hearing of the matter.

If further legal action was to be initiated, Class 4 proceedings would be sought in relation to re-instating the premises back to the originally approved layout. Council would also seek orders for the proprietor to lodge a S96 application with regard to the trading hours of the premises, pursuant to Conditions 6 and 7 of the consent.

It should be noted that if the applicants are not satisfied with the determination of the Section 96 application they have a right of appeal in the NSW Land and Environment Court.

CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

- "(a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

- (c) *it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

Likely Environmental Impact

As noted above under S79c considerations, Council's Development Assessment Unit, Building Services Unit and Environmental Health Unit have been unable to finalise the assessment of the proposal in detail. As such, Council cannot be satisfied that the proposed modifications are of minimal environmental impact.

Substantially the Same Development

An assessment needs to be undertaken in terms of whether the proposed development is "substantially the same" as the originally approved development, pursuant to the provisions of the Environmental Planning and Assessment Act.

As noted above, the current use of the premises is considered to be a bar, having a primary purpose of selling alcohol. Such a use is not in keeping with the existing consent for a restaurant, which has a primary purpose of providing meals.

Therefore, the proposed modifications are not considered to meet the provisions of being substantially the same development as originally approved. Rather, the proposal should be assessed as a new Change of Use development application. As such, the proposed modifications are recommended for refusal.

Notification/Submissions

After finally paying the required \$540 in advertising fees, the application was placed on public notification for a period of two weeks, during which time one (1) written submission was received.

The primary area of objection relates to the proposed continuation of 24 hour trading. The submission raises issues with regard to numerous complaints in relation to inappropriate noise and behaviour issues that have occurred during the hours of 3.00am and 6.00am in the morning. The submission also notes that a number of younger female persons were seen outside the establishment enacting lewd behaviour towards passing motorists. Also noted is the issue of the problems associated with 24 hour trading is not in the spirit of what the Jack Evans Revitalisation project is trying to achieve, in terms of promoting the area as a safe and family oriented area.

The issues raised by the submission are largely police matters. However, the suitability of the proposed development has been documented throughout this report in terms of being out of character with the objectives of such an important area.

PUBLIC INTEREST:

As noted above, the proposed development is not considered to be appropriate for the subject site and adjoining public reserve, being the showpiece of the Tweed. Without a thorough assessment of the potential impacts and change of trading hours, the proposed modifications are not considered to be in the public interest.

OPTIONS:

1. Refuse the proposed modifications to Development Consent DA05/0223; and
2. Notify the Office of Liquor, Gaming & Racing in writing that the premises is no longer operating as a restaurant and is therefore no longer complying with the provisions of the existing on-premises licence for the originally approved restaurant; and
3. Re-initiate legal action through Council's Solicitor's in relation to unauthorised building works and modification of trading hours (Class 4 proceedings through the NSW Land and Environment Court); or
4. Approve the application, subject to the hours of operation being amended to 9.00am – 12 midnight Monday to Saturday, 10.00am – 10.00pm Sundays.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Financial implications will result from legal proceedings involving Class 4 proceedings.

The applicant also has a right of appeal (Class 1) in the NSW Land and Environment Court if dissatisfied with the determination of the S96 application.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The history of this premise, in terms of not providing detail required by Council for assessment, suggests that unless a determination to refuse the proposed modifications and legal action is undertaken, the issue of unauthorised building works etc will continue. As well as regularising the unauthorised building works, legal action may also need to address the issue of use and trading hours.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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15 [PR-CM] Tomewin Road Equestrian Pad Compliance Matter

ORIGIN:

Development Assessment

FILE NO: PF5510/1295

SUMMARY OF REPORT:

Since May 2008 Council staff has been receiving complaints about the lawfulness of the construction of an equestrian pad at No. 308 Tomewin Road, Dungay.

The construction of the equestrian pad involved the importation of fill and the levelling and top dressing of this fill with sand to make a suitable equestrian pad.

The matter was investigated in 2008 by Council's Compliance Officer, Council's Subdivision Technical Officer, Council's Planning and Infrastructure Engineer (Flooding Engineer), Council's Coordinator Development Assessment and Council's Manager Development Assessment. At that time the height of the fill averaged 300mm with a maximum height of 400mm and it was proposed to surface the pad with a further sand layer. Given the limited extent of proposed filling at that time, Council wrote to the complainants and the owners of the subject site in September 2008 advising that:

- The fill pad is extremely unlikely to cause any adverse flooding impact on adjoining land or local flood behaviour.
- The works are to facilitate ancillary development associated with the keeping of livestock (horses) and are thus best defined as agriculture for the purposes of the Tweed LEP 2000. Agriculture is exempt development and does not necessitate a Development Application;
- The applicant does however need a permit from the then Department of Water & Energy for works within 40m of a waterway in accordance with the Water Management Act.

The subsequent permit issued by Department of Water & Energy in December 2008 authorised an equestrian pad 20m x 70m and approximately 600mm high.

The equestrian pad is now complete and Council has received further complaints regarding the location, extent and height of the finished equestrian pad.

The Department of Water & Energy has signed off on the completed equestrian pad satisfied that the equestrian pad is generally in accordance with their issued permit.

Notwithstanding this, Council staff have re-inspected the equestrian pad and taken GPS measurements to depict the actual height of the pad in relation to the pre-existing ground level and surrounding topography. At its lowest point, along the north western boundary, the fill formation is approximately 450mm above pre existing ground level. This is consistent

with Council's original inspections in 2008. At its highest point in the south eastern corner the fill is 900mm above pre existing ground level.

This report seeks to analyse this new data and determine whether Council's opinion as expressed in September 2008 is still valid given the additional height of the equestrian pad. It is considered that Council has three options available to it:

- Option 1: Require modification of the fill pad to achieve fill heights of a maximum 450mm above pre existing ground level;
- Option 2: Require submission of 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;
- Option 3: Require no action, and allow the matter to proceed as a civil matter between neighbouring parties.

RECOMMENDATION:

That:

- 1. Council advises the owners of the subject site that a review of the completed equestrian pad has revealed a fill height of greater than that previously considered by Council and that accordingly the owners are requested to undertake either Option 1 or Option 2 as detailed below:**

Option 1:

The owner is to modify the fill pad to achieve fill heights of a maximum 450mm above pre existing ground level.

or

Option 2:

The owner is 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 1 or 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.**

REPORT:

Owner: Mr Darryl James Colby and Mrs Leanne Gaye Colby
Location: 308 Tomewin Road, Dungay
Zoning: 1(a) Rural and 1(b2) Agricultural Protection
Cost: N/A

BACKGROUND:

Following is a brief chronology of how this compliance matter has evolved since May 2008:

5 May 2008 - Council received objections to the works being undertaken at 308 Tomewin Road. Council's Compliance Officer investigated and determined that the works were minor and required no compliance action.

19 August 2008 - Council received additional objections to the works being undertaken. Council's Subdivisions Technical Officer attended the site and consulted Council's Flooding Engineer. At that time the height of the fill averaged 300mm with a maximum height of 400mm and it was proposed to surface the pad with a further sand layer. On this basis Council's Flooding Engineer verbally confirmed that the works would have no significant impact on the flood pattern within the area. Therefore again Council's Subdivision Technical Officer determined that the works were minor and required no compliance action.

24 August 2008 – Further written objections were received by the General Manager again objecting to the works being undertaken on the basis that they need Development Approval, and approval from the Department of Water & Energy (for works within 40m of the creek).

Tuesday 9 September 2008 – Council's Manager Development Assessment and Coordinator Development Assessment attended the subject site and viewed the fill pad area. The fill was 300mm to 400mm high and was limited in size to 70m x 20m. While the fill required further compaction and an additional top dressing layer to make it suitable for its equestrian use, it appeared minimalistic. The site visit included a visit to the neighbouring site to discuss with the reasons for objecting to the filled pad. The neighbour was concerned about a bund built along the creek bank approximately 200 mm in height and a dam built within another nearby creek, built in the last 18 months. The neighbour was concerned about the construction of a levee wall type structure and the potential to worsen future flooding in the area.

11 September 2008 - Council's Manager Development Assessment and Coordinator Development Assessment and Council's Planning & Infrastructure Engineer (Flooding Engineer) attended the subject site with the owners present to obtain full access to the site.

12 September 2008 – Council wrote to the owners and complainants generally advising as follows:

Following numerous site visits and investigations Council can now provide you with the following information:

Council's Flooding Engineering has stated that:

The following observations are made in regard to flooding and the potential for the fill pad in question to impact on local flooding behaviour:

- *The fill pad, which is intended as a level platform for horse riding / dressage, is approximately 300mm in height above natural surface level. This height varies in some areas due to slight undulations in the natural surface, but would not exceed 400mm.*
- *The area of the fill pad is approximately 20m x 70m, which represents just over 1% of the 10.2 hectare property.*
- *According to Council's ground level contours, the site is at approximately 4m AHD. Tweed River Q100 flood level for this property is 4.7m AHD. The flood model does not account for additional flood gradient coming down Dungay Creek, which runs along the northern property boundary and is adjacent to the fill pad.*
- *Contour mapping and site inspection confirms that during large flood events, water from the creek will preferentially pass through the property via existing gullies and back channels in a generally straight path from upstream of the dwelling, across the access road and through paddocks about 100m south of the fill pad. The fill pad is not located in an obvious out-of-creek flowpath.*
- *The level of fill is not considered significant as it is generally consistent with, and does not exceed by any significant amount, the level of the creek bank and other natural and man-made land formations in the area.*
- *While some flood storage will potentially be lost due to the filling, the size of the fill pad is considered insignificant, and therefore should not adversely affect flood levels in the locality.*
- *Overall, I consider the fill pad acceptable, and extremely unlikely to cause any adverse flooding impact on adjoining land or local flood behaviour. I do not consider that further investigations or major modifications to the fill pad are warranted at this time.*

In regards to permissibility the subject site is zoned part 1(a) Rural and part 1(b2) Agricultural Protection. In both of these zones agriculture is exempt development and is defined as:

includes horticulture and the use of land for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, and the growing of fruit, vegetables and the like. It does not include forestry, or the use of an animal establishment or a retail plant nursery.

Given the minimalistic nature of the equestrian area, it is Council's opinion that the works are ancillary to the keeping of livestock (horses), and thus constitutes exempt development under the LEP 2000. Hence no Development Application will be required.

However, you are still required to obtain a Permit from the Department of Water & Energy for works within 40m of a waterway in accordance with the Water Management Act.

2 December 2008 – The Department of Energy and Water issued the owners with a controlled activity permit under the Water Management Act 2000 for works within 40 m of the waterway.

December 2008 - Councillor enquiries resulted in the Councillors being advised of Council's letters dated September 2008.

July - August 2009 - Council's Flood Management Committee enquired about the status of the equestrian pad as members had received complaints about the works. A request for the Floodplain Management Committee to undertake a site visit was refused by the landholders, as based on Council correspondence and the Department of Water and Energy approval there were no grounds for reinvestigation by the Committee. Council's Acting Flood and Stormwater Engineer undertook an independent site visit to observe the works from neighbouring properties, without entering the Colby's land, and concluded that:

"The height of the mound is between 300mm and 400mm and, in my view, overland flow would only be affected for flow depths up to the height of the mound and then to a lesser extent for flows which overtop the mound.

In my opinion, these potential effects, such as Eddy currents and minor increases in water levels, would be limited to the immediate perimeter of the mound, and possibly up to a maximum of 3 or 4 metres either side.

Whilst the neighbour considers the mound to be "large", the size of the mound is relatively small in relation to the surrounding landscape and floodplain either side. (the size is approximately 20m x 70m),

I have discussed the matter with Council's Coordinator Development Assessment to ascertain what Council's position would be if further fill is added to the mound. It would appear that the mound is compatible with the permissible uses for the zoning and would only become a matter of concern if it adversely affected flood behaviour.

It would therefore seem that Council has no basis for taking any further action and the neighbour can only consider the other remaining options explained to him whilst on site, or accept the situation as it now stands."

31 August 2009 – The owners' solicitor (Ellis & Baxter) notified Council in writing that works would be recommencing in accordance with the Department of Energy and Water permit as issued on 2 December 2009.

Despite Council officers forming the above opinion Council continued to get objections to the works being undertaken on the site. Such objections were coming from nearby neighbours and the NSW Cane Growers Association.

Council maintained its position formed in September 2008 and continued to respond to complainants accordingly.

September 2009 - Councillor enquiries received resulted in this matter being reported to the Executive Management Team for review. The Executive Management team deemed it would be appropriate for Council's Waterways Officer to inspect the site and provide advice on what can be done to prevent erosion and ensure stabilisation of the adjoining creek bank.

4 September 2009 – Council's Waterways Officer inspected the subject site and that of the adjoining owners. The officer concluded that *"It is highly unlikely that the filling has had an impact on the condition of the channel and stream banks at this point"*. A full copy of the Officer's Report is annexed to this agenda.

23 September 2009 – Council's Executive Management Team reconsidered the advice of Council's Waterways Officer and made a:

Decision that, following the Executive Management Team's review of the investigations to date by Council Officers in relation to the fill placed on 308 Tomewin Road, Dungay, the Director Community & Natural Resources advises Cr Milne that:

1. *Planning staff have reviewed the activity and have advised that development consent is not required and that the relevant works are being undertaken under the approval of the Department of Water and Energy applicable to works within 40 metres of a waterway,*
2. *Engineering staff have reviewed the activity and advised that the works is of a minor nature and there will be no significant impact on flooding behaviour and;*
3. *Natural Resource Management staff have inspected the site and determined that the placing of fill is unlikely to have caused any erosion to the adjacent creek banks.*

25 November 2009 - Despite Council's Executive Management Team forming the above opinion Council continued to get objections to the works being undertaken on the site. Council maintained its position formed in September 2008 and continued to respond to complainants accordingly.

January 2010 – Council continued to receive objections from the nearby neighbours and further enquiries from Councillor Milne. It was alleged that the fill was now 1m high which was more than that originally considered by Council. Council staff asked for credible evidence demonstrating the additional depth of fill before again investigating this matter.

11 January 2010 – The Department of Water & Energy (now known as the Department of Environment Climate Change and Water – NSW Office of Water) inspected the completed equestrian pad and concluded that:

"The NSW Office of Water is satisfied that the dimensions of the structure generally comply with the Controlled Activity Approval (ERM2008/1309)"

8 April 2010 – Council staff met with Thomas George (MP) and the complainants regarding this matter. The complainants again suggested that the fill height was now at least 1100mm above natural ground level. It was resolved that if the complainants gave Council credible evidence demonstrating the additional depth of fill the matter would be re-investigated.

23 April 2010 – The complainants produced a letter detailing their dissatisfaction with the manner in which this matter had been investigated and produced photo's that suggested the equestrian pad had been built to higher than that originally reviewed by Council. A copy of this letter is annexed to this agenda

20 May 2010 – Council staff wrote to the owners of 308 Tomewin Road seeking permission to access the site for the purpose of surveying the height of the recently completed equestrian pad. Access was granted for 27 May 2010 with the accompaniment of the owners solicitors (Ellis & Baxter).

27 May 2010 – A site visit was conducted by Council's Coordinator Development Assessment, Council's Planning & Infrastructure Engineer, and Council's Surveyor. Photos and GPS data of the equestrian pad were taken. Following this Council staff then met on site with the complainants and took further GPS data of adjoining property levels and photos of any adjoining matter pointed out by the complainants.

Council's Planning and Infrastructure Engineer has since produced the following notes summarising the results of this site visit:

On the morning of Thursday 27 May 2010, Council's Planning & Infrastructure Engineer, Coordinator Development Assessment and Surveyor attended a site inspection of the equestrian pad on the subject property. The inspection commenced on the subject property, in the presence of Liz Ellis, on behalf of the property owners (Leanne and Darryl Colby). Later the inspection moved onto the adjoining properties, in the presence of Barry Sweetnam, Trevor Baker and Tom Gresham. Numerous survey measurements and photographs were taken throughout the inspection.

A previous inspection of the site was carried out on 11 September 2008, which was not long after the fill was first placed for the equestrian pad. In terms of the potential flood impact of the fill, the following assessment was made at that time:

"The fill pad, which is intended as a level platform for horse riding / dressage, is approximately 300mm in height above natural surface level. This height varies in some areas due to slight undulations in the natural surface, but would not exceed 400mm.

The area of the fill pad is approximately 20m x 70m, which represents just over 1% of the 10.2 hectare property.

According to Council's ground level contours, the site is at approximately 4m AHD. Tweed River Q100 flood level for this property is 4.7m AHD. The flood model does not account for additional flood gradient coming down Dungay Creek, which runs along the northern property boundary and is adjacent to the fill pad.

Contour mapping and site inspection confirms that during large flood events, water from the creek will preferentially pass through the property via existing gullies and back channels in a generally straight path from upstream of the dwelling, across the access road and through paddocks about 100m south of the fill pad. The fill pad is not located in an obvious out-of-creek flowpath.

The level of fill is not considered significant as it is generally consistent with, and does not exceed by any significant amount, the level of the creek bank and other natural and man-made land formations in the area.

While some flood storage will potentially be lost due to the filling, the size of the fill pad is considered insignificant, and therefore should not adversely affect flood levels in the locality.

Overall, I consider the fill pad acceptable, and extremely unlikely to cause any adverse flooding impact on adjoining land or local flood behaviour. I do not consider that further investigations or major modifications to the fill pad are warranted at this time."

The purpose of the latest inspection was to:

- a) determine the actual extent of the works, following concerns raised by neighbouring landholders in a meeting at Council offices on 8 April 2010, and in a written submission dated 19 April 2010, and*
- b) determine whether the completed works are consistent with the previously inspected works, and whether the assessment made at that time remains valid.*

The latest site inspection confirmed the previous observations regarding local flood behaviour and patterns. In large flood events the most significant out of creek flows would occur to the south of the fill site, however some flow is retained in the creek and from a tributary from the north. This has to negotiate the area in proximity to the fill pad.

A central concern of the neighbouring landholders is previous landforming works undertaken on the subject land several years previous to the equestrian pad works. According to the neighbouring landholders an overflow channel from the creek has been filled in the vicinity of the existing shed and the equestrian pad, preventing the breakout of water from the creek in a southerly direction. According to the neighbouring landholders this confines more water to the main creek line, and they fear this detrimentally affects downstream properties. Council officers are unable to make an assessment of any works undertaken prior to or separately to the equestrian pad, and as such, these works have not been considered in determining the "pre-existing" or "natural" ground level in the vicinity of the fill pad.

The survey measurements of the equestrian fill pad confirmed that the finished formation has been significantly raised since the last inspection. At its lowest point, along the north western boundary, the fill formation is approximately 450mm above pre-existing ground level. This is consistent with the initial inspection of 300-400mm high in its rough, uncompacted form, with the addition of a working surface. However at its highest point in the south eastern corner, the fill formation is approximately 900mm above pre-existing ground level, and far exceeds the initial assessment. As the pad surface is generally level at approximately 5.0m AHD, this variation can be attributed to the slope of the natural ground.

In light of these measurements, the fill pad is not considered to be consistent with the formation that was initially assessed. Further, the potential impact of the fill pad in its

current configuration and level on adjoining land cannot be properly determined, without a flood impact assessment and flood modelling.

It is understood that this matter will be reported to Council. There are three options available to Council:

- Option 1:* *Require modification of the fill pad to achieve fill heights of a maximum 450mm above pre existing ground level;*
- Option 2:* *Require submission of 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;*
- Option 3:* *Require no action, and allow the matter to proceed as a civil matter between neighbouring parties.*

Option 1 and 2 are recommended, and the landholder can determine which of these to undertake. It is noted that Option 1 is likely to be the cheaper of these two options, due to the high cost of flood modelling.

From a planning perspective the subject site is zoned part 1(a) Rural and part 1(b2) Agricultural Protection.

Since 2008 the nature of the works has always been defined as either agriculture or earthworks.

Agriculture is defined as “includes horticulture and the use of land for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, and the growing of fruit, vegetables and the like. It does not include forestry, or the use of an animal establishment or a retail plant nursery”

Earthworks are defined as “the addition or removal of any solid material on, to or from land, or any other work which will substantially alter the existing ground level or character of the surface of the land”

Agriculture is permitted without development consent while earthworks require development consent in these zones.

To assist in determining the most suitable definition Council has always used the Planning & Infrastructure Engineer's comments to establish whether any impact has been associated with the works.

Up until May 2010 Council's Planning & Infrastructure Engineer had advised that, based on a fill formation of approximately 300mm to 400mm plus an additional working surface, the fill pad was acceptable and extremely unlikely to cause any adverse flooding impact on adjoining land or local flood behaviour.

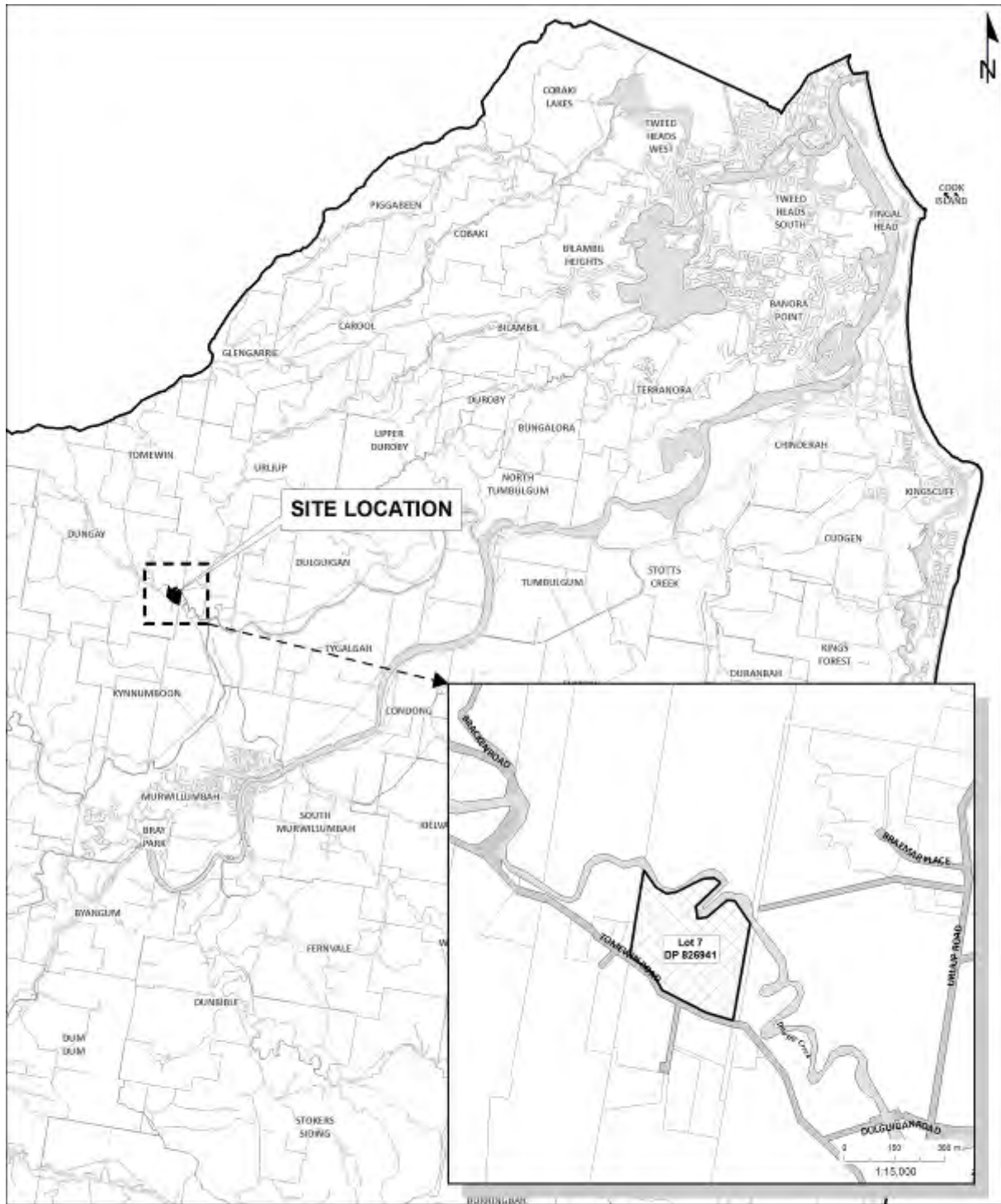
Accordingly given the minimalistic nature of the equestrian area, it was Council's opinion that the works were ancillary to the keeping of livestock (horses), and thus constituted exempt development under the Tweed LEP 2000.

Following the May 2010 inspection Council's Planning & Infrastructure Engineer advised that the fill pad is not considered to be consistent with the formation that was initially assessed. Further, the potential impact of the fill pad in its current configuration and level on adjoining land cannot be properly determined, without a flood impact assessment and flood modelling.

Accordingly the latest evidence suggests that the most suitable definition is now "earthworks" thus necessitating a development approval.

Alternatively the owner should be given an opportunity to reduce the height of the equestrian pad to a level of not greater than 450mm which is the level previously considered acceptable to constitute exempt agriculture. This route would attract additional issues about where the excess fill should be moved to. However, this could be resolved between Council staff and the owner.

SITE DIAGRAM:



LOCALITY PLAN

Lot 7 DP 826941
No. 308 Tomewin Road, Dungay

0 1 2 3 Km
1:125,000

Filename: z:\esr\planning\mwd\A&P_B&W SitePlan.mxd

Author: J.Bachelor - Planning Reforms Unit

Date Printed: 24 June, 2010

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Coordinate System: MGA Zone 56
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TWEED
SHIRE COUNCIL

AERIAL IMAGE SHOWING APPROXIMATE LOCATION OF FILL PAD:



GPS DATA SHOWN ON AERIAL:



PHOTOGRAPHS:



August 2008



August 2008



September 2008



September 2008



May 2010



May 2010



May 2010



May 2010

OPTIONS:

- A. That 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 undertake either Option 1 or Option 2 as detailed below:

Option 1:

The owner is to modify the fill pad to achieve fill heights of a maximum 450mm above pre existing ground level.

or

Option 2: The owner is 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 1 or 2 as detailed above (within 60 days from the date of notification) will result in Council pursuing this matter legally.

- B. That Council advise 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. However advise the owners that no further action will be taken from Council as the works continue to be considered ancillary to the keeping of animals (agriculture).

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council adopt Option A which encompasses both Options 1 and 2 the owners may challenge such a request and contest any subsequent legal action. Council would incur legal costs if this were to happen.

Should Council adopt Option B which takes no further action in regards to this matter the complainants may pursue civil action against the subject property and/or Council. Council could incur legal costs if this were to happen.

POLICY IMPLICATIONS:

Council's position in regard to this matter could set a precedent in terms of establishing suitable levels of fill as exempt development when in association with agriculture. However, it should be noted that each case still needs to be looked at on its merits to interpret the applicable legislation for each site.

CONCLUSION:

This compliance matter has been continually investigated since September 2008.

Recent evidence suggests that the finished height of the equestrian pad is 900mm at its highest point above natural ground level. Council's Planning & Infrastructure Engineer has concluded that the potential impact of the fill pad in its current configuration and level on

adjoining land cannot be properly determined, without a flood impact assessment and flood modelling.

This advice changes Council's previous planning advice in regards to the structures permissibility.

If the flood impact can not be determined the extent of fill is sufficient enough to change the applicable definition from agriculture (which is exempt) to earthworks (which requires development approval).

Accordingly it is recommended that the owner either reduce the height of the fill pad to that originally considered acceptable (450mm) or lodge a development application with flood modelling to consider the equestrian pad as it is in its present form.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Department of Energy and Water - Controlled Activity Permit dated 2 December 2008 (Water Management Act 2000) for works within 40 m of the waterway (ECM 18635608)
 2. Waterways Program Leader Memorandum on Erosion Issues at Dungay Creek, dated 4 September 2009 (ECM 18634568)
 3. **Confidential Attachment** Letter of complaint dated 19 April 2010 (ECM 18634590)
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16 [PR-CM] Major Project Application MP06_0153 for a 41 Lot Residential and Tourist Subdivision at Lot 156 DP 628026 Creek Street, Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA10/0228 Pt2

SUMMARY OF REPORT:

The purpose of this report is to seek Council's endorsement of the proposed submission to the Department of Planning on the Major Project Application for the 41 lot subdivision at Lot 156 Creek Street, Hastings Point (Department of Planning Reference MP06_0153).

The proposal has been reviewed by Council staff from relevant planning, building, engineering and environmental units across Council.

The Officers raise serious concerns with this development and have requested that the Department consider refusing the application as currently proposed.

RECOMMENDATION:

That Council endorses that the attached draft submission relating to Major Project Application MP06_0153 at Lot 156 DP 628026, Creek Street, Hastings Point be forwarded to the NSW Department of Planning.

REPORT:

Applicant: Planit Consulting
Owner: Walter Elliott Holdings Pty Ltd
Location: Lot 156 DP 628026, Creek Street Hastings Point
Zoning: Part 2(e) Residential Tourist and part 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: N/A (Department of Planning Development Application)

BACKGROUND:

Tweed Shire Council was first asked to review an application on this site by the Department of Planning in September 2006.

On 20 October 2006 Council provided the Department of Planning with information to assist in the formation of the Director General Requirements. Part of this submission stated:

“By way of background you should be aware that this property has had a long history of unauthorised work, particularly in the western part of Lot 156 with the construction of the existing artificial waterway as well as in more recent times clearing within the 7(a) Environmental Protection (Wetlands and Littoral Rainforest) parts of the property. These activities have generated a considerable number of submissions from the local community both to Council and the NSW Ombudsman. Given this history an important part of processing this application will be extensive consultation with the local community.”

In October 2008 Council was provided with a Draft Environmental Assessment. This application was for 57 residential allotments and one residue allotment for a resort development. The Department advised that they had already determined this Environmental Assessment as inadequate and that the Department were awaiting amendments by the proponent.

Furthermore on 27 October 2008 Planit Consulting requested Council's owners consent for roadwork's within Creek Street to accommodate the proposed Part 3A Application.

Council staff responded to this request with the following letter:

I refer to your letter of 27 October 2008, seeking consent from Tweed Shire Council as the owner of Creek Street Hastings Point, to lodge the subject Major Project Application with Department of Planning.

Please be advised that owner's consent shall not be granted at this time, as it is considered that the Preliminary Environmental Assessment fails to adequately deal with impacts of the proposed development on other land.

The main engineering issues upon which this is based are as follows:

- 1) The Engineering Impact Assessment (EIA) does not address stormwater runoff from all external catchments.*

The drainage assessment does not consider any stormwater catchments north of Creek Street (refer Figure 6.0). This is a significant deficiency in the EIA, as there is a large contributing catchment north of and including the North Star Caravan Park, which currently discharges to Cudgera Creek through the subject land. The catchment extends beyond Round Mountain Road to the north-west, and Tweed Coast Road to the north-east. A number of drainage channels have been constructed over time within this catchment, which enter the lake on the subject land.

The drainage assessment also fails to consider stormwater flows within Creek St itself. If street drainage is blocked by fill to the south, with no major flow outlet, this will cause flooding of existing low set dwellings along the street.

- 2) *The EIA does not properly consider the impact of the proposed development, specifically the filling of land, on flooding behaviour in the locality.*

The flood impact assessment is flawed in that it has not been calibrated against known flood events (e.g. the 30 June 2005 flood), and as such, the levels predicted for the existing and post-development case cannot be considered representative. The argument that the absolute levels are not critical for a comparative study is noted, however is not agreed. Pre-development inundation levels are too high to reflect filled land in the caravan park site, and post-development predictions show portions of the new filled development still being inundated. Neither situation provides an accurate and reliable basis for flood impact assessment or comparison.

Further, it is considered that the 30m grid used in the 2-dimensional flood modelling is too coarse to properly represent the local variations in topography (fill, structures, gullies etc.) and local watercourses and flow paths.

A cumulative development scenario should also be provided. While it is agreed that the extent of developable land is limited in Hastings Point, areas of existing development (i.e. the caravan park and residential allotments along Creek St) have not been filled to design flood level. To account for future redevelopment of such land, an ultimate development scenario where all urban zoned land is filled to 100 year ARI level must be considered.

If the above flooding assessment is unfeasible at this stage for the applicant, it is recommended that the lodgement of concept plans with the Department of Planning be deferred until Council's Coastal Creeks Flood Study is completed. This calibrated model will be available in 2009 for the applicant to conduct their flood impact assessments. The Coastal Creeks Flood Study will also include modelling of climate change scenarios in accordance with the Department of Environment and Climate Change "Practical Consideration of Climate Change" Guideline (Oct 2007).

Owner's consent cannot be provided until such time as adequate impact assessments are provided, which demonstrate that the proposed development, specifically the proposed filling, will have no significant adverse impact on local flooding and drainage for a range of flood and storm events as specified in Council's Subdivision Manual and the NSW Floodplain Development Manual."

This letter was discussed with the applicant at a meeting on 25 February 2009 who understood why Council at that time was refusing to grant owners consent. To date owners consent has still not been granted or re-requested.

In March 2009 Council was provided with a revised Draft Environmental Assessment for review. This application was for a 38 lot residential subdivision (including 5 nominated dual occupancy sites), two tourist allotments and two allotments (containing integrated housing).

On 16 April 2009 Council reviewed this application and provided the Department of Planning with a 13 page letter detailing issues with the application as submitted. This response forms an **annexure** to this report.

On 16 April 2010 Council were provided with a revised Environmental Assessment for review. This application is the exact application that is currently before the Department of Planning for determination (a 41 lot residential subdivision).

Council staff were extremely disappointed with the communication in regards to this test of adequacy review. Below is a chronology of the events surrounding this review:

16 April 2010 *Council Received Test of Adequacy from the Department of Planning to Review by 28 April 2010.*

28 April 2010 *TSC contacted the then DoP assessing officer (by phone) to advise that comments were still being prepared by Council officers, and that there were some serious concerns for the DoP to consider. The officer advised at that time that he couldn't see a problem with an extension to Council's outstanding comments to the end of following week (Friday 7 May 2010)..*

3 May 2010 *A new DoP assessing officer for the project called TSC to confirm that the extension was ok, provided that TSC could give a verbal explanation of the issues. TSC provided an explanation of the major engineering, planning and ecological concerns. It was stressed that TSC staff thought the test of adequacy should be rejected. The DoP officer seemed to understand the issues and advised TSC that they would await Council's comments.*

7 May 2010 *The DoP assessing officer rang TSC to advise that they could not wait any longer for Council comments. TSC advised him that the comments would be finalised immediately and sent through. The officer advised that Council's comments would be considered in the assessment of the project application, but that the Department of Planning had already approved the test of adequacy as being suitable for public exhibition. Council's comments were submitted to the DoP soon thereafter.*

On 7 May 2010 Council provided the Department of Planning with a 10 page letter detailing issues with the application as submitted. Disappointingly the revised Environmental Assessment failed to address many of the Council issued previously identified in April 2009. The full response forms an **annexure** to this report.

This same application has now been placed on public exhibition (between 2 June 2010 and 2 July 2010) and Council like any other objector has been presented with an opportunity to review the proposal and provide comment to the Department of Planning by 8 July 2010 (the Department of Planning gave a minor extension from 2 July to 8 July to accommodate the reporting of this matter to Council).

THE SITE:

The subject site is located within the Village of Hastings Point in the Shire of Tweed. Within the immediate vicinity, the following elements frame the context of the site:

- The North Star Holiday Resort is directly adjacent, located on the northern side of Creek Street. The holiday park contains both permanent and temporary sites and a three storey building to the front of the site facing onto the Tweed Coast Road.
- Medium Density Apartments and attached dwellings (Hastings Cove) are located to the north east of the site adjacent to Coast Road.
- Single Detached Dwellings adjoin the site, located between Creek Street and the northern boundary.
- Cudgen Nature Reserve adjoins the western boundary of the site. The southern boundary of the property adjoins the Mean High Water Mark (MHWM) of Christies Creek that connects to Cudgera Creek and a section of State Environmental Planning Policy 14 (SEPP 14) Coastal Wetland in the south east and eastern areas of the property.

The site is largely a vacant allotment (17.77 ha) with the exception of a single house recently constructed in accordance with development consent DA07/0600 (issued by Tweed Shire Council). Construction of this dwelling has been completed and the dwelling is currently occupied.

THE PROPOSED DEVELOPMENT:

The proposal is for the approval of a Concept Plan for a Residential and Tourist subdivision of the subject site. The following table summarises the proposed developments physical parameters.

Table 6: Physical Parameters			
Residential Allotments		37 (1.8995 ha) (includes 3 allotments of a size capable of containing dual occupancy development)	
Townhouse Allotments		2 (0.2915 ha)	
Tourist Allotments		2 (0.333 ha)	
Public Open Space & Roads		15.246 ha	
Proposal Description			
Lot Number	Plan Number	Address	Area
Lot 156	628026	No. 32 Creek Street, Hastings Point	17.77ha
Total Area			17.77ha

Details	
Total No. of Lots	41
Total 2(e) zone area (existing)	7.02ha
Total development footprint inc. roads	4.03ha
Total public open space	0.51ha
Total rehabilitation area	1.94ha
Total EEC removal (saltmarsh)	1740m ²
Total dedication area (environmental lands) ex. Public open space. To be retained and monitored for environmental presence and removal as outlined in rehabilitation plan attached.	12.75ha
Open Space	Provided
Public Open Space – Local Parks TSC Requirement 1.13ha per 1000 population (assume 2.4 persons per allotment) NB. Structured Open space will be addressed by way of monetary contribution	0.51ha TSC Requirement equates to approx 1130m ² (41 lots @ 2.4 persons per lot)

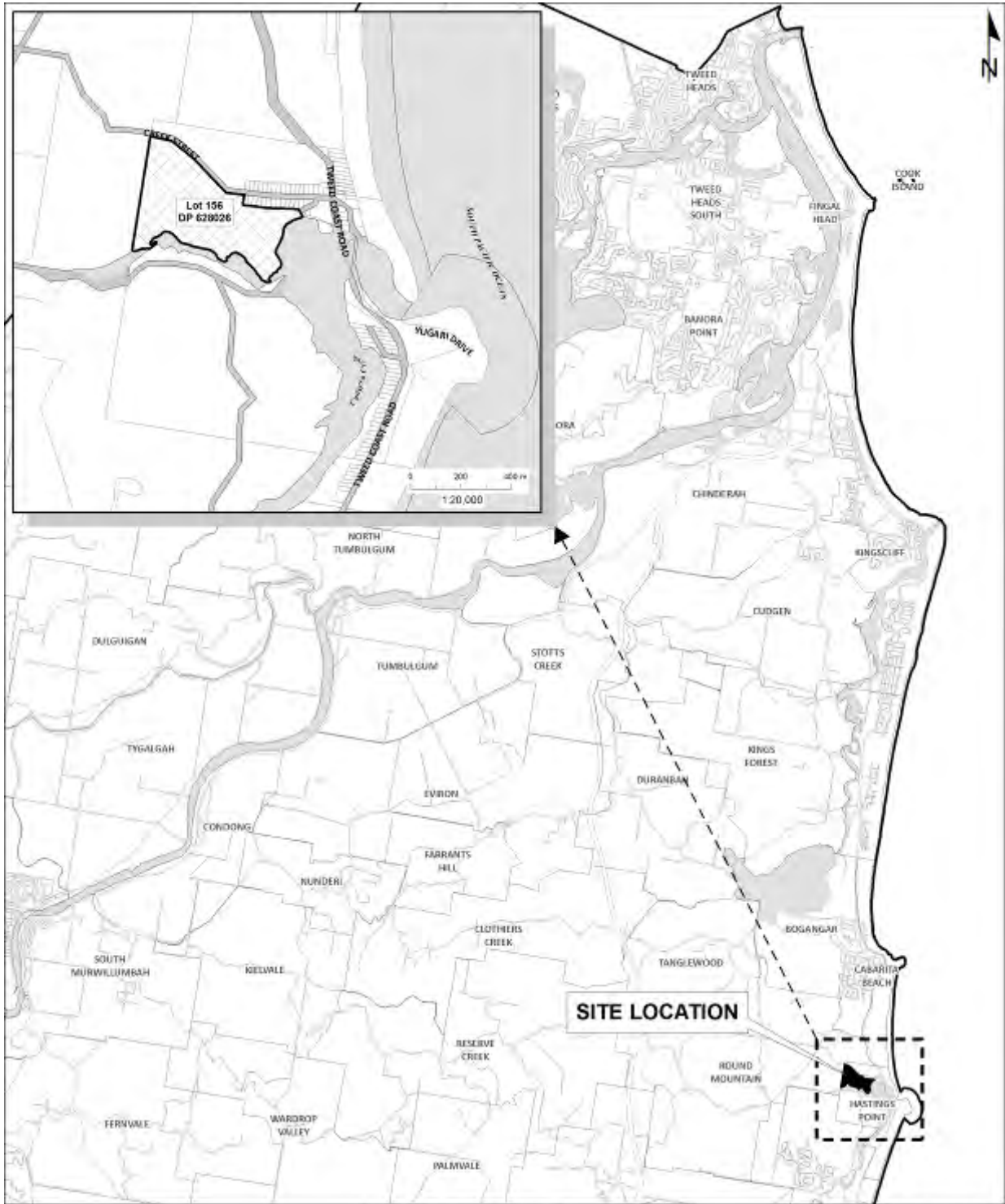
The applicant has provided that the proposed tourist allotments have been spatially separated from the existing dwellings along Creek Street and are of a land area that would not promote a single large resort proposal. They have further stated that the proposed tourist allotments are envisaged to be suitable for conventional medium density development also, given that the tourist zoning is identified as being removed within the Draft LEP 2010.

The remainder of the subdivision is largely comprised of low density single dwelling allotments. There are twelve (12) existing dwellings on the south of Creek Street and the proposed design shows that only two (2) of these existing dwellings would adjoin future proposed dwelling allotments.

Three (3) larger dwelling allotments (Lots 19, 32, 35) are provided within the layout and have the potential to be taken up as dual occupancy allotments by future owners as these lots are of a minimum size, in accordance with the Tweed Shire Council's DCP, to enable dual occupancy development

In regard to the existing dwelling that has been recently constructed on the site under DA07/0600, this dwelling will become part of the Townhouse housing within proposed Lot 31.

SITE DIAGRAM:



LOCALITY PLAN

Lot 156 DP 628026
Creek Street, Hastings Point

0 1 2 3 Km
1:100,000

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 June, 2010

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E: planningreforms@tweed.nsw.gov.au



AERIAL PHOTOGRAPH:



ZONING PLAN:

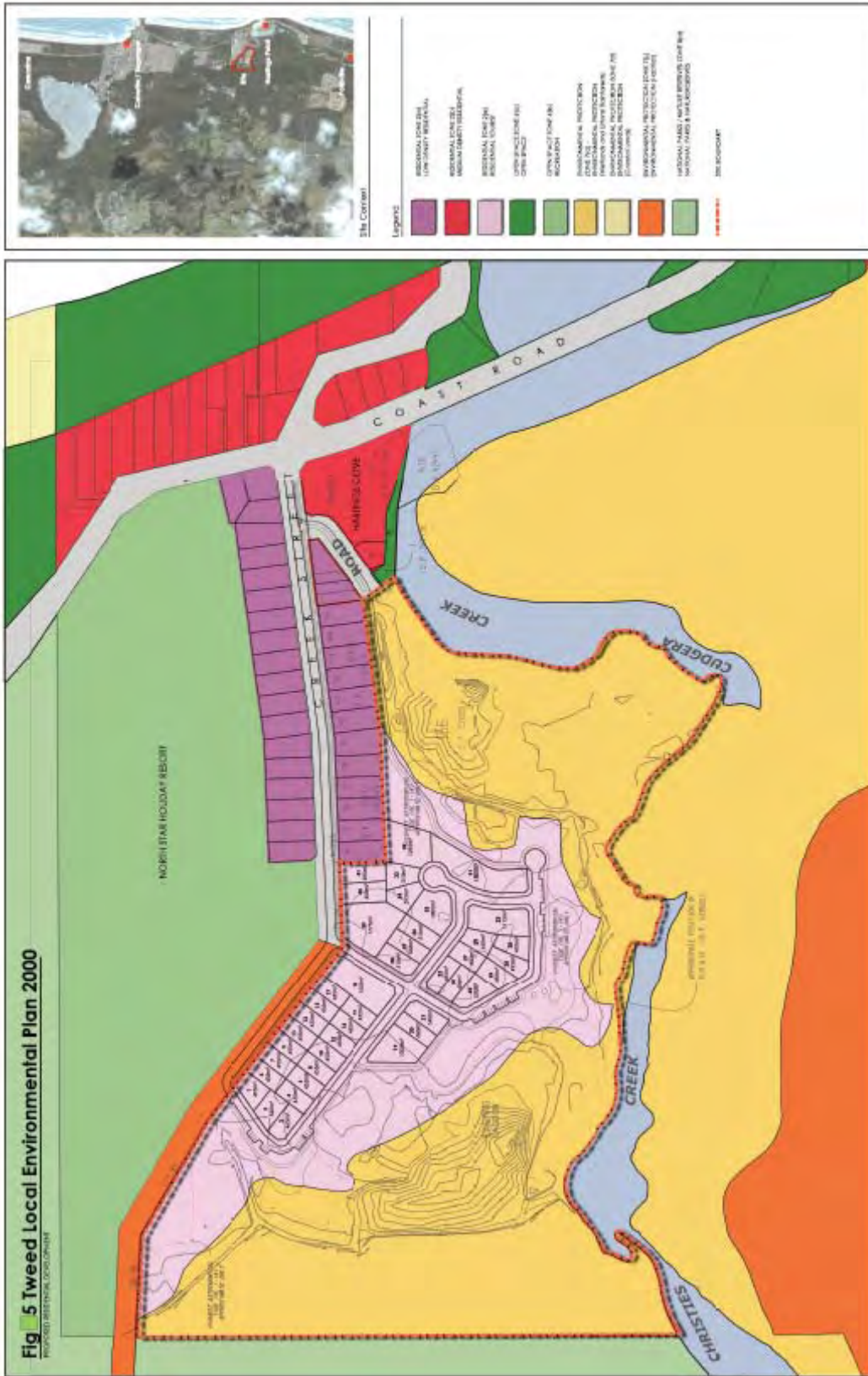


FIGURE 5 LEP - Zoning
154 Creek Street Hastings Point
REGIONAL COUNCIL

FIGURE 5 LEP - Zoning
154 Creek Street Hastings Point
REGIONAL COUNCIL

CLIENT: WALTER ELIOT HOLDINGS PTY LTD
DATE: FEBRUARY 2000
DRAWN: JB

STATEMENT OF LANDSCAPING INTENT:



Masterplan

156 Creek Street Hastings Point

CLIENT: WATER EJUDI HOLDINGS PTY LTD
DATE: JANUARY 2009
DRAWN: JB

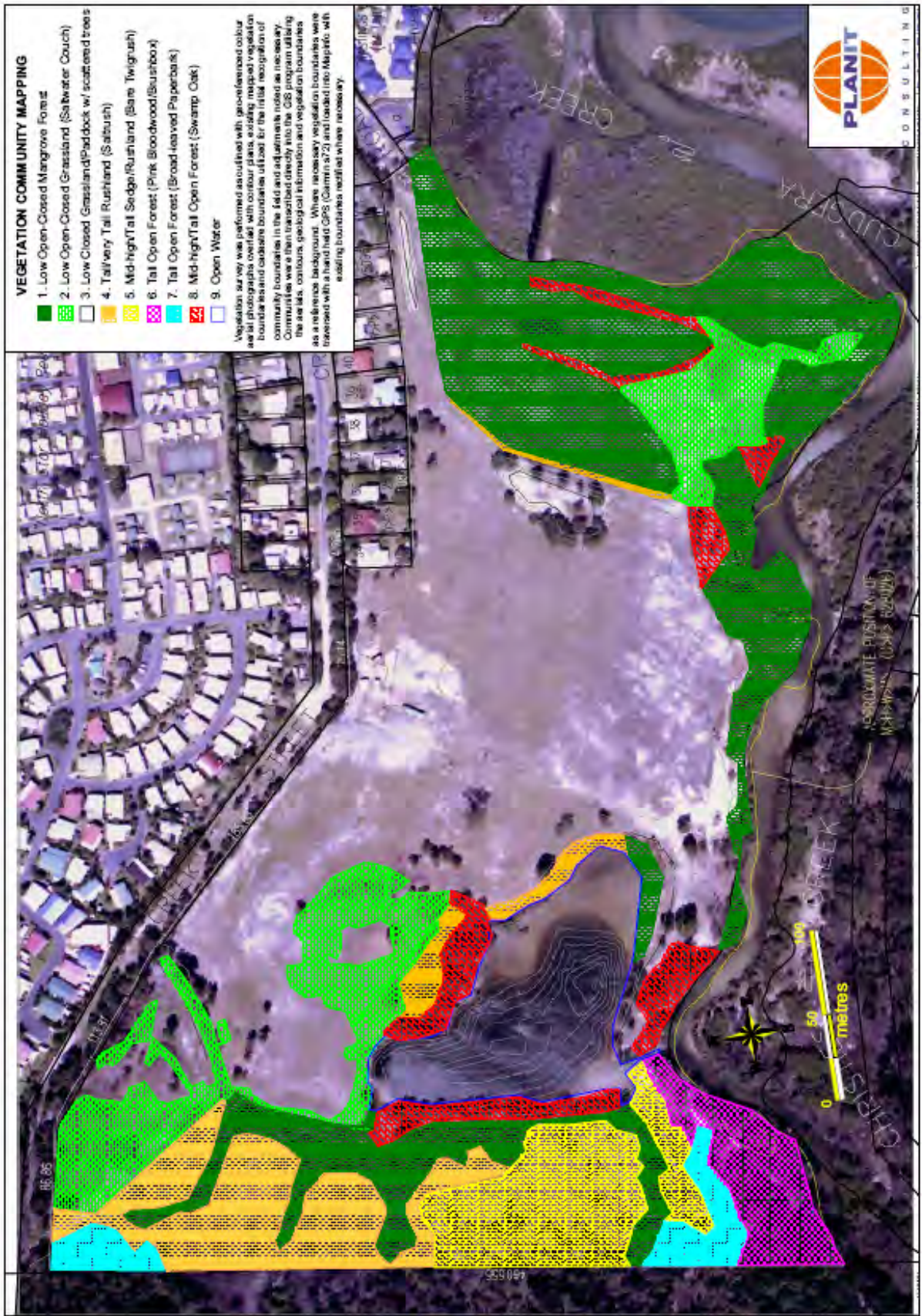
Statement of Landscape Intent
156 Creek Street Hastings Point
RESIDENTIAL SUBDIVISION

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New South Wales 2515
Ph: 02 9439 1111
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E: info@planetlandscape.com.au

STATEMENT OF LANDSCAPING INTENT – REHABILITATION :



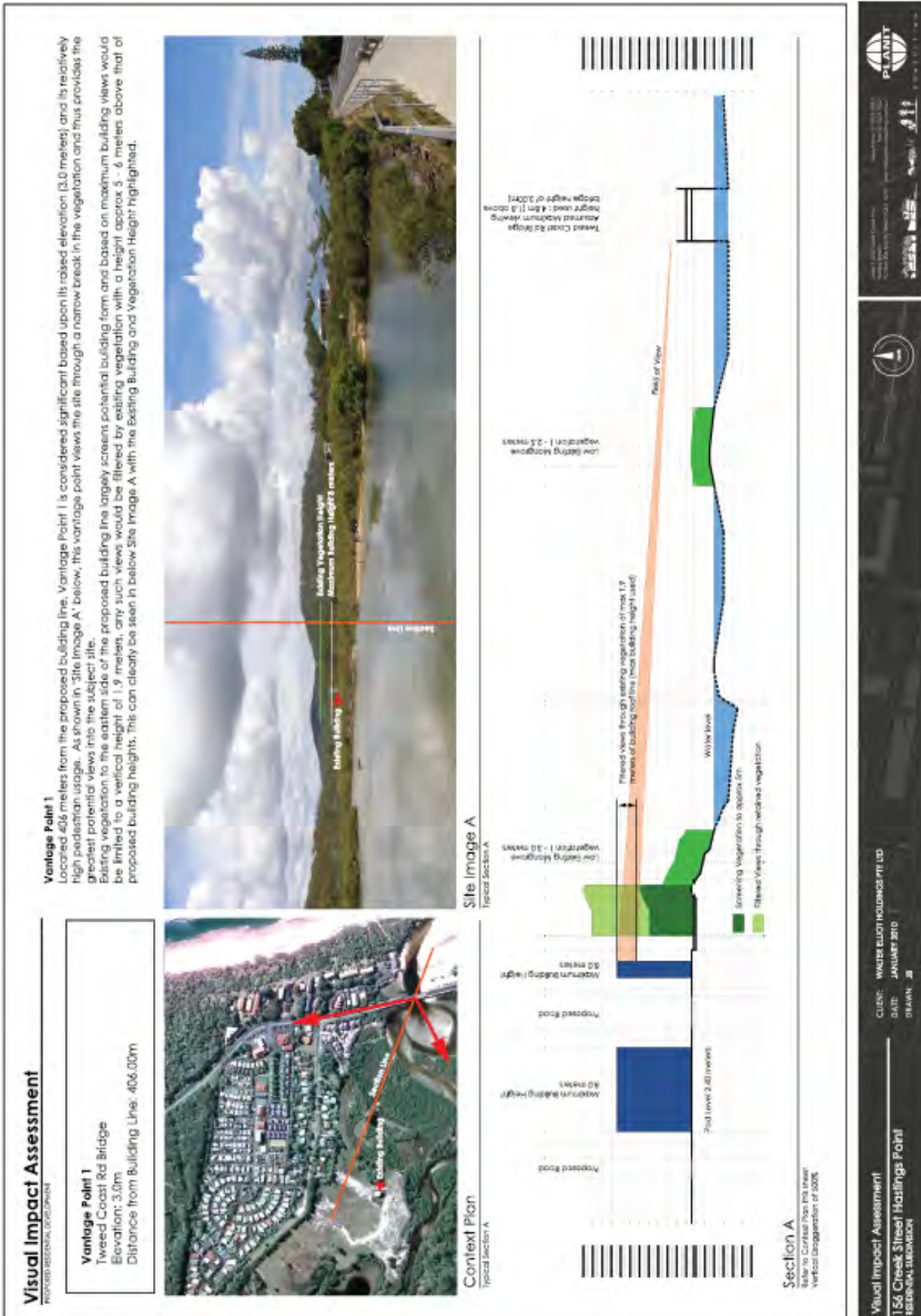
APPLICANTS VEGETATION MAPPING:



APPLICANTS TENURE MAPPING:



VISUAL IMPACT ASSESSMENT (more available on file):



Draft Submission

The subject application was placed on public exhibition between 2 June 2010 and 2 July 2010. Council like any other objector was presented with an opportunity to review the proposal and provide comment to the Department of Planning by 8 July 2010 (the Department of Planning gave a minor extension from 2 July to 21 July to accommodate the reporting of this matter to Council).

The Department of Planning have not paid for Council to undertake any detailed planning, ecological and engineering assessment. Accordingly in accordance with Council's adopted policy on the processing of Major Projects this assessment has only looked at matters that may affect Council in the long term for example major flood implications and maintenance as the future asset owner of public land.

Council has not undertaken a detailed ecological assessment and this should be undertaken by the Department of Planning as part of their assessment role as the consent authority.

The application was accordingly circulated to Council Officers with expertise in the following fields:

- Planning
- Traffic
- Infrastructure Engineering
- Water & Sewer Infrastructure
- Natural Resource Management; and
- Recreational Services.

Comments from Council Officers have been collated into the attached draft submission.

Major issues raised include the following:

Planning

The application relies on that part of the subject site zoned 2(e) Residential Tourist to facilitate the majority of this development. The application fails to adequately demonstrate how and why 41 residential lots incorporating 2 larger allotments that are for tourist use satisfy the 2(e) zone objectives which state:

Primary Objective

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

Secondary Objective

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

In addition the application fails to adequately determine the permissibility of the proposed road (emergency access road) within that part of the site zoned 7(a) which has the following zone objectives:

Primary Objectives

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

Secondary Objectives

- *to protect the scenic values of wetlands and littoral rainforests.*
- *to allow other development that is compatible with the primary function of the zone.*

The proposed road within the 7(a) zone needs assessment against Clause 8(2) of the Tweed LEP 2000. The applicant has only provided limited justification in this regard and only establishes that if this subdivision pattern were to be approved then the emergency road needs to be in that locality. The Clause 8(2) assessment does not consider alternative allotment configurations that would avoid the need for any road within the 7(a) zone.

Furthermore, the application fails to adequately demonstrate that the proposed road is within the applicant's land. Local testimony indicates that the water level from the adjoining Creek comes within 7-10m from the rear of properties in Creek Street (particularly Number 8 Creek Street). This may affect the applicant's land parcel as the applicants boundary is dictated by mean high water mark not a hard survey line. The Department of Planning should investigate this matter further.

Importantly the current application has failed to:

- Adequately address Draft Tweed LEP 2010 which has just come off public exhibition;
- Address Draft Hastings Point Locality Plan which specifically contains development provisions for this site. Given the extent of fill proposed this may cause an issue with the ultimate height of the built form.

The concern being, that with a potential fill up to 3.1 meters AHD, and dwellings of up to 8 metres, there may be a breach outside of the view field guidelines suggested (See page 140 of Draft DCP B 23).

In addition the extended areas of public open space shown as Point 9 on the Masterplan, should be part of a revegetated nature strip.

- Be accompanied by Tweed Shire Council's Owners Consent for works within Creek Street.
- Adequately demonstrate the visual implications of fill/road works etc for the existing residents within Creek Street. It is noted that the high road exiting the site abuts those

properties in Creek Street which may result in poor visual amenity for those existing properties. A visual analysis is needed.

- Adequately address the history of unauthorised works on this site.

Flooding & Stormwater Issues

In previous communication to the Department of Planning it was concluded that the subject application did not adequately address the flooding and stormwater issues affecting the site. Despite these comments, the Department of Planning (DoP) have publicly exhibited the Environmental Assessment (EA) for the Major Project Application.

The following comments reiterates the potential flooding and stormwater impacts of the development on the locality, for the consideration of the Department.

Flooding - Council's consultants have recently completed a new calibrated 2-dimensional flood model (TUFLOW) for the Coastal Creek floodplains (including Cudgera and Christies Creeks). This should be used as the basis for the applicant's flood impact assessment. By doing so the applicant can properly investigate impacts of the full range of design flood events, including the probable maximum flood (PMF) and climate change scenarios in accordance with the Department of Environment and Climate Change "Practical Consideration of Climate Change" Guideline (Oct 2007).

The applicant has provided a flooding assessment in the EA (Engineering Impact Assessment, Opus International Consultants). This does not appear to have utilised Council's flood model, but by various means has attempted to replicate Council's results in their own model. While the results appear to be comparable, without additional details such as model files and comparative mapping to verify the adequacy of the applicant's model, this approach cannot be properly assessed. The applicant has also failed to provide climate change assessments as required.

As such, the current flood modelling approach is unsatisfactory, and it is requested that the applicant obtains Council's Coastal Creeks flood model and undertakes the required post-development scenario assessment accordingly. This approach will provide the most consistent, rigorous and defensible means for assessing the potential impacts of the development, and limit the potential for third party appeals.

In previous memos, additional flood modelling scenarios were also requested to explore options to rectify changes in flood behaviour due to the previous history of site alterations, in conjunction with the rehabilitation plans for foreshore environmental land and open space. The applicant has failed to address these considerations in the EA flood assessment.

The EA adopts a design flood level (DFL) for the site of RL 2.4m AHD, and intends to fill the site to this level as a minimum, with an average of RL 2.8m AHD. Minimum habitable floor level for subsequent residential development is specified as RL 3.1m AHD. Since the project was initiated with DoP, Council has revised DCP Section A3 - Development of Flood Liable Land (Version 1.3), in consideration of the results of the Coastal Creeks Flood Study. Under DCP-A3 Version 1.3, greenfield residential subdivision of this kind must adopt a climate change DFL, in accordance with maps in Appendix D of the plan. As such, the subdivision requires a minimum fill level of RL 2.8m AHD, and a 0.5m freeboard to habitable floor levels, to RL 3.3m AHD. Due to proximity of the site to the creek mouth, this increase in peak flood levels is primarily due to sea level rise predictions in accordance with the adopted

benchmarks from the NSW Government. As a result of the DCP-A3 amendments, additional fill will be required across the site, and this must be incorporated into the post-development scenarios for the proponent's flood impact assessment. The "Summary Of Commitments and Mitigation Measures" (7.1.4) also needs to be updated with regard to the DFL.

As raised previously, there are inaccurate comments regarding the extent of flood liable land and the impact of the development in the EA. Section 2.7 of the EA states that:

"Areas of the site are currently below the Q100 flood level, including areas proposed to be contained within the developable area of the proposal ... Preliminary hydraulic modelling shows that the site can be filled to the design flood level ... with no detrimental impacts or cumulative effects on surrounding properties ... It has been shown that an area toward the eastern end of Creek Street, equating to that area opposite Lot 10 Creek Street has the potential to be flood prone as it is located slightly below the 1 in 100 year flood level. This constraint has been taken into consideration and an emergency road is provided for vehicular access in such a flood event."

This statement significantly understates the current extent of flood liable land in the locality. Considering the DFLs adopted in DCP-A3, the entire site and all existing residential properties fronting Creek St are liable to some degree of flooding in the 100 year ARI event. Further, the impact modelling shows that the filling will have impacts on the local area. Flooding is a significant constraint, as the DCP requirement to fill the site results in some degree of obstruction and constriction of existing flood flow paths from the west and the north to Christies Creek. Further, to satisfy the requirement for the development to provide flood free evacuation access to high land (as defined by DCP-A3), an evacuation route is proposed along the southern boundary of existing low-lying dwellings in Creek St, which has the potential to provide a barrier to existing stormwater and flood flows, to the detriment of these landholders.

These same issues also arise in Sections 2.18, 3.7, 4.5.10, and 5.1.3 of the EA.

Stormwater Management - The stormwater assessment and water cycle management plan (WCMP) in the Engineering Impact Assessment are unsatisfactory for the following reasons:

- (i) The stormwater catchments relied upon in the drainage design are not representative of the local area. Only one external catchment, "catchment C" consisting of the dwellings along the southern side of Creek St adjoining the development has been considered in the impact assessment. In reality the provision of fill on Lot 156, including the new high level evacuation route, will potentially block flows from these dwellings, as well as dwellings on the northern side of the street, the street itself (which is poorly formed and without longitudinal drainage along much of its alignment), and the adjacent caravan park, from entering the subject land in major storm events (if not minor events as well). If this flow path to the creek is blocked, this stormwater will potentially flood low lying dwellings along Creek St.
- (ii) The external catchments E3, E4 and E5 to the north have been considered in calculations, but are assumed to discharge solely to the existing open drains at the western end of Creek St. It is likely that in the pre-development case these flows arrive at the site as channel and sheet flow and disperse across the site towards Christies Creek. These flows will be restricted by the filled development unless some mitigation works are put in place, but these have not been addressed.

- (iii) Given the lack of existing drainage infrastructure in the locality, the predicted increases in stormwater runoff from the site (up to 49%) are not properly addressed. While on site detention may be provided under the WCMP, the impacts of changes to stormwater flow volumes and times of concentration may be significant on adjoining land, and the receiving water bodies (including bank stability, scour/erosion, ecological impacts etc).
- (iv) There is no design provided for the culverts under the filled formation of the emergency evacuation route. The design of an effective transverse drainage system that will remain free from blockage in major storm events is essential in protecting existing low-set dwellings in Creek St from increased damage and nuisance. If the evacuation route cannot be feasibly installed without significant impact, the development fails to satisfy the emergency response criteria in the DCP, and therefore cannot be supported by Council.
- (v) The flooding/stormwater assessment describes the division of the Christies Creek catchment between Cudgera and Cudgen Creeks. While such interaction is known to occur in large flood events, it is controlled by drainage structures under Kanes Road, so the full diversion of such a large catchment to Cudgen Creek cannot be so simply assumed. Council's 2-dimensional flood model should be utilised by the applicant to determine a more realistic interaction of flood discharge during flood and runoff events.
- (vi) Alternate stormwater quality control measures should be considered to the proposed proprietary devices, to adopt Water Sensitive Urban Design (WSUD) measures given the sensitivity of the surrounding ecology, and the apparent suitability of site conditions (extent of open space dedication, flat grades, soil type etc), in accordance with Development Design Specification D7 - Stormwater Quality.

Summary of Commitments - Section 7.1 Summary of Commitments and Mitigation Measures fails to commit the developer to protecting adjoining properties from adverse flooding and stormwater impacts, and to providing the necessary mitigation measures to ensure that this is achievable.

Flooding and Stormwater Conclusion - The subject Major Project Application is not supported as it fails to adequately address flooding and stormwater issues in the locality.

Traffic

There is inadequate assessment of pedestrian movement at the intersection of Creek Street and Tweed Coast Road especially since the provision of a right turn lane for vehicles on Tweed Coast Road will necessitate the removal of an existing pedestrian refuge. There is no mention in the report of replacing this pedestrian refuge. Many pedestrians will want to cross busy Tweed Coast Road from the development side to get to the beach, most likely down Peninsula Street. The traffic report has not identified how pedestrians can be safely catered for; e.g. where can a pedestrian refuge be safely and practically installed on Tweed Coast Road including provision of adequate sight distances.

This is an extremely important and serious pedestrian safety issue. Council, and the community, will possibly lose an important safety infrastructure item (a pedestrian refuge) without replacement. This requires resolution prior to consent as there appears to be no suitable replacement location for this refuge.

If this application were not amended the only opportunity to rectify this matter would be for Council to refuse any future Section 138 application for the works required by this development.

In regards to the Creek Street upgrade the application advises that Creek Street will be upgraded to a local access street, based on predicted traffic generation rates for the development. The minimum standard for a local access street is a 6m wide sealed carriageway within a 13m wide road reserve.

Council's Development Design Specifications – Road Design Specification D1 provides an indicative maximum volume of 1000 vehicles per day for a local access street constructed to absolute minimum standards as stated above.

Council's development design specifications also limit the length of a 6m wide local access street to a length of 200m, before the road carriageway would be required to be increased to a wider access street. The length of Creek Street (including the extension of Creek Street to service the subdivision) is appropriately 540m in length within a 20m wide road reserve. Creek Street would be required to have a pavement width of 7.5m from the proposed intersection on Creek Street providing access to the subdivision to the intersection of Creek Street and Tweed Coast Road.

Wider access streets are designed to cater for higher traffic volumes over longer distances and to provide for more intensive land uses such as integrated development or tourist development (such as this application) creating a higher density land use or where flexibility is required for future land uses.

If such engineering standards were enforced this could conflict with Draft DCP B23 – Hastings Point Locality Plan in terms of maintaining the character of existing streets like Creek Street.

For more detailed traffic considerations and road upgrade information please refer to the attached Draft submission to the Department of Planning

Water & Sewer Infrastructure

There are three main issues in regards to water and sewer servicing:

1. Water cycle management only refers to Basix requirement for rain water tanks whereas Council would like demand management addressed more fully – i.e. our minimum 5000 L tank for single lot dwellings, etc.
2. The issue of sewer connection is still ambiguous with a suggestion of parts of the site filled to 3 – 3.6 m with the suggestion of a lift station if that doesn't happen, whereas other parts of the document only show above 2.4m.
3. The acknowledgement that the 100mm water main is inadequate but it doesn't state that a larger main will be needed to connect to the trunk mains.

Open Space – Recreational Services

There are five major issues in regards to the applicants proposed open space areas:

1. Small turf and modified 'park' areas are too small for efficient maintenance

As described in Figure 9: Masterplan, there are 2 small turfed areas which represent a high cost to Council to maintain for minimal benefit.

Item 7: This tiny area of turf appears to provide no recreation value and is very inefficient in maintenance terms. It cannot be accepted.

Item 14: This area of around 1,000m² is variously called the 'Community Park' or Park Area 1. It is a small park area and Recreational Services Unit would strongly prefer a larger area for efficiency of maintenance.

Please note: Strong concern is expressed regarding the proposed play equipment close to the water and the road. All new playgrounds must comply with guidelines established in the 'Playground Audit for Tweed Shire Council' (July 2009). Appendix 3 of this audit establishes a procedure for assessing risks and mitigation. No playground facility may have a Facility Risk Rating that exceeds 13 as defined in Table 3A7 of this document. Information on this can be provided on request to the developer and or Department of Planning.

2. Informal Open Space

Figure 9: Masterplan indicates areas described as 'extended area of open space to be maintained with cleared understorey and vegetation cover to remain'. It is not clear why Recreation Services would do ongoing maintenance on such areas. Accordingly it cannot be supported.

3. Retaining walls in public open space or streetscape

It is very undesirable to have retaining walls in public open space. The cost to maintain, and possible requirement for fencing means Recreation Services cannot support the proposal.

4. Access to Lagoon in Figure 10, Public Open Space

Access to the lagoon is likely to occur as a result of the development, so it is desirable this access be controlled. Council will require more information on how the interface with the lagoon at the indicated access point will be managed.

5. Minor clarifications or corrections required

Figure 10 (Public Open Space) references a 'section elevation 3'. Figure 9 (Masterplan) also references a 'section elevation 3'. There is only one section 3 provided in the application, so both cannot both be correct. Clarification is sought.

Figure 10 (Public Open Space) indicates an 'existing lagoon'. This appears to be incorrect.

It is very unfortunate that the developer has not discussed the parks and open space design with relevant Council staff as some of these difficulties could have been resolved earlier.

Ecology

Major ecological concerns are raised in relation to this development. Overall the Major Project as exhibited cannot be supported from an ecological viewpoint because the level of information provided is insufficient to determine impacts both on and off the site in an ecologically sensitive area, and the potential for a significant impact on threatened species, ecological communities and the ecological functioning of the estuarine system is high. Ecological comments originally and subsequently submitted still apply as matters previously raised have generally not been satisfactorily addressed.

From an ecological viewpoint, it is considered the site is much better suited to single residential allotments along Creek Street and would be happy support the same density of development as currently exists on the southern side of Creek Street between the unnamed road reserve and the property, ie allotments of around 700m² with a single access off Creek Street prior to the start of Environmental Protection zoning.

a. Endangered Ecological Communities

- Saltmarsh is to be removed and inadequately compensated such that more will be lost than will remain, even after compensation actions. Saltmarsh has also been impacted by land maintenance practices to date. Saltmarsh is inadequately represented in the Tweed and is vital habitat for fish (particularly in provision of food for commercial fish species) and for shorebird roosts which are also inadequately represented in the Tweed.
- Four floodplain Endangered Ecological Communities (EECs) exist on the site and immediate surrounds. The occurrence of floodplain EEC's is highly dependant on small changes in topography, soils and hydrology. Major changes are proposed to stormwater drainage, flood flow and ground levels; no analysis has been undertaken to determine whether offset areas offer a suitable suite of conditions for EEC replacement; and in some cases, an existing EEC (in this case Saltmarsh) is proposed to be replaced by another (Swamp Sclerophyll). Information submitted with the application is insufficient to make a determination that the EEC's will not be significantly impacted and impacts appear very likely.

b. Threatened species

- Threatened fauna species and their habitat have been poorly considered and are very likely to be adversely impacted by the proposed development. The site is adjacent Cudgen Nature Reserve and adjoins a tidal estuary with records of significant species within and adjacent to the site. No significance assessment has been provided for the critically endangered Beach Stone Curlew (photographs supplied by residents show the species roosting at the estuary on the edge of the development site) or the Bush Stone Curlew (record adjacent the site). Koala records exist all around the site yet key feed tree species are proposed for removal and road works are proposed through this corridor. All three species are highly impacted by domestic pets which are regarded as key threats to the species' survival yet no restrictions on dog or cat ownership are considered, habitat is to be adversely impacted and inadequately compensated. Large old growth trees are proposed for removal without a thorough analysis of their ecological role. The use of nest boxes and artificial raptor poles to replace such valuable resources is ill-considered and inadequate to avoid immediate impacts.

c. Domestic Pet ownership

- Domestic cats and dogs should be prohibited on the site for the above reasons.

d. Ecological buffers

- Both the riparian buffer and the buffer to Endangered Ecological Communities has previously been argued as a minimum of 50m required to protect the estuarine and ecological values and this argument is supported by numerous legislative and policy documents as previously listed. Not only is restoration of such buffers not proposed but all buffers are significantly encroached, in some cases with only 10m to EECs or, in the case of Saltmarsh, the community itself will be lost in part. Recently released updated guidelines for development adjoining DECCW estate should be addressed in full.

e. Ecological restoration

- Ecological restoration generally is inadequate, ill-defined and conflicting within various parts of the documents. It also appears to be only replacing that zone that has been cleared or modified without consent. Therefore, compensation is essentially lacking. The plan is highly deficient in its methodology. Council will not accept dedication of land unless restoration meets agreed performance criteria.

f. Other issues which impact ecological values

- Roads - the main access road, the emergency evacuation route and individual driveways are proposed to be formed within land zoned for environmental protection and are not supported. The emergency evacuation route within the buffer to Cudgera Creek, is ill-considered and described and is not supported – it appears an area previously supporting wetlands has been filled and will require further fill leading to a permanent change to existing residential amenity and will alter flooding behaviour with detrimental impacts on residential amenity and ecological regimes, adapted to the particular site regime.
- Creek Street itself contains tree species of significance due to their age and fauna habitat values and their retention must be the starting point from which minor variation may be sought, rather than an assumption that all may be removed. Road access into the site should be gained from Creek Street road reserve only and not encroach into the environmental protection zoned section.
- Flooding impacts on surrounding sites has not been adequately assessed. Additional flooding of adjoining sites appears likely as a result of the development and the natural drainage regime of the site will be largely altered, ultimately affecting the vegetation and habitat qualities of the site and surrounds (including communities and species that are not able to withstand further loss).
- Acid sulfate soils are insufficiently considered. Council's experience in undertaking pipeline upgrades to the Hastings Point sewerage treatment was that pockets of very high acidity were found along Creek Street. Disturbance of these soils close to the creek is to be avoided. Dewatering is likely to be required for service provision, yet has not been addressed.

- Contaminated land issues are insufficiently addressed to enable assessment. Disturbance of any potentially contaminated land has the ability to cause highly detrimental impacts to the sensitive estuarine environment.
- Recreational access to Cudgera Creek - Direct access to the creek should be prevented in this sensitive area supporting marine vegetation. Instead creek access at the existing bridge area and beyond should be encouraged.

Density of development - Density is too high to enable ecologically sustainable development to be achieved on such a sensitive site in very close proximity to a tidal estuary.

OPTIONS:

1. That Council endorse the key themes in the attached draft submission to the Department of Planning on the Application for Lot 156.
2. That the Council proposes an alternative draft submission to the Department of Planning on the Application for Lot 156.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Council has the opportunity to make a submission to the Department of Planning on the proposed Application for Lot 156.

Various internal experts have reviewed the Environmental Assessment Report recently on public exhibition. These comments have been collated into the attached draft submission.

The purpose of this report is to seek Council endorsement of the key themes provided in the attached draft submission and reinforce to the Department of Planning that the application as submitted raises major planning, engineering and ecological concerns and should be refused in its current format.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Submission to the Department of Planning (ECM 18777467)
2. First test of adequacy comments (18778482)
3. Second test of adequacy comments (18778483)

17 [PR-CM] Rural Fire District Service Agreement

ORIGIN:

Building & Environmental Health

FILE NO: Emergency Services – Bush Fire Brigades

SUMMARY OF REPORT:

Councils have a number of roles and responsibilities under the Rural Fires Act 1997. Many of these roles are now performed on Council's behalf by the Rural Fire Service (RFS) through a Service Agreement between the two parties. The Service Agreements to date have been administered in successive, three year periods.

The latest Tweed Council Service Agreement expired in October 2009, and is now in need of a renewal.

Officers of Tweed Council and the RFS have been working together in the preparation of a new Service Agreement. A copy of a Draft Service Agreement is attached to this report.

It is therefore recommended that Council approves the General Manager to enter into a new Rural Fire District Service Agreement with the New South Wales Rural Fire Service and affix the Common Seal of Council to the agreement.

RECOMMENDATION:

That Council approves the General Manager on Council's behalf to enter into a new Rural Fire District Service Agreement with the New South Wales Rural Fire Service and affix the Common Seal of Council to the agreement.

REPORT:

Councils have a number of roles and responsibilities under the *Rural Fires Act 1997*. Many of these roles are now performed on Council's behalf by the Rural Fire Service through a Service Agreement between the two parties under the provisions of Section 12A of the Act. The Agreement also includes arrangements for the use and maintenance of District Equipment, the occupation of buildings, land and maintenance thereof, and the provision of administrative, environmental and accounting support services.

Councils across New South Wales contribute 11.7% to the Rural Fire Fighting Fund for the provision of these services. For the 2010/11 financial year the estimated contribution for Tweed Shire Council is \$155 433.

The format of the Agreement was determined between the Rural Fire Service and the Local Government Shires Association with inclusions determined between the individual Council and the relevant offices of the NSW Rural Fire Service. The Agreement format has changed slightly from previous years to a continuous agreement with either party able to terminate the agreement on receipt of written notification.

The Agreement has operated very successfully from Tweed Shire Council's perspective.

The Service Agreements to date have been administered in successive, three year periods.

The latest Tweed Council Service Agreement expired in October 2009, and is now in need of a renewal.

Officers of Tweed Council and the RFS have been working together in the preparation of a new Service Agreement. A copy of a Draft Service Agreement is attached to this report.

It is therefore recommended that Council approves the General Manager to enter into a new Rural Fire District Service Agreement with the New South Wales Rural Fire Service and affix the Common Seal of Council to the agreement.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Financial – Annual agreed contributions, current proposed contribution \$155 433 for 2010/11

Resources – utilisation of Council services for the maintenance of District Equipment, buildings and land, and administrative, environmental and accounting support services.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Service Agreement between Tweed Shire Council and the NSW Rural Fire Service (ECM 19130456)
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18 [PR-CM] Development Application DA09/0685 for a Two (2) Lot Subdivision at Lot 2 DP 772129 Hogans Road, Bilambil

ORIGIN:

Development Assessment

FILE NO: DA09/0685 Pt1

SUMMARY OF REPORT:

At its meetings on 18 May 2010 and 15 June 2010, Council considered an application to undertake a two (2) lot rural subdivision of a 95.23 hectare parcel of land zoned 1(a) Rural in Bilambil. At its meeting on 15 June 2010, Council resolved:

“That the application be approved in principle, and Council officers bring back a report with conditions for consideration.”

This report is in response to the latest Council resolution and includes recommended conditions of consent in the Options section should the Council want to approve the two lot subdivision.

RECOMMENDATION:

That Development Application DA09/0685 for a two (2) lot subdivision at Lot 2 DP 772129, Hogans Road, Bilambil be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards.**
- 2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with State Environmental Planning Policy (Rural Lands) 2008 as the proposal will result in:**
 - development being incompatible with surrounding agricultural uses,**
 - potential to create land use conflicts**
 - the proposed subdivision not supporting or enhancing the agricultural production of the site.**
- 3. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 1(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not protect the rural character and amenity;**

4. Pursuant to Section 79C(1)(a)(i) the development proposal in seeking a subdivision for a residential purpose is not consistent with Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, as the proposed Lot 2 is below the minimum requirement of 40 hectares.
5. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed.
6. Pursuant to Section 79C(1)(e) the proposed development will result in a development with a dwelling house located on an undersized allotment (Lot 2) that does not enjoy a dwelling entitlement.
7. Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest as the development would create an undersized lot (Lot 2) in the 1(a) Rural zone.

REPORT:

Applicant: Mr B Ricker
Owner: Ricker Pastoral Company Pty Ltd
Location: Lot 2 DP 772129 Hogans Road, Bilambil
Zoning: 1(a) Rural
Cost: N/A

SUMMARY:

At its meetings on 18 May 2010 and 15 June 2010, Council considered an application to undertake a two (2) lot rural subdivision of a 95.23 hectare parcel of land zoned 1(a) Rural in Bilambil. Despite Council Officers recommending refusal, at its meeting on 15 June 2010, Council resolved:

“That the application be approved in principle, and Council officers bring back a report with conditions for consideration.”

In accordance with the resolution of Council dated 15 June 2010 in the Options section of this report provides draft conditions of consent should Council decide to approve this application.

Please note that the proposed Lot 1 (76.17ha) will comprise a structure that appears to have been illegally converted into a dwelling. The draft Condition 1 of this report details a recommended resolution to resolve this matter.

Furthermore, the Draft Conditions include a restriction on further subdivision of proposed Lot 1. This restriction reads at follows:

7. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
 - (a) Easements for sewer, water supply and drainage over **ALL** public services/infrastructure on private property.
 - (b) Proposed Lot 1 is not to be further subdivided.

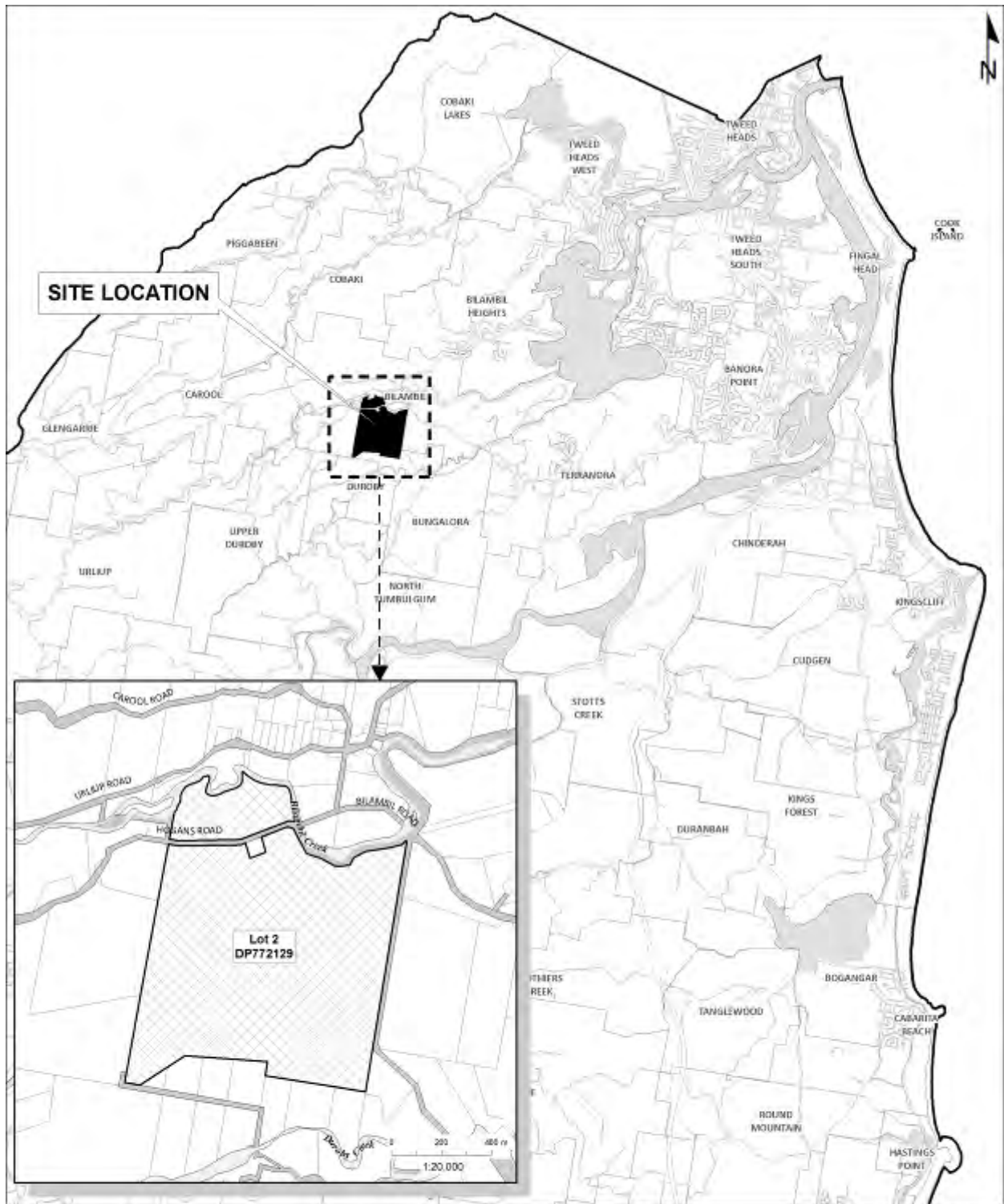
Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally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

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

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

[PSC0835]

SITE DIAGRAM:



LOCALITY PLAN

Lot 2 DP 772129,
Hogans Road, Bilambil

0 0.5 1 1.5 2 Km
1:100,000

Filename: z:\esr\planning\mxd\4dp_B&W SitePlan.mxd

Author: J Batheletor - Planning Reforms Unit

Date Printed: 04 May, 2010

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Coordinate System - NGA Zone 56
Datum - GDA 94

Cadastral: 04 May, 2010
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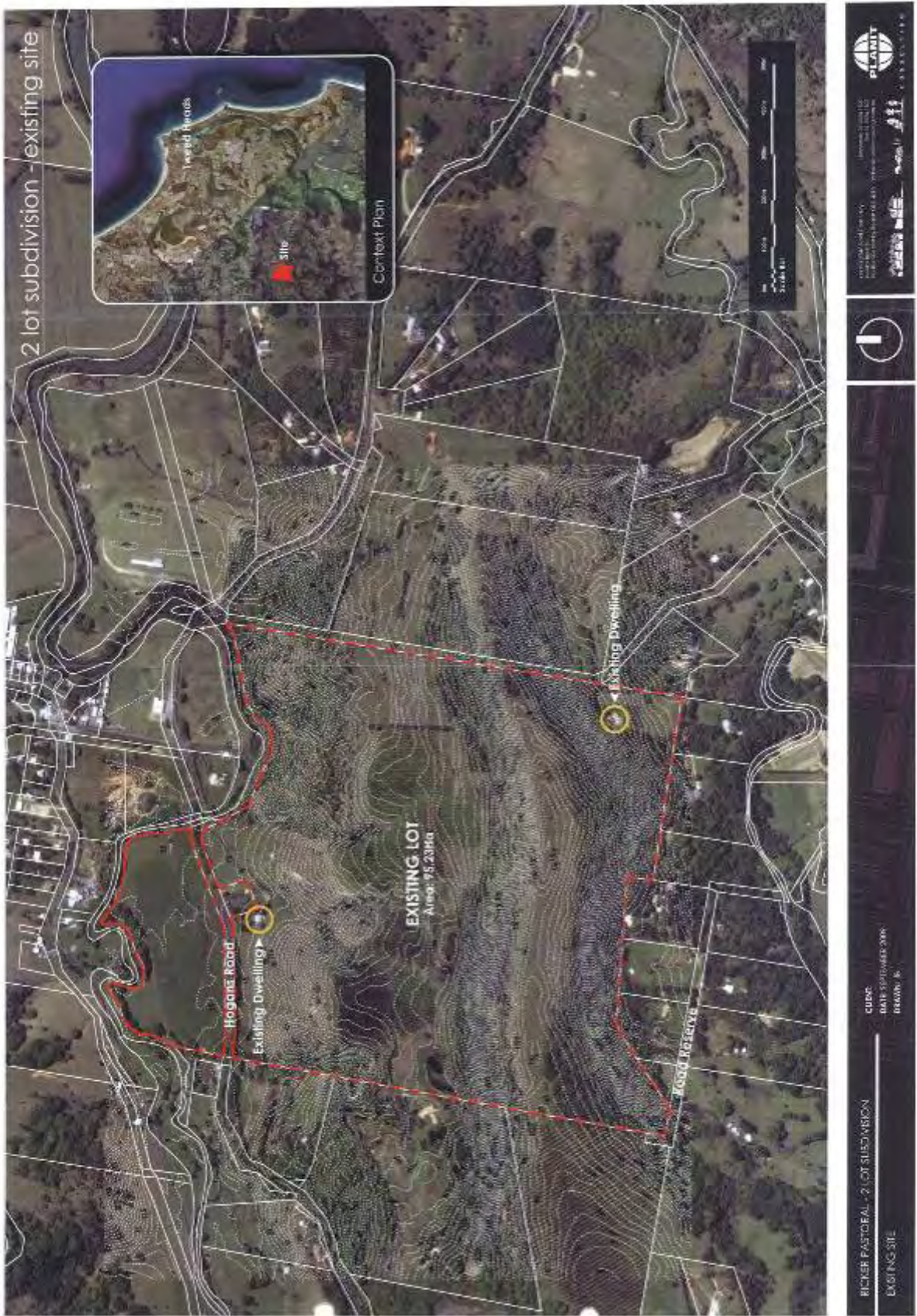
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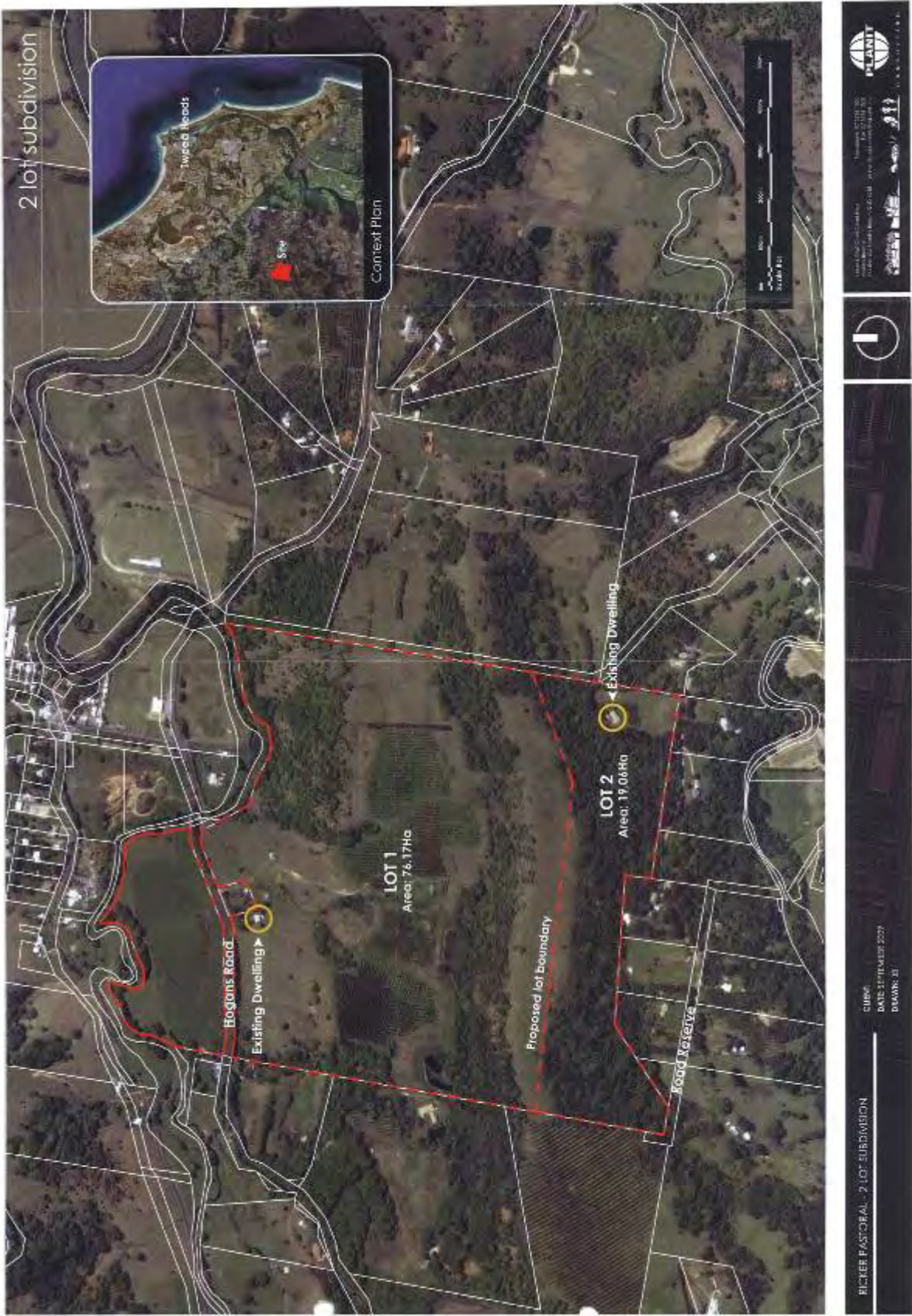


TWEED
SHIRE COUNCIL

DEVELOPMENT PLANS: Existing Lot Layout



Proposed Lot Layout



PLANNING
DATE: 25 FEBRUARY 2010
DRAWN: JI

RICHIE PASTORAL - 2 LOT SUBDIVISION

DATE: 25 FEBRUARY 2010
DRAWN: JI

PLANNING
DATE: 25 FEBRUARY 2010
DRAWN: JI

OPTIONS:

1. Determine the application as per the recommendation (by way of refusal) having regard to the previous Council Officers reports.
2. Determine the application by way of approval in accordance with the following Draft Resolution as follows:
 - A. That Development Application DA09/0685 for a two (2) lot subdivision at Lot 2 DP 772129, Hogans Road, Bilambil be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan prepared by Planit Consulting and dated September 2009, except where varied by the conditions of this consent. [GEN0005]
2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications. [GEN0125]
3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. [GEN0135]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

4. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans. [PSC0005]

5. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan: 6.5 Trips @ \$2358 per Trips (\$2143 base rate + \$215 indexation) S94 Plan No. 4 Sector12a_4	\$12851.68*
(b) Open Space (Casual): 1 ET @ \$526 per ET (\$502 base rate + \$24 indexation) S94 Plan No. 5	\$441.84*
(c) Open Space (Structured): 1 ET @ \$602 per ET (\$575 base rate + \$27 indexation) S94 Plan No. 5	\$505.68*
(d) Shirewide Library Facilities: 1 ET @ \$792 per ET (\$792 base rate + \$0 indexation) S94 Plan No. 11	\$665.28*
(e) Bus Shelters: 1 ET @ \$60 per ET (\$60 base rate + \$0 indexation) S94 Plan No. 12	\$50.40*
(f) Eviron Cemetery: 1 ET @ \$120 per ET (\$101 base rate + \$19 indexation) S94 Plan No. 13	\$100.80*
(g) Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$1759.9 per ET (\$1759.9 base rate + \$0 indexation) S94 Plan No. 18	\$1478.32*
(h) Regional Open Space (Casual) 1 ET @ \$1031 per ET (\$1031 base rate + \$0 indexation) S94 Plan No. 26	\$866.04*
(i) Regional Open Space (Structured): 1 ET @ \$3619 per ET (\$3619 base rate + \$0 indexation) S94 Plan No. 26	\$3039.96*

- * *Includes adjustments which effect compliance with the Directions from the Minister for Planning in relation to the maximum contribution payable per dwelling dated 13 January 2009 and 19 July 2009.*

[PSC0175]

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

[PSC0825]

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

- (a) Easements for sewer, water supply and drainage over **ALL** public services/infrastructure on private property.
- (b) Proposed Lot 1 is not to be further subdivided.

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

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

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

[PSC0835]

8. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[PSC0845]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

10. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0945]

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

[PSC1165]

12. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to a point no less than 45 metres from the front boundary of each allotment.

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

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

[PSC1175]

13. Prior to the issue of a Subdivision Certificate the applicant is required to lodge an application to alter the onsite sewerage management system servicing the dwelling located at Cavendish Road under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval. The alteration works shall be undertaken in accordance with the recommendations contained within the HMC Compliance and Feasibility Report HMC 2009.077 dated September 2009 or to the satisfaction of the General Manager or Delegate.

[PSCNS01]

14. Prior to the issue of a Subdivision Certificate the applicant is required to lodge an application to operate the two (2) separate onsite sewerage management systems on the property under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

[PSCNS02]

15. Details of the existing right of carriageway are to be shown on the plan of subdivision prior to the issue of a Subdivision Certificate.

[PSCNS03]

16. Prior to the issue of a Subdivision Certificate the unauthorised dwelling is to be removed or rendered uninhabitable, or made lawful.

[PSCNS04]

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

Asset Protection Zones

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

1. At the issue of a subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 1, to a distance of 10 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. At the issue of a subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 2, to a distance of 20 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire protection 2006' and the NSW Rural Fire Services document 'Standards for asset protection zones'.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.

3. The existing dwelling(s) on proposed Lots 1 and 2 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors, vents, weepholes and eaves.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision of the determination the applicant may determine to lodge an appeal with the Land and Environment Court.

POLICY IMPLICATIONS:

Should the recommendation of this report be upheld, no direct policy implications will occur.

CONCLUSION:

As stated in previous Council reports, Council Officers consider that approval of an allotment substantially below the development standard, will allow for the potential lawful creation of an additional allotment, thus the proposal is contrary to the zone objectives and the rural planning and subdivision principles within State and Local Environmental Planning Policy Frameworks. However, if Council resolves to approve the application, appropriate conditions of consent have been provided.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council report dated 18 May 2010 (ECM 18186088)
 2. Council report dated 15 June 2010 (ECM 18186092)
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19 [PR-CM] Development Application DA10/0066 for a Two (2) Lot Subdivision at Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi

ORIGIN:

Development Assessment

FILE NO: DA10/0066 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 97.3%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 1(b2) if the area of each allotment created is at least 40 hectares. Proposed Lot 12 has a total area of 5.99ha and is inclusive of the totality of 1(b2) zoned land on the subject site (1.08ha). This land is currently located within an 8.55ha allotment (current Lot 10), the majority of which is zoned 1(c). An existing 97.3% variation to the abovementioned development standard currently relates to the site.

The applicant seeks consent for a two (2) lot rural residential subdivision, including an addition to the existing 8m wide Right of Carriageway to provide access to proposed Lot 11.

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

- The proposal is consistent with the objectives of the zone; and
- The size of the existing lot is not large enough to maintain agricultural pursuits. The portion of the land affected by the zone 1(b2) is neither altered nor affected by this subdivision proposal.

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

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

RECOMMENDATION:

That Development Application DA10/0066 for a two (2) lot subdivision at Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi be approved subject to the following conditions: -

GENERAL

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

Plan No 17891D Sheet 1 Revision A Ref. No. M30974, prepared by B&P Surveys Consulting Surveyors and dated 6 May 2010

Plan No 17891D Sheet 2 Revision A Ref. No. M30974, prepared by B & P Surveys Consulting Surveyors and dated 6 May 2010,

except where varied by the conditions of this consent.

[[GEN0005]

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

[[GEN0125]

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

[[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[[PCC0285]

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

RURAL ACCESS

- (a) The existing gravel track providing access to the dwelling site on proposed lot 11 shall be upgraded to a 3.0m wide, 150mm compacted gravel pavement with a two(2) coat bitumen seal from the junction with the existing bitumen driveway to the dwelling site on proposed lot 11.**

[[PCC0875]

- 6. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.**

[[PCC0935]

- 7. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction**

Specifications shall be submitted to the Principal Certifying Authority for approval.

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

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

[[PCC0985]

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

[[PCC1155]

PRIOR TO COMMENCEMENT OF WORK

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

[[PCW0745]

DURING CONSTRUCTION

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

[[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[[DUR0205]]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[[DUR0215]]

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

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

[[DUR0795]]

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

[[DUR0815]]

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

[[DUR0985]]

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

[[DUR0995]]

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

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

[[DUR1005]

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

[[DUR1025]

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

[[DUR1795]

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

[[DUR1875]

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

Roadworks

- (a) Final inspections - on maintenance
- (b) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

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

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

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

[[DUR1895]

22. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[[DUR1955]

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

[[DUR2015]

24. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[[DUR2375]

25. Erosion and sediment control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.

[[DURNS01]

26. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.

[[POC1025]

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

[[USE0125]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[[PSC0005]

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying

Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP6: 1.2 ET @ \$10709 per ET \$12,850.80

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

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

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

[[PSC0165]

30. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$1601 per Trips \$10407

(\$1455 base rate + \$146 indexation)

S94 Plan No. 4

Sector10_4

(b) Open Space (Casual):

1 ET @ \$526 per ET \$526

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

- (c) **Open Space (Structured):**
 - 1 ET @ \$602 per ET \$602
 - (\$575 base rate + \$27 indexation)
 - S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
 - 1 ET @ \$792 per ET \$792
 - (\$792 base rate + \$0 indexation)
 - S94 Plan No. 11
- (e) **Eviron Cemetery:**
 - 1 ET @ \$120 per ET \$120
 - (\$101 base rate + \$19 indexation)
 - S94 Plan No. 13
- (f) **Extensions to Council Administration Offices
& Technical Support Facilities**
 - 1 ET @ \$1759.9 per ET \$1759.90
 - (\$1759.9 base rate + \$0 indexation)
 - S94 Plan No. 18
- (g) **Regional Open Space (Casual)**
 - 1 ET @ \$1031 per ET \$1031
 - (\$1031 base rate + \$0 indexation)
 - S94 Plan No. 26
- (h) **Regional Open Space (Structured):**
 - 1 ET @ \$3619 per ET \$3619
 - (\$3619 base rate + \$0 indexation)
 - S94 Plan No. 26

[[PSC0175]

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

[[PSC0725]

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

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

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

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

[[PSC0785]]

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

[[PSC0825]]

- 34. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[[PSC0845]]

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

The following information must accompany an application:

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

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

[[PSC0885]]

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

- (a) Compliance Certificate - Water Reticulation

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.

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

[[PSC0915]

37. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[[PSC0945]

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

[[PSC1165]

39. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to a point no less than 45 metres from the front boundary of each allotment.

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

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

[[PSC1175]

40. Prior to the issue of the subdivision certificate the applicant shall obtain from Council approval to operate the existing on-site sewage management system servicing the dwelling on proposed lot 12 under Section 68 of the Local Government Act 1993.

[[PSCNS01]

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

1. Landscaping surrounding the existing dwelling is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Mr J Parsons
Owner: Mr J Parsons and Mrs SM Parsons
Location: Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi
Zoning: 1(b2) Agricultural Protection, 1(c) Rural Living
Cost: \$50,000

BACKGROUND:

History

Current Lot 10 in DP 1034435 was created in 2001 following approval of K99/1284, a two-lot rural residential subdivision of Lot 8 in DP 803002 (10.02ha), on 28 January 2000. Lot 9 in DP 1034435 was also created, which is a 1.468ha parcel with a narrow frontage to Clothiers Creek Road with a Right of Carriageway over Lot 10 for means of access and water supply. Lot 8 was inclusive of the minor portion of land currently zoned 1(b2).

Lot 8 in DP 803002 was created in 1990 following approval of subdivision 80/90. This subdivision was a rearrangement of two allotments, Lot 13 in DP 567949 (14.97ha) and Lot 6 in DP 773854 (37.86ha), both of which had frontage to Eviron Road to the north. The subject site was contained within the southern portion of the latter parcel. It was at this stage that the basic shape of the allotment was created to contain a minor portion of 1(b2) zoned land.

Aerial imagery indicates that the basic shape of the subject site was created originally to cater for a small pocket of vegetation located in the north-eastern corner. It was not possible historically to use this land for agricultural purposes and the subsequent shape of the allotment through the subdivision history reflects this. This can be verified through aerial imagery dating back to 1962.

Structures on the subject site are lawful:

- D90/0097: erection of a private dwelling
- 0637/90B: swimming pool.

The Subject Site

The subject property is legally described as Lot 10 DP 1034435 and is more commonly known as 285 Clothiers Creek Road, Nunderi. The property has an area of 8.552 hectares and contains an existing residential dwelling, swimming pool and various farm sheds and improvements. Vehicular access to the site is provided by way of an existing bitumen driveway from Clothiers Creek Road. The property is irregular in shape being defined by an access handle fronting the road.

The site is generally clear of vegetation other than a remnant pocket of bushland in the north east corner of the site. Scattered vegetation is also found on adjoining properties, whilst the land to the north is utilised for the growing of sugar cane.

A dam is located centrally along the northern boundary of the existing allotment.

An existing 3m wide easement for water supply is located adjacent the existing bitumen driveway and benefits Lot 9 in DP 1034435. An existing 8m wide and variable width Right of Carriageway is located generally over part of the existing bitumen driveway and is for the purpose of gaining vehicular access to Lot 9 in DP 1034435.

There is a Restriction to User that burdens all allotments within DP 1034435. Terms of the restriction relate to satisfactory On-Site Sewer Management Systems, driveway configurations and water storage facilities.

The Proposed Development

The applicant seeks consent for a two (2) lot rural residential subdivision, including an addition to the existing 8m wide Right of Carriageway to provide access to proposed Lot 11. Land areas of the proposed lots are as follows:

- Lot 11 = 2.56ha
- Lot 12 = 5.99ha (retention of existing dwelling)

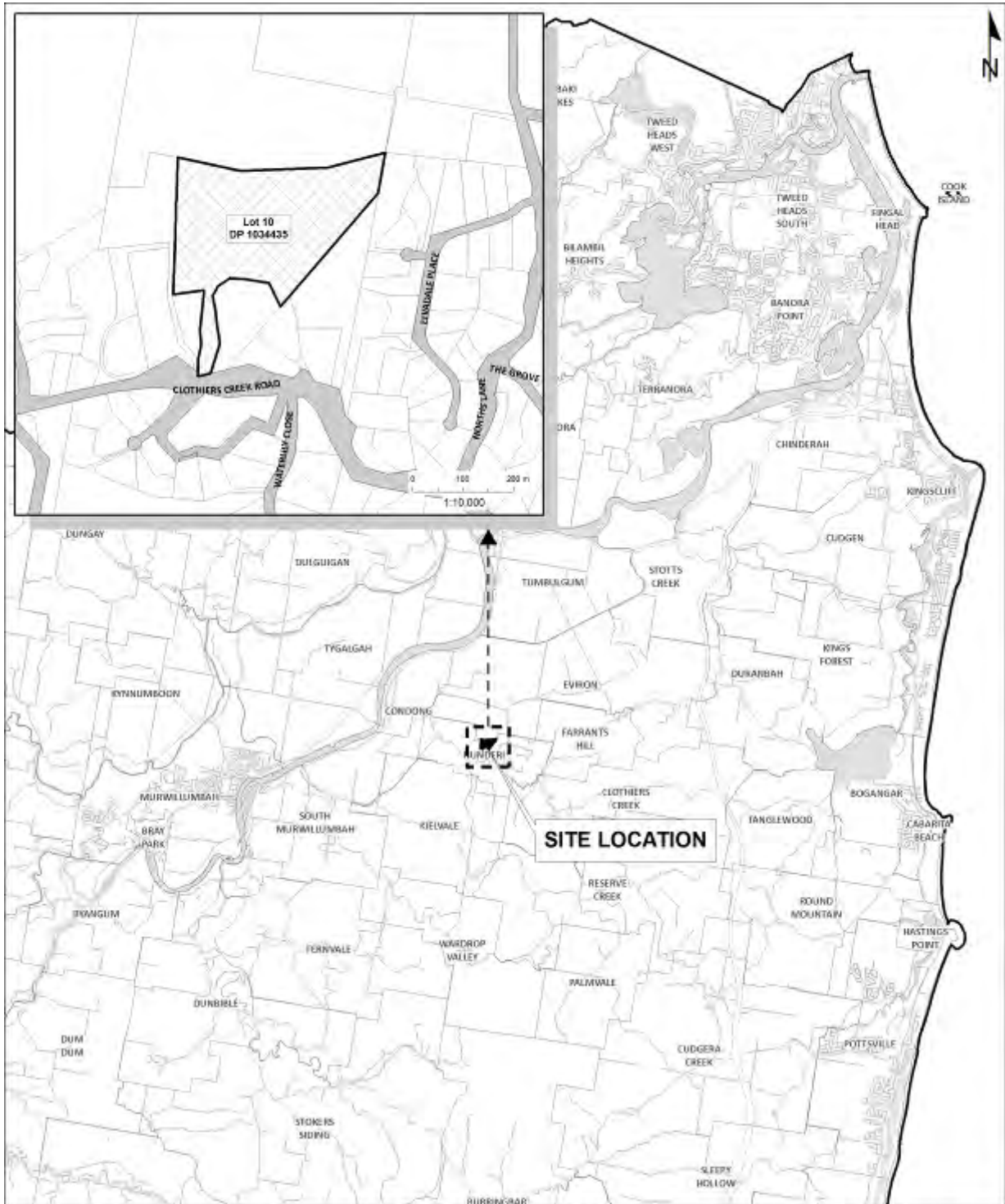
The proposal includes:

- Subdivision of the site into 2 residential lots (Torrens Title)
- Additional provision of Right of Carriageway over the existing bitumen driveway to benefit proposed Lot 11
- Nomination of a suitable dwelling site for proposed Lot 11.

Summary

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

SITE DIAGRAM:



LOCALITY PLAN

Lot 10 DP 1034435
No. 285 Clothiers Creek Road, Nunderi

Filename: z:\esrp\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Bachelor - Planning Returns Unit

Date Printed: 24 June, 2010

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Cadastral: 25 June, 2010
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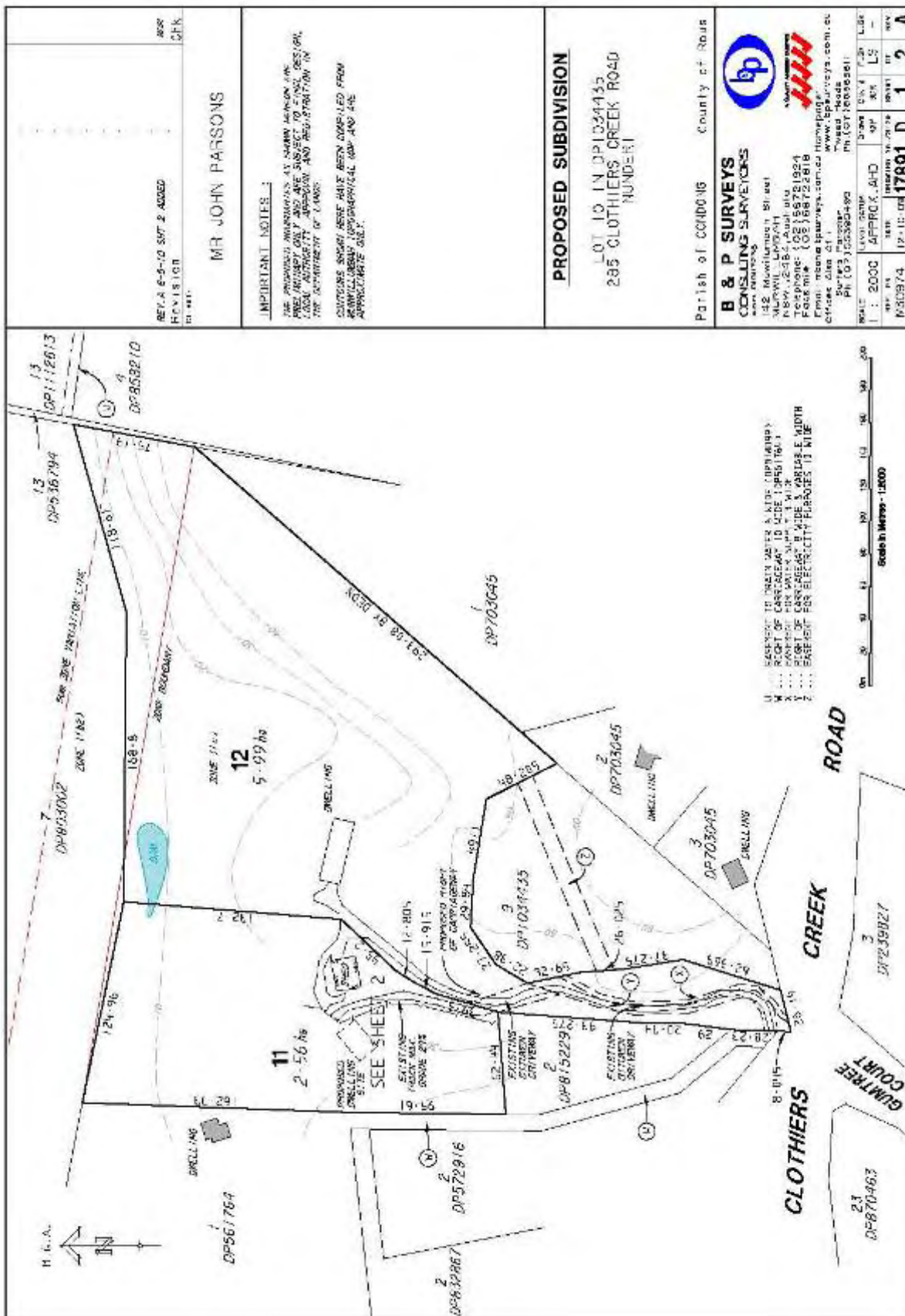
Coordinate System: - MGA Zone 56
Datum - GDA 84

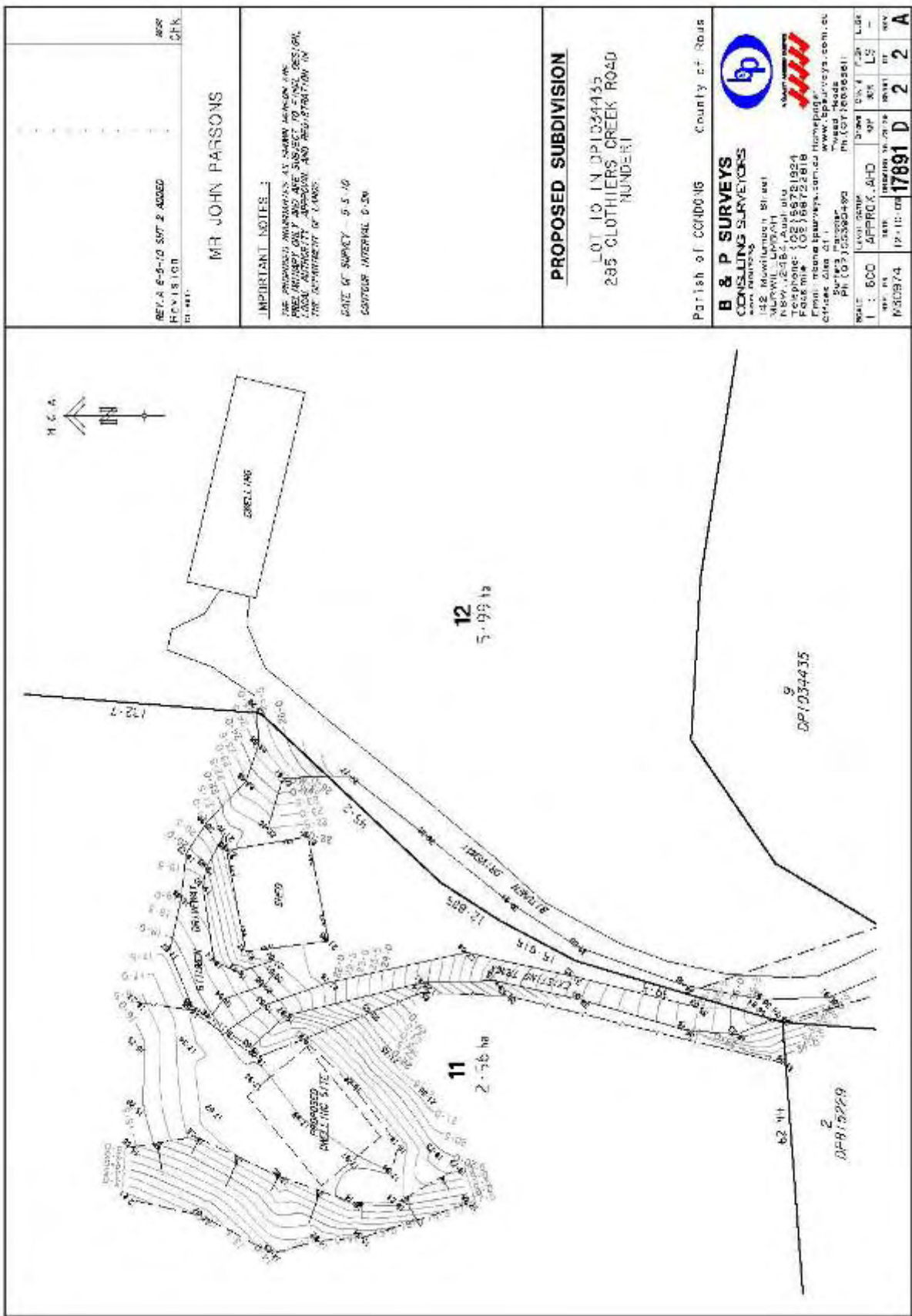
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W: www.tweed.nsw.gov.au
E: planning@twec.nsw.gov.au



DEVELOPMENT PLANS:





REV. A 6-9-10 SWT 2 ADDED
 CHECK
 10-11-10

MR JOHN PARSONS

IMPORTANT NOTES:
 THE PROPOSED SUBDIVISION IS SHOWN SUBJECT TO THE
 LOCAL AUTHORITY'S APPROVAL AND REGULATIONS IN
 THE INTEREST OF LANDS.
 DATE OF SURVEY - 5.5.10
 CONTOUR INTERVAL 0.5m

PROPOSED SUBDIVISION

LOT 10 LN DP1034435
 285 CLOTHIERS CREEK ROAD
 HUNDEET

Parish of COHOONIS County of Rous

B & P SURVEYS
 CONSULTING SURVEYORS
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 10/155-157 Macleay Street
 Newcastle NSW 2288
 PH: (02) 55884999




SCALE	LEVEL	DATE	BY	CHK	REV
1: 600	APPROX. AHD	05/05/10	JP	LS	-
NS0974	12-11-10	DP1034435	D	2	2
			A		

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

The site is zoned 1(c) Rural Living & 1(b2) Agricultural Protection as per the Tweed LEP 2000.

1(c) Rural Living Zone

Primary objectives of the 1(c) Rural Living zone relate to the enabling of rural residential development which does not compromise rural activities within the vicinity, detract from rural amenity or place unreasonable demands for the extension of public amenities or services. They also permit quality rural residential development that makes a positive contribution to existing local rural character.

The secondary object of the zone enables other development that is compatible with rural residential development.

The proposed subdivision is consistent with the applicable primary objectives of the zone in that it represents quality rural residential development of appropriate scale and character to that of the locality. It will not result in a burden on public amenities or services.

Dwelling houses not connected to Council's reticulated sewerage system are permissible if they are located on allotments with a minimum area of one (1) hectare (refer Clause 21 of the Tweed LEP 2000). The proposed lots, at 2.56ha and 5.99ha meet the minimum requirement of one (1) hectare.

1(b2) Agricultural Protection Zone

The primary objective of the 1(b2) Agricultural Protection Zone relates to the protection of identified prime agricultural land from fragmentation and the economic pressure of competing land uses.

The secondary objective allows other development that is compatible with agricultural activities.

Dwelling houses are permissible with consent on an allotment of at least 40 hectares. This is discussed in detail below in this report in relation to the SEPP 1 variation to development standards.

In any case, the proposed subdivision does not alter the original zoning configuration of the subject site and does not impact upon the historical and continuing use of the 1.08ha portion of land zoned 1(b2) for purposes other than agricultural activity. The land is vegetated and used as open space in association with existing rural residential development. This land use is considered compatible with the zone objectives.

Clause 15 - Essential Services

Council's reticulated potable water supply is available to the area. A water reticulation service exists for the dwelling in existing Lot 10 (proposed Lot 12). This will be maintained.

Recommended conditions of consent shall require the provision of service for proposed Lot 11 from Clothiers Creek Road to the proposed Lot 11 frontage in accordance with Council's standards.

Council's piped effluent disposal infrastructure is not available within the area.

Electricity services are currently provided to the area via Country Energy infrastructure. Telecommunications services are currently provided to the area via Telstra Infrastructure.

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

Council's Enlighten indicates that the site is generally covered by Class 5 Acid Sulfate Soils. There are a couple of small areas along the northern boundary that exhibit Class 2 soils. However, it is not envisaged that any earthworks will be required in these locations and the ground will remain undisturbed.

Other Specific Clauses

Clause 34 – Flooding

Council's Enlighten indicates that a section of the existing allotment is flood liable with a Design Flood Level of RL 4.5m AHD. This flood liable area is situated away from the proposed dwelling footprint on proposed Lot 11 and the existing dwelling on proposed Lot 12.

Specific Clauses

Clause 19 – Subdivision (General)

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

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

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

Clause 20 provides for the subdivision in 1(b2) zoned land if the area of each allotment created is at least 40 hectares. This application proposes to maintain the same 1.08ha area of 1(b2) zoned land (along with 4.91ha of 1(c) zoned land) within a parcel with a total land area of 5.99ha.

There is no change to the land zoned 1(b2). The land will be included in the proposed lot for the existing dwelling. No development is proposed on the land zoned 1(b2). It is therefore the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General and is discussed in full at a later stage within this report.

Clause 21 – Subdivision in Zone 1(c)

The objective of Clause 21 is to ensure that the semi-rural character and environmental values of the locality are protected.

The proposal is in accordance with Clause 21 as each of the proposed lots which are not connected to the Council's reticulated sewerage system, have an area not less than 1ha. A tank water supply is nominated for use in association with the existing dwelling and will be required to be provided for any future dwellings.

Existing areas for on-site treatment and disposal of sewage in association with the existing dwelling have been reviewed and assessed as acceptable by the Environmental Health Unit.

Clause 22 – Development near Designated Roads

Clothiers Creek Road is a Council Designated Road. The objectives of this clause are to protect and improve the operation of designated roads and prevent

development being unsuitably located near a noisy designated road, or prevent development spoiling the scenic attractiveness of such a road.

Access to the subject site is from Clothiers Creek Road. However, this access is by way of a driveway only. The site does not have useful frontage to the designated road. Access will not be changed as a part of this application and it is not possible to locate dwellings any closer than 250m from this road.

Therefore, the objectives of this clause are considered to be satisfied.

Clause 24 – Setbacks to Designated Roads

As discussed above, the existing and proposed dwelling associated with the subdivision are located no closer than 250m from the designated road. This complies generously with the desired 30m setback set out in this clause.

Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the NSW Rural Fire Service on 24 February 2010 for consideration and comment, as the subject site is bushfire prone land. A response was received 30 March 2010. The Service recommended a condition be attached to the development consent, should it be granted.

The condition relates to Landscaping.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

The history of the use of the site for the past 50 years indicates that of dairy farming and residential use. The small parcel of land zoned 1(b2) Agricultural Protection has not been farmed, as indicated in aerial photography dating back to 1962.

Adjoining and surrounding land is utilised for rural residential and cane farming purposes.

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

Clause 43: Residential development

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

Site erosion will be minimised as there are no works proposed. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 1(b2) zone for subdivision purposes as contained within Clause 20(2)(a) of the Tweed LEP 2000.

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

Consent may only be granted to the subdivision of land:

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

The applicant contends that *the land is not altered or affected by this proposed subdivision.*

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

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

“With reference to provisions of State Environmental Planning Policy No. 1 – Development Standards, we advise that a minor portion of subject land, located in the north-eastern corner is currently zoned 1(b2) Agricultural Protection. This land is not altered or affected by this proposed subdivision. We advise that this area of subject land is currently not, nor has been, used for agricultural purposes. The existing land form, land ownership and vegetation does not lend itself towards these uses.

The remainder of subject land is zoned 1(c) Rural Living, which is consistent with the character and focus of the lands to the east, west and south of the subject land. As such, we consider the proposed development is consistent with the planning objectives and criteria of this locality.

Due to the minor portion of subject land in the north-eastern corner being zoned 1(b2) Agricultural Protection, it is necessary to obtain flexibility in the application of planning controls operating over this said portion of land.

We note that the minimum lot size for land within zone 1(b2) Agricultural Protection is 40ha. The standard is considered unreasonable and unnecessary due to the following points:

- *subject land has always been less than 40ha*
- *the minor portion of subject land affected by zone 1(b2) Agricultural Protection is neither altered or affected by this subdivision proposal*
- *the existing topography, land uses and existing vegetation is not considered consistent with agricultural use."*

Assessment of the applicant's submission:

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

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

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

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

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

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

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

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

The proposal provides for a Torrens Title subdivision that incorporates one new allotment and no unreasonable burden on public infrastructure.

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

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

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

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

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

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

- The proposal is consistent with the objectives of the zone; and
- The size of the existing lot is not large enough to maintain agricultural pursuits. The portion of the land affected by the zone 1(b2) is neither altered nor affected by this subdivision proposal.

SEPP (Rural Lands) 2008

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

None of the provisions contained within the SEPP relate specifically to this site. The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

The shire-wide Draft Local Environmental Plan was recently placed on exhibition. The draft zones are R5 Large Lot Residential and RU1 Primary Production. The proposed subdivision includes a minor 1.08ha portion of land draft zoned RU1 that will not be affected by the proposal. Minimum allotment sizes for the draft zones are as follows:

- 1ha for R5
- 40ha for RU1.

This is consistent with current zoning provisions. Objectives for both zones are also consistent with current zoning provisions.

Dwelling houses are permissible forms of development in both draft zones. A 'dwelling house' is a form of 'Residential' development'.

Land Use Controls:

R5

3 Permitted with consent

Bed and Breakfast Accommodation; Dual Occupancy (attached); Dwelling houses; Home Industry; Roadside Stalls;
Any other development not specified in item 2 or 4

RU1

3 Permitted with consent

Agricultural Produce Industries; Animal Boarding or Training Establishment; Aquaculture; Bed and Breakfast Accommodation; Biosolid waste applications; Boat Sheds; Cellar Door Premises; Dual Occupancies (attached); Dwelling houses; Extractive Industries; Farm Buildings; Farm Stay Accommodation; Flood Mitigation Works; Forestry; Helipads; Home Based Child Care; Home Businesses; Home Industries; Intensive Livestock Agriculture; Mining; Roadside Stalls; Rural Worker's Dwellings; Turf Farming; Water Recreation Structures; Water Storage Facilities.

Any other development not specified in item 2 or 4

Clause 4.6 (6) states that consent must not be granted under this clause for a subdivision of land in Zone RU1 if:

- a. The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- b. The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

In the case of this subdivision proposal, the development standard is varied considerably which would require the applicant to justify the contravention of the development standard and for concurrence of the Director-General to be obtained by the consent authority.

This is a similar process to that which is conducted under SEPP 1, which has been discussed above in this report.

It is therefore concluded that the subdivision proposal may be assessed as a form of development that would be considered favourably under the draft zoning provisions.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

Council's Enlighten indicates that a section of the existing allotment is flood liable with a Design Flood Level of RL 4.5m AHD. This flood liable area is situated away from the proposed dwelling footprint on proposed Lot 11 and the existing dwelling on proposed Lot 12.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

A5.5.2 Physical Constraints

The rural subdivision proposal is consistent with the surrounding neighbourhood and utilises the existing rural layout and topographical features.

The existing and proposed dwelling sites for this proposed subdivision are both located above acceptable 2009 flood levels. Filling land on a floodplain does not form part of this application. The dwelling sites are not located within any natural water course or drainage system.

The proposed subdivision will not involve the clearing of any vegetation. It integrates with the surrounding rural environment and compliments existing scenic rural landscapes. The proposed dwelling site and additional access for Lot 11 is considered to be sensitive to the visual amenity of the site and as such is deemed not to detract from the scenic quality or view corridors of the surrounding neighbourhood.

A5.5.3 Rural Water Courses & Drainage

The subject land is traversed by natural gullies and water courses. The proposal will not change or affect the natural flow paths.

A5.5.4 Rural Subdivision Structure

The proposed subdivision is consistent with the zone objectives and is consistent with the existing rural character and amenity of the adjoining rural neighbourhood to the east, west and south of the subject land. The proposed subdivision is not an isolated rural development and is not anticipated to provide an unsustainable demand on public amenities and services.

A5.5.5 Rural Subdivision and Lot Layout

The position of the proposed new lots was determined taking into consideration the topography, position of existing structures, the landscape and visual character and the environmental values of the locality. The proposed lots comply with the minimum lot sizes outlined in Clause 21(2) of the TLEP 2000 for the subdivision of land zoned 1(c).

A5.5.6 Rural Movement Network

The subject land gains access from Clothiers Creek Road via an existing bitumen driveway. A Right of Carriageway will be provided over the existing bitumen driveway which will benefit proposed Lot 11 and the width of such will comply with the minimum standards as per the DCP. A total of three allotments will share this existing driveway, which is acceptable to the requirements. The proposed subdivision will not affect the existing situation regarding the traffic volumes and the like.

On-site sewer management will be carried out in accordance with the necessary environmental and health protection guidelines and proposed Lots 11 and 12 will be connected to the public reticulated water supply, which enters the site off Clothiers Creek Road.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

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

Access, Transport and Traffic

The proposed two-lot subdivision has frontage to Clothiers Creek Road which is an asphalt sealed road pavement in excellent condition. The horizontal, vertical alignments and cross section profile are considered satisfactory.

Adequate site distance exists at the intersection of Clothiers Creek Road.

A public transport system currently services Clothiers Creek Road and the Nunderi area. This is accessible to the proposed development.

Access to proposed Lots 11 and 12 will be via the existing 'Right of Carriageway' laneway from Clothiers Creek Road which is contained within existing Lot 10 DP 1034435 and serves existing Lot 9 DP 1034435. The existing laneway is bitumen sealed and in good condition.

Currently no footpaths are constructed in Clothiers Creek Road. Adequate parking and manoeuvring is available to each proposed allotment.

The proposed development will not generate any significant additional traffic to the Clothiers Creek Road and Nunderi area. However, the road network in the area has sufficient capacity to cater for any additional traffic.

(c) Suitability of the site for the development

Surrounding Land Uses / Development

The property is generally surrounded by rural residential development to the east, south and west but overlooks the extensive cane field system of the Tweed Valley to the north.

Amenity

The proposed dwelling site is setback approximately 150m from the boundary with adjacent cane growing activities. It is noted that the existing dwelling on Lot 10 is located closer than the proposed dwelling. Further, another dwelling exists on the adjacent Lot 1 DP 561764 about 50m from the boundary.

The proposed 150m setback is considered reasonable to minimise the potential for cane farming practices to impact upon further residents.

Flora and Fauna

The main vegetation affecting the property is located in the north east corner of the site and to a lesser extent on the property to the west. The majority of the property is clear of any bushland and is utilised in part for intermittent grazing of livestock.

Topography

The property is situated on the northern side of a small hill in Nunderi and has elevated views overlooking the cane fields of the Tweed Valley to the north.

The subject site is a combination of flat, gentle and moderately sloping land. The land slopes up initially from the formed Clothiers Creek Road frontage then slopes down in a gentle manner to the rear.

Site Orientation

Views from the existing dwelling and proposed dwelling sites are in a north and north-west direction across the existing adjoining agricultural lands. The proposed dwelling site for Lot 11 will not visually impede the existing dwelling or adjoining dwelling's view corridors.

Effluent Disposal

An On-Site Sewage Management Design Report was submitted. The report assesses the treatment system associated with the existing dwelling and provides design detail for a new system for the proposed dwelling.

It is considered that the on-site sewage treatment and disposal method as detailed in the Design Report including all recommendations of the report is sufficient to attain an acceptable level of environmental impact within the allotment boundaries as assessed in accordance with AS1547/2000.

Contaminated Land

Application documentation states that the 'subject land is currently not, nor has been, used for agricultural purposes'.

The current Lot 10 was created by a previous subdivision and notes on the file indicate that a letter was provided to Council which confirmed that the property was used for dairying for the previous 50 years.

This information remains relevant and no further information was sought in support of the application.

Stormwater Drainage

The proposed lots have sufficient grades to convey stormwater to the existing watercourses within the respective proposed allotments. Proposed Lot 11 will discharge to the existing gully / watercourse to the west of the proposed dwelling footprint and proposed Lot 12 will continue to discharge stormwater as per the existing stormwater discharge arrangement.

Small watercourses on the site discharge to dams located at the northern boundary of the existing allotment. On-site detention is not required and stormwater will be directed to the existing watercourses / gullies.

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

The application was not required to be notified but was referred, as integrated development to NSW Rural Fire Service for comment. One condition in relation to landscaping was imposed.

(e) Public interest

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

OPTIONS:

1. Approve the development application with conditions; or
2. Refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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

ORIGIN:

Development Assessment

FILE NO: DA08/1056

SUMMARY OF REPORT:

At its meeting on 18 May 2010, Council refused the Development Application DA08/1056 for a Rural Worker's Dwelling at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay.

Council has been served notice of a Class 1 Appeal against Council's determination in the NSW Land and Environment Court. The first call-over with the Court has been set down for Monday 9 August 2010 and Council's position on defending the Appeal to enable engagement of solicitors is requested.

RECOMMENDATION:

That:

1. Council instructs its solicitors to suspend acting on the original Council resolution to commence proceedings (for a breach of the Environmental Planning and Assessment Act 1979) dated 18 May 2010 and defend the Class 1 application (Case No. 10535/10 filed by J & P Griffis in the Land and Environment Court on 6 July 2010) and on completion of the Class 1 proceedings proceed with action required by Council's resolution dated 18 May 2010 if necessary.
2. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

REPORT:

The proposed development (DA08/1056) is for the conversion of a 360m² farm shed to a rural worker's dwelling approximately four kilometres north of Murwillumbah.

The subject site has an area of 2.04ha, with frontage to Tomewin Road and Sanderson Place, Dungay. The site incorporates a dwelling, associated pool and tractor shed at the front of the site. The unlawfully converted farm shed is located to the rear of the site.

The farm shed was approved on 4 September 2006. In breach of Condition 26 of the development consent, the farm shed was converted for use as a dwelling.

The development standard within Clause 18(3) of the Tweed Local Environmental Plan 2000 that allows a rural worker's dwelling to be located within the 1(a) Rural Zone is varied up to 95%. Concurrence was not granted by the Director General and the rural worker's dwelling was not considered suitable for the location.

Council officers submitted a report to Council's meeting of 18 May 2010 recommending refusal DA08/1056. At this meeting Council resolved to refuse the application based on the following reasons:

"RESOLVED that: -

- A. *Development Application DA08/1056 for the conversion of an existing farm shed to rural workers dwelling at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay be refused for the following reasons:*
- 1. The Department of Planning has not issued concurrence.*
 - 2. The proposed land use does not comply with the 40 hectare minimum development standard contained within Clause 18(3) of the Tweed LEP 2000.*
 - 3. The SEPP 1 objection has not demonstrated that the development standard is unnecessary and unreasonable.*
- B. *Council engages it's Solicitors to commence legal proceedings (for a breach of the Environmental Planning and Assessment Act 1979) in respect of the unauthorised works at Lot 1 DP 803636, No. 9 Sanderson Place, Dungay, and seek reinstatement of the use as farm shed as part of the legal proceedings."*

Following Council's determination, the officers engaged the firm Sparke Helmore Lawyers to act upon Council's resolution to commence legal action in respect of the unauthorised use of the shed.

Council has since been served notice of a Class 1 Appeal against Council's determination. Council's Solicitors have advised (see Confidential Attachment) that it is accepted Land and Environment Court practice that in circumstances where both Class 1 and Class 4 action are concurrently activated for one matter, that the Court will deal with the Class 1 action first, before the Class 4 action is considered.

OPTIONS:

Comment:

There are no alternate options given Council has no authority to negotiate Consent Orders given the application was not granted concurrence from the Department of Planning.

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.

Should Council proceed with the original resolution at this stage, the Land and Environment Court will hold a Class 4 application in abeyance until such time as the Class 1 appeal is determined.

However, should the Class 1 appeal prove unsuccessful, Council may initiate Class 4 proceedings against the applicant as originally intended in the resolution dated 18 May 2010.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. **Confidential Attachment** Letter from Council's Solicitors dated 25 June 2010 (ECM 18976874).
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21 [PR-CM] Refund of Application Fees Associated with Development Application DA09/0482 and Construction Certificate CC09/0416 for Alterations to Existing Tennis Shed Providing a Usable Building for the General Community During Community Activities at Lot 23

ORIGIN:

Development Assessment

FILE NO: DA09/0482 Pt1

SUMMARY OF REPORT:

The applicant, Uki Public Hall and Recreation Reserve Trust, has requested a refund of Council's fees associated with Development Application and Construction Certificate relating to the subject development. The landowner and applicant are a non-for profit organisations with the subject development providing a public benefit to the community. The total amount requested is \$345.40.

The break down of Council's fees are as follows:

DA fee	\$198.50
Environment Enforcement Levy	\$9.50
Construction Certificate Application	\$125.40
Inspection Fee	\$220.00
TOTAL	\$345.40

The Uki Public Hall and Recreation Reserve Trust, has received two donations in the last three consecutive years being an amount of \$1200 on 30 September 2008 and \$550 on 18 August 2009. 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.*

RECOMMENDATION:

That Council's fees associated with Development Application DA09/0482 and Construction Certificate CC09/0416 for alterations to existing tennis shed providing a usable building for the general community during community activities at Lot 233 DP 721129, No. 1462 Kyogle Road, Uki not be donated to the Uki Public Hall and Recreation Reserve Trust, as the donation policy does not permit more then two donations within any consecutive three year period.

REPORT:

As per summary

OPTIONS:

1. Council donates a total of \$345.40 to the applicant being the fees associated with DA09/0482 and CC09/0416.
2. Council declines to donate Council's fees associated with DA09/0482 and CC09/0416.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The applicants request for a refund of Council's fees associated with the Development Application and Construction Certificate is supported as the landowner and applicant are non-for profit organisations 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.

22 [PR-CM] Development Application DA09/0106 for a Roadside Stall at Lot 10 DP 252918, No. 852 Tyalgum Road, Eungella

ORIGIN:

Development Assessment

FILE NO: DA09/0106 Pt1

SUMMARY OF REPORT:

Consent is sought for a roadside stall to be located within the prescribed 30m setback distance to a designated road under Clause 24 of the Tweed Local Environmental Plan 2000. A SEPP 1 objection has been submitted by the applicant in this regard as the proposed roadside stall is located only 12m from Tyalgum Road, a Council designated road. Planning officers have reviewed the SEPP 1 objection and consider that strict application of Clause 24 is unreasonable and unnecessary in the circumstances of the case, given the minor nature of the proposed development and the SEPP 1 objection should be supported.

The proposed roadside stall has a total area of 20m² and will sell organic produce grown on the subject farm. A total of two (2) car parking spaces have been supplied to the satisfaction of Council's Traffic Engineer, with ample room within the site boundaries for additional parking if required.

The application has been reviewed by Council's Development Traffic Advisory Group (DTAG) and Council's Development Assessment Engineer, Traffic Engineer, Building Surveyor and Environmental Health Officer and appropriate conditions have been applied by each officer.

As such, conditional approval of the application (inclusive of the SEPP 1 objection) is recommended.

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 24 of Tweed Local Environmental Plan 2000 regarding a 30m setback for development from designated roads be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA09/0106 for a roadside stall at Lot 10 DP 252918, No. 852 Tyalgum Road Eungella be approved subject to the following conditions:**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Site Plan and Location Plan submitted to Council 9 March 2009 and car parking plan submitted to Council 21 June 2010, except where varied by the conditions of this consent.
[GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
3. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.
[GEN0300]
4. Only primary products produced on the property on which the stall is situated are permitted to be sold from the roadside stall. All produce offered for sale from the roadside stall is to be whole i.e.: no sale of cut produce is permitted without prior approval from Council's General Manager or delegate.
5. The total area of the roadside stall shall not exceed twenty (20) square metres.
[GENNS01]
6. The approved advertising sign shall have an area of not greater than 1m x 1.2m and shall be displayed wholly within the boundaries of the subject site at all times. The sign shall be removed at the close of business each day.
7. The stall shall not be adapted or used for residential accommodation or for any purpose other than a roadside stall without prior consent from Council's General Manager or delegate.
[GENNS02]

PRIOR TO COMMENCEMENT OF WORK

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

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

[PCW0215]

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

[PCW0225]

10. 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]

DURING CONSTRUCTION

11. The provision of a minimum of two (2) off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code. Car parking spaces are to be constructed of compacted screened road base and clearly marked as 'customer parking' at all times.

[DUR0085]

12. 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]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0245]

15. 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]

16. 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]

17. Provision to be made for a flood free storage area for equipment susceptible to water damage.

[DUR1395]

18. All display shelves or benches must be of a durable, smooth, impervious material capable of being easily cleaned.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

19. 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]

20. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300 650 124.

[POCNS01]

USE

21. 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]

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

7.00am to 6.00pm Monday to Sunday

[USE0185]

23. The use being restricted to the floor area designated on the approved plan. No retail activities shall occur outside the nominated stall area (20m²) as identified on the approved plan.

[USE0415]

24. No intensification of use beyond the provision of the sale of whole produce (no cutting allowed) sold on the same property of the farm is permitted without the approval of the General Manager or his delegate.

[USE0855]

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

[USE0965]

26. Either a suitable management plan for the water supply of the rainwater tank at the farm stall is put in place and regular testing shows that the water is free of contamination OR a warning sign is placed at the water outlet of the rainwater tank of the farm stall with the wording "*WARNING - The drinking water here is not monitored or treated. Water quality may not meet Health Guidelines*" or "*Warning - water not suitable for drinking*".

[USENS01]

27. All practicable measures shall be taken to protect displayed foods from the likelihood of contamination including pests, dust and dirt.

[USENS02]

28. Any premises used for the storage, preparation or sale of food are to comply with the provisions of the Food Act 2003.

[USENS03]

REPORT:

Applicant: Ms S Oberholster and I Willis
Owner: Ms S Oberholster
Location: Lot 10 DP 252918 No. 852 Tyalgum Road, Eungella
Zoning: 1(a) Rural
Cost: \$4,000

BACKGROUND:

Council has received a development application for a roadside stall to be located at Lot 10 DP 252918, 852 Tyalgum Road, Eungella. Tyalgum Road is a Council designated road and the subject property is an established organic farm.

The proposed stall measures 20m² in area and proposes an area of approximately 250m² inside the property boundary for the purposes of carparking which will be covered with crushed rock road base and graded.

The proposed stall will sell farm fresh organic fruit and vegetables that are grown on the subject allotment.

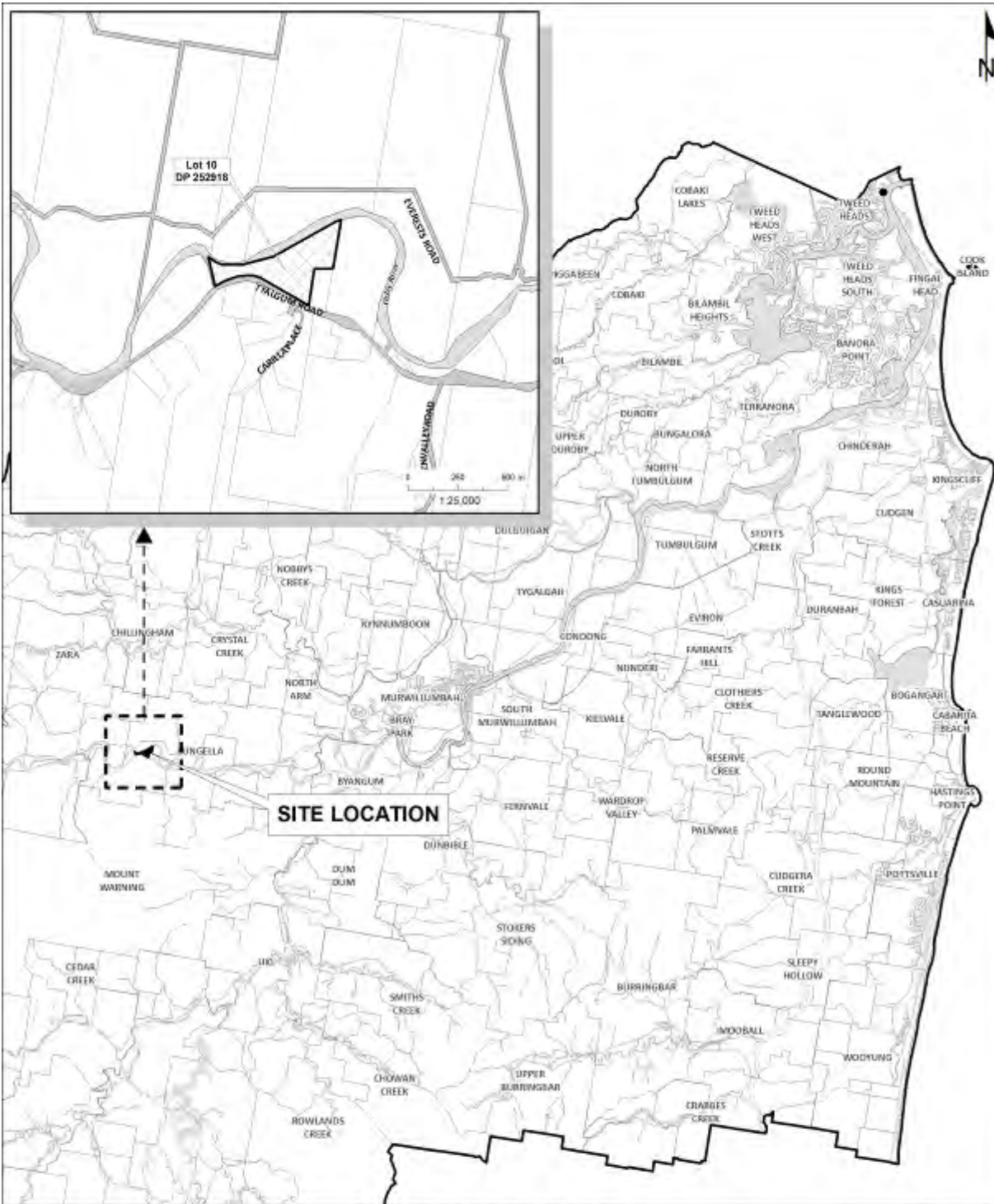
Removal of approximately 6.7m of existing post and rail fence will be required.

A small 'A-frame' blackboard sign is also proposed (1m x 1.2m), to be utilised only when the stall is in operation, and placed wholly within the property boundaries. It is noted that the applicant has not supplied specific hours of operation, indicating that opening hours will be dependant upon demand. As such, a condition limiting operation of the stall has been applied limiting operating hours to between 7.00am and 6.00pm Monday to Sunday.

A SEPP 1 Objection has been provided by the applicant in relation to Clause 24 – Setbacks to Designated Roads of the Tweed Local Environmental Plan. Clause 24 requires development for the purposes of a roadside stall within the 1(a) Rural zone to be setback a minimum of 30m from the designated road. The roadside stall is proposed to be located 12m from Tyalgum Road, a variation in excess of 10%. As such, the application has been reported to Council for determination in accordance with the Department of Planning's circular issued 14 November 2008.

No submissions were received with respect to the proposed development.

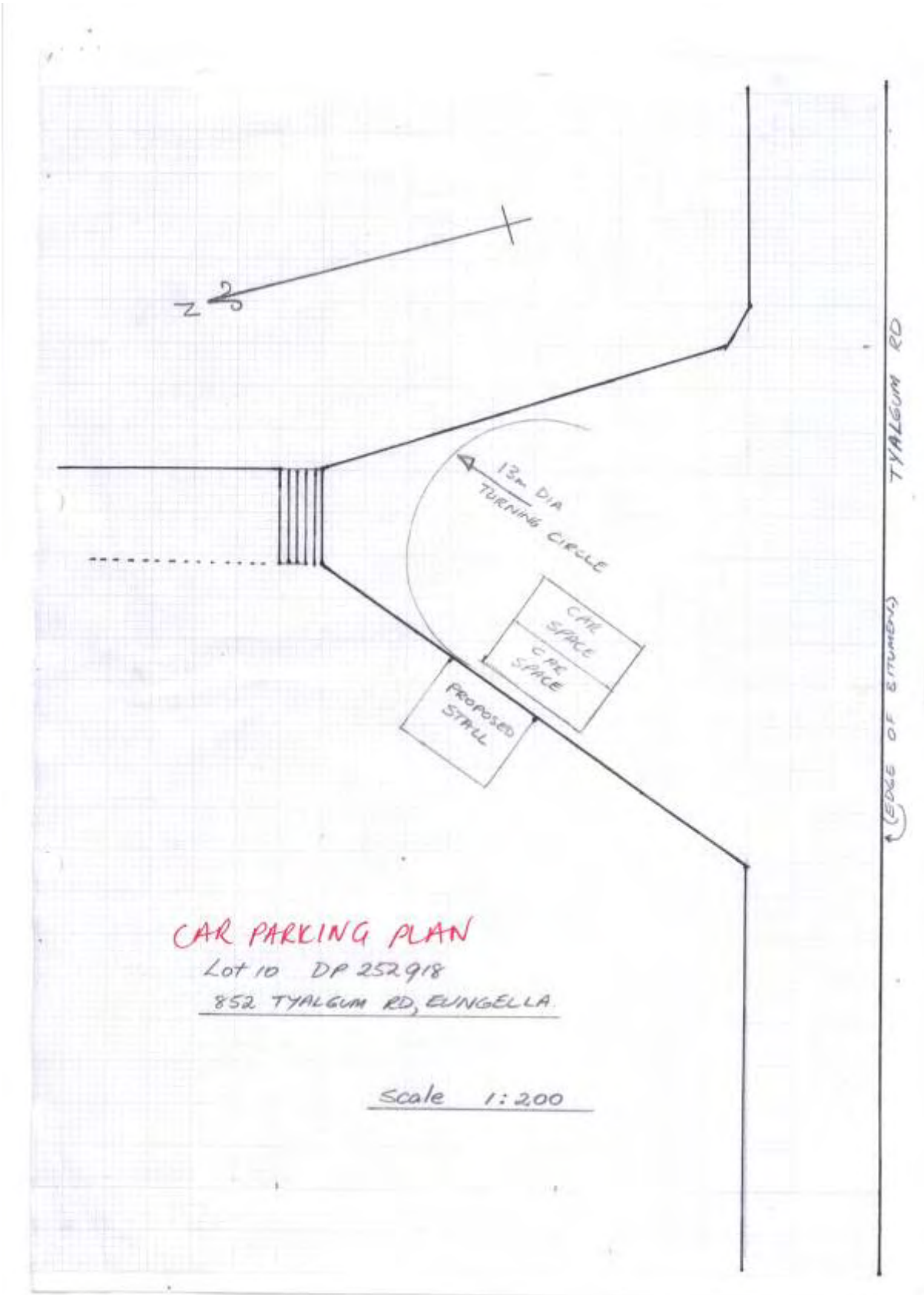
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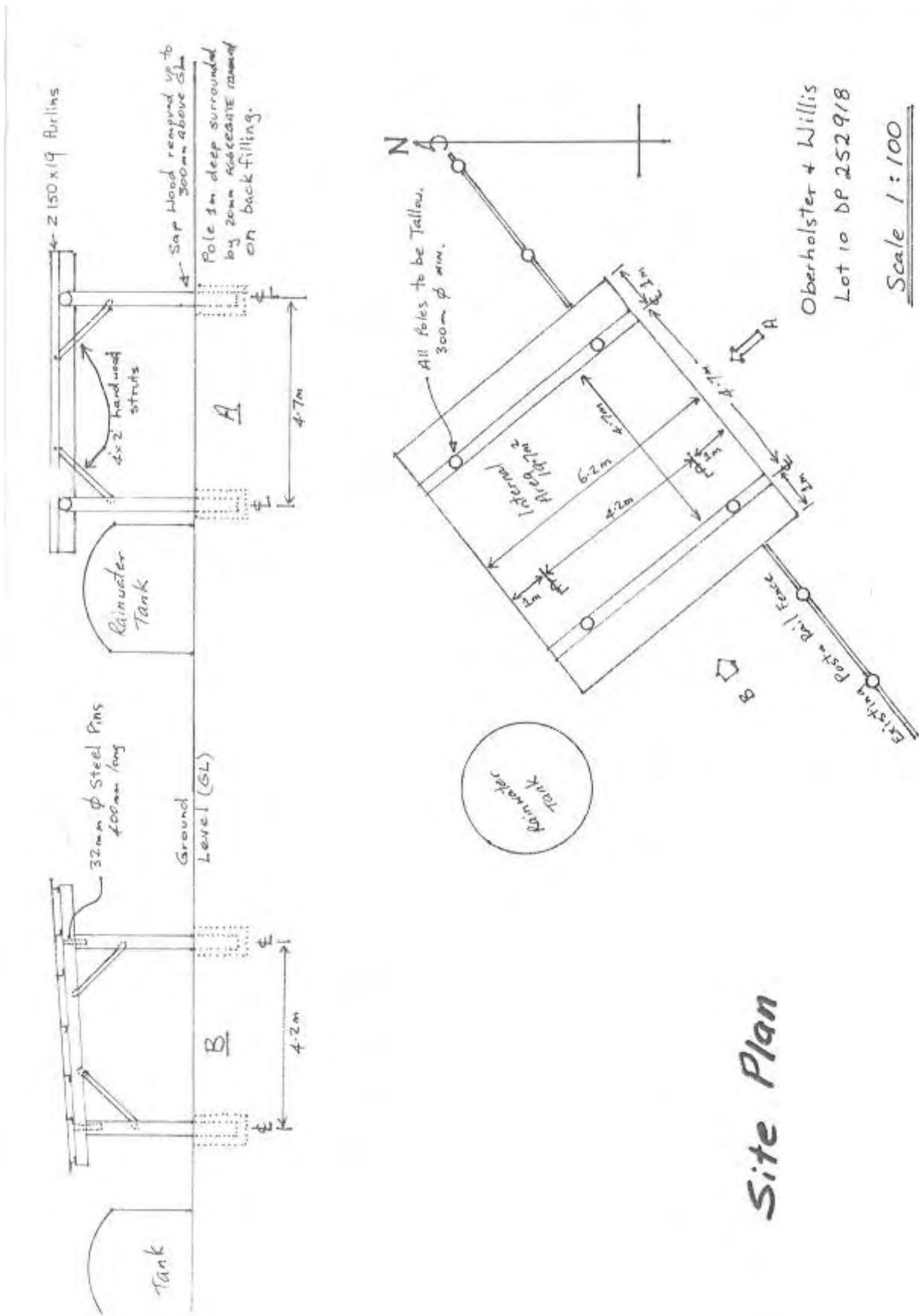


LOCALITY PLAN
 Lot 10 DP 252918
 No. 852 Tyalgum Road, Eungella

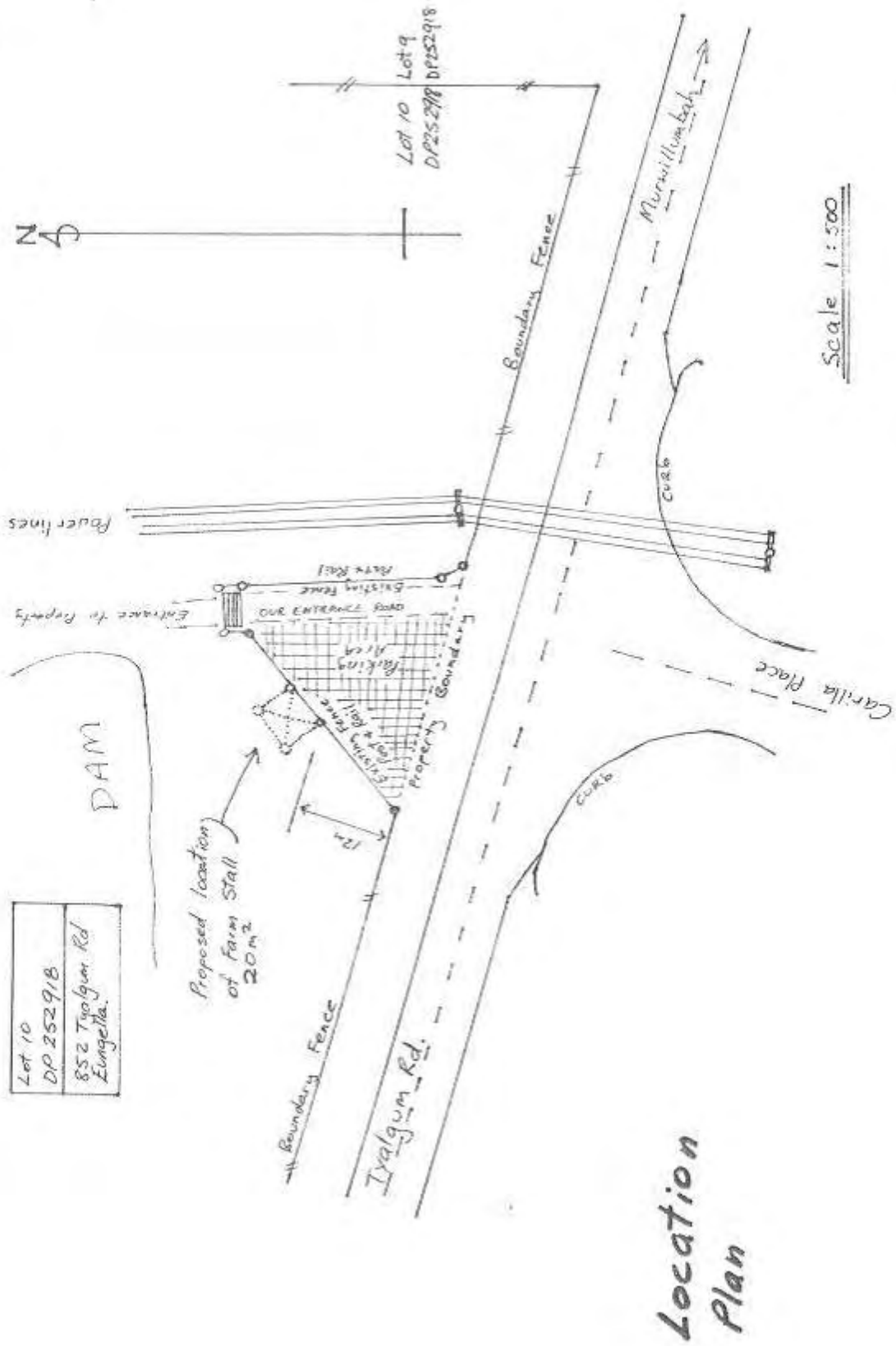
<p>Filename: z:\esri\planning\msd\AAP_D&W_SitePlan.mxd Author: J. Batchelor - Planning Reforms Unit Date Printed: 24 June, 2010</p>	<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and declines all responsibility and all liability (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 as a general guidance only and should not be used for survey or construction purposes and prior to any excavation a "Dig before you Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p> GDA Geodetic Datum - MGA Zone 56 Datum - GDA 94</p>	<p> Cadastral: 25 June, 2010 © Dept. of Lands & Tweed Shire Council</p>	<p> TWEED SHIRE COUNCIL Civic and Cultural Centre 3 Tyalgum Road Murwillumbah NSW 2464 PO Box 816 Murwillumbah NSW 2464 T: (02) 6670 2400 / 1300 202 872 F: (02) 6670 2483 W: www.tweed.nsw.gov.au E: info@tweed.nsw.gov.au</p>
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DEVELOPMENT PLANS:





Site Plan



Lot 10	DP 25291B
852 Iyalgum Rd Eungella	

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 roadside stall encourages sustainable economic and cultural development 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 minor location and ability to contribute to sustainable food growth.

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 1(a) Rural zone which maintains rural use of the site. The proposal is considered to be consistent with the aims and objectives of the TLEP 2000 as it facilitates the sale of the primary products grown on the site and allows for the sustainable economic use of the site and the continuance of production of certified organic produce. The subject proposal is not considered to result in any unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole due to its minor nature. Approval of this application is not considered to set a precedent for further like applications as each would be assessed on its merits and likely require its own SEPP 1 objection.

The proposal is considered to be consistent with Clause 8.

Clause 11 – Zone Objectives

Under the Tweed LEP 2000, the subject land is zoned 1(a) Rural, within which a Roadside Stall is permissible with development consent (Item 2).

The provisions of Tweed LEP 2000 require the proposed roadside stall have a maximum gross floor area of 20m². The proposed stall does not exceed this requirement.

The objectives of the 1(a) Rural zone are to:

Primary Objective

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

Secondary Objective

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

The proposed roadside stall (which meets the size criteria for the 'roadside stall' and is permissible with consent in the zone) is considered to accord with both primary objectives in that the development facilitates sustainable economic utilisation of natural resources and contributes to the rural nature and amenity of the local area. The proposal is also considered to accord with the secondary objectives in that it enables sustainable economic development which relies on the rural values of the land.

The proposal is considered to be wholly consistent with Clause 11.

Clause 15 - Essential Services

The proposal does not require connection to, nor will impact upon essential services at the site. A rainwater tank is proposed for the collection of roof water from the stall. Appropriate conditions have been applied by Council's Environmental Health Officer with regard to water quality (this is addressed further under 'Water Supply' below).

Clause 16 - Height of Building

The proposed stall has a maximum height of 3.4m which is entirely consistent with the 3 storey residential height limit of the subject site.

Clause 17 - Social Impact Assessment

The proposal is minor and is not considered to result in any significant positive or negative social impacts, aside from potential economic returns for the owner.

Clause 35 - Acid Sulfate Soils

The subject site displays Class 5 Acid Sulfate Soils which require a management plan for any works within 500m of Class 1, 2, 3 or 4 land that are likely to lower the water table below 1m in adjacent Class 1, 2, 3 or 4 land. The subject proposal is minor and involves laying footings to a maximum of 1m deep. The site is not located within 500m to any other class of soils and the proposed works will not result in the lowering of the water table. No further consideration with regard to Acid Sulfate Soils is required. This has been confirmed by Council's Environmental Health Officer.

Other Specific Clauses

Clause 22 – Development along Designated roads

Clause 22 of the Tweed LEP 2000 requires Council to protect and improve the capacity, efficiency and safety of designated roads. The proposal relies upon Tyalgum Road as its means of vehicular access, a Council designated road. The following comments are offered in relation to Clause 22(4):

The development due to its nature, scale and volume of traffic likely to be generated is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road. Further, the location and design of access points, sufficient sight distance and on-site traffic movement and parking arrangements, appropriately ensures that through traffic movement on the designated road (Tyalgum Road) is not impeded and does not prejudice any future improvements or realignment of Tyalgum Road.

Council's Development Traffic Advisory Group (DTAG) and Development Assessment Engineer have reviewed the application in this regard and returned no objections.

Accordingly, the proposal is considered to satisfy Clause 22 of the Tweed LEP 2000.

Clause 24 – Setbacks to Designated Roads

Clause 24 of the TLEP requires Council to control development along designated roads.

The provisions of Clause 24 require the proposed roadside stall be setback a minimum of 30 metres from the designated road (Tyalgum Road).

The proposed stall is located 12 metres from Tyalgum Road, and an accompanying SEPP No. 1 Objection has been submitted accordingly. The details of the SEPP No. 1 Objection have been discussed in full further in this report, concluding that with regard to the proposed stall, in particular its minor nature, the 30m setback development standard is considered unreasonable and unnecessary in this instance.

Clause 34 – Flooding

The site is identified as 'could be' flood prone on Council's GIS system, due to proximity of the Oxley River which forms the rear boundary of the subject allotment. The proposed roadside stall is not habitable and no regulations exist with regard to minimum floor levels for a roadside stall. No impacts with regard to flooding are envisaged.

Clause 39A – Bushfire Protection

The site is partially bushfire prone (at the rear and in excess of 100m from the proposed stall), though the bulk of the subject locality is predominantly cleared. The proposed stall is not habitable and no impacts with regard to bushfire are envisaged.

Clause 47 – Advertising Signs

A removable 1m x 1.2m a-frame blackboard sign is proposed to direct potential customers to the stall. This is permissible in a rural zone under Clause 47 because it is directing the travelling public to what will be a lawful business, is considered to be of a reasonable size for such a purpose and relates to a lawful use of the land on which it is to be displayed (i.e.: an organic farm within a rural zone).

The proposed sign is considered to be in keeping with the character of the locality and is not considered to adversely affect the locality in terms of appearance or size, will not detract from the rural character of the area and will not contribute to visual clutter though the proliferation of signs.

The proposal is consistent with Clause 47.

The proposed roadside stall is considered to be generally consistent with the Tweed Local Environmental Plan, notwithstanding the SEPP 1 variation to Clause 24 (Setbacks to Designated Roads) which is discussed under SEPP 1 below.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

The proposed roadside stall and car parking area are minor and is located in an area outside an existing fence, adjacent to the driveway for the subject lot. The stall does not encroach upon any land in use for agricultural purposes on the subject site or any adjoining lots.

The proposal is consistent with Clause 12.

Clause 15: Rivers, streams and wetlands

The subject site is bounded at the rear by the Oxley River, which is located in excess of 220m to the proposed roadside stall. No further consideration in this regard is required and the proposed stall is not considered to have any impacts on the Oxley River in terms of water quality, water flows or habitat loss.

The proposal is consistent with Clause 12.

Clause 29A: Natural areas and water catchment

No vegetation clearing is proposed, nor is the proposed development located in any of the prescribed zones (protection, scenic protection or escarpment preservation). The proposed roadside stall has no implications in terms of the water catchment of the Oxley River.

The proposal is consistent with Clause 12.

The proposal is consistent with the applicable provisions of SEPP (North Coast Regional Environmental Plan) 1988.

SEPP No. 1 - Development Standards

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

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

The subject application contained a SEPP 1 objection in regards to the 30m setback required by Clause 24 (Setbacks to Designated Roads) of the Tweed Local Environmental Plan 2000 for development of this nature within the 1(a) Rural zone. The application proposes a 12m setback to Tyalgum Road. The proposal constitutes greater than a 10% variation (i.e.: located closer than 27m to Tyalgum Road) and as such, the application is being reported to Council.

In *Wehbe v Pittwater Council* (2007) NSW LEC 827, Chief Justice Preston ruled that an applicant for a SEPP 1 Objection “*must satisfy the consent authority that the objection is well founded*”. The most commonly invoked way of demonstrating this (also established by Preston J in *Wehbe v Pittwater Council* (2007)) is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved

notwithstanding non compliance with the standard. This is the method relied upon by the applicant in their justification below:

“We believe that compliance to the above standard is unreasonable and unnecessary in our circumstances. The reasons for this are:

- 1. As the proposed development is for a roadside farm produce stall so as to attract passing traffic a set back in excess of 30m would fundamentally comprise the concept of a roadside stall in that it would no longer be at the roadside. This we believe demonstrates that the standard in this instance is unreasonable to apply in particular clause 24(3).*
- 2. On our property we only have one real option for the location of such a stall that would ensure the safe entrance and egress of customers and that is where we have proposed it in the plans submitted. The only problem with this location is that there is a long dam running parallel to the designated road with its central long axis at about the 30m distance from the road. Consequently for a stall to be no less than 30m would mean our stall would need to be on the other side of the dam making it about 70m from the road. Additionally this would then necessitate customer traffic travelling on our single lane road across the dam wall. This we believe demonstrates that the standard in this instance is unreasonable to apply in particular clauses 22(4)(a) &(b).*
- 3. The structure proposed is a stall not a dwelling so issues like traffic noise would not be a problem. This we believe demonstrates that the standard in this instance is unreasonable to apply in particular clause 22(4)(e).*
- 4. The proposed structure is proposed to be made of solid tallow wood poles, giving not only great strength but a rustic rural appearance. This we believe demonstrates that the standard in this instance is unreasonable to apply in particular clause 22(4)(f).”*

Planning Comments

In addition to being satisfied that the SEPP 1 Objection is well founded, the consent authority must also be of the opinion that *“granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3”* and consider the matters in clause 8(a): *“whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The aims of the policy are as follows:

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

Sections 5(a) (i) and (ii) are as follows:

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

With respect to Sections 5(a) (i) and (ii) it is considered that the proposed roadside stall does not hinder the proper management, development and conservation of any resources, in particular agricultural land that surrounds the subject site. The proposal is considered to have minimal environmental impacts whilst contributing to the economic welfare of the community and facilitating orderly and economic use of the subject site. Further, non compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with Clause 24 of the LEP is considered to be justified in this instance and is not likely to result in an adverse planning precedent. As such, the granting of this application is unlikely to impact upon public benefit and the objection is considered to be well founded.

Based on the above, support of the subject SEPP 1 Objection is considered appropriate in this instance.

SEPP No. 64 – Advertising and Signage

The SEPP outlines the following in regards provisions for signs within rural areas:

The advertisement relates to the land on which the advertisement is to be displayed, or to premises situated on that land or adjacent land, and

(ii) specifies one or more of the following particulars:

- (A) the purpose for which the land or premises is or are used,*
- (B) the identification of a person residing or carrying on an occupation or business on the land or premises,*
- (C) a description of an occupation or business referred to in sub-subparagraph (B),*
- (D) particulars of the goods or services dealt with or provided on the land or premises.*

The subject signage is consistent with the requirements of the SEPP in that the sign is displayed on the premises to which the proposed sign relates, and will serve to identify the business and proprietor.

The proposed sign is considered to be consistent with the provisions of SEPP 64.

SEPP (Rural Lands) 2008

The SEPP outlines the following 'Rural Planning Principles':

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas;*

Planning Comment:

The proposed roadside stall promotes sustainable economic activity on the subject site for the current capacity of the farm, as well as allowing for further productive use of the land for more intensive cropping purposes.

- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State;*

Planning Comment:

The subject proposal facilitates the continuation of agricultural activities on the subject allotment and is supportive of the increasing demand for consumers wishing to purchase organic produce.

- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development;*

Planning Comment:

The subject proposal maintains the rural use of the subject site and may facilitate further growth of the organic farm which has the potential to provide social and economic benefits through the employment of local workers and generation of profit for the landholders and cost effective local produce for consumers.

- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community;*

Planning Comment:

The proposed development is minor and is not considered to impact on the social, economic and environmental interests of the broader community.

- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land;*

Planning Comment:

The subject proposal, if approved, is unlikely to pose a detrimental impact on any natural resource in the vicinity.

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;*

Planning Comment:

The proposed development is minor and is not considered to have any significant impacts on the local community in terms of social and economic welfare, notwithstanding the potential positive impacts outlined under principle (c) above.

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.*

Planning Comment:

The proposal is minor and does not have any ramifications for rural housing.

Based on the above, the proposal is considered to entirely accord with SEPP (Rural Lands) 2008.

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

The draft shire wide Tweed Local Environmental Plan 2010 zones the subject site RU2 – Rural Landscape and defines a roadside stall as “*a place or temporary structure used for retail selling of agricultural produce or handcrafted goods (or both) produced from the property in which the stall is situated, or from an adjacent property*”.

Under Clause 5.4, the ‘retail floor area’ of a roadside stall must not exceed 30m².

A roadside stall remains permissible with consent in the RU2 – Rural landscape zone and the floor area of the subject proposal (20m²) is consistent with the 30m² maximum control for the ‘retail floor area’ of the stall under the draft shirewide LEP 2010.

The proposal is consistent with the draft shire wide Tweed Local Environmental Plan 2010.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The proposed location of the roadside stall is adjacent to an area of approximately 250m² which will be covered with crushed rock roadbase and graded. Under DCP A2, no specific requirement for carparking has been specified, with a note applied to ‘assess parking on its merits, with all parking to be within property boundaries’. Utilising the ‘shop’ rate (5.4 spaces/100m² GFA) results in a parking requirement of only 1.08 spaces (not inclusive of ESD reduction).

Council’s Traffic Engineer has advised that a minimum of two (2) car spaces must be provided, designed to AS2890. The applicant has submitted a plan showing two

car spaces (2.4m x 5.4m each) which has been accepted by Council's Development Assessment Engineer (see file note dated 30 June 2010).

The above assessment is considered to demonstrate that the proposed roadside stall has ample parking inside the property boundaries.

The proposal is consistent with DCP A2.

Note - * The application was also referred to DTAG (discussed below) and conditions have been applied relating to construction of the carpark area.

A3-Development of Flood Liable Land

The subject site is identified as 'could be' flood prone. However, there is no minimum floor level for a roadside stall (which is obviously not habitable). No further consideration with regard to flooding impacts is required. Two conditions of consent have been applied as follows:

- The stall shall not be adapted or used for residential accommodation or for any purpose other than a roadside stall;
- Flood free storage shall be provided for equipment susceptible to water damage.

The proposal is consistent with DCP A3.

A4-Advertising Signs Code

The application includes a 1m x 1.2m 'a-frame' blackboard sign to serve as business identification and advertise specific produce for sale.

The DCP permits a maximum of five (5) business identification signs per business premises (which will not be exceeded by the subject proposal) and specifies types of signs which are permissible and prohibited.

The following objectives are also provided for signage in rural areas:

- To preserve the rural amenity of the locality within which the sign is to be displayed;
- To eliminate the proliferation of signs;
- To ensure that those signs which are displayed are in character with the existing and likely future amenity of the rural locality;
- To minimise the visual impact of signs;
- To prevent distraction to motorists and a reduction in traffic safety on roads; and
- To coordinate tourism signs.

The subject 'a-frame' sign is a permissible type of signage, however it exceeds the maximum size (900mm x 1200mm) by 12cm² (being 1000mm x 1200mm). This is considered to be a very minor increase which will not have an adverse impact on the locality in terms of size or visual appearance. The proposal is considered to be consistent with the objectives for signage in rural areas, being removable, small scale, single (i.e.: one sign only) and located wholly within the property boundary at all times (conditions have been applied in this regard).

The proposed sign is considered to be consistent with DCP A4.

A11-Public Notification of Development Proposals

The proposal was notified to nearby and adjoining landholders for a period of fourteen (14) days from 1 April 2009 to 17 April 2009. No submissions were received as a result of the notification process.

A13-Socio-Economic Impact Assessment

The proposal is not anticipated to have a significant social or economic impact on the locality and a social impact assessment is not required.

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

Clause 92(a) Government Coastal Policy

The subject site is not located on land to which the Government Coastal Policy applies.

Clause 92(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

This application does not propose a change of building use and Clause 93 is not relevant.

Clause 94 Buildings to be upgraded

This application does not propose the rebuilding, alteration, enlargement or extension of an existing building. Clause 94 is not relevant to the proposal.

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

Context and Setting

The proposal is minor and in keeping with the rural character of the subject locality. No adverse impacts on the natural or built environment are envisaged in the locality, and the proposal has the potential to facilitate economic returns for the landholder (and possibly provide for future growth of the sustainable farming venture).

The proposal is consistent with the context and setting of the locality.

Access, Transport and Traffic

The proposed access and parking arrangements have been reviewed by the Development Traffic Advisory Group (DTAG) and Council's Traffic Engineer.

Minutes of the DTAG meeting (held 16 April 2009 and available in full on file) conclude that DTAG have no objections to the proposed development:

"It is reported that parking is wholly on private property with adequate sight distance in both directions for arrivals and departures. The location of the farm stall is opposite Carilla Place. The area designated solely for parking is 250m², with the entrance area including the area for parking and the entrance road being 320m², all of which will be covered with crushed rock road base and graded.

No objection is raised for the location of a 20m² farm stall within 30m of a designated road".

Council's Traffic Engineer has also reviewed the application and advised that a minimum of two (2) car spaces are required as well as a turning circle for a B99 vehicle, which have been shown on a plan prepared by the applicant and reviewed by Council's Development Assessment Engineer with no objections.

No further access/traffic concerns were raised with regard to the proposal.

Based on the above the proposal is considered to be appropriate from an access and traffic point of view.

Farmland of State or Regional Significance

The subject site is located on land identified as Regionally Significant Farmland. Referral to the Industry and Investment NSW (formerly DPI) is only required if land is mapped as being State Significant.

Industry and Investment NSW were contacted in relation to the application and advised that the proposed roadside stall is ancillary to the rural use of the site and no objections are raised (please see file note dated 8 April 2010).

Flora and Fauna/Natural Environment

The site of the proposed stall is cleared of all vegetation with much of the subject site classified as 'highly modified' under the Tweed Vegetation Management Strategy 2004. Council's records do not contain any occurrences of threatened flora or fauna on the site and no disturbance of the natural environment is necessary to facilitate the proposal.

No adverse impacts are anticipated on flora and fauna as a result of the subject proposal.

Construction

The proposed stall shall be constructed of timber poles with a tin roof. A condition has been applied requiring the roof to have low reflectivity so as not to interfere with any adjoining properties by way of reflection.

Council's Building Surveyor has reviewed the application and applied various conditions including the requirement for the applicant to obtain a Construction Certificate for the proposed stall.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposal is minor and is considered to be consistent with surrounding land uses, much of which is pasture land or small crops and single dwelling houses.

Water Supply

A rainwater tank is proposed for the collection of rainwater from the stall, located wholly within the subject allotment. There is a chance that members of the public may gain access to the water supply. Conditions have been applied by Council's Environmental Health Officer requiring either a suitable water management plan (to ensure adequate filtration/chlorination of the tank water before use) or the provision of signage specifying that the tank water is not suitable for drinking due to being untreated.

It is noted that only whole produce will be sold at the stall, which negates the need to use the tank water for washing cutting utensils/washing down cutting areas which may contaminate cut produce. This is addressed further below.

Food Premises

Only whole produce (low risk food) grown on the applicants farm will be sold at the proposed roadside farm stall (a condition has been applied in this regard). Additional conditions have been applied (by Council's Environmental Health Officer) in regards to the product for sale to be on display only above ground level on shelving or benches of durable, smooth, impervious material capable of being easily cleaned and only whole produce (no cutting of fruit or vegetables) to be sold unless prior written consent by the General Manager or his delegate is given.

Acid Sulphate Soils/Contaminated Land

Council's Environmental Health Officer has reviewed the application with respect to acid sulphate soils and contamination. The following comments were supplied:

"A search of Council ASS maps indicates that there appears to be no ASS issues. A search of Council's records indicates that there appears to be no cattle dip sites located at the proposed farm stall site. No further action".

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

No submissions were received during the assessment process.

(e) Public interest

The proposed roadside stall is considered to be consistent with all applicable planning controls and the SEPP 1 Objection is considered to be well founded and warranted based on the circumstances of this particular case. The proposal is considered to be generally in the public interest as it will facilitate economic activity in the subject locality whilst remaining consistent with the rural land use of the area and compatible with the natural environment.

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.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject application is considered to generally comply with statutory and policy requirements. Strict application of Clause 24 – Setbacks to Designated Roads of the Tweed Local Environmental Plan 2000 was considered unreasonable and unnecessary in this instance and the SEPP 1 objection is considered to warrant support. The impact of the proposal in terms of traffic has been assessed and determined to be acceptable and it has been demonstrated that sufficient car parking is available on site. The proposed development is not considered to have a significant impact on agricultural activities in the locality nor impact upon the social, cultural and environmental characteristics of the local environment.

Therefore 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.

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

ORIGIN:

Development Assessment

FILE NO: GT1/DCP/A11

SUMMARY OF REPORT:

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

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

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

This was reported to the Council Meeting of 16 February 2010 where it was resolved to hold a workshop. Following on from the workshop of 23 February 2010 a further report to the Council meeting of 16 March 2010 resulted with Council's endorsement for the public exhibition of a Draft Tweed DCP Section A11.

The Draft DCP was publicly exhibited from Wednesday 28 April 2010 to Friday 28 May 2010, with no submissions received.

It is therefore recommended that Council adopts the exhibited amendments to Tweed DCP Section A11.

RECOMMENDATION:

That:

- 1. Council adopts the draft amendments to Section A11 of Tweed Development Control Plan – Public Notification of Development Proposals Code as identified in this report, and in accordance with section 21 of the *Environmental Planning Assessment Regulation 2000*, and to give public notice of the resolution to adopt the Plan in its newspaper, the Tweed Link, within 28 days of this resolution.**

2. **The Draft Plan be further amended to include a savings and transitional provision to the effect that development applications lodged but not determined are to be assessed as if the amendments had not been made in relation to public notification requirements.**

REPORT:

BACKGROUND:

Council Resolution

At its meeting of 16 March 2010 Council resolved the following:

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

Caravan Parks and Manufactured Home Estates

Permanent occupiers of caravan parks and manufactured home estates sites are to be notified in the same way as landowners are notified as set out in clause A11.2.1 “Who is to be notified?” (affected owners). In this regard individual sites occupiers are to be notified by mail identified by Council’s copy of the community map for each caravan park or manufactured home estate.”

Existing Notification Provisions Under DCP A11

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

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

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

- (a) all persons who, according to Council property rating records, own land immediately adjoining the application site;*
- (b) owners of any land that the Council or delegated staff consider may be detrimentally affected by the application having regard to the following criteria:*
 - (i) the views to, from, and across/over the land;*
 - (ii) overshadowing;*
 - (iii) privacy;*
 - (iv) noise;*
 - (v) the visual quality of the building in relation to the streetscape and neighbouring properties;*
 - (vi) the scale of the proposed buildings;*
 - (vii) the likely effect on the drainage of adjoining sites;*
 - (viii) the siting of the proposed building in relation to the application site boundaries;*
 - (ix) hours of use;*
 - (x) nature of use;*
 - (xi) light spillage or reflection;*
 - (xii) means of access to or provision of private parking on the application site;*

- (xiii) *any covenant or easement benefiting the adjoining or neighbouring land or the Council;*
 - (xiv) *the height, materials and position of fences erected on the boundary;*
 - (xv) *traffic generation;*
 - (xvi) *particular circumstances of the application; and*
- (c) *any community group or government agency which may be affected by or have a legitimate interest in the application.*

Proposed Amendment to the Notification Provisions

The exhibited Draft DCP contains the same wording as the existing provision above but with the addition of a new sub-clause (d), which is in the following terms:-

- (d) permanent occupiers of caravan parks and manufactured home estates sites are to be notified in the same way as landowners are notified as set out in clause A11.2.1 Who is to be notified? (affected owners). In this regard individual site occupiers are to be notified by mail identified by Council's copy of the community map for each caravan park or manufactured home estate.

The new sub-clause (d) gives effect to the Council's resolution, broadening the notification requirements to capture permanent occupiers of caravan parks and manufactured home estates who may be affected by a development proposal.

Exhibition of the Draft Plan

The draft Plan was placed on public exhibition in accordance with the *Environmental Planning and Assessment Regulation 2000* from Wednesday 28 April 2010 to Friday 28 May 2010, totaling a period of 30 days. The draft Plan was notified in the Tweed Link and made available at the following locations:

- 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 Tuesday-Friday and 9.00am to 12 noon Saturday.
- Tweed Shire Council's website

No public submissions were received during the public exhibition period. It is noteworthy that one (1) telephone enquiry was received however, notwithstanding the Council Officer's advice to make a formal written submission, one has not been received.

The enquiry related to Caravan owners not being rate payers and should therefore not have the same rights as a rate payer. Notwithstanding the way in which the issue was raised it was assessed as providing insufficient grounds to warrant refusal or an amendment to the Draft DCP.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Implementation of the draft Public Notification of Development Proposals Code (Section A11 of the Tweed Development Control Plan) will not have any adverse implication on Council's forward budget estimates.

POLICY IMPLICATIONS:

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

CONCLUSION:

The draft Plan has been in preparation since January and has been drafted and publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979 and Regulations. The proposed amendment to the DCP is minor in nature and will serve to increase the public awareness of development proposals to residents of caravan parks and manufactured home estates who might otherwise not be notified, but, who may nevertheless be potentially affected by a development proposal.

The proposed amendments to the Tweed DCP are considered to be in the public interest and are suitable for adoption.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the June 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.	DA09/0649
Description of Development:	Demolition of existing structures and construction of six (6) storey multi dwelling housing with basement carparking
Property Address:	Lot 7 DP 232124 No. 4 Endeavour Parade TWEED HEADS
Date Granted:	17/6/2010
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(b) Medium Density Residential
Justification:	Six storey building complies with building heights in LEP but due to height causes a degree of overshadowing to adjacent foreshore open space. An 8-storey building south of the site also causes overshadowing of adjacent foreshore open space.
Extent:	Overshadowing of foreshore open space area after 3pm. No measures to quantify % or degree of overshadowing.
Authority:	Tweed Shire Council

DA No.	DA10/0146
Description of Development:	granny flat above existing garage
Property Address:	Lot 1 DP 848877 No. 12 Elizabeth Street FINGAL HEAD
Date Granted:	17/6/2010
Development Standard to be Varied:	Multi Dwelling Housing Densities in Zone 2a
Zoning:	2(a) Low Density Residential
Justification:	The proposed development does not comply with the development standard contained in Clause 51A of Tweed Local Environmental Plan 2000 as it relates to the density of the development. The purpose of the development is to create a Secondary Dwelling (Granny Flat) as a first floor addition to an existing detached garage.
Extent:	The proposed development does not comply with the development standard contained in Clause 51A of Tweed Local Environmental Plan 2000 as it relates to the density of the development. More than one dwelling per 450m ² .
Authority:	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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