



**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 21 September 2010**

held at Murwillumbah Cultural & Civic Centre  
commencing at 3.30pm

### **COUNCIL'S CHARTER**

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

Tweed Shire Council has the following charter:

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

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**Items for Consideration of Council:**

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## **REPORTS THROUGH THE GENERAL MANAGER**

### **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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**11 [PR-CM] Development Application DA10/0255 for a 19 Lot Subdivision  
Comprising Four (4) Stages at Lot 56 DP 1030322, Collins Lane, Casuarina**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0255 Pt1**

**SUMMARY OF REPORT:**

The proposed development is to undertake a four stage, nineteen (19) lot torrens title subdivision.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) Environmental Protection (Coastal Lands) zone.

The SEPP 1 objection relates to a small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands). The 7(f) zoned land represents approximately 11.7% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size requirement of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed lots 14 to 19.

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent variation of the applicable development standard in accordance with the Department of Planning directive.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.

**RECOMMENDATION:**

**That Development Application DA10/0255 for a 19 lot subdivision comprising of four (4) stages at Lot 56 DP 1030322, Collins Lane, Casuarina be approved subject to the following conditions:**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects, amended details dated 9 June 2010, and the following plans:
  - COLLINSLNE\_SUB\_01 (Rev 01) - Stage 1 (Sheet 1 of 5), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_02 (Rev 01) - Stage 2 (Sheet 2 of 5), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_03 (Rev 01) - Stage 3 (Sheet 3 of 5), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_04 (Rev 01) - Stage 4 (Sheet 4 of 5 – As Amended in Red), prepared by Planit Consulting Pty Ltd and dated June 2010;
  - COLLINSLNE\_SUB\_05 (Rev 01) – Building Envelopes (Sheet 5 of 5), prepared by Planit Consulting Pty Ltd and dated June 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]

4. A Subdivision Works Accredited Certifier (SWAC) shall be appointed to assume the responsibility for certifying the compliance of the completed public infrastructure (refer to Development Construction Specification C101.01 for variations).

The SWAC shall be accredited by the Building Professionals Board Accreditation Scheme, in the following categories,

**C4: Accredited Certifier – Stormwater management facilities construction compliance**

**C6: Accredited Certifier – Subdivision road and drainage construction compliance**

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate.

[GEN0275]

5. The development is to be staged as follows:
  - Stage 1 includes Lots 1 to 7, with Lot 8 being a residual lot,
  - Stage 2 includes Lots 8 to 13, with Lot 14 being a residual lot. The existing house on proposed Lot 13 is to be demolished as part of Stage 2. The extension of Collins Lane and formation of new cul-de-sac head is included in Stage 2.
  - Stage 3 includes Lots 14, 15, 17 and 18. Lot 16 is a residual lot.



- **Stage 4 includes Lots 16 and 19. The existing guest wing on proposed Lot 19 is to be demolished as part of Stage 4.**

[GENNS01]

- 6. No residential, associated buildings or structures are permitted on land zoned 7(f) Environmental Protection (Coastal Lands).**

[GENNS02]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

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

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

[PCC0275]

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

[PCC0285]

- 9. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.**

[PCC0465]

- 10. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.**

[PCC0585]

- 11. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of any Construction Certificate. Safe public access shall be provided at all times.**

[PCC0865]

- 12. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures**

designed in accordance with Councils Development Design and Construction specifications.

#### **URBAN ROAD**

- (a) Construction of the extension of Collins Lane, including partial reconstruction, to an urban bitumen sealed road standard; 7.5m between kerbs with a 9m radius cul-de-sac. Stormwater discharge from this new road shall be connected directly in to the existing stormwater system in the adjoining reserve, and not via open headwall discharge. This is a requirement of Stage 2.

#### **OTHER**

- (b) Construction of all necessary civil works required for the various stages of the development, including but not limited to: earthworks; stormwater infrastructure; water and sewer servicing infrastructure; other service provisions.

[PCC0875]

13. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
  - roadworks/furnishings
  - stormwater drainage
  - water supply works
  - sewerage works
  - landscaping works
  - sedimentation and erosion management plans
  - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

14. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 – Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
  - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

15. 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]

16. Prior to the issue of a construction certificate for Stage 2 a demolition plan shall be submitted for the existing structure on proposed Lot 6 and proposed Lot 19 and approved by the General Manager or his delegate. All demolition works for Lot 6 shall comply with that approved plan.

Prior to the issue of a construction certificate for Stage 4 a demolition plan shall be submitted for the existing structure on proposed Lot 19 and approved by the General Manager or his delegate. All demolition works for Lot 19 shall comply with that approved plan.

[PCCNS01]

17. Prior to the issue of any construction certificate, the applicant is required to submit Work-as-Executed information, test results and engineering certification on any subdivisional civil works that were previously constructed on the site under either of the Council-issued construction certificates CC04/0402 and CC04/0403. All sewer junctions on new infrastructure are to be clearly nominated.

[PCCNS02]

18. The Stage 1 release must address (not necessarily construct) the stormwater management requirements for Stage 2 also. This is due to the requirement for all lots to infiltrate roofwater, and have a surcharge overflow path to the street. Lots 8 to 13 (Stage 2) have inconsistent fall away from the street, and the applicant is required to address any land reshaping requirements as Part of Stage 1. Some site filling may be necessary to achieve this.

[PCCNS03]

**PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0005]

20. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3<sup>rd</sup> Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems – General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

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

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

[PCW0375]

22. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
  - (i) the consent authority, or
  - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
  - (i) has appointed a principal certifying authority,
  - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

**C4: Accredited Certifier – Stormwater management facilities construction compliance**

**C6: Accredited Certifier – Subdivision road and drainage construction compliance**

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
  - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

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

[PCW0835]

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

[PCW0985]

25. Prior to the commencement of works sedimentation and erosion control measures shall be placed and maintained which are effective in preventing the discharge of sediment materials outside the boundary of the property.

[PCWNS01]

**DURING CONSTRUCTION**

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

[DUR0005]

27. 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]

28. 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]

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

[DUR0745]

30. 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]

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

[DUR0815]

32. 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]

33. 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]

34. 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]

35. 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]

36. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Collins Lane in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Development Engineering Section before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

37. 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]

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

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

[DUR1805]

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

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

[DUR1825]

40. The footpath area is to be graded to the kerb and turfed for the full frontage of the site. This is relevant for Stage 2 only.

[DUR1865]

41. 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]

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

**Roadworks**

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

**Water Reticulation, Sewer Reticulation, Drainage**

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

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

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

[DUR1895]



43. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.  
[DUR1905]
44. 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]
45. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.  
[DUR2025]
46. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.  
[DUR2185]
47. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.  
[DUR2205]
48. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.  
[DUR2355]
49. 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]
50. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.  
[DUR2425]
51. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l.  
[DUR2435]
52. Any imported material shall be from an approved source and free from any contaminants.

[DURNS01]

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

[USE0225]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

54. 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]

55. 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:

**Stage 1**

Water DSP6:	7 ET @ \$11020 per ET	\$77140
South Kingscliff Water Levy:	7 ET @ 256 per ET	\$1792
Sewer Kingscliff:	7 ET @ \$5295 per ET	\$37065

**Stage 2**

Water DSP6:	5 ET @ \$11020 per ET	\$55100
South Kingscliff Water Levy:	5 ET @ 256 per ET	\$1280
Sewer Kingscliff:	5 ET @ \$5295 per ET	\$26475

**Stage 3**

Water DSP6:	4 ET @ \$11020 per ET	\$44080
South Kingscliff Water Levy:	4 ET @ 256 per ET	\$1024
Sewer Kingscliff:	4 ET @ \$5295 per ET	\$21180

**Stage 4**

Water DSP6:	1 ET @ \$11020 per ET	\$11020
South Kingscliff Water Levy:	1 ET @ 256 per ET	\$256
Sewer Kingscliff:	1 ET @ \$5295 per ET	\$5295

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

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

**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]

**56. 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, Tumbulghum Road, Murwillumbah and Brett Street, Tweed Heads.**

**Stage 1**

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

45.5 Trips @ \$955 per Trips	<b>\$43453</b>
((\$868 base rate + \$87 indexation)	
S94 Plan No. 4	
Sector7_4	

LCA4 - Casuarina:	<b>\$7235</b>
45.5 trips at \$159 per trip	
((\$144 base rate + \$15 indexation)	

**(b) Shirewide Library Facilities:**

7 ET @ \$792 per ET	<b>\$5544</b>
((\$792 base rate + \$0 indexation)	
S94 Plan No. 11	

**(c) Bus Shelters:**

7 ET @ \$60 per ET	<b>\$420</b>
((\$60 base rate + \$0 indexation)	
S94 Plan No. 12	

<b>(d) Eviron Cemetery:</b>	
7 ET @ \$120 per ET	<b>\$840</b>
( <b>\$101 base rate + \$19 indexation</b> )	
<b>S94 Plan No. 13</b>	
<b>(e) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	
7 ET @ \$1759.9 per ET	<b>\$12319.30</b>
( <b>\$1759.9 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 18</b>	
<b>(f) Casuarina Beach/Kings Forest Community Facilities:</b>	
7 ET @ \$1611 per ET	<b>\$11277</b>
( <b>\$1311 base rate + \$300 indexation</b> )	
<b>S94 Plan No. 19</b>	
<b>(g) Casuarina Beach/Kings Forest Open Space:</b>	
7 ET @ \$1231 per ET	<b>\$8617</b>
( <b>\$717 base rate + \$514 indexation</b> )	
<b>S94 Plan No. 19</b>	
<b>(h) Cycleways:</b>	
7 ET @ \$447 per ET	<b>\$3129</b>
( <b>\$447 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 22</b>	
<b>(i) Regional Open Space (Casual)</b>	
7 ET @ \$1031 per ET	<b>\$7217</b>
( <b>\$1031 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 26</b>	
<b>(j) Regional Open Space (Structured):</b>	
7 ET @ \$3619 per ET	<b>\$25333</b>
( <b>\$3619 base rate + \$0 indexation</b> )	
<b>S94 Plan No. 26</b>	
<b>Stage 2</b>	
<b>(a) Tweed Road Contribution Plan:</b>	
32.5 Trips @ \$955 per Trips	<b>\$31038</b>
( <b>\$868 base rate + \$87 indexation</b> )	
<b>S94 Plan No. 4</b>	
<b>Sector7_4</b>	
<b>LCA4 - Casuarina:</b>	<b>\$5168</b>

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32.5 trips at \$159 per trip (\$144 base rate + \$15 indexation)	
(b) Shirewide Library Facilities:	
5.6918 ET @ \$792 per ET	\$4508
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
(c) Bus Shelters:	
5.3 ET @ \$60 per ET	\$318
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
(d) Eviron Cemetery:	
5.619 ET @ \$120 per ET	\$674
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
(e) Extensions to Council Administration Offices & Technical Support Facilities	
5.4828 ET @ \$1759.9 per ET	\$9649.18
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(f) Casuarina Beach/Kings Forest Community Facilities:	
5.6922 ET @ \$1611 per ET	\$9170
(\$1311 base rate + \$300 indexation)	
S94 Plan No. 19	
(g) Casuarina Beach/Kings Forest Open Space:	
5.6938 ET @ \$1231 per ET	\$7009
(\$717 base rate + \$514 indexation)	
S94 Plan No. 19	
(h) Cycleways:	
5.6874 ET @ \$447 per ET	\$2542
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
(i) Regional Open Space (Casual)	
5.6968 ET @ \$1031 per ET	\$5873
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
(j) Regional Open Space (Structured):	

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5.6932 ET @ \$3619 per ET	\$20604
((\$3619 base rate + \$0 indexation)	
S94 Plan No. 26	
Stage 3	
(a) Tweed Road Contribution Plan:	
26 Trips @ \$955 per Trips	\$24830
((\$868 base rate + \$87 indexation)	
S94 Plan No. 4	
Sector7_4	
LCA4 – Casuarina:	\$4134
26 trips at \$159 per trip	
((\$144 base rate + \$15 indexation)	
(b) Shirewide Library Facilities:	
4 ET @ \$792 per ET	\$3168
((\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
(c) Bus Shelters:	
4 ET @ \$60 per ET	\$240
((\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
(d) Eviron Cemetery:	
4 ET @ \$120 per ET	\$480
((\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
(e) Extensions to Council Administration Offices & Technical Support Facilities	
4 ET @ \$1759.9 per ET	\$7039.60
((\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(f) Casuarina Beach/Kings Forest Community Facilities:	
4 ET @ \$1611 per ET	\$6444
((\$1311 base rate + \$300 indexation)	
S94 Plan No. 19	
(g) Casuarina Beach/Kings Forest Open Space:	
4 ET @ \$1231 per ET	\$4924
((\$717 base rate + \$514 indexation)	

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	<b>S94 Plan No. 19</b>	
<b>(h)</b>	<b>Cycleways:</b>	
	<b>4 ET @ \$447 per ET</b>	<b>\$1788</b>
	<b>(\$447 base rate + \$0 indexation)</b>	
	<b>S94 Plan No. 22</b>	
<b>(i)</b>	<b>Regional Open Space (Casual)</b>	
	<b>4 ET @ \$1031 per ET</b>	<b>\$4124</b>
	<b>(\$1031 base rate + \$0 indexation)</b>	
	<b>S94 Plan No. 26</b>	
<b>(j)</b>	<b>Regional Open Space (Structured):</b>	
	<b>4 ET @ \$3619 per ET</b>	<b>\$14476</b>
	<b>(\$3619 base rate + \$0 indexation)</b>	
	<b>S94 Plan No. 26</b>	
	<b>Stage 4</b>	
<b>(a)</b>	<b>Tweed Road Contribution Plan:</b>	
	<b>6.5 Trips @ \$955 per Trips</b>	<b>\$6208</b>
	<b>(\$868 base rate + \$87 indexation)</b>	
	<b>S94 Plan No. 4</b>	
	<b>Sector7_4</b>	
	<b>LCA4 – Casuarina:</b>	<b>\$1034</b>
	<b>6.5 trips at \$159 per trip</b>	
	<b>(\$144 base rate + \$15 indexation)</b>	
<b>(b)</b>	<b>Shirewide Library Facilities:</b>	
	<b>1 ET @ \$792 per ET</b>	<b>\$792</b>
	<b>(\$792 base rate + \$0 indexation)</b>	
	<b>S94 Plan No. 11</b>	
<b>(c)</b>	<b>Bus Shelters:</b>	
	<b>1 ET @ \$60 per ET</b>	<b>\$60</b>
	<b>(\$60 base rate + \$0 indexation)</b>	
	<b>S94 Plan No. 12</b>	
<b>(d)</b>	<b>Eviron Cemetery:</b>	
	<b>1 ET @ \$120 per ET</b>	<b>\$120</b>
	<b>(\$101 base rate + \$19 indexation)</b>	
	<b>S94 Plan No. 13</b>	
<b>(e)</b>	<b>Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	

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1 ET @ \$1759.9 per ET	\$1759.90
((\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(f) Casuarina Beach/Kings Forest Community Facilities:	
1 ET @ \$1611 per ET	\$1611
((\$1311 base rate + \$300 indexation)	
S94 Plan No. 19	
(g) Casuarina Beach/Kings Forest Open Space:	
1 ET @ \$1231 per ET	\$1231
((\$717 base rate + \$514 indexation)	
S94 Plan No. 19	
(h) Cycleways:	
1 ET @ \$447 per ET	\$447
((\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
(i) Regional Open Space (Casual)	
1 ET @ \$1031 per ET	\$1031
((\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
(j) Regional Open Space (Structured):	
1 ET @ \$3619 per ET	\$3619
((\$3619 base rate + \$0 indexation)	
S94 Plan No. 26	

[PSC0175]

## 57. Section 94 Contributions

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

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

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

### Heavy Haulage Component

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



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

where:

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

and:

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

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

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

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

[PCC0225/PSC0185]

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

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

[PSC0215]

59. Prior to the issue of a Subdivision Certificate for Stage 2, a maintenance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

60. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

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

The submission shall include copies of all undertaken test results.

[PSC0395]

62. All landscaping requirements shall be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate.

[PSC0485]

63. 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]

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

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

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

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

[PSC0735]

65. Subdivision Certificates for each Stage of the development will not be issued by the General Manager until such time as all conditions of this Development Consent, relevant to the particular Stage being released, have been complied with.

[PSC0825]

66. 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) The existing 'Right of Carriageway 10 wide, 16 wide and variable in width' encumbering the site, is to be extinguished as part of the Stage 2 works.
- (c) The existing Council-imposed title restrictions over the property are to be reiterated by all Stages of the proposed development, via inclusion in the 88B instrument of the plan of subdivision. These restrictions cover: the restricted building area within the site; stormwater discharge infiltration requirements; and pet and plant restrictions.

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]

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

[PSC0855]

- 68. Pursuant to Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979 (As amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000, the following Development Consents shall be surrendered by lodgement of the prescribed information, suitably executed, PRIOR to the issue of a Subdivision Certificate for the nominated stage of the development;**

**Stage 1: - DA02/1009 and associated CC04/0403**

**- DA02/1708 and associated CC04/0402**

**- DA09/0048**

**Stage 2: - DA04/1023**

**- DA08/0749**

**- DA09/0109**

**- DA04/0151 (relating to the dwelling on proposed Lot 13)**

**Stage 4: - DA05/1294**

[PSC0875]

- 69. 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]

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

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

**Note:**

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

[PSC0915]

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

[PSC0925]

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

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

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

[PSC1065]

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

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

[PSC1115]

**74. 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.**

**75. Electricity**

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard, where required. Such lights to be capable of being energised following a formal request by Council.

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

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

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

**Asset Protection Zones**

1. At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of '*Planning for Bush Fire Protection 2006*' and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.

**Water and Utilities**

2. Water, electricity and gas are to comply with section 4.1.3 of '*Planning for Bush Fire Protection 2006*'.

**Access**

3. Public road access shall comply with section 4.1.3 (1) of '*Planning for Bush Fire Protection 2006*', except that a through road is not required in this case.

**Design and Construction**

4. The existing dwellings 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 mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

**REPORT:**

**Applicant:** Mr D O'Rourke  
**Owner:** Mr D O'Rourke  
**Location:** Lot 56 DP 1030322 Collins Lane, Casuarina  
**Zoning:** 2(e) Residential Tourist  
**Cost:** N/A

**BACKGROUND:**

The subject site is located off the end of Collins Lane (but has frontage to Casuarina Way) within the central precinct for Casuarina (approved Stage 4). It is essentially a rectangular shaped block with a 92 metre frontage to Casuarina Way and a depth of 143 metres to create a total site area of 1.16 hectares. The subject site is generally level (as a result of fill for the subdivision) and is clear of any significant vegetation; however the site is partially identified as bushfire prone.

The lot was created under Development Consent K99/1732. Since this time there have been numerous approvals over the land as follows:

- 0612/2001DA – approved construction for a dwelling and internal pool;
- DA02/1009 – approved a ten lot subdivision;
- DA02/1077 – approved multi dwelling housing (triplex – which has since been surrendered);
- DA02/1708 – approved a seven-lot community title subdivision;
- DA04/0151 – approved detached dual occupancy;
- DA04/1023 – approved storage shed;
- DA05/1294 – approved alterations and additions to an existing detached house (guest wing);
- DA08/0749 – approved cabana, driveway, carpark, storage shed and tennis court;
- DA09/0048 – approved 18 lot community title subdivision; and
- DA09/0109 – approved detached storage shed.

It should be noted that this application was originally submitted as a thirteen (13) lot subdivision, in the form of twelve (12) residential lots and one residual lot. The residual lot was subject to a separate development application (DA09/0048.01), which was lodged concurrently with DA10/0255. Upon Council's advice that the proposed method of subdivision (seeking to have two opposing approvals for subdivision) was not considered to be lawful nor desirable, the applicant withdrew DA09/0048.01 and amended this application as noted below.

Proposal

The proposed development is to undertake a four stage, nineteen (19) lot torrens title subdivision.

The proposed subdivision will be delivered over four (4) stages, with all lots to be of varying size and utilise varying points of access. The stages, proposed lot sizes and access points are summarised in the table below:

Proposed Lot	Size (m <sup>2</sup> )	Accessed from
<b>Stage 1</b>		
1	456.37	Casuarina Way
2	456.57	Casuarina Way
3	456.57	Casuarina Way
4	456.57	Casuarina Way
5	456.57	Casuarina Way
6	456.57	Casuarina Way
7	456.57	Casuarina Way
8 (Residual)	7035.61	Collins Lane
<b>Stage 2</b>		
8	464.26	Collins Lane
9	469.09	Collins Lane
10	534.42	Collins Lane
11	464.20	Collins Lane
12	547.10	Collins Lane
13	453.90	Collins Lane
14 (Residual)	4102.64	Collins Lane
<b>Stage 3</b>		
14	615.44	Collins Lane
15	697.44	Collins Lane
16 (Residual)	1394.88	Collins Lane
17	697.44	Collins Lane
18	697.44	Collins Lane
<b>Stage 4</b>		
16	697.44	Collins Lane
19	697.44	Collins Lane

The subject site accommodates an existing vehicular access from Collins Lane. The existing Collins Lane cul-de-sac head and right of carriageway is to be maintained as part of Stage 1. The proposed development incorporates an extension to Collins Lane as part of Stage 2, which would allow the extinguishment the existing right of way. A new cul-de-sac head will be constructed as part of Stage 2.

There are three existing dwellings located over the site. One of these is to remain, with the subdivision being designed to accommodate the house within its own parcel of land (proposed Lot 16 in Stage 4). The second dwelling (located partially on proposed Lot 13) is to be demolished as part of Stage 2 of the development. The third dwelling (the guest wing located on proposed Lot 19) is to be demolished as part of Stage 4 of the development.

The proposed development will require several existing approvals to be surrendered. An appropriate condition of consent has been applied in this regard.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

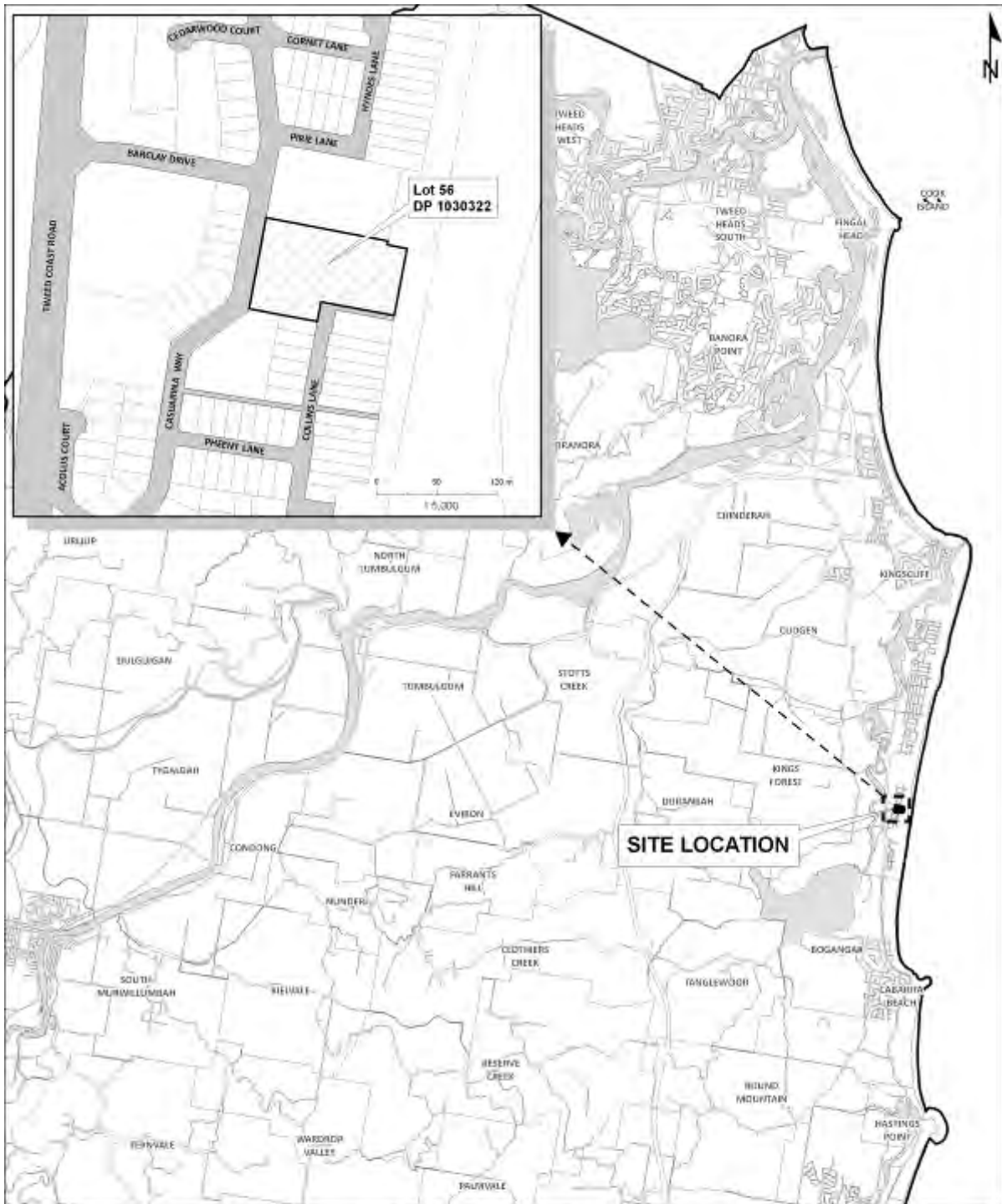
Summary

As the Department of Planning have granted Director General's Concurrence, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than a 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.



**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 56 DP 1030322  
Collins Lane, Casuarina

0 0.5 1.0 Km  
1:100,000

Filename: Z:\env\planning\mxd\AAP\_08\0 SitePlan.mxd

Author: J.Dunham - Planning Reform Unit

Date Printed: 09 September 2010

Disclaimer: While every care has been taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty, expressed or implied, as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation liability in negligence) for all expenses, losses, damages, including indirect or consequential damage (and costs of claims) in connection with a user's reliance on any data or any system. This information is supplied for the general public and is not to be considered professional advice and a professional adviser should not be used for advice or construction purposes and prior to any occurrence a "Read before you Dig" enquiry must be made by calling LIRB. The information contained on this document remains valid for 30 days only from the date of supply.



Coordinate System: PAZL Zone 56  
Datum: GDA94

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City and Cultural Centre  
3 Tankage Road  
Murrumbidgee NSW 2484  
PO Box 618  
Murrumbidgee NSW 2484  
T: (02) 6670 2489 / 1300 202 872  
F: (02) 6670 2485  
W: www.tweedshire.gov.au  
E: planning@tweedshire.gov.au



**SUBDIVISION PLANS:**





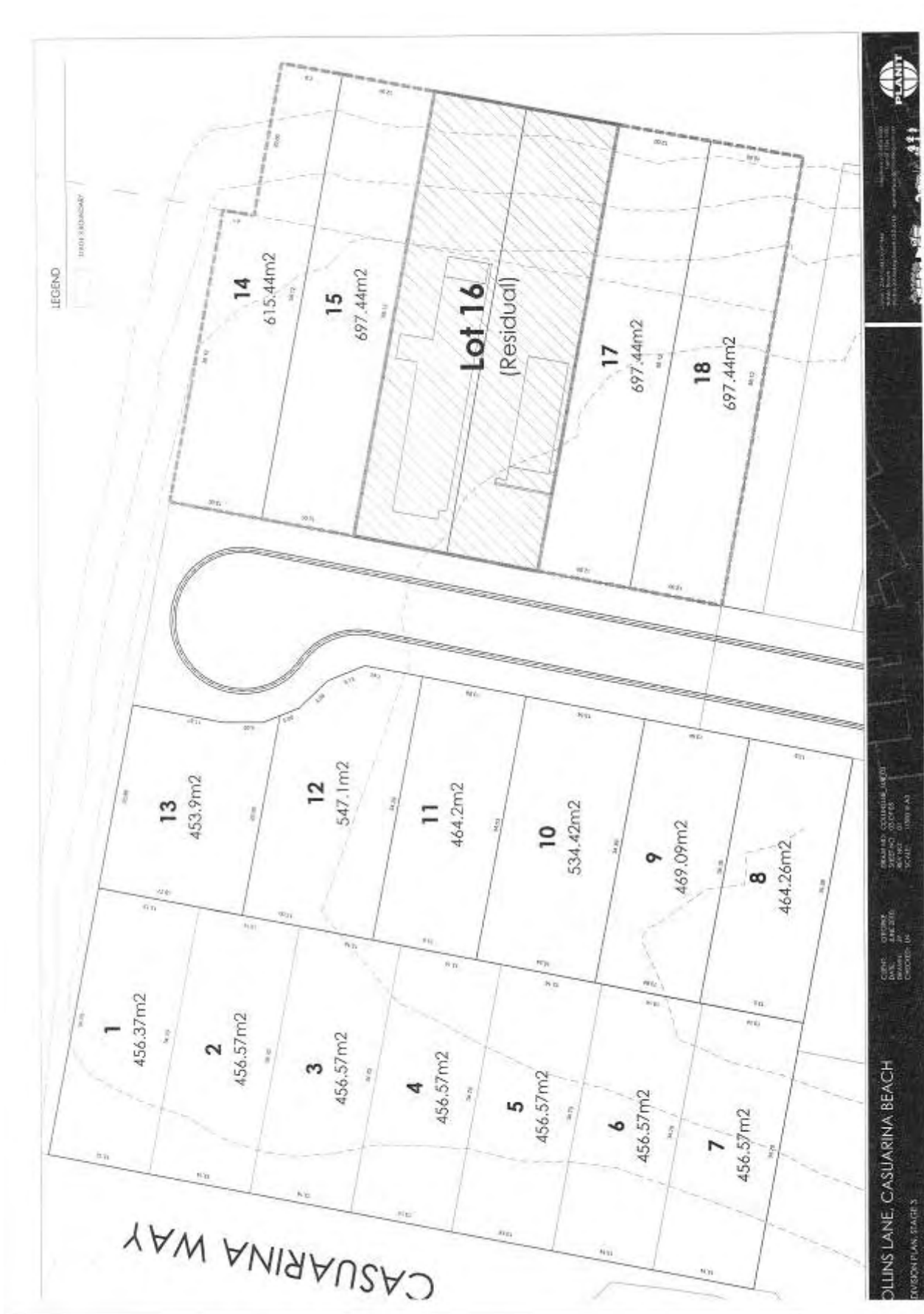
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 DATE: 04/03/10  
 OFFICE: 20  
 PROJECT: 20  
 DRAWING NO: 1000/100

DRAWING: 1000/100  
 SCALE: 1:500 (A3)

PLAN NO: 1000/100  
 DATE: 02/03/10  
 PROJECT: 20

PLANIT  
 www.planit.com.au  
 111

**OLLINS LANE, CASUARINA BEACH**  
 DIVISION PLAN, STAGE 2



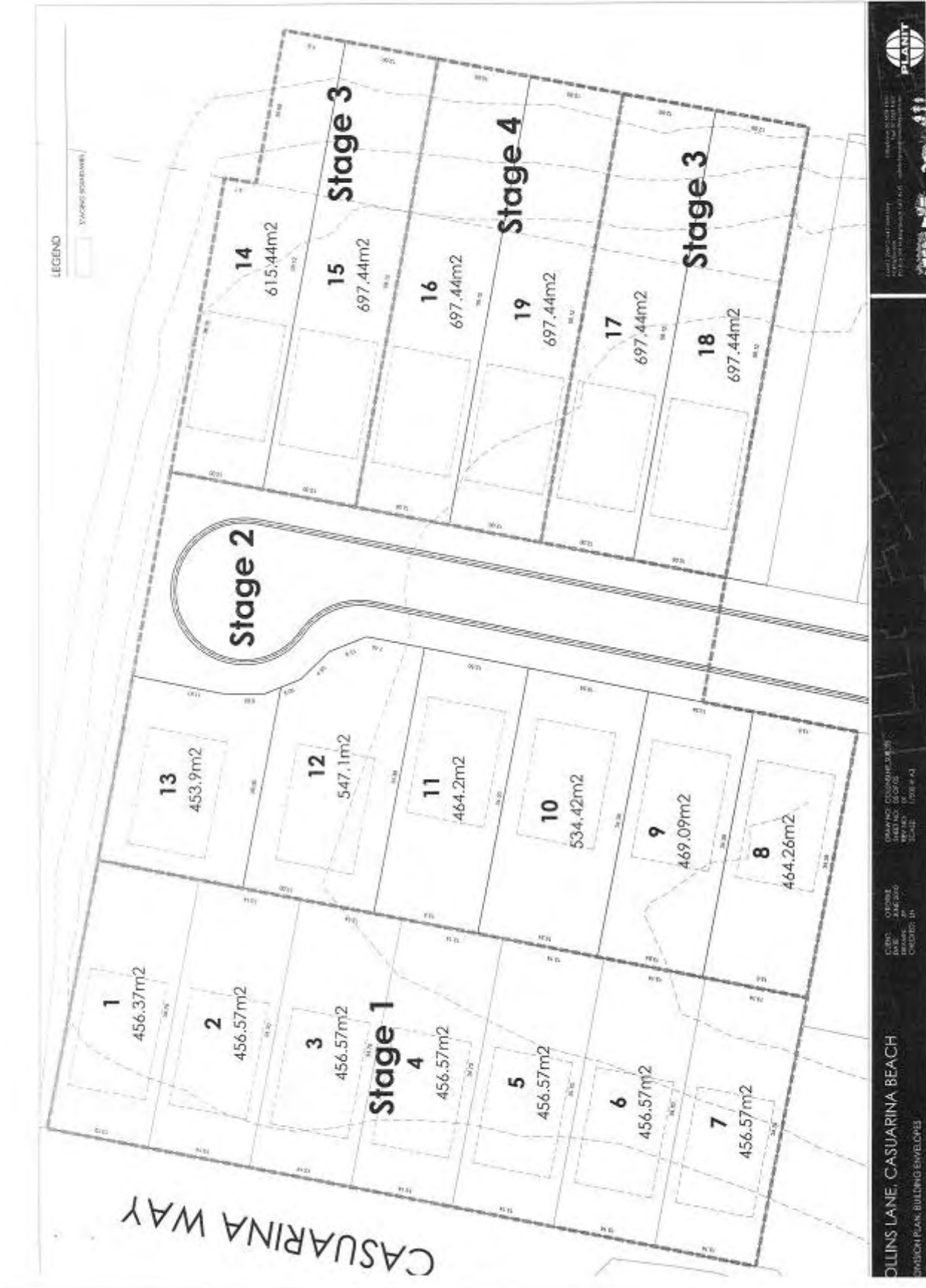


PLANIT

CLIENT: CASUARINA BEACH  
DATE: 20/09/2010  
DRAWN BY: J. SMITH  
CHECKED BY: J. SMITH

SCALE: 1:1000

OLINS LANE, CASUARINA BEACH  
SUBDIVISION STAGE 4



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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

**Clause 5 - Ecologically Sustainable Development**

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*. The subject site is an existing infill site and therefore the proposed development is considered to be in keeping with the ESD principles.

**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.*

In this instance, the subject site is part zoned 2(e) Residential Tourism, the primary objectives of which are outlined below.

The proposed subdivision is considered consistent with the primary objective of the zone as it will be for residential use.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established residential nature of the local area.

#### Clause 11 - Zone objectives

The site is part zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands).

### **2(e) Residential Tourist Zone**

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.*

The proposed development for a nineteen (19) lot subdivision of a residential development lot within the Casuarina Beach Estate is considered to be consistent with the objectives of the 2(e) zone.

### **7(f) Environmental Protection**

Primary objectives

- *To identify land susceptible to coastal erosion and protect it from inappropriate development.*
- *To protect and enhance the scenic and environmental values of the land.*

Secondary objective

- *To allow for other development that is compatible with the primary function of the zone.*



The proposed subdivision is considered to be appropriate in the 7(f) zone as the majority of the proposed residential lots (68%) are wholly within the land zoned 2(e) Residential Tourist. Only 6 of the 19 allotments incorporate a portion of 7(f) Environmental Protection zoned land (in the eastern most portion of each).

Any future residential dwelling / structure will be required to be situated entirely within the 2(e) zone and no buildings or associated structures will be permitted in the 7(f) zone. The approved use of all allotments will be residential, which is consistent with the surrounding land uses.

#### Clause 15 - Essential Services

The proposal can be adequately serviced by way of existing water and sewer mains within the locality, whilst augmentation and embellishment of the existing stormwater facilities can also be satisfactorily achieved subject to compliance with the provisions of Tweed DCP Section A5 and conditions of consent.

The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

#### Clause 16 - Height of Building

A 3 storey height limit encumbers the allotment. No buildings are proposed as part of this application.

The proposal is considered to be consistent with the provisions of Clause 16 of TLEP 2000.

#### Clause 17 - Social Impact Assessment

Having regard to the provisions of DCP Section A13, a detailed social impact assessment is not required.

#### Clause 27 - Development in Zone 7(f) Environmental Protection (Coastal Lands)

The objective of Clause 27 is to protect land that may be susceptible to coastal erosion processes from inappropriate development. It is considered that the proposed nineteen (19) lot Torrens title subdivision will not impact on the behaviour of the sea, beach or dune, landscape or scenic quality of the locality, and any native vegetation.

The existing 3m wide easement to drain sewer in the 7(f) zone has been previously approved as public infrastructure (which is a permissible use). The proposal seeks to relocate the existing sewer line (which services one house) and relocate it in alignment with the sewer infrastructure south of the subject site.

Having a public sewer line within the 7(f) zone is consistent with surrounding development and in this instance is considered acceptable.

Clause 35 - Acid Sulfate Soils

The subject site is identified as possessing Class 4 Acid Sulphate Soils. Council's Environmental Health Unit has advised that the site has been subject to significant earthworks and disturbances for historical sand mining and construction of the original Casuarina Beach subdivision. Any ASS which may have been present on the site would have been exposed previously. Further, the approved ASSMP for Casuarina Beach required treatment of materials below 5m AHD, west of the old coast road (which does not apply to the subject land).

It is considered that the proposal complies with the requirements of Clause 35 of the TLEP 2000.

Clause 39 - Contaminated Lands

The site is existing residential land and is part of the greater Casuarina Beach Estate. Council Environmental Health Unit has advised that in accordance with a Council Resolution of 21 November 2001, no further testing for contamination was necessary.

It is considered the proposal complies with the requirements of Clause 39 of the TLEP 2000.

Clause 39A - Bushfire Protection

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act a permit is required for subdivisions on land subject to bushfire hazard.

The NSW Rural Fire Services has given their general terms of approval for the development and appropriate conditions of consent have been imposed.

**State Environmental Planning Policies**

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

Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 33: Coastal hazard areas

The proposal is for subdivision of an existing residential allotment within the Casuarina Beach Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard.

Council's Natural Resources Management Coordinator has noted the following:

*'The reviewed 2100 Hazard line (to include the NSW Government's Sea Level Rise benchmarks) is now aligned with the 7(f) zoning, therefore the requirements of this zone is applicable. There are no further requirements or considerations considered necessary for this proposal with regard to Coastal Hazards.'*

It is considered the proposed subdivision is in accord with the Coastline Management Manual and the existing subdivision patterns within the area.

The proposal is compliant with Clause 33.

#### Clause 43: Residential development

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

Site erosion will be minimised throughout the construction phase and enforced via conditions of consent. 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, a SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

The 7(f) zoned land represents approximately 11.7% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed lots 14 to 19.

Whilst justification is provided, the applicant draws Council attention to *'the established subdivision pattern and existing controls and covenants which dictate management of 7(f) zoned properties within Casuarina Beach Estate. The proposal has been designed to be consistent with this existing situation'*.

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

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

*'The proposed subdivision has been designed to replicate the existing layout with regard to the 'beach front' allotments and is clearly representative of the established subdivision pattern.'*

*In this regard the established subdivision pattern provides 'beach front' residential allotments (inclusive of the subject site) which incorporates a part 2(e) / 7(f) zoning. This configuration sees all 7(f) zoned land within the existing residential allotments provide areas less than 40 hectares. An effective visual representation of this situation can be found within Council's zoning maps.*

*The proposed layout inclusive of lot size variation is clearly in keeping with the existing subdivision pattern and will enable the continued development of the Casuarina Beach estate in a coordinated and consistent manner. Granting of development consent inclusive of the proposed lot size variation will not result in an excess or avoidable impact.*

*Despite the lot size variation all existing 'beach front' allotments within Casuarina Beach achieve land uses generally in accord with the objectives of the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas.*

*By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'beach front' allotments and that of the subject property. No adverse impacts will result to the established environmental character'.*

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

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

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

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

The objectives of the Clause 21A are:

- *to protect the ecological or scenic values of coastal lands,*
- *to protect land that may be susceptible to coastal erosion processes from inappropriate development.*

The proposed development is considered to be consistent with the objectives of Clause 21A in that the ecological or scenic values of the coastal lands are maintained; and land susceptible to coastal erosion processes will be protected from inappropriate development, by way of restrictions of use applied to each new allotment.

The objection is considered to be well founded. As such, strict compliance with the minimum lot size for land zoned 7(f) is considered unreasonable and unnecessary in this instance.

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

The 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 19 lot Torrens title subdivision in an existing subdivision that incorporates a development with access to utility services and is within close proximity to community facilities. The subject allotment has been identified for subdivision since the creation of the Casuarina Beach Estate.

The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the above objectives.

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

The Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f). As such, the proposed non-compliance with clause 21A of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this particular case, as only a minor portion of the site (11.7%) is zoned 7(f) Environmental Protection (Coastal Lands) and the proposed subdivision will have no impact upon that particular zone. That is, the area of land zoned 7(f) will remain unchanged, with all new development required to be located entirely within the 2(e) zoned.

The streetscape and amenity of the locality will remain relatively the same, noting that the subject site is infill development within a well established residential precinct of Casuarina Beach estate.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with clause 21A of the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

### Conclusion

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under clause 21A is considered unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support.

In addition, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- *The majority of the proposed residential lots are within the land zoned 2(e) Residential Tourist while only the eastern strip of proposed Lots 14 to 19 consists of 7(f) Environmental Protection;*
- *Any residential dwellings will be situated entirely within the 2(e) zone. No buildings or associated structures would be permitted in the 7(f) zone;*
- *The proposed uses of the land would be residential, which is consistent with the surrounding land uses.*

### SEPP No. 55 - Remediation of Land

The land has been sand mined in the past and areas of radiation have been discovered in the Casuarina Beach area. In relation to this development, Council's environmental Health Unit are satisfied that on the basis of the information submitted to Council, that further investigation is not required for radioactive material.

### SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development will be considered compatible with existing and approved development for the locality upon completion of the proposed subdivision works.

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

Under the Draft LEP 2010, the subject site is zoned R1 – General Residential and E2 Environmental Protection. The proposed development is considered to be consistent with the objectives of both zones.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the R1 land currently zoned 2(e) is identified as Lot Size code G, which requires 450m<sup>2</sup>; the E2 land currently zoned 7(f) is identified as Lot Size code AB2, which requires 40ha.

Clause 4.6 of the Draft LEP 2010 relates to exceptions to development standards, to allow a degree of flexibility. The proposed subdivision is consistent with clause 4.6 in that: the applicant has lodged a written request that seeks to

justify the contravention of the development standard (SEPP1 Objection); Council is satisfied that the written request adequately addresses all matters; the proposal will be in the public interest; and concurrence has been granted.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

It appears that each allotment has been designed to enable a dwelling house to be erected that will be fully compliant with the relevant Site and Building Design controls contained within Section A1.

A2-Site Access and Parking Code

The property has frontage to both Casuarina Way and Collins Lane. Proposed Lots 1 to 7 (Stage 1) will have individual access driveways directly fronting Casuarina Way. Lots 8 to 13 and 14 to 19 will have individual access from the proposed extension of Collins Lane (which will be constructed in Stage 2 of the development).

Council's Development Engineer has raised no concerns with regard to site access and parking.

A5-Subdivision Manual

The proposed Torrens title subdivision generally complies with the requirements of Section A5 of the DCP. With regards to the relevant provisions regulating lot size and dimensions, all allotments are compliant meeting both the 450m<sup>2</sup> minimum lot size and providing sufficient width and length to accommodate the required 10m by 15m building envelope.

Council's Development Engineer has noted the following with respect to the proposed subdivision:

Title restrictions

*'The following easements and restrictions currently encumber the site, per DP 1030322::*

- *Easement for drainage of sewage 3 wide, 4 wide, 5 wide, 6 wide, 8 wide, 16 wide and variable width. (Actual affectation is 8m to 13m wide in 7(f) zone).*
- *Easement for drainage of water, 5 wide, 6 wide, 8 wide and variable width. (Actual affectation is 8m to 13m wide in 7(f) zone).*
- *Easement for electricity supply, 2 wide, 3 wide, 10 wide and variable width. (10m)*
- *Right of Carriageway 10 wide, 16 wide and variable in width (10m). This will need to be extinguished as part of the Stage 2 works.*
- *Easement for water supply, 10 wide and variable in width. (10m)*
- *Restrictions on the use of land x 4:*

- 7(f) zone – no building.
- Infiltration requirement for stormwater.
- Plants, dog and cat restrictions.
- Private restriction re: building matters.

*The first three of these restrictions will be required to be reiterated within the proposed subdivision's 88B instrument.*

*New easements will need to be created over any new sewer or stormwater infrastructure that is to be dedicated to Council'.*

#### Earthworks / Landforming

*'The creation of the individual allotments shall not require any significant earthworks to be undertaken.*

*However minor reshaping of the site will be necessary to ensure all lots fall to either a street frontage or existing reserve. The subdivision will have a mandated roofwater infiltration requirement, with surcharge flows directed to a street frontage or reserve.*

*To facilitate this, Lots 8 to 13 will be reshaped. Some fill may need to be imported.*

*Suitable conditions relating to site filling will be imposed'.*

#### Road Network

*'The property has frontage to Casuarina Way as well as Collins Lane. Both roads are fully constructed with (modified) K & G and an asphalt pavement in good condition: Casuarina Way having an 11m wide carriageway and Collins Lane having a 7.5m wide carriageway.*

*Casuarina Way does not require any road modifications or improvements.*

*Collins Lane will require:*

- *Removal of the current cul-de-sac head and reconstruction as a straight road.*
- *The subsequent extinguishment of the existing Right-of-Carriageway over the current cul-de-sac head.*
- *An extension of the existing road through the site, to terminate in a cul-de-sac head with a minimum radius of 9m.*

*This proposal will extend this arm of Collins Lane from approximately 150m long to over 220m long. While this is not strictly compliant with Council's desired maximum cul-de-sac length of 100m, it is considered to be a reasonable alternative to the previously approved 'Community Title' option for the site.*

*The lots in the cul-de-sac comply with Council's minimum requirement of a 9m kerb line frontage.*

*An existing dwelling and the existing concrete driveway within the site will need to be removed to implement this Collins Lane construction'.*



### Lawful Point of Discharge

*'There are multiple legal discharge points, being the road frontages as well as the adjoining Public Reserve to the north. The reserve will be the legal discharge point for the extension of Collins Lane, similar to the previously approved CC04/0402 & CC04/0403 – and NOT as indicated on the applicant's plan (open headwall discharging into the reserve). A direct connection to the existing stormwater line within the reserve will be required. This will be covered by a condition of consent, and pursued at the time of CC submission for Stage 2.*

*Stages 1 and 2 will not require any specific stormwater works as all those lots fall out to the street – however the Stage 1 release must address (not necessarily construct) the stormwater management requirements for the entire development. This is due to the requirement for all lots to infiltrate roofwater, and have a surcharge overflow path to the street. Lots 7 to 12 have adverse fall away from the street, and the applicant must determine the most appropriate stormwater scheme for the site. Some site filling may be necessary to achieve, which may involve Lot 6, being Stage 1'.*

### Water Supply

*'Council's reticulated potable water supply is available to the area. The existing water main in Collins Lane will need to be partly removed, relocated and extended, while ensuring the existing service of properties remains unaffected. The applicant's submission is inappropriate in this regard, however such details will be pursued upon submission of a construction certificate.*

*Recommended conditions of consent shall require the provision of service in accordance with Council's standards'.*

### Effluent Disposal

*'Council's piped effluent disposal infrastructure is available within the area, and currently services the site.*

*Part of the required sewer infrastructure for this development has already been constructed, per DA02/1009 and the associated CC04/0403. This line runs along the Casuarina Way frontage, then diverts THROUGH proposed Lot 2 to Lot 13. It is likely that some of this line will need to be relocated.*

*Work-as-Executed information, test results and engineering certification will be required for this previously completed work, prior to the Stage 1 release.*

*The applicant proposes to extend the existing sewer system to service the development. Adequate spare capacity exists within the system to allow for this.*

*The existing house connections to the dwellings on Lots 16 & 19 will require relocation and removal of the old service prior to issue of the subdivision certificate for Stage 3.*

*Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards'.*

B5-Casuarina Beach

The provisions of Section B5 relate to the land within the Casuarina Beach Estate. It is considered that the proposed infill subdivision is compliant with all relevant requirements of Section B5.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

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

Clause 92(a) Government Coastal Policy

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

Demolition

The existing dwelling on Lot 6 and the guest wing on proposed Lot 19 is to be demolished. Council's Environmental Health Unit requires a demolition plan to be submitted and approved prior to the issue of a construction certificate for each relevant stage. A condition of consent has been applied in this regard.

**(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**

There are no further likely impacts in addition to those previously discussed.

The proposal is consistent with the surrounding residential character. The site's suitability has been demonstrated throughout the assessment of the proposal including the assessment of the minimal environmental impacts and consistency with environmental planning instruments and the DCP.

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

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan and minimal environmental impacts. The proposal is consistent with the residential character of the locality.

A condition of consent has been applied requiring the surrender of conflicting previous approvals, at different stages of the development.

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

The proposal was originally notified for a period of fourteen days from Monday 9 August to 23 August 2010. No submissions were received. As a result of the

changes (13 lots to 19 lots), the revised proposal was re-notified for a further 14 days. No submissions were received.

Department of Planning

As noted above, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f).

NSW Rural Fire Services

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act, the proposed subdivision was referred to the NSW RFS as Integrated development. The NSW RFS has granted a bushfire safety authority, subject to conditions of consent which have been applied.

**(e) Public interest**

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

**OPTIONS:**

1. Adopt the recommendation and resolve to approve the development application with conditions.
2. Resolve to refuse the development application with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development 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 therefore considered the site suitable for the development and warrants 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**12 [PR-CM] Development Application DA10/0283 for Re-subdivision of 16 Lots into 23 Lots at Lots 1-16 Section 8 DP 14895, Casuarina Way, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0283 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a development application for the re- subdivision of land at Lots 1 – 16 in Section 8 DP 14895 situated at Casuarina Way, Kingscliff (Seaside City Northwest precinct).

The proposal involves subdividing the existing 16 allotments in the northwest precinct (on the western side Casuarina Way) which are approximately 1000m<sup>2</sup> into 23 allotments varying in size between 450 m<sup>2</sup> and 744 m<sup>2</sup>. Lots 36 - 47 are proposed in clusters of four allotments incorporating a battle axe format. The houses developed on these allotments will need to be carefully designed in accordance with the recommended conditions of consent given the minimum allotment size of 450m<sup>2</sup>.

The proposal is the second major re-subdivision within the Seaside City development. The first major re-subdivision was DA08/0755, which sought approval to re-subdivide 18 of the south west allotments into 24 smaller allotments. This application proceeded to the NSW Land & Environment Court where the applicant challenged many of Council's draft conditions of consent. Throughout the proceedings the interpretation of the following documents were challenged:

- Tweed DCP Section B11 Seaside City;
- Tweed S94 Plan No. 28 Seaside City;
- Seaside City Planning Agreement (S94) between Tweed Shire Council and Richtech Pty Ltd.

Following a Section 34 Mediation Conference the applicant was issued with a development consent by the court.

This application has been lodged generally in accordance with the adopted principals as per the Court determination and accordingly many of the recommended conditions have been duplicated from the DA08/0755 determination.

The application is reported to Council for determination as the proposal incorporates a SEPP 1 Objection to Clause 20(2)(a) of the Tweed LEP 2000 which imposes a 40ha standard on land zoned 7(l) Environmental Protection (habitat). The western boundary of these allotments is already burdened by a slither of 7(l) zoned land and accordingly this application merely seeks to duplicate the existing arrangement over the additionally proposed allotments (4 of which are affected by the 7(l) zone).

**RECOMMENDATION:**

**That Development Application DA10/0283 for a re-subdivision of 16 lots into 23 lots at Lots 1 - 16 Section 8 DP 14895, Casuarina Way, KINGSCLIFF be approved subject to the following conditions:**

**GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and Preliminary Plan of Subdivision Plans:**

- Sheet 1 of 2 Sheets prepared by Brian Darryl Raaen and dated 10/08/2010**
- Sheet 2 of 2 Sheets prepared by Brian Darryl Raaen and dated 10/08/2010**

**except where varied by the conditions of this consent.**

[GEN0005]

**2. This subdivision application has approved 23 single dwelling allotments only (no duplex sites have been approved by this application). Each allotment is to be a minimum of 450m<sup>2</sup> in size (excluding battle handles) as indicated on the approved plan.**

[GEN0005]

**3. All works shall comply with the Seaside City, Kingscliff Construction Environmental Management Plan prepared by Cardno and dated 6 July 2007 to the satisfaction of the Council.**

[GEN0005]

**4. All works shall comply with the Radiation Investigation and Remediation Action Plan prepared by Cardno and dated 23 May 2008 to the satisfaction of the Council**

**5. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.**

[GEN0045]

**6. Subject to Condition 71, 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]

**7. 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]

**8. All works shall comply with the Acid Sulfate Soils Management Plan prepared by Cardno and dated 23 May 2008 to the satisfaction of the Council.**

[GEN0005]

**9. All works shall comply with the Seaside City Northwest Subdivision Erosion and Sediment Control Plan prepared by Cardno and dated 8 April 2010.**

[GEN0005]

10. As required by condition 11 below the primary revegetation/restoration works within the riparian buffer as detailed within the approved Plan of Management for existing Lots 1 to 9 Section 8 DP 14895 zoned 7(I) Environmental Protection (Habitat) must be completed within 12 months of the issue of this development consent.

[GEN0005]

**PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

11. A Plan of Management must be prepared for the riparian buffer of existing Lots 1 to 9 Section 8 DP 14895 zoned 7(I) Environmental Protection (Habitat) by suitably qualified person with knowledge and experience in the local vegetation reference community (Littoral/ riparian rainforest) and submitted to Director Planning and Regulation for approval. The Plan of Management must provide the following:

- planting and maintenance details to enable local native species to cover the riparian buffer including at least two trees per lot selected from the list within the approved vegetation management plan for DA05/0793
- management of the 5m Asset Protection Zone
- potential impacts and methods to avoid these impacts arising upon the ecological values of the riparian corridor: disturbance of native flora and fauna as a result of intrusion by humans and domestic animals: increased fire risk: rubbish dumping: weed invasion and vegetation clearing. The Plan of Management is to include an Implementation Schedule in accordance with the draft guidelines attached which provide for progress reports on implementation of the plan to be given to the Council no less than once per year for a period of five years not later than on each anniversary of the date of this development consent or until a dwelling is constructed on the affected lots.

[PCCNS01]

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

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

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

[PCC0275]

13. 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]

14. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

[PCC0485]

15. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

16. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

17. 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.

#### **RIGHT OF CARRIAGEWAY**

- (a) The right of carriageways providing access to proposed lots 37, 38, 39, 41, 42, 43, 45, 46 and 47 shall be constructed with a 4.5m wide concrete pavement and shall also comply in general terms with Council's Driveway Access to Property Policy.

[PCC0875]

18. Prior to the issue of a Construction Certificate for civil works to be dedicated to Council 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
  - Rights of Carriageway
  - stormwater drainage



- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

#### 19. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 6m per day:
  - As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to allow for construction and operation vehicular loading.

- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

20. 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]

21. Prior to the issue of a Construction Certificate for this development all works necessary to provide infrastructure and services to the proposed 23 lots as approved under Construction Certificate CC08/0473 shall be completed to the satisfaction of the General Manager.

[PCNS01]

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

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

[PCW0005]

23. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

24. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3<sup>rd</sup> Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems – General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

25. Any imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further

blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

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

[PCW0375]

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

[PCW0815]

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

[PCW0835]

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

[PCW0985]

#### **DURING**

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

[DUR0005]

30. 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]

31. 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]

32. Any 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]

33. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.
- [DUR0815]
34. 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]
35. 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.
- [DUR0995]
36. 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]
37. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.
- [DUR1015]
38. 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]
39. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be: -
- (a) Roofed;
  - (b) Provided with a sealed floor; and
- Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-labile and shall be provided with pump out facilities.
- [DUR1635]
40. A concrete footpath 1.2 metres wide is to be constructed on a compacted base along the entire frontage of the site to Casuarina Way in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

41. 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]

42. 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) Rights of Carriageway
- (b) Pathways, footways, bikeways - formwork/reinforcement
- (c) Final inspections - on maintenance
- (d) 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]

43. The 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]

44. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.

[DUR2185]

45. 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]

46. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

47. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

48. All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.

[DURNS01]

49. Noise from the proposed works shall not be permitted to unreasonably impact the amenity of any residential premise.

[DURNS01]

50. All construction activities that generate dust shall cease when average wind speeds exceed 15m/s(54 km/h). The applicant shall be responsible for providing a calibrated wind meter on site to monitor wind speeds. The wind meter must be located so that it is easily accessed by relevant supervisors and Council Officers. This data must be able to be produced to Council on request.

[DURNS02]

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

51. 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]

52. 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:	23 ET @ \$11020 per ET	\$253460
South Kingscliff Water Levy:	23 ET @ 256 per ET	\$5888
Sewer Kingscliff:	23 ET @ \$5295 per ET	\$121785

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.

[PCC0265/PSC0165]

53. 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:**  
 45.5 Trips @ \$955 per Trips **\$43453**  
 (\$868 base rate + \$87 indexation)  
 S94 Plan No. 4  
 Sector7\_4
- (b) **Shirewide Library Facilities:**  
 7 ET @ \$792 per ET **\$5544**  
 (\$792 base rate + \$0 indexation)  
 S94 Plan No. 11
- (c) **Bus Shelters:**  
 7 ET @ \$60 per ET **\$420**  
 (\$60 base rate + \$0 indexation)  
 S94 Plan No. 12
- (d) **Eviron Cemetery:**  
 7 ET @ \$120 per ET **\$840**  
 (\$101 base rate + \$19 indexation)  
 S94 Plan No. 13
- (e) **Community Facilities (Tweed Coast – North)**  
 7 ET @ \$581 per ET **\$4067**  
 (\$581 base rate + \$0 indexation)  
 S94 Plan No. 15
- (f) **Extensions to Council Administration Offices  
 & Technical Support Facilities**  
 7 ET @ \$1759.90 per ET **\$12319.30**  
 (\$1759.9 base rate + \$0 indexation)  
 S94 Plan No. 18
- (g) **Cycleways:**  
 Plan No. 22 states \$47 per m<sup>2</sup> for 715m<sup>2</sup> of cycleway.  
 This equates to \$84, 012 credit  
 Minus \$2, 682 (DA08/0755) = \$81, 330 credit for works in kind.  
 Minus \$447 (DA09/0816) = \$80, 883 credit for works in kind.  
 Minus \$447 (DA09/0822) = \$80,386

**An additional 7 lots for DA10/0283 (\$3129)**

**Leaves a credit of \$77,257**

**Therefore NIL charge**

**(\$447 base rate + \$0 indexation)**

**S94 Plan No. 22**

**(h) Seaside City Structured Open Space:**

**7 ET @ \$3585 per ET**

**\$25095**

**(\$3585 base rate + \$0 indexation)**

**S94 Plan No. 28**

[PCC0215/PSC0175]

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

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

[PSC0215]

- 55. Prior to the issue of a Subdivision Certificate, a maintenance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.**

**Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.**

[PSC0225]

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

[PSC0725]

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

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

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

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

[PSC0735]

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

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

- (a) 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]

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

[PSC0825]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.**
- (b) Rights of carriageway with a minimum width of six (6.0m) meters shall created over the accessways to proposed lots .37, 38, 39, 41, 42, 43, 45, 46 and 47**
- (c) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority**
- (d) 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.**
- (e) Restriction as to user regarding the riparian buffer described within the approved Plan of Management for the riparian buffer – this area must be subject to an approved restoration program and managed as a natural area in perpetuity. Burden: Part existing Lots 1 to 9 Section 8**

**DP 14895 zoned 7(l) Environmental Protection (Habitat) Benefit: Tweed Shire Council**

- (f) **Restriction as to user regarding the riparian buffer– primary works as described within the approved Plan of Management for the site must be completed prior to the occupation of any building on the site**  
**Burden: Part existing Lots 1 to 9 Section 8 DP 14895 zoned 7(l) Environmental Protection (Habitat) Benefit: Tweed Shire Council**
- (g) **Restriction as to user regarding dog and cat ownership and control on all residential lots in the following terms:**
- **Owners of dogs within the development shall have their yards fenced as to securely contain a maximum of one (1) dog per allotment and the ownership of cats within the development shall be restricted to one (1) de-sexed cat per allotment and such cats shall be restrained within the house or a secure night cage between the hours of 6.00pm and 6.00am.**
  - **No dog shall be registered without the consultation of a dog-proof compound which must be approved by Council and the relevant fee paid by the applicant.**
  - **No owner can retrieve a dog that has been impounded unless they can demonstrate to Council they have a secure compound.**

**Burden: Lots 1 to 16 Section 8 DP 14895. Benefit: Tweed Shire Council**

- (h) **Restriction as to user indicating that part of the lots zoned 7(l) Environmental Protection (Habitat) are located within the 50m Cudgen Creek buffer area and no building works, swimming pools or structures are to be placed within this buffer area. Burden: Part Existing Lots 1 to 9 Section 8 DP 14895 zoned 7(l) Environmental Protection (Habitat) Benefit: Tweed Shire Council**
- (i) **Restriction as to user creating the asset protection zone as described in detail at Conditions 73 and 74 of this consent.**

**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]

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

[PSC0855]

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

The following information must accompany an application:

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

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

[PSC0885]

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

- (a) Compliance Certificate – Water Reticulation
- (b) Compliance Certificate – Sewerage Reticulation
- (c) Note:

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

[PSC0915]

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

[PSC0925]

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

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP – Section A5 – Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005.

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

[PSC1115]

66. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone to all allotments has been completed.

[PSC1165]

67. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

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

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

[PSC1185]

68. Prior to issue of a subdivision certificate a validation statement for the subject development stage regarding radiation monitoring, from a suitably qualified person, shall be provided to Council to the satisfaction of the General Manager or his delegate. Monitoring and investigation shall include both surface and depth monitoring. The validation statement shall confirm compliance with the approved remediation action plan, include details of monitoring undertaken, the nature and depth of materials on site, and establish that the site is suitable for the proposed use.

[PSCNS01]

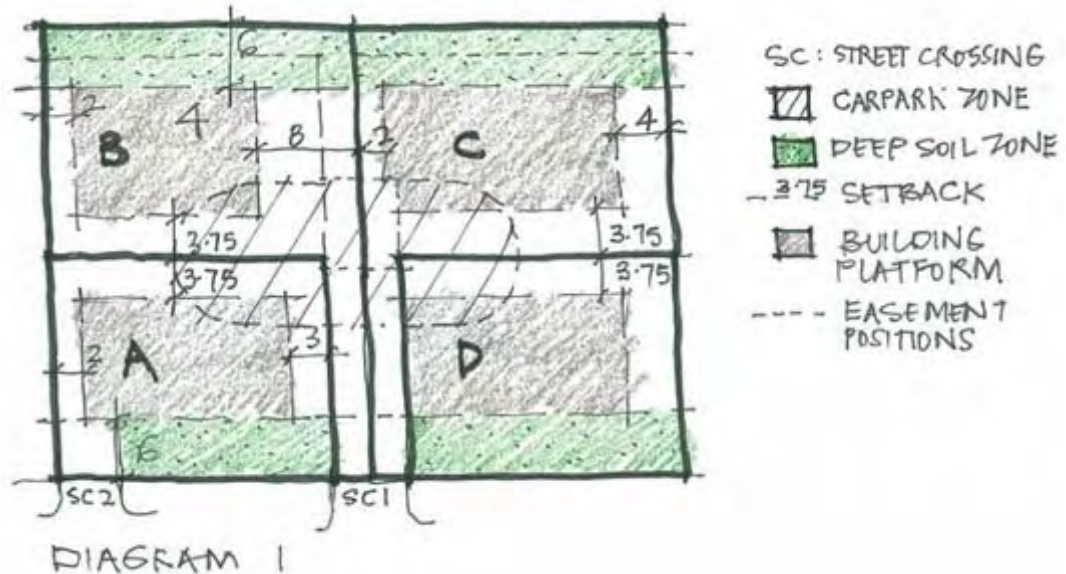
69. Prior to the issue of a subdivision certificate surface radiation monitoring of Lot 1971 DP 133919 and Lot 500 DP 727420 shall be completed to the satisfaction of the General Manager or his delegate. Prior to the issue of a subdivision certificate a validation statement of surface radiation levels on Lot 1971 DP 133919 and Lot 500 DP 727420 shall be completed to the satisfaction of the General Manager or his delegate which establishes that the sites are suitable for the use.

[PSCNS01]

70. Prior to issue of a subdivision certificate, all infrastructure works approved in Stage 1 of Development Consent DA 05/1464 as modified from time to time must be completed to the satisfaction of the Council.

[PSCNS02]

71. The battleaxe allotments will be developed in accordance with the principles illustrated in Diagram 1 below:



These provisions are to be read in conjunction with the Coastal Housing provisions described in Tweed Shire Council DCP 2008: Section B11 – Seaside City.

These provisions are applicable as guiding principles and are described by a layout common to the four individual clusters of lots in the application which are designated Lots A, B, C and D on Diagram 1.

The principles underpinning these clusters/battleaxe allotments are:

- (i) the maximum number of driveway footpath crossings applicable to each cluster will be 2. Crossings will be allowed in the central location between allotments and adjacent to the southern boundary of Lot A. Not other crossing positions will be allowed.
- (ii) If a single street crossing is nominated all carparking for the lots will be located generally in the area designated on Diagram 1.
- (iii) A 3.75 metre setback, shall apply on either side of the common north-south boundary between Lots A and B, and between Lots D and C, to provide a minimum of 7.5 metres separation distance between habitable rooms. Garages and Carports may intrude into this setback.
- (iv) A deep soil zone will be provided in the 6 metre setback of Lots A and D along the frontage to Casuarina Way and in the 6 metre setback to the rear boundary of Lots B and C.
- (v) Each lot will contain a 30% landscape provision inclusive of deep soil areas previously nominated.
- (vi) Each lot will have additional minimum setbacks as designated on the attached Diagram 1 (carports and garages excepted) to provide for effective privacy, screening and solar access.

If there is any inconsistency between this condition and the controls in the Tweed Shire DCP 2008, then this condition prevails to the extent of the inconsistency.

72. Any future dwellings on the standard allotments (proposed Lots 25-35) must comply with Tweed DCP Section A1 and B11 Seaside City in relation to landscaping (30% as per B11), setbacks, height and density.

73. In satisfaction of the RFS' GTA condition (1) a 15m wide Asset Protection Zone (APZ) to the west for Lots 25 to 35 (inclusive) must be provided at the commencement of building works as follows:
- (a) 5m of the APZ to be situated on Lots 25 to 35 (inclusive) and Lots 37, 38, 41, 42, 45 and 46; and
  - (b) 10m of the APZ to be situated on the adjoining unnamed road reserve (which borders Lot 1971).
74. In satisfaction of the RFS' GTA condition (1), 15m wide Asset Protection Zone (APZ) to the north for Lots 46 and 47 (inclusive) must be provided at the commencement of building works as follows:
- (a) 9m of the APZ to be situated on Lots 46 and 47 (inclusive) and
  - (b) 6m of the APZ to be situated on the adjoining unnamed road reserve.

#### **GENERAL TERMS OF APPROVAL**

##### **Bushfire Safety Authority**

**As Required 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. Future dwellings will require a minimum 15 metre APZ to the west and north. The APZ shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

##### **Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

##### **General Advice – consent authority to note**

This approval is for the subdivision of the land only. Future DA for the erection of a dwelling within this subdivision will be subject to the requirements as set out in 'Planning for Bush Fire Protection 2006'.



**REPORT:**

**Applicant:** Seaside City Developments  
**Owner:** Richtech Pty Ltd  
**Location:** Lots 1-16 Section 8 DP 14895 Casuarina Way, Kingscliff  
**Zoning:** Part 2(e) Residential Tourist and Part 7(I) Environmental Protection (Habitat)  
**Cost:** N/A

**BACKGROUND:**

Seaside City History

Seaside City comprises a 32 hectare parcel of land. Seaside City was approved for subdivision in the 1920s and comprises 205 titled lots (including the area between Cudgen Creek and the development). Richtech Ltd owned approximately 85% of the lots with the remainder individually owned. Cudgen Creek forms the western edge to the study area and the Pacific Ocean to the east.

The site was never serviced and accordingly development of the site was problematic, specifically given the multiple landowners. The revitalisation of the site occurred when Richtech (the primary land owner) instigated a series of DA's to enable the servicing of the site.

Accordingly, in 2005 Council received and considered three Development Applications (DA05/0775, DA05/0793 and DA05/1464) which all sought approval for the carrying out of works for the purposes of land clearing, earthworks, construction of roads and other services in preparation of the further development of the existing lots.

DA05/1464 was considered and ultimately determined by the NSW Land & Environment Court, while DA05/0775 and DA05/0793 were consequently approved by Council.

As part of the approvals a site specific Development Control Plan (Tweed DCP Section B11) and site specific S94 Plan (Tweed S94 Plan No. 28) was created in relation to the Seaside City Development. Additionally a specific Planning Agreement was created between Tweed Shire Council and Richtech Pty Ltd to allow Tweed Shire Council to collect funds on behalf of Richtech from non Richtech owned land to contribute to the cost of the bulk earthworks and servicing across the site.

Since approval of DA05/1464 the applicant has received the relevant Construction Certificates to act on the development consents issued to date. These Construction Certificates service the site with all the essential services (water, sewer, roads, telecommunications, power etc) thus enabling applications like this to be considered on its merits.

Proposal

The original subdivision pattern (as approved in 1927) catered for 16 allotments all approximately 43m long (running east to west) x 20m wide (running north to south). This created 18 allotments each approximately 1000m<sup>2</sup>.

The proposed subdivision layout caters for 23 allotments by reducing the size of each allotment and creating 6 battleaxe allotments.

The site is burdened by a partial 7(l) Environmental Protection (habitat) zoning to the rear, is bushfire prone, and falls within the riparian buffer for Cudgen Creek. However, Condition 3.130 within DA05/1464 (which was approved by the Court) stipulated that Lots 1-9 in Section 8 DP 14895 could be built upon (despite being partially affected by the riparian buffer) subject to restrictions as to user stating that no works, swimming pools or structures except fences are to be placed within this buffer area.

This application merely looks at the difference as to whether these allotments accommodate 9 houses (as per the current approvals) or 13 houses (as proposed within this application). Given the length of the subject allotments (generally 43m) a dwelling envelope measuring 10m x 15m can still be accommodated on each allotment excluding the riparian areas and accordingly the application is recommended for conditional approval.

The subject application has been accompanied by a SEPP 71 Master Plan Waiver and a SEPP Major Project Waiver. Accordingly Tweed Shire Council is the lawful consent authority in this instance.

The applicant lodged amended plans in August 2010 to better facilitate the required asset protection zones as required by RFS.

#### Land and Environment Court Decision DA08/0755 (Seaside City South West Precinct)

In regard to DA08/0755 the original subdivision pattern (as approved in 1927) catered for 18 allotments all approximately 43m long (running east to west) x 20m wide (running north to south). This created 18 allotments each approximately 1000m<sup>2</sup>. The proposed subdivision layout catered for 24 allotments by reducing the size of each allotment and creating 8 battleaxe allotments.

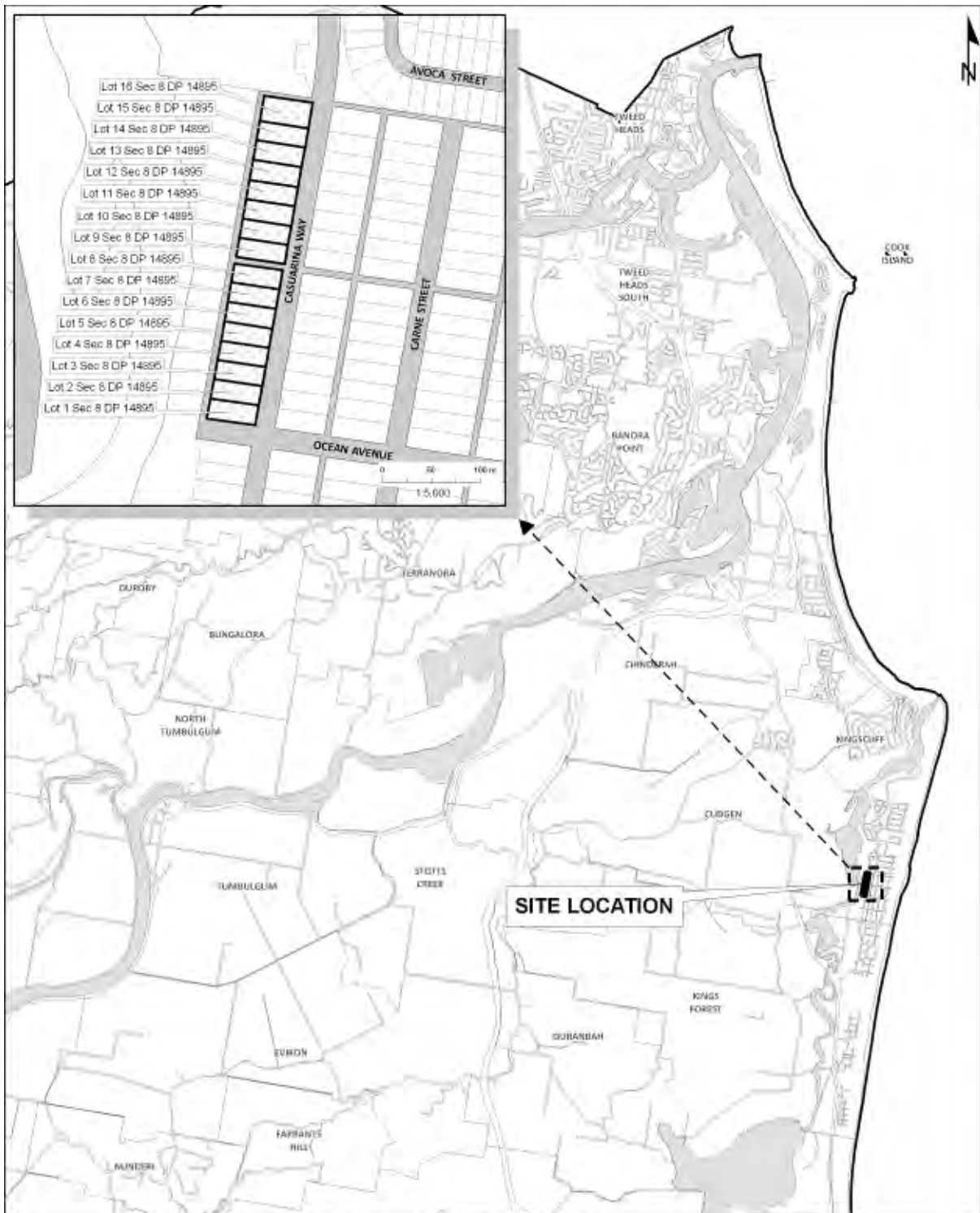
At the s34 Mediation Conference Council Staff and the applicant had opposing points of view in regards to the following primary issues:

1. Draft Conditions of Consent that required building envelopes for the allotments given the small size of the allotments (smallest lot 450m<sup>2</sup>), and the constrained nature of site (Asset Protection Zones);
2. A Draft Condition of Consent that outlined the applicable S94 Contributions;
3. Draft Conditions of Consent relating to contaminated land across the site; and
4. Draft Conditions of Consent relating to the required engineering specifications for the site.

Each of these matters were worked through and resolved by way of mutually agreed conditions of consent. Such conditions have been duplicated within the recommendation for the subject application.

The Council Report for DA08/0755 forms an annexure to this report which explains how exactly these matters were resolved.

**SITE DIAGRAM:**



**LOCALITY PLAN**

DA10/0283 - Lots 1-16 Section 8 DP 14895  
Casuarina Way, Kingscliff

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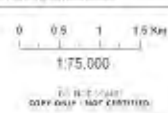
Author: J. BARNES, Planning Information

Date: 17/09/2010 10:42:58 AM

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**GDA** Coordinate System - MGA Zone 56  
Datum - GDA 11

Cadastral: 05 September 2010  
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Tweed Shire Council



Civic and Cultural Centre  
3 Tumbulgum Road  
Mullumbidgee NSW 2486  
PO Box 511  
Mullumbidgee NSW 2484  
T: (02) 6670 2408 / 1000 200 672  
F: (02) 6670 2493  
E: [info@twweedshire.nsw.gov.au](mailto:info@twweedshire.nsw.gov.au)  
C: [www.twweedshire.nsw.gov.au](http://www.twweedshire.nsw.gov.au)


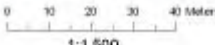

**TWEED SHIRE COUNCIL**

2009 AERIAL IMAGE:

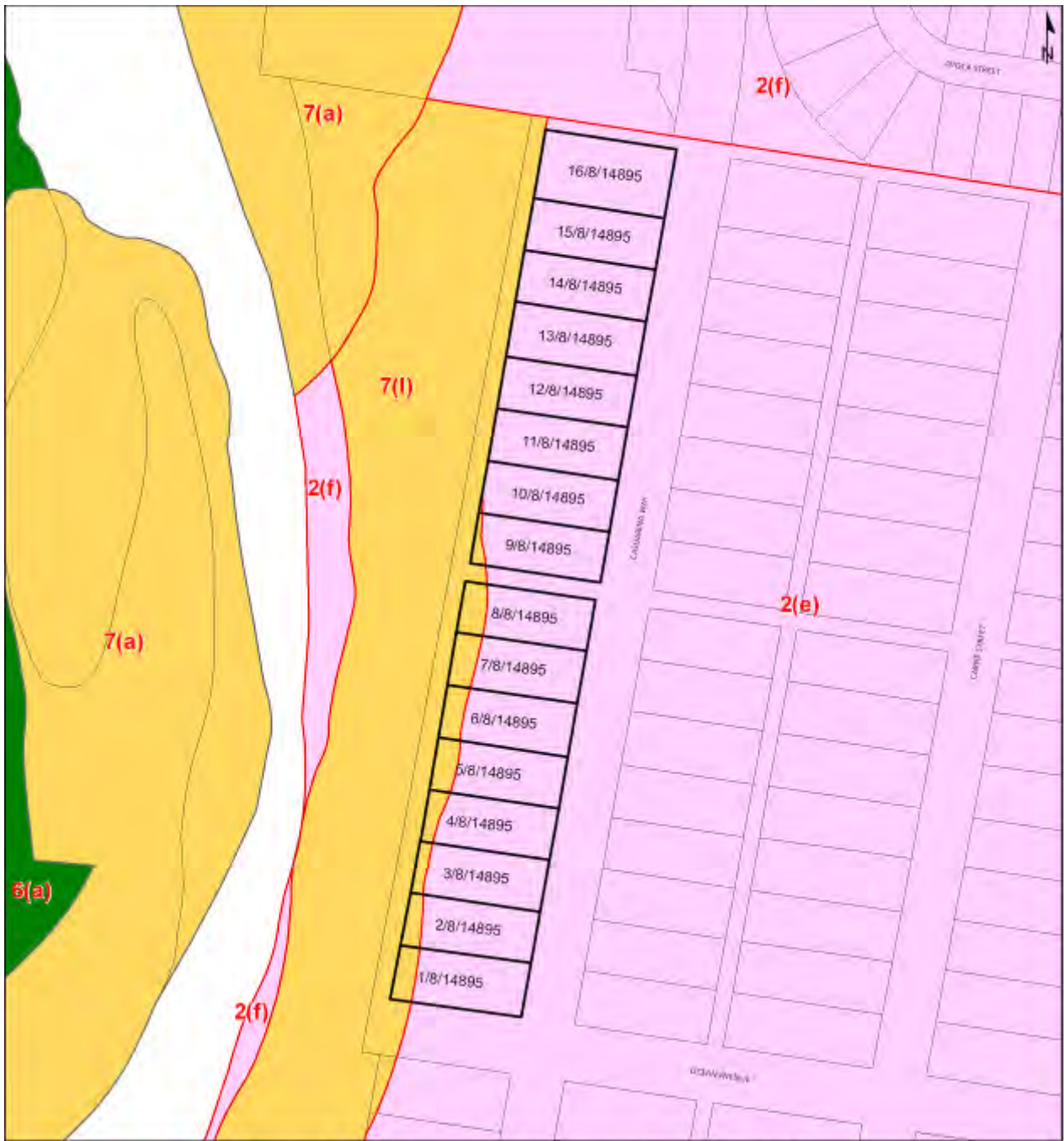


2009 aerial photography is supplied by Fugro Spatial Solutions Pty Ltd

**AERIAL PHOTO - taken October 2009**  
 DA10/0283 - Lots 1-16 Section 8 DP 14895  
 Casuarina Way, Kingscliff

<p>Filename: I:\Spatial\planning\root\APP_B&amp;W_SitePlan.mxd                  Author: Slatersuite - Planning Referrals Unit                  Date Printed: 06 September, 2010</p>	<p>                      Coordinate System - MGA Zone 56                      Datum - GDA 94                      Code: 06 September, 2010                      © Dept. of Lands &amp; Tweed Shire Council                 </p>	<p>                       0 10 20 30 40 Meters                      1:1,500                      DO NOT SCALE COPY ONLY - NOT CERTIFIED                 </p>	<p>  <b>TWEED SHIRE COUNCIL</b>                      Civic and Cultural Centre                      3 Sandridge Road                      Merimbula NSW 2534                      PO Box 816                      Merimbula NSW 2484                      T: (02) 6078 2480 / 1300 292 872                      F: (02) 6678 2455                      E: <a href="mailto:parangeton@tweed.nsw.gov.au">parangeton@tweed.nsw.gov.au</a> </p>
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**TWEED LEP 2000 ZONE MAP**



**Tweed Local Environmental Plan 2000**

DA10/0283 - Lots 1-16 Section 8 DP 14895, Casuarina Way, Kingscliff

<p><b>ZONING</b></p> <p><b>RURAL</b></p> <ul style="list-style-type: none"> <li>7(a) Rural</li> <li>7(b) Rural Living</li> <li>7(c) Agricultural Protection</li> <li>7(d) Agricultural Protection</li> </ul>	<p><b>RESIDENTIAL</b></p> <ul style="list-style-type: none"> <li>2(a) Low Density Residential</li> <li>2(b) Medium Density Residential</li> <li>2(c) Tourist</li> <li>2(d) Urban Expansion</li> <li>2(e) Village</li> <li>2(f) Residential Tourist</li> </ul>	<p><b>BUSINESS</b></p> <ul style="list-style-type: none"> <li>3(a) Sub-Regional Business</li> <li>3(b) General Business</li> <li>3(c) Commerce &amp; Trade</li> <li>3(d) Watershed Enterprise</li> <li>3(e) Special Tourist (Jack Evans Boat Harbour)</li> </ul>	<p><b>INDUSTRIAL</b></p> <ul style="list-style-type: none"> <li>4(a) Industrial</li> </ul> <p><b>SPECIAL USES</b></p> <ul style="list-style-type: none"> <li>5(a) Special Uses</li> </ul> <p><b>OPEN SPACE</b></p> <ul style="list-style-type: none"> <li>6(a) Open Space</li> <li>6(b) Recreation</li> </ul>	<p><b>ENVIRONMENTAL PROTECTION</b></p> <ul style="list-style-type: none"> <li>7(a) Environmental Protection (Wetlands and Littoral Rainforest)</li> <li>7(b) Environmental Protection (Coastal &amp; Estuarine)</li> <li>7(c) Environmental Protection (Coastal Landfill)</li> <li>7(d) Environmental Protection (Habitat)</li> </ul>	<p><b>NATIONAL PARKS &amp; NATURE RESERVES</b></p> <ul style="list-style-type: none"> <li>8(a) National Parks and Nature Reserves</li> </ul> <p><b>DEFER</b></p> <ul style="list-style-type: none"> <li>defer</li> </ul>
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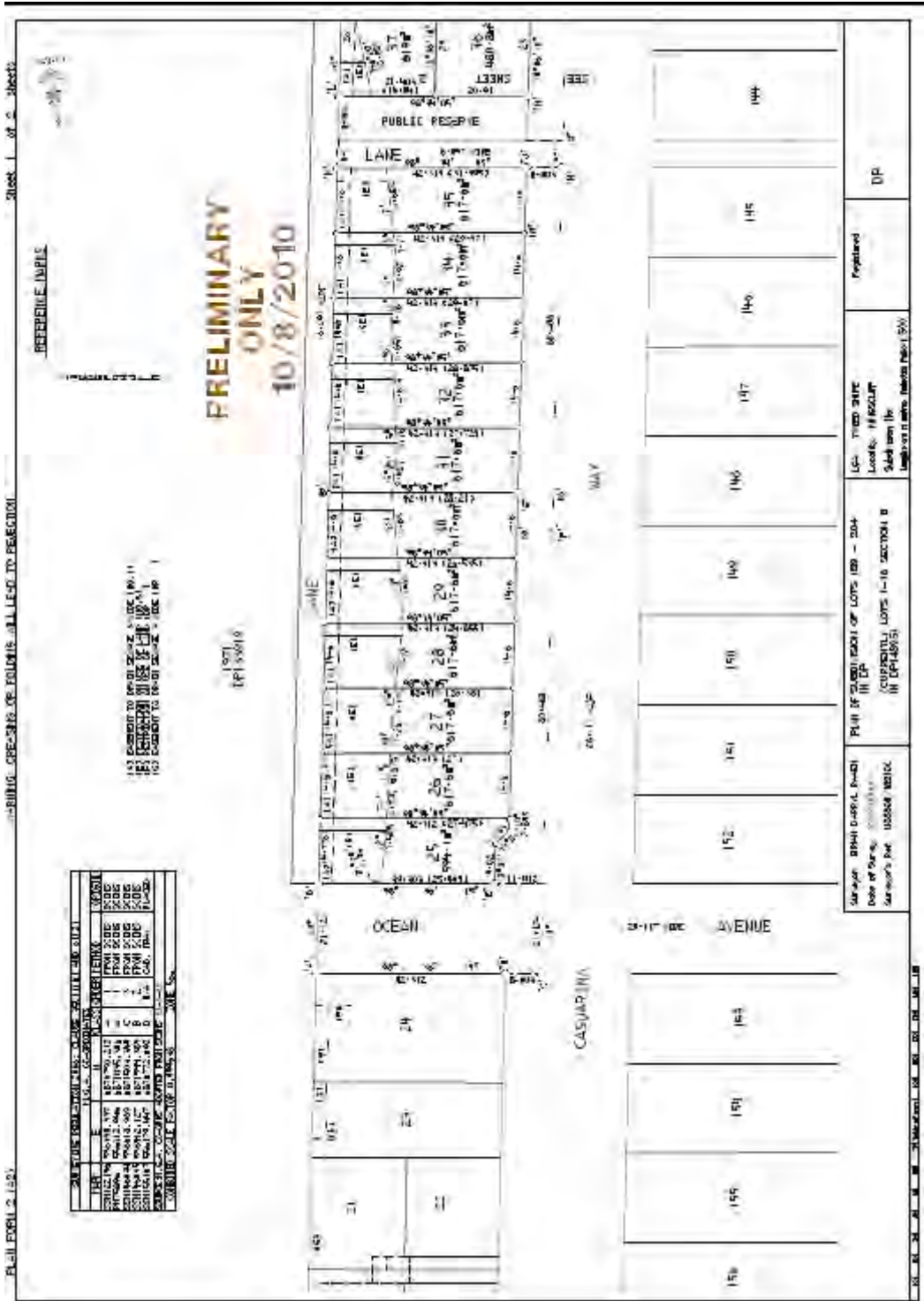
  

<p><b>ADDITIONAL CONTROLS</b></p> <ul style="list-style-type: none"> <li>Clause 37 (Transmission Line Corridor)</li> <li>Clause 38 (Future Roads)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 41 (Heritage Conservation Area)</li> <li>Clause 52 (Cobaki)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 52 (Cobaki)</li> <li>Clause 52 (Existing and Future Dam Areas)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 52 (Minimum Lot Size)</li> <li>Clause 52 (Stormwater and FFI)</li> </ul>	<ul style="list-style-type: none"> <li>Clause 53 (Schedule 3 Item)</li> <li>Clause 52 (Pottery)</li> </ul>
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DEVELOPMENT/ELEVATION PLANS:



Sheet 3 of 2 sheets

PLUMBING OPERATIONS OF FOUNDRY COLLEGE TO RESECTION

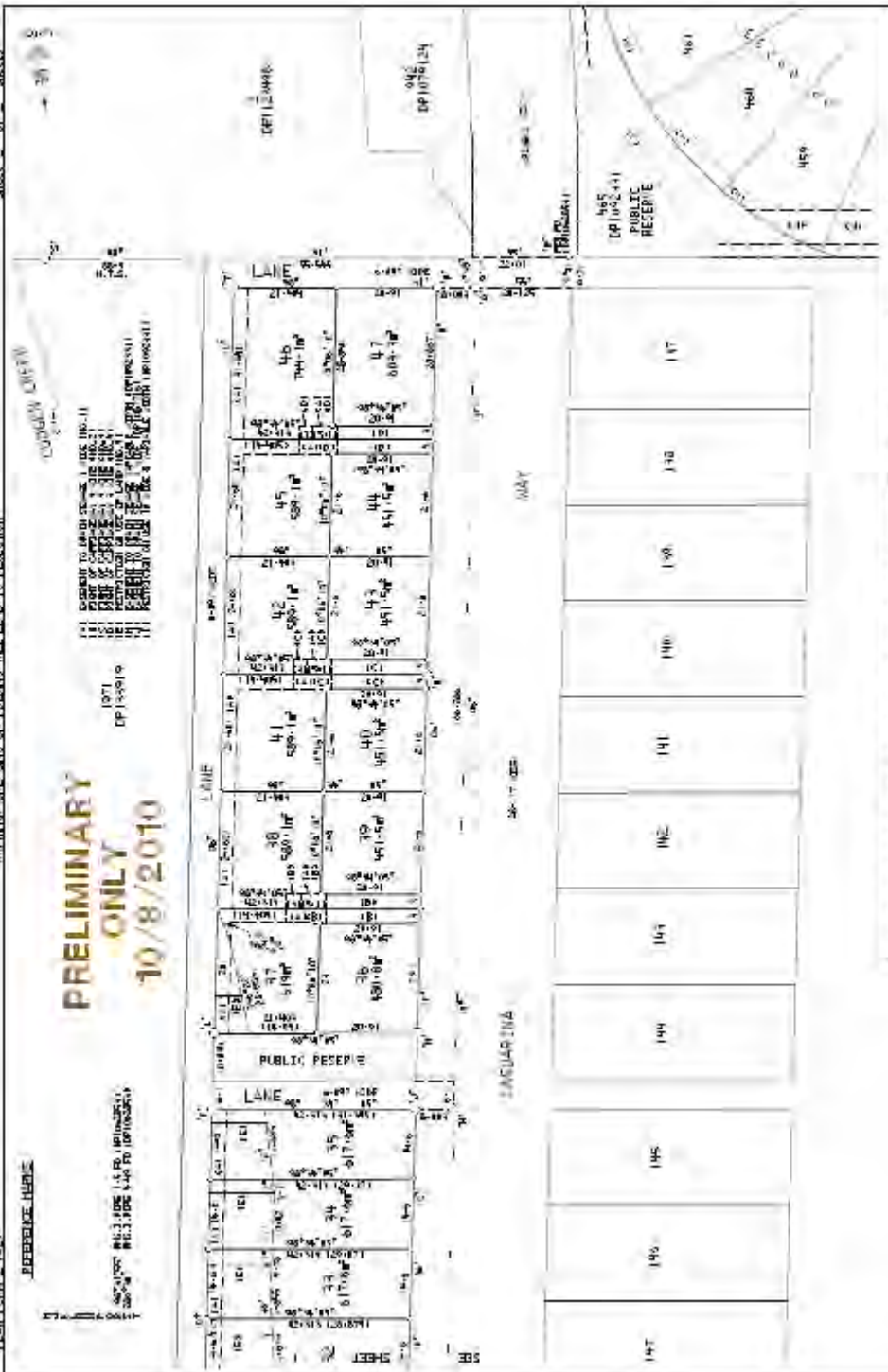
PLU 15/011 & 15/012

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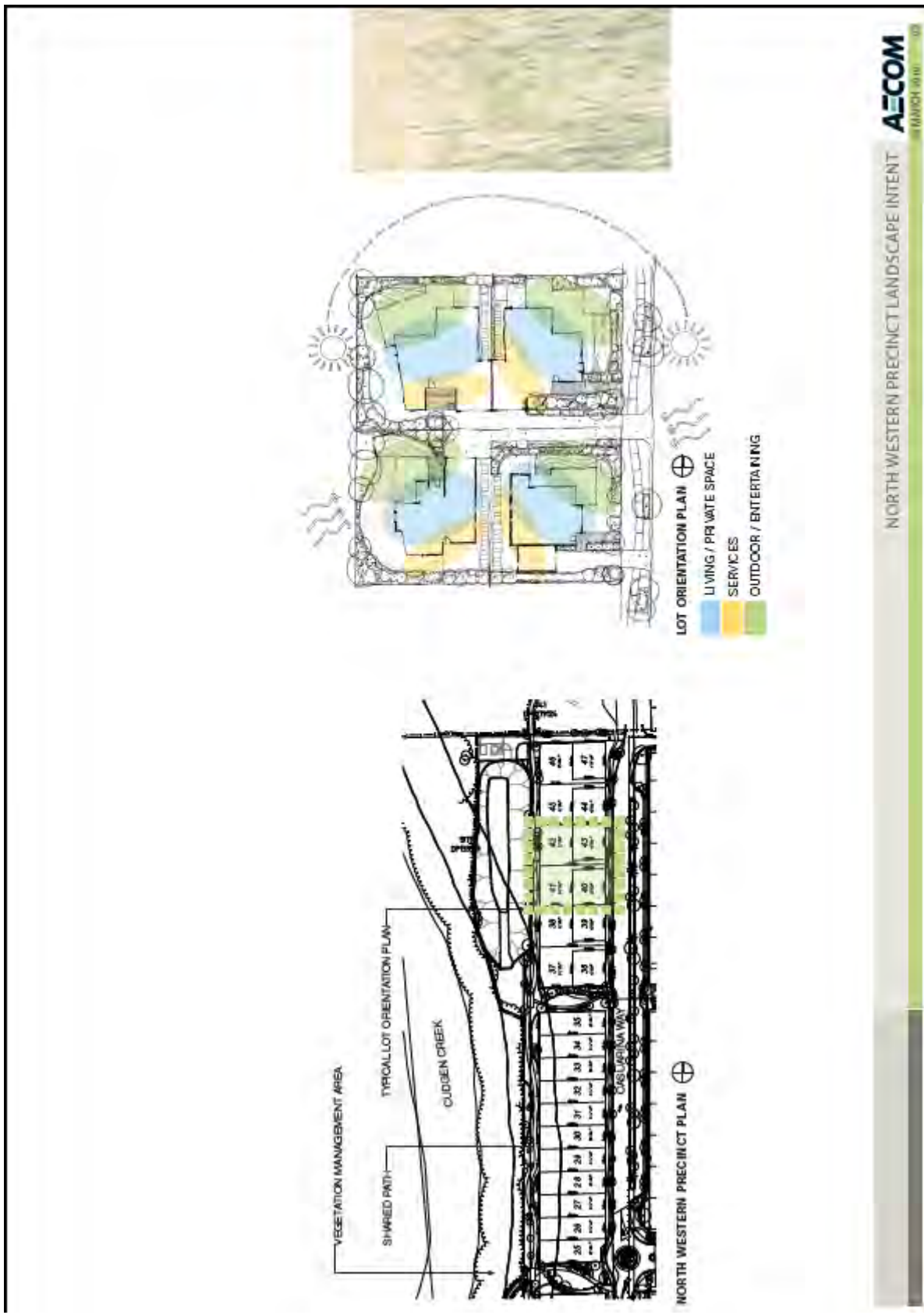
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Surveyor: BRAD D. GIBB Date of Survey: 08/27/2010 Surveyor's No.: 102584 (2010C)	PLAN OF SUBDIVISION OF LOTS 147 - 154 (I) DP (CURRENTLY LOTS 1-16 SECTION 8 (II) DP14885)	LCA: TYPED STATE LOCAL: PARACOURT Submission No: Length: 0.00 m (0.00 miles)	Prepared: DP
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**INDICATIVE LOT ORIENTATION PLAN:**

(NOTE: The land areas shown on this plan do not reflect the latest plan dated 10/08/2010)





**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 aim of the Tweed Local Environmental Plan (TLEP) is to “manage growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”.

The proposed subdivision forms part of a larger master plan (now reflected in the Seaside City DCP) which have undergone extensive assessment and provided a framework for future development of the area.

The proposal is consistent with the land uses approved in the DCP as well as the intent of the subject zoning. Given the extensive planning that has previously occurred for the site, potential impacts on the environment and residential amenity have been adequately considered and the proposal is not considered to compromise the aims of the TLEP.

Clause 5 - Ecologically Sustainable Development

The proposal is not considered to contravene the principles of ecological sustainable development, which were considered as part of the DCP. Previous approvals have required the necessary land dedications along the creek and foreshore to ensure protection of the environment.

The constraints of the site have been considered in greater detail below, and conditions of approval recommend limiting potential impacts on the environment.

Clause 8 – Consent Considerations

Clause 8 1(a) and 8 1(b) are addressed under their specific Clause headings and are deemed to be satisfied.

Clause 8 1(c) requires that the Consent authority considers any cumulative impacts the development may have on the community, locality or catchment. It is not considered that the proposal will result in significant cumulative impacts given the various management plans and conditions imposed which are designed to mitigate potential impacts.

Clause 11 – Zone Objectives

The subject site is partly zoned 2 (e) Residential Tourist, and partially 7 (l) Environmental Protection (Habitat).

Notwithstanding the proposed development is permissible by virtue of Clause 53C “Seaside City” of the Tweed LEP 2000 not Clause 11. Clause 53C is addressed later in this report.

Each zone is however addressed below.

*2 (e) Residential Tourist*

The majority of the works and subdivision is proposed in the 2 (e) zone.

The works are permissible (Item 2 - allowed only with consent) in the subject zone.

The primary objective of the zone is to provide and encourage *“family orientated tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities...”*. The secondary objective is to permit other development associated with a residential / tourist environment and not likely to affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

The proposed subdivision is consistent with this objective as it provides for low to medium residential development (all allotments greater than 450m<sup>2</sup>) and does not demand any greater level of services beyond that reasonably expected for residential use.

*7 (l) Environmental Protection (Habitat)*

Land adjacent to the site at the west is zoned 7 (l) Environmental Protection (Habitat). This zoning also affects the rear of existing Lots 1-9 by a maximum encroachment of 17m.

Each of the affected allotments are 43m in depth thus allowing for a remaining 10 x 15m building envelope outside the riparian buffer.

No works are therefore proposed as part of this application in this 7(l) portion of the site. Site levelling has already occurred under DA05/1464 and the relevant Construction Certificate.

The primary objective of the 7 (l) zone is *“to protect areas or features which have been identified as being of particular habitat significance, to preserve the diversity of habitats for flora and fauna, to protect and enhance land that acts as a wildlife corridor”*. The secondary objective is to *“protect areas of scenic value and to allow for other development that is compatible with the primary function of the zone”*.

The proposed subdivision is considered to satisfy these zone objectives as previous and proposed conditions of consent will be enforced to ensure the land zoned 7(l) remains free from structures. Planting in this area will need to be limited as this area has to act as a dual riparian and asset protection zone. However, this arrangement was all set up with the approval of DA05/1464. The current application seeks to increase the number of houses within this affected area from 9 to 13. This arrangement is still considered to satisfy the zone objectives.

Clause 15 - Essential Services

Clause 15 requires that development does not occur without a water supply, facilities for treatment of sewer and adequate drainage.

The development proposal includes provision for sewer, water and drainage. Council's Engineers have assessed the proposed infrastructure and it is deemed adequate subject to conditions.

Clause 16 - Height of Building

No buildings are proposed and this clause is not relevant.

Clause 17 - Social Impact Assessment

Clause 17 requires that Council considers a socio economic impact statement (in certain circumstances). The socio-economic impact must identify the likely future impacts of the development on the affected community and analysis the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services. The socio economic impact assessment must also determine if impacts will cause a loss of amenity within the locality due to reduction in community services and facilities, as well as assess possible measure for the management or mitigation of likely impacts.

A socio-economic impact assessment is not required (by Council's DCP) as not more than 50 residential lots are proposed.

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

The purpose of clause 20 is to prevent fragmentation and to protect ecological or scenic values of the land. The clause requires that the minimum lot size in the 7 (l) zone is 40 hectares.

A SEPP 1 Objection is required for lots 25-35, 37 and 38 as the rear portion of these lots are partially zoned 7 (l) Environmental Protection (habitat).

The applicant lodged a SEPP 1 objection which stated:

*“EXTENT OF STATUTORY VARIATION*

*Within Appendix A of this document are diagrams of the boundary layout of the proposed subdivision. The proposal is to subdivide sixteen existing residential lots into twenty three allotments. Thirteen of the allotments contain a small area of land at the rear which is within zone 7(l) Environment Protection (Habitat). Council's attention is drawn to the proposed lot layout plan and the dimensions and area of each lot.*

*The site area of the thirteen subject allotments area as follows:*

- Lot 25 594.1m<sup>2</sup>
- Lot 26 617m<sup>2</sup>
- Lot 27 617m<sup>2</sup>

- Lot 28 617m<sup>2</sup>
- Lot 29 617m<sup>2</sup>
- Lot 30 617m<sup>2</sup>
- Lot 31 617m<sup>2</sup>
- Lot 32 617m<sup>2</sup>
- Lot 33 617m<sup>2</sup>
- Lot 34 617m<sup>2</sup>
- Lot 35 617m<sup>2</sup>
- Lot 37 619m<sup>2</sup>
- Lot 38 589m<sup>2</sup>

*The variation is to the development standard within Clause 20 of the Tweed LEP 2000 that states,*

*consent may only be granted to the subdivision of land zoned 7(l) if the area of each allotment created is at least 40 hectares. The allotment size of proposed Lots does not meet this development standard.*

*Justification for the variation sought is discussed later in this submission.*

#### **ASSESSMENT OF APPLICATION FOR VARIATION**

*Assessment of the application for variation in accordance with the 5 part test outlined by Chief Justice Preston in the decision *Wehbe v Pittwater Council* (2007) NSW LEC 827 follows. Preston rephrased the assessment process as follows:*

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.*
2. *The consent authority must 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”.*

*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”.*

- (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,*

3. *The consent authority must be satisfied that a consideration of 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.*

*Preston also expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:*

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*Initially the relevant development standard must be identified. The relevant controls are set out in Clause 20 of the Tweed Local Environmental Plan 2000 which states, inter alia:*

*The development standard represented as 2(a) of this clause, relates to the minimum area of created allotments through subdivision and is clearly a development standard.*

#### **OBJECTIVES OF THE STANDARD**

*Secondly, it must be determined what the underlying object or purpose of the standard is.*

#### **JUSTIFICATION FOR VARIATION OF THE STANDARD AND MATTERS FOR CONSIDERATION**

*Of the five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, Point 1 and 4 are applicable in this instance and is noted as follows:*

**1. The objectives of the standard are achieved notwithstanding non-compliance with the standard:**

*As discussed above and confirmed by judgments supported by the Land & Environment Court, the ability of a proposal to attain the objective of the standard and its intent are fundamental to the appropriateness of applying the standard in the first instance. We note therefore, that the variation requested is done so with particular reference to the content and wording of the objectives to the standard. Accordingly, we have broken down the request for variation into three (3) specific headings, each of which is identified within the objective proper. The first and third objective above concerning the fragmentation of rural land and protection of the area of Tweed's water supply are not applicable to this site as it does not fall within a rural zoning or the catchment of the Clarrie Hall Dam, which provides Tweed's water supply.*

*An analysis in this context has been carried out as follows:*

**Does the proposal protect the ecological and scenic values of the land?**

*It is submitted that the proposed subdivision design protects both the ecological and scenic values of the land. The area of land zoned 7(l) contains no vegetation and has largely been reshaped as part of bulk earthworks associated with development approval DA 05/1464. The 7(l) zoned land defines the 50m buffer boundary to Cudgen Creek. Proposed lots 25 - 38 are encroached upon by the riparian buffer zone. Only a small portion at the rear of each lot is affected. This buffer is to be restricted by a Section 88 (b) instrument to ensure that it is maintained as a buffer area by the landowner. It is anticipated that the Council will include such a condition of approval in regard to these lots similar to that imposed on DA 08/0755.*

*As outlined above it is considered unnecessary to strictly adhere to the provisions of the development standard in this instance, as the objectives to the development standard are clearly attained by this proposal. Further to this it is considered that the proposal meets the Objectives for the zone as outlined in the text of the SEE document.*

**4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

*The proposed subdivision involves the re-subdivision of 16 existing residential lots with 15 of the lots having an area of 1012m<sup>2</sup> and the other 1283.9m<sup>2</sup>. As a result of this historic subdivision it is submitted that the development standard of 40 hectares for 7(l) zoned land in this case has been virtually abandoned or destroyed. The existing lots are of a residential nature and in terms of size are only 0.25% of the required sizes under this standard. Therefore in this case compliance with the standard in this case is considered unnecessary and unreasonable.*

## CONSISTENCY WITH AIMS OF SEPP1

*The third question in Winten asks whether compliance with the development standard is consistent with the aims of SEPP 1. The aims state:*

*'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 and unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.'*

*This question also asks does compliance with the development standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the EPA Act. These objects state:*

*The objects of this Act are:*

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

*These matters have been addressed in detail above. Importantly the proposed variation sought will not seek a dangerous precedent nor compromise the intent of Council's planning controls.*

*The proposed variation clearly satisfies these requirements."*

Such application was referred to the NSW Department of Planning for concurrence which was subsequently granted. The Department of Planning stated that:

*"Following consideration of the application, concurrence has been granted to vary the subdivision development standard contained in Clause 20(2)(a) of the Council's planning instrument to permit the creation of proposed lots 25 to 35, and lots 37 and 38 partly zoned 7(l).*

*Concurrence was granted in this instance as the proposed lots will continue to allow the development of residential land to be developed for residential purposes. It is understood that no development will occur on the 7(l) land".*

Having regard to the applicant argument above, and the concurrence issued by the Department of Planning compliance with Clause 20(2)(a) in this instance is therefore considered unreasonable and unnecessary. The SEPP 1 Objection is considered suitable and reasonable in the circumstances.

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

The purpose of this clause is to protect wildlife habitat from the adverse impacts of development. As discussed above no works are proposed in the 7 (I) zone. The recommended conditions of consent incorporate restrictions as to user to ensure no structures are erected in this area and furthermore Council's Ecologist has recommendation planting with this area to make it consistent with the adjoining riparian plantings. Council's Ecologist has reviewed the proposal and recommended conditional approval as detailed later in this report under the heading flora and fauna.

Clause 31 – Development Adjoining Waterbodies

Cudgen Creek does not immediately adjoin this property. Rather these properties are separated from the Creek by Lot 1971 which will ultimately be dedicated to Council to accommodate the required riparian buffer. This buffer does not equate to exactly 50m as the site was bound by the original 1920's subdivision. The subject application does not deplete this riparian buffer in any way but rather intensifies the number of houses permitted from 9 to 13 within the area affected by the buffer.

The proposed application is considered to satisfy the objectives of Clause 31. However, the detailed flora and fauna comments (shown further below in this report) review this matter further.

Clause 34 - Flooding

The objective of this clause is to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land and to minimise the effect of flooding on the community.

The subject site is above the Q100 flood level and is therefore not affected by flooding.

Clause 35 - Acid Sulfate Soils

The subject site is indicated as Class 4 acid sulfate potential on Council's mapping. This clause requires that an acid sulfate soil (ASS) management plan is provided for works below 2 metres below the natural ground level.

An acid sulfate soil management plan was submitted and considered satisfactory for the parent consent DA05/1464.

No further assessment in this regard is required.

Clause 39 – Remediation of Contaminated Land

This clause seeks to ensure that contaminated land is adequately remediated prior to development occurring.



As part of DA05/1464 radiation monitoring and validation requirements were addressed.

Similar conditions of consent have been recommended on this consent to ensure the final residential land parcels are free from contaminants thus satisfying this Clause.

#### Clause 39A – Bushfire Protection

The subject site is bushfire prone. The subdivision triggers referral to the Rural Fire Service (RFS) and general terms of approval have been issued by the RFS. General terms of approval include provision of an inner asset protection zone of 15m to the west adjoining Lot 1971 (along the creek) and to the north where the lots adjoin Lot 2 in DP 1123498 (where the properties adjoin SALT).

The vegetation management plan approved for Lot 1971 to west stipulated that 10m of the 15m APZ could be located within Lot 1971 leaving the need for a 5m APZ within the subject properties. This can be achieved within the proposed subdivision layout.

In regard to the allotments adjoining SALT (Lot 2 in DP1123498) the applicant amended their DA on 12 August 2010 to ensure Lots 46 and 47 can accommodate both the 5m western APZ and northern 9m APZ adjoining Lot 2 in DP1123498. The northern APZ is only 9m as the applicant is relying on the adjoining northern 6m laneway to act as the remaining APZ requirement. The 6m and 9m combined therefore reach the required 15m APZ criteria. The 6m wide laneway will comprise a bitumen seal laneway for access to the sewer pump station. This is capable of acting as the APZ as approved within the Vegetation Management Plan associated with Lot 1971.

Lot 46 is now proposed to be 744m<sup>2</sup> while Lot 47 is proposed at 603m<sup>2</sup>.

The conditioned asset protection zone is required to protect the future residents of the development and the adjoining nature reserve from major fire events. Thus satisfying the objective of this Clause.

#### Clause 53C

Clause 53 aims

- (a) to ensure that development of the land to which this clause applies is undertaken within an appropriate planning framework, and
- (b) to ensure that relevant environmental issues are considered before consent is granted to development of the land, and
- (c) to facilitate the development of the land having regard to the subdivision and ownership patterns of the land.

The Clause states that development must not be carried out on land to which this clause applies unless a development control plan has been prepared for the land.

A DCP has been created (Tweed DCP Section B11 Seaside City) and the proposed development generally conforms to the provisions contained therein.

The proposed battleaxe allotments will need to be designed in accordance with the lot orientation as determined suitable by the land and environment court decision for DA08/0755.

Appropriate conditions of consent are recommended in this regard.

The proposed subdivision has been created with all relevant environmental issues considered, including the Riparian Buffer Zone, erosion and sediment control, stormwater management and bushfire management.

The application satisfies the provisions of Clause 53C.

### **State Environmental Planning Policies**

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

##### **Clause 32B: Coastal Lands**

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
  - (a) *the NSW Coastal Policy 1997,*
  - (b) *the Coastline Management Manual, and*
  - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
  - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time),*  
*or*
  - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The application is considered to comply with Clause 32b. Public access through the adjoining Lot 1971 will be via a formed cycleway and will be managed in accordance with an approved management plan to ensure ecological values are protected.

The proposal will not result in any overshadowing of foreshore areas and provides a suitable buffer to the Cudgen Creek to limit impacts upon the adjoining habitat.

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

- (1) *The council shall not grant consent to development for residential purposes unless:*
  - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*

- (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
- (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposal is considered to be an acceptable outcome with regard to this clause. It is consistent with the previously adopted DCP for the site. Density has been maximised whilst ensuring measures are in place to protect the adjoining reserve.

The proposal complies with Council's road standards as previously approved within DA05/1464.

Clause 81: Development adjacent to the ocean or a waterway

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
  - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
  - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
  - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

As identified above the proposed subdivision does not further encroach on the previously established riparian corridor. It is considered that public access through Lot 1971 should be controlled, given the ecological values and zoning of this land. Such measures have been established within previous approval and do not directly relate to the subject application.

SEPP No. 1 - Development Standards

The application required a SEPP 1 objection in relation to the 7(l) zone to the west of the subject allotments. This SEPP 1 has been addressed above and concurrence from the Department of Planning has been granted.

SEPP No. 44 - Koala Habitat Protection

The subject site does not comprise any vegetation on the site and therefore does not comprise potential Koala habitat.

SEPP No. 55 - Remediation of Land

As identified above previous approvals have addressed site contamination and appropriate conditions have been imposed on this consent to ensure consistency.

SEPP No 71 – Coastal Protection

Clause 18(2) requires a master plan if subdivision of land is proposed within the sensitive coastal zone. The site is partly identified as being sensitive coastal land and the applicant has provided correspondence from the Department of Planning (dated 13 May 2010) identifying that the master plan requirement can be waived.

The applicant has provided information addressing the matters in clause 8 of SEPP 71 and considers the proposal to be consistent with the aims of this policy.

The proposed subdivision will not have any impact on the coastal foreshore or scenic qualities of the NSW coast. It is consistent with the form of housing that exists in this area.

Land dedication along the Creek and foreshore have previously been provided in relation to maintaining riparian and foreshore buffers. Cultural matters have been assessed and cumulative impacts were taken into consideration in the original Court approval for Seaside City.

The application is considered suitable having regard to SEPP 71.

SEPP (Major Projects) 2005

This policy requires that subdivision in the coastal zone that could create more than 100 lots be assessed and determined by the Minister. Whilst this subdivision only seeks approval for 7 additional allotments the total re-development of Seaside City could theoretically exceed the 100 lot criteria. Accordingly the applicant has provided correspondence from the Minister declaring that the development is of local planning significance only and can be dealt with under Part 4 of the act (correspondence dated 21 November 2008).

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

Council's Draft Local Environmental Plan 2010 has recently come off public exhibition. The subject site has been identified as R2 – Low Density Residential and E2 – Environmental Conservation. The proposed development is permissible in these zones and is not inconsistent with the Draft LEP.

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

**A2-Site Access and Parking Code**

Road design and street networks are discussed in subsection A5 – Subdivision Manual below.

The proposal being for subdivision does not generate any car parking requirements at this stage.

### **A3-Development of Flood Liable Land**

As identified above, the subject land is not flood prone.

### **A5-Subdivision Manual**

The proposed subdivision has been assessed against section A5 and is generally compliant. Relevant sections of A5 are addressed in more detail below.

#### A5.4.3 Physical Constraints

The Subdivision Manual (A5) requires that master planning of the site is undertaken to identify physical constraints, including environmental constraints on the development site or adjacent land. The intent is that urban form responds to the natural landform and drainage system, topographical features and environmental constraints. The proposal is consistent with the approved DCP for the site.

#### A5.4. Environmental Constraints

A5 also requires that site constraints are identified including contaminated land, landslip, bushfire threatened species, ecological communities, coastal lands, significant vegetation, landscape character, acid sulfate soils, heritage or cultural items.

These matters have been addressed in this report and it is considered that applicable constraints can be effectively managed by way of conditions of consent.

#### A5.4.7 Storm water Runoff, Drainage, Waterways and Flooding

Council's Development Engineer has provided the following information:

*"Each allotment will be required to install a household infiltration system to capture and dispose of roof runoff. Allotment runoff will discharge to the street and then be directed to the major infiltration basin located in the north western corner on the Seaside City Development.*

*The construction of the drainage system as approved under CC08/0473 will satisfy all downstream drainage requirements for this development.*

*The applicants have provided a Erosion and Sediment Control Plan for stormwater quality management during the construction phase and this management plan is considered satisfactory.*

*Management of stormwater quality during the operation phase will be satisfied by the implementation of works required under CC08/0473."*

In addition in regards to waterways the DCP stipulates requirements for riparian buffers. In this regard the buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce

these buffers but does increase the intensity of development by 4 additional dwellings. As detailed in this report this is considered reasonable subject to the conditions of consent.

#### A5.4.8 Urban Structure

The Subdivision Manual seeks to ensure neighbourhood design is walkable, connected and includes an interconnected street network. It is also considered that a network of well distributed parks should be provided, as well as neighbourhood centres that act as a community focus and surrounded by higher density.

The urban structure has been dictated by the approved Tweed DCP Part B11. The urban structure is considered suitable.

#### A5.4.10 Movement Network

This section of the Subdivision Manual seeks to ensure adequate street network and intersection design.

Council's Engineer has provided the following comments in this regard:

*"The longitudinal and horizontal alignment of Casuarina Way has been approved under CC08/0473. Casuarina Way will be reconstructed to include an 11.0 wide pavement and a 6.0m wide service lane. Generally the finished surface will be slightly lower than the existing pavement. The reconstruction of Casuarina Way will provide safe access to the proposed 24 allotments.*

*A roundabout will be constructed at the intersection of Casuarina Way and Ocean Avenue. The approved Construction Certificate provides details for the construction of this roundabout.*

*Casuarina Way is a designated bus route and when constructed will be 11.0m in width with nominated bus stops as shown on CC08/0473.*

*Vehicular access to the allotments will be via Casuarina Way. Construction of Casuarina Way in accordance with the approved construction certificate will ensure that safe access is provided to the new allotments.*

*The applicant has indicated that vehicular access to proposed lots 37, 38, 39, 41, 42, 43, 45, 46 and 47 will be via a 6.0m wide right of carriageway with a 4.5m wide pavement. This standard is consistent with A5 – Subdivision Manual, section A5.4.12 and is therefore supported.*

*A 1.2m wide concrete footpath will be constructed along the frontage of the proposed subdivision and a 2.0m wide cycleway will be constructed at the rear of the allotments within the open space area. These works are approved under CC08/0473.*

*The proposed subdivision will create an additional seven (7) allotments which will increase traffic volumes on the road network by approximately*

*45.5 vehicles per day. This traffic increase can be easily accommodated within Casuarina Way when upgraded to its ultimate formation.”*

#### A5.4.11 Open Space Network

All park requirements for Seaside City have been approved as part of DA05/1464. The proposed additional allotments do not generate the need for additional parks as the approved parks were based on an ultimate population which this development contributes to.

#### Table A5-9.4 – Land in Zone 2 (e) Residential Tourist

The proposal complies with the minimum lot size for dwelling houses of 450m<sup>2</sup>. Lot sizes are in the order of 450 – 744m<sup>2</sup>.

The subdivision (excluding battle axe allotments) complies with the 14m minimum as the smallest block width equals 17m.

The battle axe allotments do not meet the 9m minimum street frontage and therefore each battle axe block must provide one additional onsite parking space (for visitors) to make up for the lost on street parking space (this has been enforced by way of conditions limiting the design options for these sites).

Whilst battle axe allotments are not favoured the DCP does allow them where there are “*outlooks over parks*” and “*in very limited circumstances, larger lots adequate for self-containment of a dwelling and its outlook.*”

The proposed battle axe allotments all back on to the riparian buffer to Cudgen Creek and offer an additional outlook for allotments fronting the Creek.

As the allotments are capable of accommodating a single dwelling house in accordance with Tweed DCP Section A1 (Part A) and B11, their application appears to be capable of compliance with DCP Section A5 Subdivision Manual.

The access handles for the battle axe blocks are 3m wide within each allotment. Due to the subdivision design each battle axe handle adjoins another battle axe block resulting in a 6m wide access handle for the two adjoining blocks. This complies with Council’s standards. Conditions have been incorporated to ensure some landscaping and curvature occurs within the battle axe handle to improve the visual amenity from the street).

Each battle axe handle equates to approximately 60m<sup>2</sup> this ensures each battleaxe allotment equates to a minimum allotment size of at least 450m<sup>2</sup> excluding the battle axe handle (this has been reinforced with a condition of consent).

All lots have a long axis which runs east west providing adequate solar access opportunities.

The application is considered to achieve compliance with DCP Section A5.

### **A6-Biting Midge and Mosquito Control**

The application is not considered to create any new mosquito breeding areas.

### **A13-Socio-Economic Impact Assessment**

It is considered that the proposal does not require a socio economic assessment as the proposal will not result in any unreasonable social or economic impact.

### **B9-Tweed Coast Strategy**

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast generally.

The proposal is generally consistent with B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the Tweed Coast.

Section B9 includes specific provisions relating to riparian buffers in TSC.7.9. It states that riparian buffers should be 50 metres wide, however where the buffer adjoins an environmental protection zone, the buffer need only have a minimum width of 20 metres (from the edge of the environmental protection zone).

Control TSC.7.10 states that the riparian buffer zone should incorporate two components, being a 20 metre core buffer (adjoining the mean high water mark) and a 30 metre outer buffer, adjacent to any section of the core buffer that adjoins Cudgen Creek. It is not required where the core buffer adjoins an environmental protection zone. The outer buffer does not need to be dedicated to Council.

As detailed above, the buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by 4 additional dwellings. As detailed in this report this is considered reasonable subject to the conditions of consent.

Council's Ecologist has reviewed this application specifically in relation to riparian buffers and recommended conditional approval. The full flora and fauna report is duplicated below.

### **B11- Seaside City**

The DCP contains the broad strategic framework for Seaside City as a whole in addition to specific precinct controls.

Specifically the following controls apply to this section of the development site:

*Land Use Map shows subject site as Coastal Dwelling Area:*



Table 1 - Built Form Controls

Type	Height		Max. Building Site Coverage (based on land title area)	Density		Min. Landscape Area of Site (Incl. Deep Soil Zone)
	Metres Ridge & Ceiling	Storeys		FSR (floor space to site area)	Min. N <sup>o</sup> . Units / m <sup>2</sup> Full Site Area	
Coastal Dwellings (2 Storey Low Density)	9m & 7m	2 storeys	50%		NA	30%

***“Seaside Housing is to be predominantly single two (2) storey housing and where appropriate Dual Occupancies that are designed to give the street appearance of a single dwelling.”***

### **Height**

*Building Height Maximum height of 9m to the ridgeline. Maximum height of 7m to the ceiling. Storeys 2 storeys.*

### **Density**

*Building Site Coverage The maximum building site coverage is to be 50% of the site area.*

*FSR Maximum of 0.5: 1 (building floor space to site area including the whole lot for the properties east of Lorna Street).*

### **Open Areas**

*Landscape Area 30%*

### **Setbacks**

Front 6m  
Rear 6m (5m based on A1)  
Side 0.9m

### **Deep Soil Zone**

*3m off each street frontage*

### **Driveways**

*4m per property max and 0.75m screen plantings along boundary*

### **Garages**

*No greater than 25% of frontage”*

Assessment against Section B11 Seaside City & DCP Section A1 (Part A):

- **Lot 25 Variable depth 39.3 - 42.3m x 14.7m - 594m<sup>2</sup>**

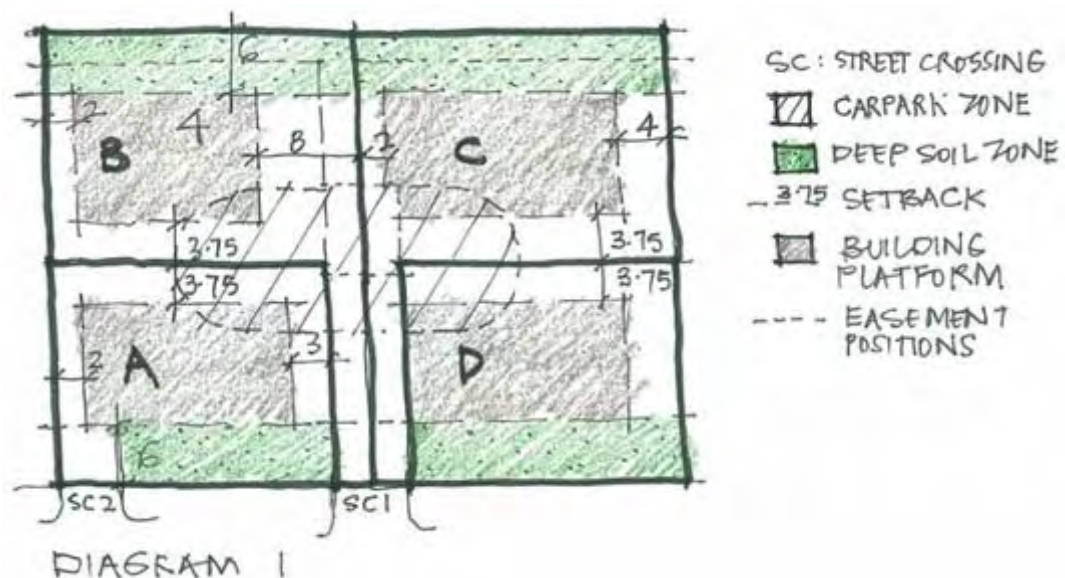
This allotment is capable of accommodating a single dwelling house with a building footprint of 10m x 15m based on the above criteria (Note 10m APZ on Council land and 5m APZ on subject property).

- **Lots 26 – 35 Depth 42.3m x 14.7m - 617m<sup>2</sup>**

These allotments are capable of accommodating a single dwelling house with a building footprint of 10m x 15m based on the above criteria (Note 10m APZ on Council land and 5m APZ on subject property).

- **Lots 36, 39, 40, 43, 44 and 47  
Depth 20.91m x Variable 21 – 28m - 451m<sup>2</sup> - 603m<sup>2</sup>**

These front allotments of the battle axe clusters are capable of accommodating a single dwelling house with a building footprint of approximately 10m x 15m based on the above criteria. As negotiated within DA08/0755 these allotments should be designed based on the following parameters:



- **Lots 37, 38, 41, 42, 45 and 46  
Depth 21m (excluding battle axe handle) x Variable 24 – 31m - 589m<sup>2</sup> - 744m<sup>2</sup>**

These rear allotments of the battle axe clusters are capable of accommodating a single dwelling house with a building footprint of approximately 10m x 15m based on the above criteria. As negotiated within DA08/0755 these allotments should be designed based on the above diagram:

Appropriate conditions of consent have been recommended to ensure compliance with the above diagram and DCP Section A1 and B11 accordingly.

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

Clause 92(a) Government Coastal Policy

As identified above, the proposal is not considered to be inconsistent with the Coastal Policy. It will not result in overshadowing or impacts on the coastal foreshore.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

No buildings are proposed.

Clause 94 Buildings to be upgraded

No buildings are proposed.

**(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 considered compatible with the existing density and character of surrounding development and coastal communities.

Ecological Impacts/ Flora & Fauna

Council's Ecologist has reviewed the application and made the following comments:

*"The main issue of ecological interest is the riparian buffer to Cudgen Creek. A 50m riparian zone from Mean High Water Mark is zoned 7(l) Environment Protection (Habitat).*

*Relevant controls and issues are discussed below.*

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
SEPP 71 Clause 8  Matters for consideration	Matters for consideration include: <ul style="list-style-type: none"> <li>measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u>) and plants (within the meaning of that Act), and their habitats,</li> <li>existing wildlife corridors and the impact of development on</li> </ul>	This SEPP aims to protect coastal vegetation and wildlife corridors amongst other things.  In this case, vegetation on the lots has already been removed thus protection per se is not applicable. It is considered that replacement of native vegetation, however, is an appropriate response to the aims and matters for

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
	<p>these corridors,</p> <ul style="list-style-type: none"> <li>• the cumulative impacts of the proposed development on the environment,</li> </ul>	<p>consideration. This has been conditioned.</p>
<p>LEP 2000 Clause 11</p> <p>Zone objectives for 7(l) Environmental Protection (Habitat) zone</p>	<p>Zone objectives are:</p> <p><b>Primary objectives</b></p> <ul style="list-style-type: none"> <li>• to protect areas or features which have been identified as being of particular habitat significance.</li> <li>• to preserve the diversity of habitats for flora and fauna.</li> <li>• to protect and enhance land that acts as a wildlife corridor.</li> </ul> <p><b>Secondary objectives</b></p> <ul style="list-style-type: none"> <li>• to protect areas of scenic value.</li> <li>• to allow for other development that is compatible with the primary function of the zone.</li> </ul>	<p>Part of the 7(l) zone is under active rehabilitation in accordance with the Vegetation Management Plan for Lot 1971 adjacent to the subject lots (Lot 1971 was set aside for environmental purposes). The density of planting in Lot 1971 has been significantly reduced in a zone 10m adjacent the subject lots for bushfire asset protection purposes and a cycleway permitted in this area. Further reductions in available space for replanting have arisen due to provision of a stormwater detention basin and sewer pump station. In addition, maximum tree height has been limited under existing powerlines.</p> <p>It is considered that habitat enhancement of those parts of the subject lots zoned 7(l) is a reasonable response to the 7(l) zone where it exists on the lots in order to comply with zone objectives. This has been conditioned.</p>
<p>LEP 2000 Clause 20</p> <p>Subdivision in Zone 7(l)</p>	<p>Consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted.</p>	<p>Although the land zoned 7(l) within the subject allotments will have a restriction on use such that buildings or other structures will not be permitted, the land will be part of privately owned residential land parcels. This does not appear to strictly accord with the intent of this clause. It gives support to the need to revegetate these portions of applicable lots as conditioned.</p>
<p>LEP 2000 Clause 28</p> <p>Development in Zone 7 (l) Environmental Protection (Habitat) and on adjacent land</p>	<p>(1) Objective</p> <ul style="list-style-type: none"> <li>• to protect wildlife habitat from the adverse impacts of development.</li> </ul> <p>(3) The consent authority must not grant consent to development on or adjacent to land within Zone 7 (l) unless it has taken into consideration:</p>	<p>The application states that these matters have been addressed for lots to the south similarly encumbered via provision of Restrictions on Use of the land, registered on title. Further, that it is expected that similar conditions would be applied to the subject lots. The restrictions referred to provide only that no building or</p>

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
	<p>(a) the likely effects of the development on the flora and fauna found in the locality, and</p> <p>(b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and</p> <p>(c) a plan of management showing how any adverse effects arising from the development are to be mitigated.</p>	<p>swimming pool be constructed and pet ownership is restricted to one dog in a fenced yard and one de-sexed cat kept inside at night. Only two lots in the southern block are affected, each to a lesser degree than any of the eleven blocks proposed to result from resubdivision of Lots 1 to 8.</p> <p>Whilst the restrictions on title are supported, it is considered that development in the private 7(l) area is likely to increase risk to flora and fauna by way of the matters listed. Although a Vegetation Management Plan has been approved over the adjoining Lot 1971, no management plan has been provided for these areas of private land. It is considered that these matters are required to be addressed but can be addressed within the Restriction on Use to be registered on each lot title.</p>
<p>LEP 2000 Clause 31</p> <p>Development adjoining Waterbodies</p>	<p>Objectives</p> <ul style="list-style-type: none"> <li>to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.</li> </ul> <p>This clause applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody.</p> <p>Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent authority of the mean high-water mark or,</p> <p>where there is no mean high-water mark, the top of the bank or shore of a stream, creek,</p> <p>river, lagoon or lake unless it is satisfied that:</p> <ul style="list-style-type: none"> <li>the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the Local Government Act 1993 that applies to the land or to land that may be affected</li> </ul>	<p>Whilst the lots do not strictly adjoin Cudgen Creek, they are the closest development to the creek and within the area zoned for protection of riparian buffer, thus the intent is met.</p> <p>The relevant Estuary Management Plan is discussed below and requires a 50m riparian buffer for all new development.</p>

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
<p>DCP A5 Subdivision A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding</p>	<p style="text-align: center;">by the development,</p> <ul style="list-style-type: none"> <li>• Development in or adjacent to waterways, water bodies, wetlands or within their catchments must: <ul style="list-style-type: none"> <li>• Provide a riparian buffer of 50m along major streams (Tweed River, Rous River, Oxley River, Cudgen Ck, Cudgera Ck, Mooball Ck and major tributaries)</li> <li>• Conserve native vegetation surrounding waterways, water bodies, wetlands by the retention of riparian buffers.</li> </ul> </li> <li>• Riparian buffers along major streams shall be dedicated to Council and placed under active management in accordance with a plan of management submitted by the applicant and approved by Council.</li> <li>• Riparian buffer zones shall be revegetated and fences or other appropriate barriers provided to prevent transverse crossing of the riparian buffer (except in designated areas).</li> </ul>	<p>A riparian buffer of 50m has been delineated along this section of Cudgen Creek via the 7(l) Environment Protection zone.</p> <p>Native vegetation was originally removed for sand-mining purposes and subsequent regrowth of native and weed species was removed during construction of Casuarina Way in 2000, thus the conservation of native vegetation is not applicable to the riparian buffer section of the private lots.</p> <p>The buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by 4 additional dwellings.</p> <p>A benefit to the riparian will be gained through planting and plan of management conditioned for the riparian zone within the private allotments.</p>
<p>DCP B11 Seaside City B11.2.4 Environmental and Hazard Management – Cudgen Creek</p>	<p>Cudgen Creek</p> <p>A 50m riparian buffer zone is to be provided, measured from Cudgen Creek, and adjacent to the adjoining 7(a) and 7(l) environmental protection zones.</p> <ul style="list-style-type: none"> <li>• A minimum 20m core buffer. This will include the area that immediately adjoins the MHWL and any area that adjoins an environmental protection zone. The core buffer shall be dedicated to Council in a rehabilitated form to the satisfaction of Council to manage and maintain. This component should retain all native vegetation and be weeded and replanted where required.</li> <li>• A 30m outer buffer. This area</li> </ul>	<p>The buffers at Seaside City have been predetermined by the original subdivision pattern and DA05/1464. This development does not reduce these buffers but does increase the intensity of development by 4 additional dwellings.</p> <p>The total riparian buffers along Cudgen Creek adjoining the subject sites (measured from the mapped waterway) comprise a minimum of 50m and a maximum of 100m. However if this is measured from the current top of bank (the narrowest section) a minimum of 38m exists.</p> <p>This comprises on average;</p> <ul style="list-style-type: none"> <li>• a core buffer of at least 20m which will be densely</li> </ul>

Legislative or policy control	Detail of relevant provision	Comment with regard to proposal
	<p>is to be provided adjacent to any section of the core buffer that adjoins Cudgen Creek. It is not required where the core buffer adjoins an environmental protection zone. • The 30m outer buffer does not need to be densely revegetated, however it shall not contain buildings except those ancillary to its environmental or recreational uses where appropriate (e.g. park shelters etc).</p> <ul style="list-style-type: none"> <li>• Infiltration basin and cycling/walking paths may be located will be provided within the outer 30m buffer of this dedicated land.</li> <li>• Any required outer buffer on private land is to have suitable restrictions on the title to ensure that it is maintained as a buffer area by the landowner.</li> <li>• Prior to issue of a construction certificate for a building, or subdivision certificate for any land within Seaside City, Lot 1971 shall be dedicated to Council at no cost due to it's riparian and environmental qualities. Prior to this dedication, approved embellishment of the area (such as recreation facilities) must be completed, and an approved vegetation management plan prepared. The developer must commit to completing works associated with the approved plan within a minimum of 5 years.</li> <li>• A Riparian Management Plan shall be provided to the satisfaction of Council in respect of all areas described above.</li> </ul>	<p>re-vegetated as part of DA05/0793;</p> <ul style="list-style-type: none"> <li>• a dual cycleway/asset protection zone measuring approximately 10m managed as an inner protection area;</li> <li>• a maximum 17m riparian zone within the private allotments the subject of this application</li> </ul> <p>This application presents Council with an opportunity to ensure the 17m within the private allotments will be managed as riparian buffer with some native plantings.</p> <p>This has been conditioned within the application and is considered to be the best possible outcome given the existing subdivision layout as created by the 1920's subdivision.</p>
<p>Tweed Coast Estuary Management Plan – Cudgen, Cudgera and Mooball Creeks</p> <p>21 Strategies and actions</p>	<p>Development - Actions required</p> <ul style="list-style-type: none"> <li>• Adhere to a minimum of 50m buffer zone of riparian vegetation on any new development site</li> <li>• Wherever possible, encourage dedication and</li> </ul>	<p>A 50m buffer has been identified via Environmental Protection Zoning. As the development is a 1923 approved subdivision, it is not "new development", despite the current proposal for re-subdivision. Thus dedication</p>

<b>Legislative or policy control</b>	<b>Detail of relevant provision</b>	<b>Comment with regard to proposal</b>
Costs 21.1 Cudgen creek	rehabilitation of riparian zones with development applications	would be unreasonable at this stage.  Lot 1971 is under current rehabilitation and is intended to be dedicated to Council.  The bank at this site has not been identified as of particular concern in relation to bank erosion.

### **Ecologist Conclusion**

*The re- subdivision of existing Lots 9 to 16 Section 8 DP 14895 in the north-west corner can be supported because they are (apart from a very small corner) entirely outside of the 50m riparian buffer represented by the 7(l) zone. A previous issue raised with regard to the ability to provide adequate asset protection zones to protect the development from bushfire hazard to the north (Salt riparian buffer) has been addressed through amendment of lot layout and is now satisfactory.*

*The re-subdivision of existing Lots 1 to 8 Section 8 DP 14895 is justified because a benefit will be gained through planting of native vegetation within the private 7(l) zoned land. Appropriate conditions have been recommended.*

*All lots will be conditioned to require a minimum of 30% landscaped area in accordance with DCP B11 for Coastal Housing.”*

The application has been conditioned in accordance with the advice of Council's Ecologist.

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

#### Surrounding Landuses/Development

The subject site is compatible with surrounding residential development to the north and south. Conditions are recommended to ensure that the edge effects upon the adjoining reserve are limited.

#### Topography

All required bulk earthworks will occur as part of DA05/1464. The previously approved earthworks are compliant with Council's policies.

#### Site Orientation

The configuration of the site allows for the long axis of the proposed lots to be provided on a east /west orientation to allow for increased solar access.



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

The application was notified and advertised from Wednesday 26 May 2010 to Wednesday 9 June 2010.

During this time, no submissions were received.

**(e) Public interest**

The application is not considered to be contrary to the general public interest.

**OPTIONS:**

1. Approve the application as recommended
2. Refuse the application with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant may appeal the decision in the NSW Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil

**CONCLUSION:**

Council is in receipt of a subdivision application for the north-west precinct of Seaside City. The proposed subdivision is generally consistent with the site specific DCP and the intent of the primary 2 (e) zone and Clause 53C of the Tweed LEP 2000.

The proposal is recommended for approval, subject to conditions to limit and manage potential impacts arising from the development.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) 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 DA08/0755 18 May 2010 (ECM 21250371)
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**13 [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 matter was referred to the Council meeting of 20 July 2010.

Concerns were raised in relation to the location of secondary koala habitat on the subject site and the impact that the proposed development may have on that habitat.

As such, Council resolved as follows:-

*'that this item be deferred to allow for a workshop.'*

This addendum report now aims to summarise the outcome of the workshop and provide an update to recommended conditions in order for it to be reconsidered by Council.

**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]

4. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of proposed Lot 11 or part thereof may own or allow to remain on the site or any part thereof any dog (excluding any "assistance animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).

Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the Disability Discrimination Act 1992 of the Commonwealth, but does not include a working dog. Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.

5. No approval is granted for the removal of any Koala food or Koala use trees being Blackbutt (*Eucalyptus pilularis*), Brush Box (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Grey Ironbark (*Eucalyptus siderophloia*). These trees must be protected throughout the development site during construction works and operational phases of the development.

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. 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]

7. 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]

8. 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]

9. 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]

10. 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**

11. 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**

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

[DUR0005]

13. 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]

14. 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]

15. 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]

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

[DUR0815]

17. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

24. 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]

25. 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]

26. 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]

27. Erosion and sediment control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.

[DURNS01]

28. 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]

29. 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**

30. 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]

31. 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]

32. 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]

33. 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]

34. 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]

- 35. 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]

- 36. 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]

- 37. 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]

- 38. 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]

39. 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]

40. 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]

41. 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]

42. 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]

43. 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) Restriction as to user regarding no dogs or cats. Burden: Proposed Lot 11 (new lot created on the subject site). Benefit: Tweed Shire Council.

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.**

**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:**

**SUMMARY OF ADDITIONAL ASSESSMENT:**

Council officers undertook a site inspection on 3 August 2010 to determine koala habitat and usage of Lot 10 DP 1034435. The owner of the subject site, Mr Parsons, accompanied Council officers and was able to offer valuable information in relation to the current and proposed future use of the site.

The site contains Blackbutt (*Eucalyptus pilularis*) Open Forest with associated species including Pink Bloodwood (*Corymbia intermedia*), Brushbox (*Lophostemon confertus*) and Grey Ironbark (*Eucalyptus siderophloia*). None of the preferred Koala food trees as listed by Phillips (Forest Red Gum, Tallowwood, Small-fruited Grey Gum or Forest Red Gum) are present on the site or immediate surrounds. The ground layer is managed as exotic grassland used for cattle grazing. Occasional rainforest species as well as Camphor Laurel occur in lower, ungrazed parts of the site.

Consideration of Koala usage of the site involved undertaking the Spot Assessment Technique over the treed areas of the site. Bark damage on the trunk consistent with use of the tree and scats beneath the tree were recorded from four out of some roughly twenty-five trees on the site. Three of the four trees indicating use are Blackbutts with one being a Pink Bloodwood, all of which are located some 100m from the existing house and on the opposite side to the proposed new allotment to be created.

Usage of the site by Koalas on the evidence obtained is not unequivocal due to an usual clumping of scats not usually seen from Koalas, however, it would appear that the site is likely to exhibit value as secondary habitat which may form one extent or part of a large home range and it is useful as part of a wildlife corridor. No clearing or other direct impact is expected on this part of the site; however, it would be prudent to prevent any more dogs being allowed in the vicinity.

**OUTCOME OF WORKSHOP:**

Results from the site visit to determine koala habitat and usage were presented and discussed. Clarification was provided in relation to koala habitat mapping, threatened species and wildlife corridors.

Council officers suggested that additional conditions be imposed upon the development consent to manage:

- Restriction on the keeping of dogs within the vicinity, and
- Retention of Koala food and/or Koala use trees located on the site.

These additional conditions read as follows:

**General**

1. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of proposed Lot 11 or part thereof may own or allow to remain on the site or any part thereof any dog (excluding any "assistance

animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).

Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the *Disability Discrimination Act 1992* of the Commonwealth, but does not include a *working dog*. Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a *disability*.

2. No approval is granted for the removal of any Koala food or Koala use trees being Blackbutt (*Eucalyptus pilularis*), Brush Box (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Grey Ironbark (*Eucalyptus siderophloia*). These trees must be protected throughout the development site during construction works and operational phases of the development.

### **Prior to Subdivision Certificate**

3. 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) Restriction as to user regarding no dogs or cats. **Burden:** Proposed Lot 11 (new lot created on the subject site). **Benefit:** Tweed Shire Council.

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.

### **OPTION 1**

To adopt the original recommendation from the officer's report of Item P19 of 20 July 2010 Council meeting without the additional conditions:

*That:* -

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

B. *Long term period - the duration.*

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

[DUR0215]

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'.*

### **OPTION 2**

To approve the development application with the original recommended conditions inclusive of the three (3) additional conditions (Conditions 4, 5 and 43) recommended by Council Officers at the Council Workshop:

*That: -*

- A. *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]

4. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of proposed Lot 11 or part thereof may own or allow to remain on the site or any part thereof any dog (excluding any "assistance animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).

Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the [Disability Discrimination Act 1992](#) of the Commonwealth, but does not include a [working dog](#). Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a [disability](#).

5. No approval is granted for the removal of any Koala food or Koala use trees being Blackbutt (*Eucalyptus pilularis*), Brush Box (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Grey Ironbark (*Eucalyptus siderophloia*). These trees must be protected throughout the development site during construction works and operational phases of the development.

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. 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]

7. 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]

8. *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]

9. *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]

10. *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**

11. *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*

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

[DUR0005]

13. *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]

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

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

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

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

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

[DUR0215]

15. *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]

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

[DUR0815]

17. *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]

18. *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]

19. *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]

20. *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]

21. *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]

22. *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]

23. *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]

24. *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]

25. *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]

26. *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]

27. *Erosion and sediment control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.*

[DURNS01]

28. *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]

29. *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**

30. *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]

31. *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]

32. 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 ( <i>\$502 base rate + \$24 indexation</i> ) S94 Plan No. 5	\$526
(c)	Open Space (Structured): 1 ET @ \$602 per ET ( <i>\$575 base rate + \$27 indexation</i> ) S94 Plan No. 5	\$602
(d)	Shirewide Library Facilities: 1 ET @ \$792 per ET ( <i>\$792 base rate + \$0 indexation</i> ) S94 Plan No. 11	\$792
(e)	Eviron Cemetery: 1 ET @ \$120 per ET ( <i>\$101 base rate + \$19 indexation</i> ) S94 Plan No. 13	\$120
(f)	Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$1759.9 per ET ( <i>\$1759.9 base rate + \$0 indexation</i> ) S94 Plan No. 18	\$1759.90
(g)	Regional Open Space (Casual) 1 ET @ \$1031 per ET ( <i>\$1031 base rate + \$0 indexation</i> ) S94 Plan No. 26	\$1031
(h)	Regional Open Space (Structured): 1 ET @ \$3619 per ET ( <i>\$3619 base rate + \$0 indexation</i> ) S94 Plan No. 26	\$3619

[PSC0175]

33. 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]

34. 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]*

- 35. 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]*

- 36. 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]*

- 37. 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]*

- 38. 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]

39. *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]

40. *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]

41. *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]

42. *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]

43. *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) *Restriction as to user regarding no dogs or cats. **Burden:** Proposed Lot 11 (new lot created on the subject site). **Benefit:** Tweed Shire Council.*

*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.

**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'.*

**OPTION 3**

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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Report to Council at its meeting of 20 July 2010 on Development Application DA10/0066 (ECM 20870034)
-

**14 [PR-CM] Development Application DA10/0439 for a Boundary Adjustment at Lot 514, 515 DP 1132400, No. 40-44 and 46-48 Honeyeater Circuit, South Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0439 Pt1**

**SUMMARY OF REPORT:**

The proposed development involves two (2) parcels of land with part 4(a) Industrial and part 1(a) Rural Zone. The applicant is seeking approval for a boundary alteration between two (2) parcels of land which will create no additional lots.

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

The following report addresses the issues and reasons for recommending approval of the proposed development.

**RECOMMENDATION:**

**That Development Application DA10/0439 for a boundary adjustment at Lot 514, 515 DP 1132400, No. 40-48 Honeyeater Circuit, South Murwillumbah be approved subject to the following conditions:**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 21020PROP Sheet 1 of 1 prepared by N.C. White & Associates and dated 22/06/2010, 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]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

- 3. 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]

4. 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.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a right of carriageway or easement shall make provision for maintenance of the right of carriageway or 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 (as applicable).

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

[PSC0835]

5. 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]

**REPORT:**

**Applicant:** Tweed Central Pty Ltd  
**Owner:** Tweed Central Pty Ltd  
**Location:** Lot 514 and 515 DP 1132400 No. 40-44 and 46-48 Honeyeater Circuit, South Murwillumbah  
**Zoning:** Part 4(a) Industrial and Part 1(a) Rural  
**Cost:** N/A

**BACKGROUND:**

Council is in receipt of a development application for a boundary alteration.

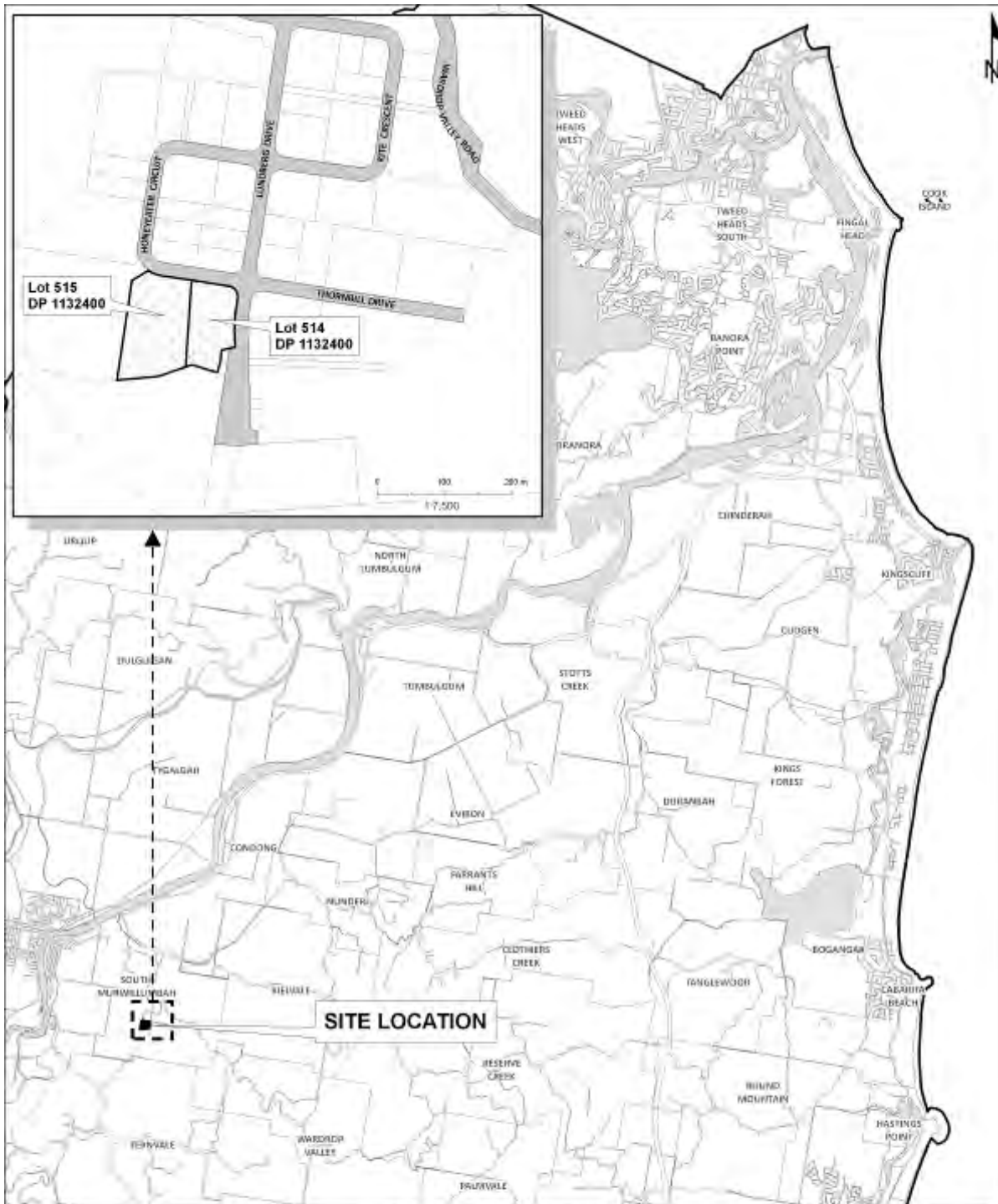
On 11 March 2004 it was resolved to grant consent for a 56 lot industrial subdivision (DA02/1685) which formed the Tweed Valley Industrial Park. On 31 May 2010 it was resolved to grant consent for a Public Building for the Australian Federal Police K9 Facility at 40-44 and 46-48 Honeyeater Circuit, South Murwillumbah. The majority of the Public Building is located on Lot 514 with a small amount of the building located on Lot 515.

Current Lot	Size	Proposed Lot	Size
514	8,101m <sup>2</sup>	11	9,474m <sup>2</sup>
515	1.396ha	10	1.266ha

The subject site is legally described as Lot 514 and Lot 515 DP1132400 and is located at 40-48 Honeyeater Circuit, South Murwillumbah. The allotments are of an irregular shape and Lot 514 has an overall area of 8,101m<sup>2</sup> whilst Lot 515 has an overall area of 1.396 hectares. The boundary adjustment involves the transfer of 1,373m<sup>2</sup> from Lot 515 to Lot 514. The boundary adjustment will allow for the development of the industrial land in accordance with the development consent DA10/0183 for a K9 facility for the Australian Federal Police to be wholly located on Lot 514. The section of 1(a) zoned land consists of approximately 700m<sup>2</sup> and will remain on Lot 515.

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

**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 514 & 515 DP 1132400  
No.40-44 & 46-48 Honeyeater Circuit, South Murwillumbah

Filename: E:\env\planning\mes\448\_08\0 SitePlan.mxd

Author: J Butcher - Planning Returns Unit

Date Printed: 01 September 2010

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty in respect of the accuracy, reliability, completeness or suitability for any particular purpose and assumes all responsibility and all liability (including without limitation liability in negligence) for all expenses, losses, damages, including indirect or consequential damage (and costs which may be incurred) as a result of its being used with or without any caveat. This information is supplied for the general public and a notice of disclaimer is available on the council website. It should not be used for survey or construction purposes and prior to any excavation a "dig before you dig" enquiry must be made by calling 1300. The information contained on this document remains valid for six days only from the date of supply.



Coordinate System: PAUK Zone 56  
Datum: GDA94

Calculated: 06 September, 2010  
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Lot Area: 10000  
COPY ONLY - NOT CERTIFIED

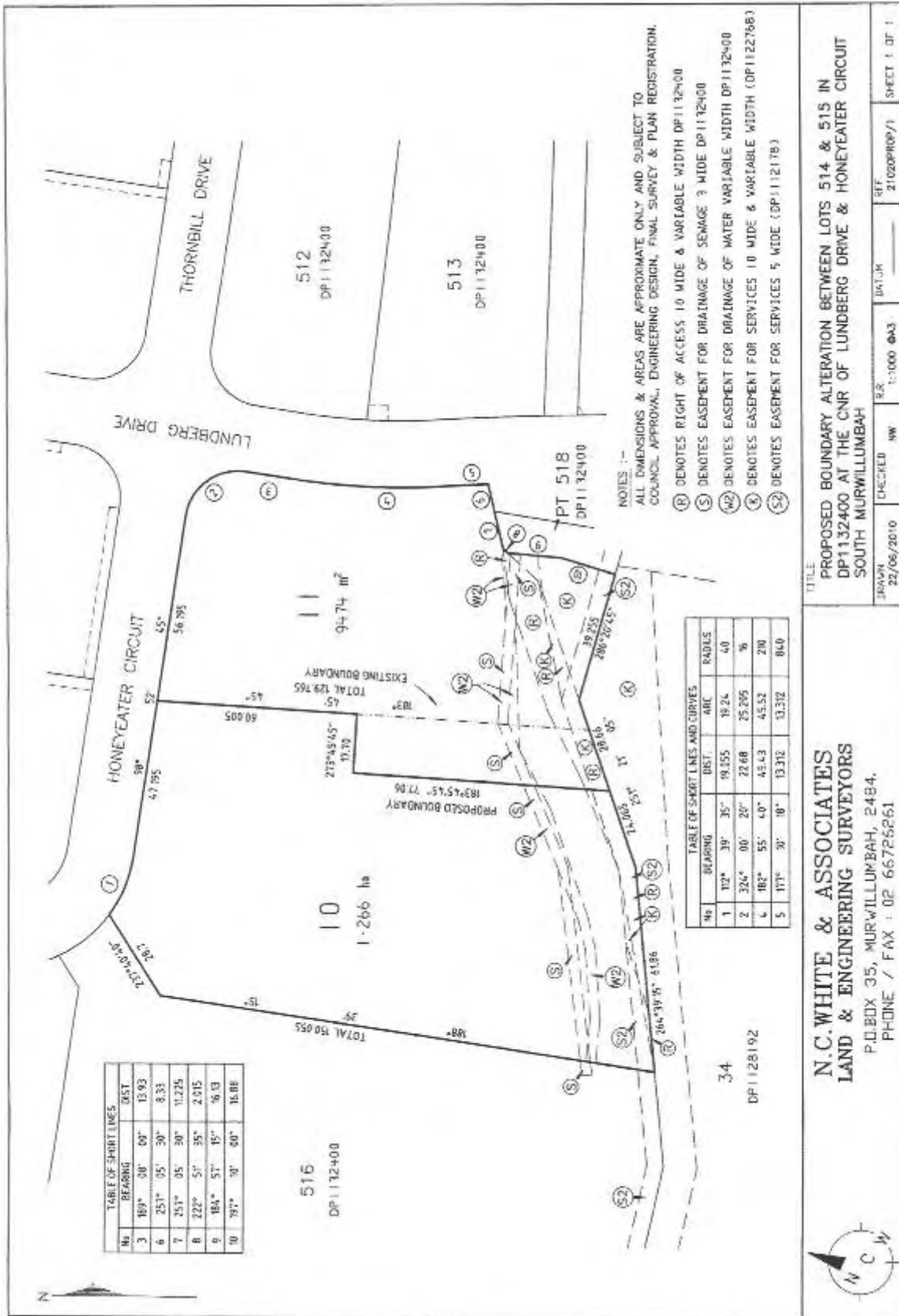
City and Cultural Centre  
3 Tumbalonga Road  
Murwillumbah NSW 2454  
PO Box 918  
Murwillumbah NSW 2454  
T: (02) 6670 2489 | 1300 260 872  
F: (02) 6670 2485  
W: www.tweedshire.gov.au  
E: glenn.griffiths@tweedshire.gov.au



**TWEED**  
SHIRE COUNCIL



PROPOSED PLAN:



TITLE  
 PROPOSED BOUNDARY ALTERATION BETWEEN LOTS 514 & 515 IN  
 DP1132400 AT THE CNR OF LUNDBERG DRIVE & HONEYEATER CIRCUIT  
 SOUTH MURWILLUMBAH

DATE: 22/06/2010  
 CHECKED: NW  
 SCALE: 1:1000  
 REF: 2102090P/1  
 SHEET 1 OF 1

**N.C. WHITE & ASSOCIATES**  
**LAND & ENGINEERING SURVEYORS**  
 P.O. BOX 35, MURWILLUMBAH, 2484.  
 PHONE / FAX : 02 66762651





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

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

**Tweed Local Environmental Plan 2000**

**Clause 4 - Aims of the Plan**

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The subject boundary adjustment is considered to be suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

**Clause 5 - Ecologically Sustainable Development**

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

Broadly, the subject proposal is considered consistent with the above criteria, as the proposed boundary adjustment of part 4(a) and part 1(a) zoned land is not likely to have significant ramifications for ecologically sustainable development.

**Clause 8 - Zone objectives**

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.*

In this instance, Lot 514 is located entirely within the 4(a) Industrial zone whilst Lot 515 is located within the 4(a) Industrial zone and it has a small section of the

southern end of the site located within the 1(a) Rural zone pursuant to the provisions of TLEP 2000. The primary objective of the 4(a) zone is as follows:

- “- to provide land primarily for industrial development.*
- to facilitate economic activity and employment generation.”*

The proposed boundary adjustment is considered consistent with the primary objective of the zone, in that it is located within the industrial zone and will be utilised for purposes which will facilitate economic activity and employment generation for the purposes of the Australian Federal Police. This will not change as a result of the proposal.

The primary objective of the 1(a) zone is as follows:

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

The boundary adjustment will not be located within the 1(a) zoning. However, as a result of the 1(a) zoned land being below the 40ha minimum the proposal was sent to the Department of Planning for Concurrence. The Department of Planning responded on 29 July 2010 granting concurrence.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established industrial nature of the subject area.

#### Clause 14 - Development near zone boundaries

The proposal is permissible in this zone therefore Clause 14 is not applicable.

#### Clause 15 - Essential Services

The subject site is located within an established residential area with all essential services available.

#### Clause 16 - Height of Building

Not applicable. There is no new building proposed.

#### Clause 17 - Social Impact Assessment

Not applicable. The proposal is for a boundary adjustment.

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

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

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

As noted above, the subject site incorporates 1(a) zoned land which relates to Clause 20. The existing allotments 514 and 515 are both currently below the 40 hectare minimum.

The proposed allotments 514 and 515 do not meet the minimum 40ha requirement. A SEPP 1 Objection has been submitted and the application was referred to the Department of Planning for the Director-General's concurrence. The Department's comments and the SEPP 1 Objection are detailed later in this report.

#### Clause 34 - Flooding

The proposed boundary adjustment will not increase the severity of flooding on the community.

#### Clause 35 - Acid Sulfate Soils

Class 3 and Class 5 Acid Sulfate Soils are present on the site. The proposed boundary adjustment is located within the Class 5 area and there will be no excavation as a result of this application and as such, a management plan is not required.

### **State Environmental Planning Policies**

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

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

This clause requires Council consider the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. The proposed boundary adjustment is unlikely to have any impact upon the surrounding agricultural land, given that the proposed allotments will continue to be utilised for industrial purposes. The proposal will only reconfigure the boundary.

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

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

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

The parcel of land involved with the proposed boundary alteration is located within the 4(a) Industrial Zone however there is a small portion of 1(a) Rural Zone.

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

*“As advised by Council officer a small portion of Lot 515 is included within the Rural 1A Zone and therefore the proposed Subdivision (boundary adjustment) does not comply with Part 4 Subdivision Section 20 (Subdivision in Zones 1A, etc) 2(a), which states as follows:*

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

*It appears that the partial rural zoning of Lot 515 is an anomaly as the site is part of an existing approved industrial subdivision. It is noted that Draft Tweed LEP 2010 corrects the current error within the Tweed LEP 2000 and zones all the land within the Tweed Central Industrial estate within the General Industry Zone.*

*The Lots are mostly within the Zone 4(a) Industrial which has the following primary objectives:*

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

*Lot 514 currently has a Development Consent for a Public Building (K9 Kennel Facility) and the proposed boundary adjustment will not negatively affect the future industrial development of Lot 515 as envisaged.*

*A very small portion of Lot 515 (rear batter slope) is included within the Rural Zone 1(a) which has the following primary objectives:*

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

*As advised the area of Lot 515 included within the Rural Zone are within a batter slope that holds no agricultural or natural resource utilisation purposes. The site has been approved by Council via DA02/1685 for industrial subdivision and the proposed boundary adjustment will not negatively impact on the rural character or amenity.*

*The objective of Part 4 Subdivision is as follows:*

- *To provide a comprehensive system of planning controls for the subdivision of land in the Tweed Local government area.*

*Section 19 (General) part 3 states that, “a person may, with consent carry out a minor boundary adjustment, notwithstanding that the new lots may not*

*comply with any relevant development standards applicable to the zone in which the land is situated.”*

*The proposed boundary adjustment is minor and has been brought about by a Development Consent approval issued by Council. The boundary adjustment complies with the Zone 4(a) Industrial subdivision requirements. The portion of Lot 515 within the Rural Zone is not developable as it is within a batter slope. The new Tweed LEP 2010 has corrected the error (part rural zone of Lot 515) within the current Tweed LEP which requires the concurrence of the Department for Planning for this Subdivision (boundary adjustment) application.*

*Section 20 part 3 states that despite clause 2 (allotments to be at least 40 hectares within rural zone) of Part 4 Subdivision:*

*“consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, or 10 hectares in that case of Zone 1(b1), if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purposes, for which consent could be granted”.*

*As previously advised the sites have already been approved for industrial purposes and will not be development for agricultural or residential purposes. Lot 514 and a small portion of Lot 515 have approval for Public Building and the balance area of Lot 515 will be developed for industrial purposes in the future.*

*The proposal does not result in any additional residential development rights within the Rural Zone. The area of Lot 515 within the Rural zone is located within a batter slope and has no development potential. Lot 514 will be developed as per current Council approval and Lot 515 will be developed inline with the Industrial Zone or subject to Development Application.*

*In accordance with State Environmental Planning Policy 1 – Development Standards, the Rural standard (of a minimum allotment size of 40 hectare) due to the small portion of Lot 515 being included within the Rural zone is considered unreasonable. In this case it appears to be an error within the current Tweed LEP 2000 that has been correct in the current draft LEP that includes the entire approved industrial subdivision within the Industrial Zone.*

*The proposed non compliance with Rural Zone allotment area which should not even be relevant does not give rise to any matters of state or regional planning significance.*

*The applicant sees no reason why Council or the Department of Planning should refuse this boundary adjustment subdivision application.”*

**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. Is the planning control a development standard?**

The subject planning control is contained within the Tweed LEP 2000. Clause 20 of the LEP provides inter alia, as follows:

*“(2) Consent may only be granted to the subdivision of land:*

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

As the planning control is a provision of an LEP it is regarded as a development standard and it could only be varied through the provisions of SEPP No. 1.

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

The existing lot configuration was registered by the Crown Lands Office in 2004. The subdivision created 56 lots with the subject allotments being:

Lot 514 – 8,101m<sup>2</sup>

Lot 515 – 1.4ha

In approving the 2004 subdivision Council has virtually abandoned any prospect of complying with the required 40 ha minimum lot size. There is only a small section of approximately 700m<sup>2</sup> of 1(a) zoned land on Lot 515 which is why the proposal needed concurrence from the Department of Planning.

Compliance with the development standard is unnecessary in the circumstances of the case because:

- The development would not be in conflict with the stated purpose of requiring a minimum site area of 40ha as it would not lead to potential fragmentation of ownership of rural land. The existing and proposed lots do not currently achieve the minimum standard.
- The development would not cause the agricultural use of the land to be unsustainable as it does not reduce the area available for production.
- The proposal would not cause a change that would lead to pressure to further subdivide the property. The proposal would not lead to additional dwelling entitlements.

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

Clause 3 of SEPP 1 states:

*“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.”*

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

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

In the circumstances the proposed boundary adjustment:

- Would not be in conflict with the proper management of the agricultural resource as neither the existing or proposed lot configuration will achieve lot sizes considered sufficient by the applicant for sustainable agriculture.
- Approval of the application may promote more efficient and economic use of the land. Proposed Lot 11 will be utilised for the K9 Facility as approved via DA10/0183 and Proposed Lot 10 will be able to be developed for an industrial purpose in the future.
- The proposal would not lead to further development of the property that might give rise to adverse environmental impacts. No additional dwelling entitlements would arise from the proposal.

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

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

The proposal does not raise any matters of significance for State or regional planning. The proposal is not in conflict with any objectives or provisions of the SEPP's or REP's.

In terms of the aims of the SEPP (Rural Lands) 2008, the proposal would:

- Not cause a loss in available land for agricultural purposes.
- Not involve subdivision of rural lands for the purposes of creating additional lots or give rise to pressure for future subdivision.
- Not give rise to any land use conflict.

The proposal is not in conflict with the Rural Planning Principles included in Clause 7 of the SEPP (Rural Lands) 2008 because:

- It would not lead to an imbalance of the social, economic and environmental interests of the community. On the contrary, it will provide social and economic benefits through further industrial use on the land that will generate employment.
- It would have no affect on biodiversity, native vegetation or natural waterways because no additional buildings or development is proposed by the application. There would be no change to the manner in which waste water is treated on the site.
- Existing services and infrastructure would not be impacted by the proposal as no additional buildings or other development is proposed.

Clause 8 of the North Coast Regional Environmental Plan includes provisions applicable to the preparation of the Local Environmental Plan provisions for lot sizes on rural land. Specifically it states:

*“In relation to rural land which is not prime crop or pasture land, a draft local environmental plan should set a sufficient minimum allotment size for the conduct of commercial farming.”*

The small section of 1(a) zoned land located on Lot 515 is not sufficient to carry out commercial farming. The proposed boundary adjustment would not therefore be in conflict with the intent of this clause and would have no detrimental impact on the long term viability of the property for industrial development.

#### **5. The objectives are achieved notwithstanding non-compliance.**

The minimum lot size for a subdivision in the Rural 1(a) Zone is 40ha and that minimum is underpinned by the objective stated in clause 20 of the TLEP as:

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

The proposed boundary adjustment would not be in conflict with these objectives for the following reasons:

- The subject site is only part 1(a) zoned with the majority of the site being 4(a). The boundary adjustment will not alter the amount of 1(a) zoned land located on the allotment.
- In this case, the allotments as they exist and as proposed, would be less than the 40ha in area. In the circumstances there would be no further fragmentation and no “adverse” affect on the continuation or potential future aggregation of sustainable agricultural units.
- The boundary adjustment will amend the current situation where the approved Public Building is located on both allotments. The boundary adjustment will create an amendment so the Public Building will be located entirely within Proposed Lot 11 and both lots will be maintained



as industrial blocks. The proposal would therefore not generate any pressure for further subdivision or residential development.

- The proposal involves a boundary adjustment that would not require works or development that would affect the ecological or scenic values of the land.
- The proposal would not impact on the Tweeds water supply catchment.

**6. The underlying objective is not relevant and compliance is unnecessary.**

As discussed above, the underlying purpose of the standard is based on an assumption that 40ha is the minimum allotment size required for sustainable and economic agricultural production. This assumption supports the applicant's contention that the boundary adjustment would not be in conflict with the purpose of the standard as both the existing and proposed lot configurations are not sufficient for sustainable agricultural production. We conclude therefore that the standard is not reasonable in the existing context and therefore compliance is not necessary.

Conclusion

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

SEPP (Rural Lands) 2008

The proposed development is considered to be consistent with the provisions of the Rural Lands SEPP in that there is no fragmentation of the agricultural land and no dwelling entitlement will be created on the land zoned 1(a).

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

The Draft Tweed Local Environmental Plan is currently on exhibition until 31 March 2010 which was extended until 30 April 2010. The site is within the IN1 – General Industrial zone of the Draft LEP. There would be no SEPP No 1 objection required under the new Tweed LEP as the whole site is located within the IN1 zone. This type of development is subject to the same level of assessment and therefore it is considered that the Draft LEP is not applicable to the proposed development.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

It is considered that the Site Access and Parking Code are not applicable as access to the sites will not change as a result of this boundary adjustment. Additionally, there will be no increase in the need for car parking spaces as a result of the boundary adjustment.

A3-Development of Flood Liable Land

The proposal involves a boundary adjustment which will not increase the severity of flooding on the community. It is therefore considered that the proposal is consistent with the relevant sections of this Development Control Plan.

A5-Subdivision Manual

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

*Physical Constraints* – The proposal is only constrained by the shape of the subject site and location of the existing roadway (Honeyeater Circuit and Lunberg Drive).

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

*Landforming* – The land is relatively flat. There are no earthworks proposed as a result of this application and therefore no geotechnical issues have been raised.

*Stormwater Runoff, Drainage, Waterways & Flooding* – The Stormwater Management Plan was addressed as a part of DA10/0183. As the proposal is for a boundary adjustment there are no additional stormwater issues.

*Lot Layout* – As the proposed allotments are both below the minimum lot size for rural land it is considered that there will be no fragmentation of prime agricultural land. The boundary adjustment would not be in conflict with the purpose of the 40ha standard as both the existing and proposed lot configurations are not sufficient for sustainable agricultural production. The majority of the sites are located within the 4(a) Industrial Zone which is not affected by the 40ha standard. It is therefore considered that the standard is not reasonable in the existing context and therefore compliance is not necessary.

*Infrastructure* – Council's Development Engineer has assessed the proposed development against the relevant standards pertaining to road ways, reticulated water, reticulated sewer, electricity and telecommunications. Appropriate conditions of consent were issued with the approval for DA10/0183.

In light of the above assessment, the proposed boundary alteration to create proposed Lot 11 (9,474m<sup>2</sup>) and Proposed Lot 10 (1.266ha) is considered to meet the provisions of Section A5 of Council's Consolidated DCP.

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

Clause 92(a) Government Coastal Policy

The proposed dual occupancy development is not considered to compromise the objectives of the Coastal Policy.

Clause 92(b) Applications for demolition

Not applicable. There is no demolition proposed.

Clause 93 Fire Safety Considerations

Not applicable. There are no buildings proposed for this application.

Clause 94 Buildings to be upgraded

Not applicable. There are no buildings proposed for this application.

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

Context and Setting

The proposed boundary adjustment is not considered to have any significant impact upon the future adjoining properties. The proposal is considered reasonable and appropriate, given the site has adequate area for the approved Public Building via DA10/0183. The proposal will realign the boundary so the k9 Facility is located entirely within one allotment. The subject site is located within a newly created Industrial estate and it is considered to be the most appropriate location for a K9 training facility.

Access, Transport and Traffic

As outlined, there will be no changes to the access or car parking arrangements for the site. It is therefore considered that the proposal will not affect access, transport or traffic in the area.

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

Surrounding Landuses/Development

The proposed boundary adjustment is not considered to have any significant impact upon the future adjoining properties. The proposal is considered reasonable and appropriate, given the site has adequate area for a Public Building on Proposed Lot 11 and adequate area for an industrial development on Proposed Lot 10.

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

Notification

As the application is for a minor boundary adjustment it was considered that the application was not required to be notified.

Department of Planning

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

*“Following consideration of the application, concurrence has been granted to vary the subdivision development standard contained in Clause 20(2) of the Council’s planning instrument to permit the creation of proposed Lot 10 with a small area of 1(a) Rural land.*

*Concurrence was granted in this instance for the following reasons:*

- The boundary adjustment will allow for the development of the industrial land in accordance with the development consent granted by Council;*
- All the 1(a) land will remain in a single lot (proposed Lot 10) as is the existing situation with no change in the status of that land.”*

The proposal is compliant with the conditions set out by the Department of Planning. It is therefore considered that the proposal has satisfied the requirements.

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

The proposed development has been assessed on its merits and having regard to the applicable legislation and for that reason the development does not generate a policy implication for Council.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**15 [PR-CM] Development Application DA06/1275.01 for an Amendment to Development Consent DA06/1275 for Manufacturing Sheds, Depot, Office and Storage at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/1275 Pt2**

**SUMMARY OF REPORT:**

On 30 April 2008 Council received a S96 Application to amend DA06/1275.

The original Development Application DA06/1275 sought approval for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage. The applicant then stated that the business specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment.

The matter was originally reported to the then Council Administrators on 17 April 2007. The Council Report recommended that the application be refused. However, the Council resolved as follows:

1. *Council notes there is an existing approval for a truck depot and truck maintenance area on the site with minimal conditions to address noise attenuation and hours of operation, which can be recommenced without any further approval from Council.*
2. *Council delegates authority to the General Manager to determine this application subject to conditions to address noise, traffic, site contamination, etc; including a condition which restricts the approval for a maximum of twelve (12) months from the date of issue of approval, if appropriate.*

Subsequently, an approval was issued under Delegated Authority on 1 May 2007. The full Determination Notice is **attached** to this agenda. Of significance is Condition 7 which stated that:

7. *This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

The current S96 now seeks to make the following changes to the consent:

- Deletion of condition 7 with no time limitation imposed on the Development Consent.
- It is proposed to amend the approved plans as follows:
  - The new amenity building is removed.
  - The new besser block office building and hallway is removed.
  - The new strong room is removed.

- The ceiling height of the old building is no longer proposed to be raised and the floor space will not be extended.
- The car parking arrangement and numbers have been refined with car parking number matching that required by the Tweed DCP 2007.
- Site drainage has been altered to reflect observed site conditions.
- As a consequence of the proposed changes detailed above, the applicant claims that a Construction Certificate would no longer be required and as such the applicant suggests that conditions 8, 14, 18, 21, 24, 25, 26, 27, 28, 35-49, 65, 66 & 77 to 83 be deleted from the Development Approval.
- Review the reasonableness of the following conditions having regard to the 12 month limited consent. Conditions 10 and 50 (relating to engineering plans), Conditions 11 and 17 (relating to a S138 Application), Condition 23 (relating to S94 Contributions), Conditions 19 and 69 (relating to the disposal of roof waters) and Condition 89 (relating to the surrender of T4/1762).

The proposed amendment raises issues regarding the status of the existing consent, the permissibility of the proposed amendments and the overall site suitability of the proposed development as proposed.

Both the original application and the S96 Application have generated community opposition (including a letter of opposition from the Environmental Defender's Office and an enquiry from the NSW Ombudsman's Office) and the issues raised in the various submissions need to be considered as part of this application.

Having reviewed the file history and considered all submissions the application is recommended for conditional approval.

#### **RECOMMENDATION:**

**That Development Application DA06/1275.01 for an amendment to Development Consent DA06/1275 for manufacturing sheds, depot, office and storage at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow be approved and the following changes be made to the consent:**

- 1. Delete Condition 1 and replace with new Condition 1A that reads as follows:  
1A. The development shall be completed in accordance with the S96 DA06/1275.01 and Drawing No 1.3 prepared by Darren Gibson Planning and dated April 2008, except where varied by the conditions of this consent.**
- 2. Delete Condition 7.**
- 3. Delete the heading PRIOR TO CONSTRUCTION CERTIFICATE.**
- 4. Delete Condition 8.**
- 5. Delete Condition 9 and replace with a new condition under the USE heading which reads as follows:  
# Any carparking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards.**
- 6. Delete Condition 10.**



7. Delete Condition 11 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # Any works to be carried out within the adjoining road reserve is subject to a Section 138 application and approval being issued by Tweed Shire Council as the road authority.

Application for these works and receipt of approval is to be within 3 months of DA06/1275.01 approval notice.
8. Delete Condition 12 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # All imported material shall be from an approved source and free of any contamination. Documentary evidence of the fill source and that the material is free of any contamination shall be maintained on site and provided to Council upon request.
9. Delete Conditions 10 – 16.
10. Delete Condition 17 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

The applicant shall provide a Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, intersection at Grade.

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

    - Road works/furnishings
    - Stormwater drainage
    - Water and sewerage works
    - Sediment and erosion control plans
    - Location of all services/conduits
    - Traffic control plan
    - The applicant to prepare engineering plans and lodge the plans with Tweed Shire Council within 3 months of receiving development approval.
    - The applicant to complete the works within six (6) months of receiving the S138 approval.
11. Delete Conditions 18 – 22.
12. Delete Condition 23 and replace with a new condition under the **GENERAL** heading which reads as follows:
  - # Section 94 Contributions

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

Within 3 months of approval of DA06/1275.01 all Section 94 Contributions must be paid.

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

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

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

(a) Tweed Road Contribution Plan: \$13,500  
S94 Plan No. 4 (Version 4.0)  
Sector8a\_4

13. Delete Conditions 24 – 28.
14. Delete Conditions 35 – 41.
15. Delete Conditions 43 – 50.
16. Delete Conditions 65 -66.
17. Delete Condition 69.
18. Delete Heading PRIOR TO OCCUPATION CERTIFICATE.
19. Delete Conditions 77 – 78.
20. Delete Condition 79 and replace with a new condition under the GENERAL heading which reads as follows:
  - # Within 3 months of approval of DA06/1275.01 all existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.
21. Delete Condition 80 and replace with a new condition under the GENERAL heading which reads as follows:
  - # Within 3 months of approval of DA06/1275.01 a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.
22. Delete Conditions 81 – 83.
23. Delete Condition 89 and replace with a new condition under the GENERAL heading which reads as follows:
  - # Within 3 months of approval of DA06/1275.01 Development Consent No.T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.

24. Delete Condition 90.
25. Delete Condition 99.
26. Add new Condition under the USE heading which reads as follows:
  - # Sand blasting shall not be conducted at the premise.
27. Add new Condition under the USE heading which reads as follows:
  - # Windows, doors and any other opening in the north, east or south walls of the manufacturing buildings are not permitted to be open at any time whilst manufacturing processes are being conducted.
28. Add new Condition under the USE heading which reads as follows:
  - # The LAeq(15min) noise level emitted from any activity undertaken in association with this consent shall not exceed the background noise level (LA90) by more than 5dBA at the boundary of any effected residence during the permitted hours of operation.
29. Add new Condition under the GENERAL heading which reads as follows:
  - # All activities at the property shall comply with the Site Management Plan for Industrial Site at Lot 201 DP 1002166 Pottsville Road Sleepy Hollow, Southern Cross University, August 2008 to the satisfaction of the Tweed Shire Council General Manager or his delegate. All necessary statutory approvals and associated investigations shall be obtained prior to any disturbances of the potentially contaminated portions of the site.
30. Add new Condition under the GENERAL heading which reads as follows:
  - # The existing spoon drain on the northern side of the northern building shall be converted to piped stormwater drainage to the satisfaction of the General Manager or his delegate within 30 days of the date of this amended consent. The piped stormwater drain shall be covered with imported material from an approved source that is free of any contamination. Existing materials at the base or sides of the spoon drain shall not be disturbed or excavated. Sediment and erosion controls shall be placed during these works which is effective in preventing the transport of any sediment material outside the property boundary.
31. Add new Condition under the USE heading which reads as follows:
  - # The premise is not to be used or adapted for separate residential habitation or occupation.
32. Add new Condition under the GENERAL heading which reads as follows:
  - # No exposure or use of groundwater on the site is permitted.
33. Add new Condition under the GENERAL heading which reads as follows:
  - # *Not more than 60 days from the date of this consent the applicant is required to lodge an application to install an onsite sewerage management system under section 68 of the Local Government Act, 1993 pay the appropriate fee and be issued with an approval.*
34. Add new Condition under the GENERAL heading which reads as follows:

**# Not more than 120 days from the date of this consent the existing on site sewage management system shall be upgraded in accordance with any Section 68 approval issued by Council. The on site sewage treatment and disposal system installed shall comply with the recommended on site sewage treatment and disposal methods outlined in the amended On-site Sewage Management Design Report, HMC August 2009 including all recommendations of that report or to the satisfaction of the General Manager or his delegate.**

**35. Add new Condition under the GENERAL heading which reads as follows:**

**# The treated effluent disposal area shall be identified by way of signs and vehicle access to the disposal area shall be prevented at all times.**

## REPORT:

**Applicant:** Mr J McLean and Ms A McLean  
**Owner:** Mr J McLean and Ms A McLean  
**Location:** Lot 201 DP 1002166, Pottsville Road Sleepy Hollow  
**Zoning:** 1(a) Rural  
**Cost:** N/A

## BACKGROUND:

### The Subject Site

As detailed within the original report the subject land is described as Lot 201 DP 1002166 Pottsville–Mooball Road, Sleepy Hollow and has a total area of 2.821 hectares.

The land “straddles” Pottsville–Mooball Road, with a large triangular shaped parcel of land of approximately 2.811 hectares occurring on the western side of Pottsville-Mooball Road and a small irregular shaped parcel of approximately 100m<sup>2</sup> located on the eastern side of Pottsville-Mooball Road

The development was approved wholly on the larger parcel of land on the western side of Pottsville-Mooball Road.

The land has frontage to Pottsville-Mooball Road of approximately 390m and the Pacific Highway of approximately 362m with vehicular access from Pottsville Mooball Road only.

Current improvements include two (2) galvanized iron sheds an attached cavity brick office building and associated amenities, located on a large fill pad area. Such facilities are used by the “McLean Agquip Pty Ltd – Manufacturers of AustQuip agricultural equipment, cane transport equipment, cattle feed mixers and cotton and broadacre Equipment”. Vehicular access to the site exists from Pottsville-Mooball Road. A car parking area exists to the east of the existing sheds. The site is fenced. Power and reticulated water are available to the site.

The site is located in an area generally characterised as rural, although it is immediately adjoined by the Pacific Highway to the west and Pottsville-Mooball Road to the east.

Adjoining land to the south is vacant rural land currently utilised for grazing.

There are eight dwelling houses (and/or rural workers dwellings) within a 300m radius of the subject site.

### Site History

The site is zoned rural 1(a) and has a known development history as follows:

On 31 May 1982 Council approved T4/1762 (over then Lot 1 in DP608495 – 8.691ha) to enable use of the then site for the establishment of a truck depot and vehicle maintenance area. Since this time the allotment has been split to cater for the Pacific Highway. Lot 1 DP 608495 is now the Pacific Highway and a residue land parcel being Lot 201 in DP 1002166 with a land area of 2.821ha. The applicant has always suggested that T4/1762 still applies to the subject site being Lot 201 DP 1002166. Determination of DA06/1275 was heavily reliant on T4/1762 as a pre existing consent, despite the legality of this being questioned by objectors to this development. It should be noted that such a use (depot) is a permissible land use in the 1(a) zone;

In 1999 the ABI Group leased the land from the RTA for the purpose of a roadwork’s construction depot to facilitate construction of the Pacific Highway;

In 2006 the applicant was conducting the Agricultural Equipment Business from Byron Bay. DA06/1275 sought approval to enable the applicant to relocate his business from Byron Bay to the subject site.

The applicant moved into the subject site prior to determination of DA06/1275 and following noise complaints Council Officers inspected the premises and discovered that manufacturing works on a cane bin had commenced prior to the determination of this Development Application. Subsequently a \$600 Penalty Infringement Notice (PIN) was issued on 26 March 2007, with the applicant advised that work is to cease immediately.

DA06/1275 sought approval for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage.

The development had two main components:

1. The manufacturing of agricultural equipment business specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment (defined as "light industry" and is a Clause 8(2) matter under Tweed LEP 2000);
2. The depot component would provide secure storage of plant and machinery, including earthmoving, construction and agricultural equipment. Maintenance of this equipment would also be carried out (defined as "depot" and is permissible in the rural zone).

The development was staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.

It was acknowledged that such use would involve electrical machinery that can constitute a noise source for adjoining residences.

The matter was originally reported to the then Council Administrators on 17 April 2007.

The original development attracted thirteen individual objections. The objections were focused on the suitability of the site given its rural character and its proximity to other dwellings.

The Council Report recommended that the application be refused. However, the Council resolved as follows:

1. *Council notes there is an existing approval for a truck depot and truck maintenance area on the site with minimal conditions to address noise attenuation and hours of operation, which can be recommenced without any further approval from Council.*
2. *Council delegates authority to the General Manager to determine this application subject to conditions to address noise, traffic, site contamination, etc; including a condition which restricts the approval for a maximum of twelve (12) months from the date of issue of approval, if appropriate.*

Subsequently, an approval was issued under Delegated Authority on 1 May 2007. The full Determination Notice is **attached** to this agenda. Of significance is Condition 7 which stated that:

7. *This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

Post determination Council received numerous letters of objection to the approval. Copies of these further objections are attached to this agenda.

### The Proposed Application

The current S96 DA06/1275.01 was lodged on 30 April 2008 and now seeks to make the following changes to the consent:

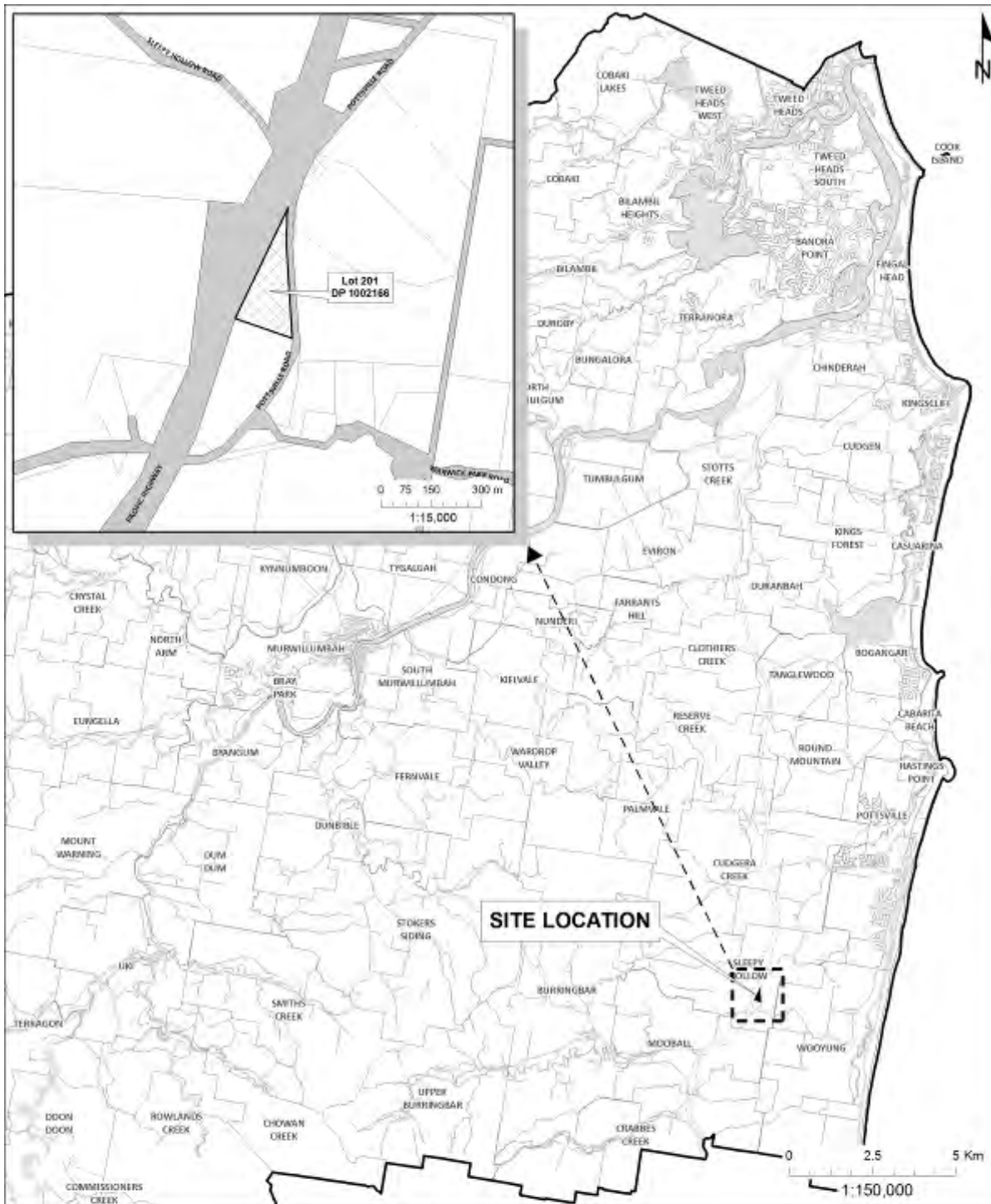
- Deletion of condition 7 with no time limitation imposed on the Development Consent.
- It is proposed to amend the approved plans as follows:
  - The new amenity building is removed.
  - The new besser block office building and hallway is removed.
  - The new strong room is removed.
  - The ceiling height of the old building is no longer proposed to be raised and the floor space will not be extended.
  - The car parking arrangement and numbers have been refined with car parking number matching that required by the Tweed DCP 2007.
  - Site drainage has been altered to reflect observed site conditions.
- As a consequence of the proposed changes, a Construction Certificate would no longer be required and as such the applicant suggests that conditions 8, 14, 18, 21, 24, 25, 26, 27, 28, 35-49, 65, 66 & 77 to 83 be deleted from the Development Approval.
- Review the reasonableness of the following conditions having regard to the 12 month limited consent. Conditions 10 and 50 (relating to engineering plans), Conditions 11 and 17 (relating to a S138 Application), Condition 23 (relating to S94 Contributions), Conditions 19 and 69 (relating to the disposal of roof waters) and Condition 89 (relating to the surrender of T4/1762).

The application as lodged was deficient in pertinent information that would have enabled a determination of the subject S96.

Following numerous additional information requests the applicant has now provided sufficient information to enable a determination of the application (including a site management plan, onsite sewerage management design reports and a response to the objections that were received following the exhibition period).

The current S96 has attracted submissions from four individuals (however some individuals have submitted multiple objections). In addition Council has received enquiries from the Environmental Defenders Office and the NSW Ombudsman's Office. The issues raised in these letters are detailed in this report and generally pertain to site suitability and legality of the consent.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
 Lot 201 DP 1002166  
 Pottsville Road, Sleepy Hollow

Filename: z:\year\planning\mad\A4P\_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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Civic and Cultural Centre  
 3 Tunbulgum Road  
 Murwillumbah NSW 2484  
 PO Box 810  
 Murwillumbah NSW 2486  
 T: (02) 6070 2400 / 1300 282 870  
 F: (02) 6070 2480  
 W: www.tweed.nsw.gov.au  
 E: planningreforms@tweed.nsw.gov.au

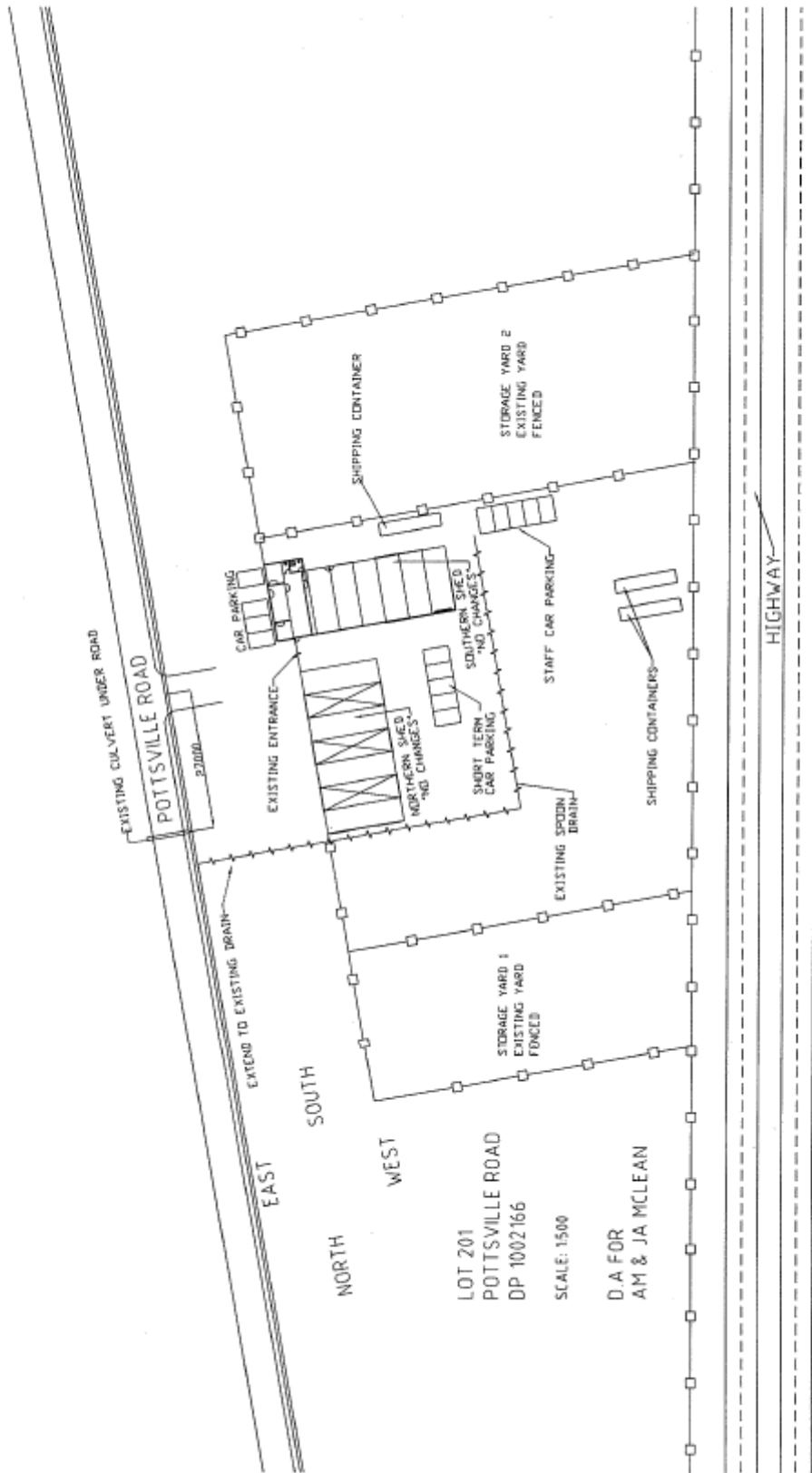


**TWEED**  
 SHIRE COUNCIL



**PROPOSED DEVELOPMENT PLAN:**

(NOTE: The originally approved 29 plans are **attached** to this agenda for comparison, however the S96 if approved would make the approved plans redundant in their entirety and be replaced with the single plan shown below)



DWG No. 1.3. Apr 2008

**CONSIDERATIONS UNDER SECTION 79C & 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

S96(1A) of the Act specifies that a consent authority can modify the development consent only if it is satisfied that the proposed modified development is of minimal environmental impact and is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

**Minimal Environmental Impact & Substantially the Same Development**

The applicant has provided the following justification for why the proposed amendments constitute a S96(1A):

- *“Approval has been issued for Manufacturing Sheds, Depot, Office and Storage. Nothing in the proposed amendments to the conditions or plans constitute a change in the activities on the site or their operational characteristics.*
- *The decision not to carry out the building works originally proposed has resulted from a review of the operational needs of the business. For example the increase in height of the northern building was originally required to accommodate a monorail hoist system. An alternate hoist system has been implemented that does not require the additional height. Further a review of the administrative and labour needs of the business has suggested that the new amenities building and office space are not warranted.*
- *The decision not to proceed with the building work will result in a reduction in environmental impacts as those impacts typically associated with construction (noise, traffic, etc) are not longer relevant.*
- *Other changes relating to the storm water drainage and car parking on site are not considered significant and do not change the nature of the use.”*

To establish whether the proposed amendments constitute minimal environmental impact and substantially the same development each proposed amendment needs to be assessed against the relevant provisions of the Environmental Planning and Assessment Act (namely 79C of the Act). The following is a review of each proposed amendment on its individual merits:

**Modification 1 - Proposed deletion of Condition 7 with no time limitation imposed on the Development Consent**

To determine whether Condition 7 should be deleted Council first needs to establish whether DA06/1275 is still a valid consent in which Condition 7 can be modified or deleted by way of the subject S96.

Condition 7 states:

7. *This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

In addition to this condition the back of the consent states:

*The application was determined on: 1 May 2007*

*The consent to operate from: 1 May 2007*

*The consent to lapse on 1 May 2008 unless commenced prior to that date.*

It appears this condition was imposed as a result of the resolution from Council which stated that:

*Council delegates authority to the General Manager to determine this application subject to conditions to address noise, traffic, site contamination, etc; including a condition which restricts the approval for a maximum of twelve (12) months from the date of issue of approval, if appropriate.*

Such a resolution is still quite ambiguous as it could be meant to achieve a number of things;

1. Is the condition simply reducing the 5 years standard life of the consent within which commencement has to take place or the consent lapses?

OR

2. Is the condition meant to imply that the development has one year to operate then lapses and has to be surrendered?

OR

3. Was the condition meant to read that the development was to be subject to a 12 month trial period to ensure the resulting impact was reasonable for the locality?

Objectors and the Environmental Defenders Office have commented on this technicality and specifically the Environmental Defenders Office have stated that:

***“Lapsing of Consent***

3. *The Applicants are seeking to delete condition 7 of the consent which is a lapsing condition. The application seeks to have no time limitation whatsoever imposed on the Development Consent. Condition 7 states:*

*This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with section 80A(5) of the Environmental Planning and Assessment Act 1979 and clause 97 of the Environmental Planning and Assessment Regulation 2000.*

4. *It is our view that Council does not have the requisite power to grant such an application. Section 95(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act) states:*

*(1) A development consent lapses 5 years after the date from which it operates.*

5. *Clearly all development consents at law have a life span within which they are to be commenced or else they will lapse.*

6. *The consent, at condition 7, has specified a lesser period within which the consent will lapse to that provided in section 95(1) of the EP&A Act. In accordance with the EP&A Act if the applicants wish an extension of time within which to commence the consent then they must make an application for an extension of lapsing period for 1 year in accordance with s95A of the EP&A Act which states:*

*(1) If, in granting a development consent, the consent authority reduced the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.*

- (2) *The consent authority may grant the extension if satisfied that the applicant has shown good cause.*
7. *It would seem that the applicants have not made a correct application to Council before 1 May 2008 and have arguably lost any right to apply for the benefit of an extension of 1 year to the lapsing period. If Council is minded to consider the s96 application an application for an extension of the lapsing period of 1 year, it has legal obligation to be satisfied that the applicants have shown good cause.*
8. *Taking the above matters into account, before purporting to grant any modification in accordance with the applicant's request, Council may wish to obtain its own legal advice as to whether it has the power to do so. In our view, any such consent would be invalid and works carried out in reliance on such consent would be illegal."*

In response to this submission the applicant sought their own legal advice from W J Grace & Co Solicitors which stated:

*'We act for Mr J McLean and Ms. A McLean and are instructed as follows:*

1. *On 1 May 2007 Tweed Shire Council ('the Council') determined Development Application no. DA06/1275 relating to Lot 201 DP 1002166 Pottsville Road, Sleepy Hollow by granting consent for the land to be developed in accordance with plans and details submitted for the purpose of manufacturing sheds, depot, office and storage, subject to certain conditions ("the Consent").*
2. *Condition No. 7 provided "This consent lapses on 1 May 2008 and the consent is to be surrendered by that date in accordance with Section 80(5) of the Environmental Planning and Assessment Act 1979 ("the Act") and clause 97 of the Environmental Planning and Assessment Regulations 2000 ("the Regulations").*
3. *Pursuant to the Consent and between 1 May 2007 and 1 May 2008 the Applicants carried out certain works including but not limited to the following:*
  - (a) *Construction of a septic tank and septic trenches;*
  - (b) *Undertaking earth works comprising the levelling of ground for car parking purposes comprising an area of approximately 30 x 30 metres;*
  - (c) *Undertaking drainage work involving the construction of a spoon drain around two existing buildings such drain measuring approximately 2 metres wide by 1 metre deep by 130 metres in length;*
  - (d) *Construction of doors along the side of the buildings;*
  - (e) *Undertaking building work including the construction of baffles to the shed roof and the installation of carpet for the purposes of sound proofing."*
4. *On 28 April 2008 Mr and Mrs McLean lodged a Section 96(1)(a) Application to modify the Consent.*
5. *By way of letter dated 12 June 2008 and the Environmental Defender's Office Ltd forwarded to you a submission regarding the S.96 modification application."*

*"We have been engaged to respond to the submission of the Environmental Defender's Office Ltd and do so as follows:*

**1. CONDITION NO. 7 OF DEVELOPMENT APPLICATION NO. DA06/1275 IS ULTRA VIRES OF THE POWER OF THE COUNCIL AND INVALID**

*In this regard Section 95(20) of the Environmental Planning and Assessment Act 1979 (the "Act") provides that a consent authority may reduce the usual period whereby a consent lapses from 5 years to a lesser period. Condition No. 7 purports to provide that the subject development consent lapses following the expiry of 1 year that is by 1 May 2008.*

*Section 95(3) of the Act provides however any such reduction of the 5 year period may not be made so as to cause:*

- (a) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates.*

*Section 4 of the Act defines "building" to include inter alia "part of a building and any structure or part of a structure (including a temporary structure or part of a structure)....."*

*Clearly the Consent in part provided for the erection of a building and or parts thereof and in this regard a septic tank was built and building works were undertaken. See in conditions Nos. 8,9,14,18,19,20,25,26,32,35 for example relating to building activity such list being by no means all inclusive.*

*Accordingly condition No. 7 contravenes section 95(3) of the Act, it ultra vires the power of the Council to impose and is invalid.*

*In Hilltop Planners Pty Ltd v Great Lakes Council (2003) 127LGERA333) His Honour J Talbot considered conditions providing for lapse of a development consent. Whilst he said he was unaware of any decision of the Land and Environment Court which deal precisely with the issue he said that the grant of a development consent was the exercise of a statutory power. It was not a power at large. The Act was circumspect about the extent to which conditions might be imposed. There was no direct reference to a power to impose a condition whereby consent could lapse as a consequence or failure to comply with the condition of the consent. Whilst in that case His Honour referred to Section 99 of the then EP&A Act the relevant condition today is Section 95 of the Act and accordingly, the whole of the powers and conditions for the lapsing of consent or the completion of development are to be found within the framework of this Section.*

*Further, there is no doubt that the works physically commenced on the land relate to the subject of the consent. See Smith v Wyong Shire Council (1984) 53LGRA 176) where his Honour Justice Cripps said "in my opinion, provided that what has been carried on is relevantly building, engineering or construction work and provided it relevantly relates to the development the subject of the consent, the only requirement is that it must be physically commenced.*

**2. THE CONSENT IS IN FULL FORCE AND EFFECT**

*In addition and or the alternative Section 95(4) of the Act provides that development consent for the erection of a building or the carrying out of a work does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the*

*consent applies before the date on which the consent would otherwise lapse under this Section. There is no suggestion that the work that has physically commenced upon this land is not related to the subject of the consent. See (Iron Gates Development Ltd v Richmond-Evans Environmental Society Inc. (1992) 81LGERA132(C/A).*

*Section 95(5) provides that development consent for development other than that referred to in subsection (4) does lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.*

*You would be well aware that not only have works physically commenced including but not limited to those noted in paragraphs 3(a)-(c) inclusive above in the period 1 May 2007 – 1 May 2008, but also the land has been used in accordance with and pursuant to the Consent in the same period and beyond.*

*In light of the above one is inevitably led to the conclusion that the consent has not lapsed and is indeed in full force and effect.*

### **3. THE MODIFICATION APPLICATION PRECEDED 1 MAY 2008**

*Further and in the alternative the Section 96(1)(a) Application to Modify the Consent was lodged on 28 April 2008 prior to 1 May 2008 in any event.*

### **4. CONCLUSION**

*In our respectful view the Council did not have the power to impose Condition 7 in the first instance, and in any event even if it did the consent has been acted upon and is valid and the Applicants are completely within their legal rights in submitting a Section 96 Application to Modify the Consent.*

*On any proper analysis the submission lodged by the Environmental Defender's Office Ltd is misguided and wrong in law and in fact."*

The applicant's legal advice appears to be consistent with legal advice Council has previously obtained in regard to another similar matter.

TF Robertson SC of Frederick Jordon Chambers considered the lawfulness of a condition of consent on Tweed Shire Council determination D96/0435 which granted approval for a road side stall on Kyogle Road Dum Dum.

The condition in questions stated:

*"This approval is limited to a period of five years from the date of consent"*

The full advice is attached to this agenda however in summary it reiterates the applicant's legal advice as follows:

*"...It is clear that there is no power to impose a condition which provides for a consent to lapse or cease to exist once it has been commenced in accordance with s.95..."*

*"...A consent may be modified even after the expiry of the time within which development authorised by it may be carried out unless it has earlier lapsed..."*

It is considered that the intent of Condition 7 was to act as a trial period however the actual wording of the condition does not reflect this.

If it is accepted that the intent of Condition 7 was to act as a trial period and possibly to reduce the 5 year standard life of the consent (albeit unlawfully) then Council needs to decide whether lawful commencement occurred between 1 May 2007 and 1 May 2008.

Having reviewed the file it is obvious that the applicant has occupied the site (within the confines of the pre-existing buildings), commenced business operations and undertaken certain site activities which would constitute lawful commencement in accordance with the provisions of the Act. These include:

- (a) Construction of a septic tank and septic trenches;
- (b) Undertaking earth works comprising the levelling of ground for car parking purposes comprising an area of approximately 30 x 30 metres;
- (c) Undertaking drainage work involving the construction of a spoon drain around two existing buildings such drain measuring approximately 2 metres wide by 1 metre deep by 130 metres in length;
- (d) Construction of doors along the side of the buildings;
- (e) Undertaking building work including the construction of baffles to the shed roof and the installation of carpet for the purposes of sound proofing.

It is therefore considered that the consent has been lawfully commenced and that Condition 7 can be lawfully deleted to allow the ongoing use of the site for "McLean Agquip Pty Ltd – Manufacturers of AustQuip agricultural equipment, cane transport equipment, cattle feed mixers and cotton and broadacre equipment".

Accordingly, the recommendation includes the provision to delete Condition 7.

**Modification 2 – Amend the approved plans as follows:**

- **The new amenity building is removed.**
- **The new besser block office building and hallway is removed.**
- **The new strong room is removed.**
- **The ceiling height of the old building is no longer proposed to be raised and the floor space will not be extended.**
- **The car parking arrangement and numbers have been refined with car parking number matching that required by the Tweed DCP 2007.**
- **Site drainage has been altered to reflect observed site conditions.**

**As a consequence of the proposed changes, a Construction Certificate would no longer be required and as such the applicant suggests that conditions 8, 14, 18, 21, 24, 25, 26, 27, 28, 35-49, 65, 66 & 77 to 83 be deleted from the Development Approval.**

This modification seeks to change part of the nature of the original approval by deleting any proposed building works. The applicant seeks approval to operate the originally approved business from within the confines of the existing site buildings as per site operations since 2007 rather than undertake construction of new structures.

The applicant proposes to provide four (4) car parking spaces for visitors/customers between the southern building and Pottsville Mooball Road with an additional 9 staff and overflow visitor spaces within the storage compound.

The proposed modification was reviewed by Council's Development Engineer and Traffic Engineer who has provided the following comments:

*No objections to the deletion of Conditions 8-24, 25-28, 35-49, 65, 66, 77-79, and 81-83 as no building works are now proposed and therefore no construction is required. As a consequence no Construction Certificate will be applicable.*

These comments have been reflected in the recommended changes to the consent.

The proposed modification was reviewed by Council's Building Surveyor who has provided the following comments:

*"Following a recent inspection of the above mentioned property for the S96 Amendment please note I have no objection to the applicants S96 requesting deletion of conditions from a building control point of view EXCEPT conditions 42 and 79 which still apply to the consent."*

These comments have been reflected in the recommended changes to the consent.

The proposed modification (as amended with revised details received 11/05/2009) was also reviewed by Council's Environmental Health Officer who has provided the following comments:

Noise Assessment

*A Noise Level Impact Assessment, Craig Hill, July 2008 has been received. Noise levels were monitored at the most exposed dwelling houses whilst the business was operational. The report states that 'noise from the above activities were not audible at nearby residential properties ..... managed activities would be within the required criteria'.*

*Further to the report, Craig Hill has verbally advised that monitoring at the three dwellings was undertaken whilst various machinery was operational and noise levels were not audible above background at the receiving dwelling houses.*

*The original noise assessment made various recommendations, including:*

- Installing hanging carpet baffles from the ceiling of the manufacturing shed.*
- Lining walls of manufacturing shed with carpet insulation.*

*During an inspection on 15 July 2009 it was observed that these works have been completed in the north building.*

*Having regard for the information contained in the original 2006 noise assessment, file history and Noise Level Impact Assessment, Craig Hill, July 2008, the following notes are made about existing and proposed conditions:*

*New Condition - Sand blasting shall not be conducted at the premise.*

*New Condition – windows, doors and any other opening in the north, east or south walls of the manufacturing buildings are not permitted to be open at any time whilst manufacturing processes are being conducted.*

*New Condition - The LAeq(15min) noise level emitted from any activity undertaken in association with this consent shall not exceed the background noise level (LA90) by more than 5dBA at the boundary of any effected residence during the permitted hours of operation.*

*Delete Condition 99*

*Retain conditions – 98, 97, 96, 92, 88, 87, 85, 84, 56 & 6.*



Contaminated Land Assessment

Previous Environmental Health Comments of 30 May 2008 stated:

*It is considered necessary that the applicant submit the site management plan now for consideration. Existing condition 90 required the submission of such a plan prior to commencement of use – it appears that this condition has not been complied with. The applicant is requested to submit the site management plan now for consideration, as per the requirements of condition 90.....'*

*A Site Management Plan for Industrial Site at Lot 201 DP 1002166 Pottsville Road Sleepy Hollow, Southern Cross University, August 2008 has been provided for consideration. The document is quite detailed and provides quite onerous requirements prior to any disturbances or the like on site.*

*Note that Part 2.2 of the Management Plan states that 'After the completion of remediation ....it was considered that the site could be classified as uncontaminated for the proposed land usage as an industrial site'.*

*Having regard for the information contained on file, CL assessments and the Site Management Plan the following notes are made about existing and proposed conditions:*

*New Condition – All activities at the property shall comply with the Site Management Plan for Industrial Site at Lot 201 DP 1002166 Pottsville Road Sleepy Hollow, Southern Cross University, August 2008 to the satisfaction of the Tweed Shire Council General Manager or his delegate. All necessary statutory approvals and associated investigations shall be obtained prior to any disturbances of the potentially contaminated portions of the site.*

*New Condition – The existing spoon drain on the northern side of the northern building shall be converted to piped stormwater drainage to the satisfaction of the General Manager or his delegate within 30 days of the date of this amended consent. The piped stormwater drain shall be covered with imported material from an approved source that is free of any contamination. Existing materials at the base or sides of the spoon drain shall not be disturbed or excavated. Sediment and erosion controls shall be placed during these works which is effective in preventing the transport of any sediment material outside the property boundary.*

*New Condition – The premise is not to be used or adapted for separate residential habitation or occupation.*

*New Condition – No exposure or use of groundwater on the site is permitted.*

*Delete Condition 90.*

*Retain conditions – 54, 71, 72 & 73.*

*Delete Condition 12 and replace with an amended condition 12A which reads as follows:*

*12A. All imported material shall be from an approved source and free of any contamination. Documentary evidence of the fill source and that the material is free of any contamination shall be maintained on site and provided to Council upon request.*

On Site Sewerage Management Assessment

As part of the revised submission an On-site Sewerage Management Design Report, HMC February 2009 was submitted (refer attached OSSMF memo dated 21 July 2009). The disposal method proposed was not deemed suitable and a site meeting was conducted with HMC.

A revised report, On-site Sewerage Management Design Report, HMC August 2009 has been provided. Council's OSSMF Officer reviewed the proposal and indicated that, subject to conditions, the treatment and disposal method is deemed sufficient to attain an acceptable level of environmental impact. This assessment is supported.

Having regard for the information contained on file and the OSSMF report the following notes are made about existing and proposed conditions:

Delete condition 22.

New Condition – Not more than 60 days from the date of this consent the applicant is required to lodge an application to install an onsite sewerage management system under section 68 of the Local Government Act, 1993 pay the appropriate fee and be issued with an approval.

New Condition – Not more than 120 days from the date of this consent the existing on site sewerage management system shall be upgraded in accordance with any Section 68 approval issued by Council. The on site sewerage treatment and disposal system installed shall comply with the recommended on site sewerage treatment and disposal methods outlined in the amended On-site Sewerage Management Design Report, HMC August 2009 including all recommendations of that report or to the satisfaction of the General Manager or his delegate.

New Condition – The treated effluent disposal area shall be identified by way of signs and vehicle access to the disposal area shall be prevented at all times.

These comments have been reflected in the recommended changes to the consent.

**Modification 3: Review the reasonableness of the following conditions having regard to the 12 month limited consent:**

**Conditions 10 and 50 (relating to engineering plans):**

The applicant has stated that the revised parking layout as shown on the proposed plan be of gravel construction (as existing). Therefore the applicant suggests that engineering plans are not required and accordingly conditions 10 and 50 should be deleted.

Condition 10 currently states:

10. The developer shall submit detailed engineering plans to the PCA for the parking spaces as shown on Drawing No. 001 dated 10/10/05 including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.

Full design detail of the proposed parking and articulated vehicle manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

Condition 50 currently states:

50. *The provision of off street car parking generally in accordance with drawing No.001 dated 10/10/06 including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.*

[DUR0085]

Council's Development Engineer raised no objection to the deletion of conditions 10 and 50 as no building works are now proposed and therefore no construction is required.

Accordingly Conditions 10 and 50 are recommended for deletion.

**Conditions 11 and 17 (relating to a S138 Application):**

The applicant has stated that Conditions 11 and 17 require an application under Section 138 for the construction of a right turn BAR treatment for a right turn movement from Pottsville- Mooball Road into the development and a traffic control plan prior to the issue of Construction Certificate.

The applicant argues that as there is no longer a requirement for the issue of Construction Certificate a timeframe for compliance would be required.

The applicant recommends the following timeframes for compliance:

- The applicant to prepare engineering plans and lodge the plans with the relevant authority within 3 months of receiving development approval for DA06/1275.01;
- The applicant to complete the works within six (6) months of receiving the authority approval.

The applicant also requests a shortened length of pavement widening so as to avoid the need to extend the large culvert to the east of the site access.

Council's Traffic Engineer reviewed this proposal and stated:

*"It is noted that the complex is and has been operating for some time and that the scale of the proposal has decreased.*

*This decrease has reduced the traffic impact with only one (1) truck movement per week.*

*With 9 staff the peak hour turning movements would only be 9vpd maximum with about 87vph on Pottsville Road (Feb 2008).*

*These volumes are relatively low and accordingly a reduced length of road widening can be considered base don't he existing major culvert constraint, and also noting site distance at the intersection is good.*

*No objection to altering conditions 11 and 17 to require a "modified BAR" intersection treatment however detailed design plans are to be submitted with a S138 Application within 3 months of approval and constructed within 6 months of the s138 Approval"*

Accordingly Condition 11 remains as a S138 is still required. Condition 17 is to be deleted and replaced with an amended Condition 17A as follows:

*17A Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road*

reserve. Application shall include engineering plans and specifications for the following required works: -

The applicant shall provide a Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, intersection at Grade.

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

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan
- The applicant to prepare engineering plans and lodge the plans with Tweed Shire Council within 3 months of receiving development approval.
- The applicant to complete the works within six (6) months of receiving the S138 approval.

**Condition 23 (relating to S94 Contributions):**

The applicant is requesting that S94 Contributions be payable within 3 months of the date of determination of DA06/1275.01 as there is no longer any Construction Certificate required which would trigger the payment.

The original application triggered the following S94 Plan No. 4 Tweed Road Contribution:

(a) *Tweed Road Contribution Plan:* \$7,777  
*S94 Plan No. 4 (Version 4.0)*

**Sector8a\_4**

This was based on 12 trips for the existing proposed building (as the building was previously only classed as general heavy industrial as opposed to the proposed factories covered by light industries) plus 3 trips for the additional floor area.

As there is no longer any additional floor area it is proposed to vary the applicable TRCP to 12 trips only which will now equate to:

(a) *Tweed Road Contribution Plan:* \$13,500  
*S94 Plan No. 4 (Version 4.0)*

**Sector8a\_4**

Therefore Condition 23 is to be deleted and replaced with an amended Condition 23A as follows:

23A *Section 94 Contributions*

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

Within 3 months of approval of DA06/1275.01 all Section 94 Contributions must be paid.

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

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

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

(a) *Tweed Road Contribution Plan:* \$13,500  
*S94 Plan No. 4 (Version 4.0)*

**Sector8a\_4**

[PCC0215]

It is further noted that Condition 24 relates to the applicable Water headwork's charges which the applicant has requested be deleted.

Condition 24 stated:

24. 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 Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction 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:

**Stage 1**

Water DSP6: 0.05781 ET @ \$4598 \$266

**Stage 2**

Water DSP6: 0.00948 ET @ \$4598 \$44

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.

[PCC0265]

This was based on the additional floor area within the proposed new buildings as the site had credit for the previous dry industrial rate.

Accordingly Condition 24 is recommended for deletion as no additional floor area is proposed.

**Conditions 19 and 69 (relating to the disposal of roof waters):**

Condition 19 and 69 require all roof waters to be disposed of through properly joined pipes to the spoon drain located to the west of the existing buildings.

The applicant has requested the amendment to these conditions for the following reasons:

- *The disposal of roof water “through properly jointed roof pipes” is relevant to the previously proposed new building work. As no new building work is proposed the roof water drainage for the existing buildings will not be altered from current arrangements.*
- *It should reflect the current drainage characteristics of the site which sees stormwater drain to the west and north of the buildings. The applicant proposes to construct a spoon drain on the northern side of the buildings which in addition to the existing spoon drain on the western side, would allow water to flow to the existing drain adjacent to Pottsville-Mooball Road.*

In regards to Conditions 19 and 69 considering the scope of the development, there are no objections to the applicants proposal to direct all stormwater to the existing drain adjacent to Pottsville Road via an existing spoon drain to the west and via a proposed spoon drain to the north. Approval for this work can be considered under a Section 68 application.

Accordingly Conditions 19 and 69 are recommended for deletion.

**Condition 89 (relating to the surrender of T4/1762):**

Condition 89 states:

89. *Prior to the commencement of use, Development Consent No.T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

[USENS06]

The applicant is requesting that this condition be modified to reflect a revised timing schedule due to the confusion with the time limited consent (Condition 7). The applicant suggests that such surrender can occur within one month of approval of the current S96 DA06/1275.01.

Accordingly Condition 89 is recommended for deletion and its replacement with Condition 89A which reads as follows:

- 89A. *Within one (1) month of this approval, Development Consent No.T4/1762 is to be surrendered in accordance with Section 80A(5) of the Environmental Planning and Assessment Act 1979 and Clause 97 of the Environmental Planning and Assessment Regulations 2000.*

[USENS06]

**Summary**

Having reviewed each proposed amendment on its merits and having regard to the applicable planning instruments (including the Act, Tweed LEP 2000, and the Tweed Development Control Plan) the proposed amendments are considered to be of minimal

environmental impact and substantially the same development as originally approved albeit within the existing building rather than any new structure.

This S96 Application is not an opportunity to revisit the assessment of the original application but rather only an opportunity to review the amendments being sought in relation to the associated legality of each amendment.

As detailed in the above report the amendments are considered lawful and capable of approval by Tweed Shire Council. It is considered that the amended consent will result in a clearer outcome which will provide the applicant with a definitive lawful way forward.

### **Notification & Consideration of Submissions**

The original development attracted thirteen individual objections. The objections were focused on the suitability of the site given its rural character and its proximity to other dwellings.

Post determination of DA06/1275 Council received nine letters of objection to the approval (however these nine letters of objection only came from 4 different people). Copies of these letters are available as an annexure to this agenda. The letters of objection challenged the validity of the consent based on process. Council responded to these letters and insisted that all due process had been followed.

The subject S96 Application was advertised and notified to adjoining property owners and the original objectors between Wednesday 28 May 2008 to Thursday 12 June 2008. During this period Council received eleven (11) objections (however seven of these came from the same person).

One of these objections was from the Environmental Defenders Office as detailed within the above report.

In addition Council received a verbal enquiry about the DA and S96 from the NSW Ombudsman's Office (Ms Jo Flanagan). Council provided the Ombudsman's Office with a copy of the original Council Report and advised that Council will be determining the S96 in due course. To date no further enquiries have been made by the Ombudsman's Office.

The remaining objections raised the following issues:

<b><u>Issue</u></b>	<b><u>Council Assessment</u></b>
<p><i>Why did Council impose a time limit on this project in the first place? Presumably</i></p> <p><i>i) to give the applicant a reasonable period to set up the business as proposed, including its important upgrading ;</i></p> <p><i>ii) to test the constancy of community opposition, in the operational circumstances.</i></p> <p><i>The facility has not been upgraded.</i></p> <p><i>The proposed noise management measures are inadequate and the application makes no attempt to address the nature and strength of the principals underlying community</i></p>	<p>The issue of the time limited consent has been detailed in consideration of Condition 7. As concluded in the above report the amendment to the consent is considered lawful and appropriate.</p> <p>This S96 Application is not an opportunity to revisit the original assessment on the community opposition. It is merely an opportunity to review the lawfulness of the proposed amendments having regard to their individual merits.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>

<u>Issue</u>	<u>Council Assessment</u>
<i>opposition.</i>	
<i>The S96 reveals that the applicant ignored virtually all of the significant conditions of consent including the need to obtain a Construction Certificate and an Occupation Certificate.</i>	<p>The development was staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.</p> <p>The upgraded works to the existing buildings (which included doorways etc constitute exempt development and do not trigger the need for a Construction Certificate.</p> <p>Furthermore, an Occupation Certificate is only required for new work or where the Building Classification has changed for the purposes of the Building Code of Australia.</p> <p>In this case an Occupation Certificate is not required for the existing buildings.</p>
<i>As the consent lapsed on 1 May 2008 all construction work on the site as well as manufacturing work should have ceased.</i>	<p>The issue of the consents validity has been detailed in the above report in regard to Condition 7. As concluded in the above report the amendment to the consent is considered lawful and appropriate.</p> <p>DA06/1275 is considered to have lawfully commenced and thus it remains a valid consent.</p>
<i>The original determination was grossly flawed</i>	<p>This S96 Application is not an opportunity to revisit the original assessment. It is merely an opportunity to review the lawfulness of the proposed amendments having regard to their individual merits.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<i>There are multiple breeches of the 2007 consent. These breeches are outlined in a separate table (which is within the objections annexed to this agenda).</i>	<p>The development was staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.</p> <p>The applicant has acknowledged that the following works have taken place:</p> <ul style="list-style-type: none"> <li>(a) Construction of a septic tank and septic trenches;</li> <li>(b) Undertaking earth works comprising the levelling of ground for car parking purposes comprising an area of approximately 30 x 30 metres;</li> <li>(c) Undertaking drainage work involving the construction of a spoon drain around two existing buildings such drain measuring approximately 2 metres wide by 1 metre deep by 130 metres in length;</li> <li>(d) Construction of doors along the side of the buildings;</li> <li>(e) Undertaking building work including the construction of baffles to the shed roof and the installation of carpet for the purposes of sound proofing.</li> </ul>



<u>Issue</u>	<u>Council Assessment</u>
	<p>The minor earthworks and upgraded works to the existing buildings (which included doorways and baffles) constitute exempt development and do not trigger the need for a Construction Certificate.</p> <p>The work on the septic tanks should have been undertaken with an approved on site sewerage management approval. Appropriate conditions are recommended in this regard to enable a lawful way forward.</p> <p>The applicant's occupation of the premises is consistent with the previously approved Stage 1. The applicants choice not to proceed with Stage 2 is entirely at their discretion as the consent remains valid forever once lawfully commenced (despite condition 7) as detailed within the above report.</p> <p>The objector's interpretation of the other conditions of consent is contrary to Council's staff as detailed within the above report.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>The site is being used for retail purposes with a yellow pages advertisement stating "New &amp; Second Hand Parts and a New Range of Agricultural Equipment"</i></p>	<p>Site inspections and site advertising does not indicate that any retail or commercial operations are taking place from the property. Notwithstanding minor ancillary products may be available from the site within the scope of the original consent.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>The subject site is unsightly and creates a visual pollution to the existing rural area.</i></p>	<p>The subject site has been used for storage of agricultural machinery, steel and general farm like equipment. This could occur on any rural property without development approval.</p> <p>Whilst the storage is not entirely desirable – it is stacked and contained in a generally tidy manner and does not appear like a junkyard.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>We are very concerned about the drainage which has now been dug and water runs into the main road drain which in turn runs through our cattle property. As we are Cattle Care and MSA accredited by Australia meat Authority, it concerns us as this site was known to have contaminated soil and now water runs off this site into the drain along the road.</i></p>	<p>Council sought additional information in regards to contamination and accordingly a detailed site management plan has been received which declares the site after the completion of remediation works as not being contaminated.</p> <p>Additional conditions of consent have been recommended by Council's Environmental Health Officer to ensure the ongoing operations at the site meet Council's standards which ensure no off site impacts.</p> <p>This objection does not warrant refusal or further</p>

<u>Issue</u>	<u>Council Assessment</u>
	amendment to the consent.
<i>This business should be relocated 5km to the proposed industrial estate at Cudgera.</i>	Council has an obligation to assess every application on its merits as lodged. Relocation is not for Council's consideration.
<i>This site will most likely turn into a sale shed for unwanted machinery. It is unsightly dumping ground for rusty machinery in an area with enough traffic to be called the gateway to Mooball and Burringbar.</i>	<p>Whilst the storage is not entirely desirable – it is stacked and contained in a generally tidy manner and does not appear like a junkyard.</p> <p>The applicant will be required to comply with the amended conditions of consent which will better reflect the nature of the business being undertaken.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<i>Approval of this non rural business will set a precedent.</i>	<p>This S96 Application is not an opportunity to revisit the original assessment. It is merely an opportunity to review the lawfulness of the proposed amendments having regard to their individual merits.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>

Council requested additional information of the application and that additional information was sent to the objectors for their information and comment as deemed necessary. In response to this information Council received a further four (4) submissions (however two of these were from the same person). The issues raised in these submissions were:

<u>Issue</u>	<u>Council Assessment</u>
<p><i>The amended material seems to imply that the applicant has evaded compliance but has failed to present positive and well founded reasons to justify his request.</i></p> <p><i>The current situation is inadequate because:</i></p> <ul style="list-style-type: none"> <li>• <i>The applicant has ignored the conditions of Council making only cosmetic improvements.</i></li> <li>• <i>The specific time limit has been used as an excuse for inaction. The current application should be a new DA requiring Council's reappraisal o the enterprise and relevant conditions.</i></li> <li>• <i>The business is not light but a medium sized industrial development</i></li> </ul> <p><i>Questions remain about the status and surrender of the consents of 1982 and 2007 now that the factory is in use and time has expired.</i></p> <p><i>Why should Council change its time limitations on this factory's manufacturing of bulky steel products simply because the owners had abandoned the plans to upgrade the business</i></p>	<p>As detailed in the above report the consent has been lawfully commenced (despite the imposition of Condition 7) and accordingly the applicant has a legal right to apply to vary the S96 as proposed.</p> <p>The above report details why on merit each of the proposed amendments are considered reasonable. As this is not an opportunity to revisit the original application.</p> <p>Accordingly the application is recommended for conditional approval and this objection does not warrant further amendment to the consent.</p>

<u>Issue</u>	<u>Council Assessment</u>
<i>which were part of his original application.</i>	
<p><i>Nothing has happened to allay the concerns of the local community regarding location and precedent.</i></p> <p><i>This is an inappropriate land use and it should be refused.</i></p>	<p>The S96 can not revisit the original merits of the proposal but only comment on the reasonableness of the proposed variations.</p>
<p><i>The scaled down version is not more acceptable to the neighbours.</i></p> <p><i>A slimmer factory is still the same enterprise, and downgrading it weakens rather than supports the case for retention.</i></p>	<p>It is considered that the recommended conditions of consent will assist the applicant move forward with the development of the site in a more lawful and transparent manner.</p>
<p><i>The applicant should be made to produce work as executed plans as required by Condition 83 as the sheds have had structural work undertaken on them which has enclosed the sheds for security purposes.</i></p> <p><i>Do the McLean's lawfully act as owner builders? This is an Occupational Health and Safety Issue.</i></p>	<p>The upgraded works to the existing buildings (which included doorways and baffles) constitute exempt development and do not trigger the need for a Construction Certificate or work as executed plans and can be undertaken by individuals.</p> <p>The applicant's occupation of the premises is consistent with the previously approved Stage 1. The applicants choice not to proceed with Stage 2 is entirely at their discretion as the consent remains valid forever once lawfully commenced (despite condition 7) as detailed within the above report.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>
<p><i>Of the 99 conditions it is difficult to identify any which have been complied with or properly addressed by the applicant.</i></p> <p><i>The applicant tries to state that many conditions only relate to the need for a CC when clearly they relate to the site as a whole.</i></p> <p><i>Condition 10 – Parking and Manoeuvrability works were done without detailed design.</i></p> <p><i>Condition 12 applies to all site works and any fill whether associated with building works or not need to be detailed prior to issue of a CC.</i></p> <p><i>Condition 19, 20 and 21 - drainage works were done without approval causing erosion and sediment issues.</i></p> <p><i>Condition 24 does not exempt the applicant from obtaining a CC or paying S64 Contributions.</i></p> <p><i>Condition 30 applies to all works on site not just building works.</i></p> <p><i>Condition 90 required a Site Management Plan prior to use which never occurred.</i></p>	<p>The objector's interpretation of the other conditions of consent is contrary to Council's staff as detailed within the above report.</p> <p>Each of the mentioned conditions have been addressed in the above report.</p> <p>This objection does not warrant refusal or further amendment to the consent.</p>

<b><u>Issue</u></b>	<b><u>Council Assessment</u></b>
<i>The area should be restored to its natural rural character.</i>	This is not an option as DA06/1275 has been lawfully commenced.
<i>The Noise Attenuation Report is flawed as testing's was done on a Saturday outside manufacturing season.</i>	The report has been reviewed by Council's Environmental Health Officer as satisfactory. Additional conditions of consent should assist the ongoing site management.
<i>The reasonableness of the conditions should have been argued originally not so long after the consent.</i>	The applicant is legally entitled to lodge a S96 Modification on this consent as the consent is deemed to have been commenced in Accordance with the Act.

The Environmental Defenders Office again wrote to Council regarding this application (post the receipt of additional information) questioning Council's legal ability to handle this application. Council did not respond to this letter as such assessment was most appropriately reported to Council in this first instance.

Having reviewed each proposed amendment on its merits and having regard to the above submissions the proposed amendments are considered to be lawful and capable of approval.

This S96 Application is not an opportunity to revisit the assessment of the original application but rather only an opportunity to review the amendments being sought in relation to the associated merits and legality of each amendment.

As detailed in the above report the amendments are considered suitable, lawful and capable of approval by Tweed Shire Council.

**OPTIONS:**

1. Approve the S96 as per the recommendation
2. Refuse the S96 with reasons

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be unsatisfied with the determination by Council they have a right of Appeal to the NSW Land & Environment Court.

Should an objector be unsatisfied with the determination by Council they have a right of Appeal to the NSW Land & Environment Court based on procedure and process only not merit (judicial review).

**POLICY IMPLICATIONS:**

This S96(1A) raises issues regarding the interpretation of the Act in regards to what constitutes a lawful development. However, based on the applicant's legal advice which is consistent with previous Council advice the proposed amendments are considered lawful.

**CONCLUSION:**

This application has an extensive development history. The S96 has been assessed on its merits based on the information available to Council. Having considered all the issues raised including those raised by the objectors it is recommended to conditionally approve the S96 Application.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. DA06/1275 Council Report 17 April 2007 (ECM 21105969)
  2. DA06/1275 Determination Notice (ECM 21106985)
  3. DA06/1275 Approved Plans x 29 (ECM 21251402)
  4. Submissions post DA06/1275 determination (ECM 21109186)
  5. Legal Advice TF Robertson SC of Frederick Jordon Chambers (ECM 21105962)
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**16 [PR-CM] Development Application DA09/0722.01 - Amendment to Development Consent DA09/0722 for a Dwelling, Swimming Pool and Spa at Lot 31 DP 1030322, Collins Lane, Casuarina**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA09/0722 Pt1**

**SUMMARY OF REPORT:**

Council at its meeting held 16 March 2010 resolved to approve a dwelling to be erected at Lot 31 DP 1030322 Collins Lane, Casuarina subject to conditions including a condition (No. 7) to require amended plans be submitted to show the position of the external wall of the garage to stand not less than 450mm from the southern side boundary.

An application has now been made to modify the original development consent under Section 96 1(a) of the Environmental Planning & Assessment Act.

The Section 96 1(a) application requests that condition number 7 be deleted from the original consent. Condition Number 7 states:

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

The original development application was to construct a new two storey dwelling, a swimming pool and a spa at the subject property.

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

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

It is recommended that the current Section 96(1)(a) application be refused due to concerns in relation to the proposed impact of the development on the amenity of the adjacent property.

**RECOMMENDATION:**

**That Development Application DA09/0722.01 for amendment to Development Consent DA09/0722 for a dwelling, swimming pool and spa at Lot 31 DP 1030322 Collins Lane, Casuarina be refused for the following reasons:**

- 1. Pursuant to Section 79C(1)(a)(iii) the proposed amendment does not comply with the side boundary setback required by Section B5 Casuarina Beach) of the Tweed Development Control Plan.**
- 2. Pursuant to Section 79C(1)(b) the proposal will have an adverse impact on the amenity of the adjacent property at Lot 30 Collins Lane, Casuarina.**



**REPORT:**

**Applicant:** Croft Developments

**Owner:** Mr Graeme Croft and Mrs Sandra Croft

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

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

**Cost:** N/A

**BACKGROUND:**

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

**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 31 DP 1030322  
Collins Lane, Casuarina

0 0.5 1 1.5 2 Km  
1:75,000

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 02 March, 2010

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Coordinate System - MGA Zone 56  
Datum - GDA 94



Cadastral: 02 March, 2010  
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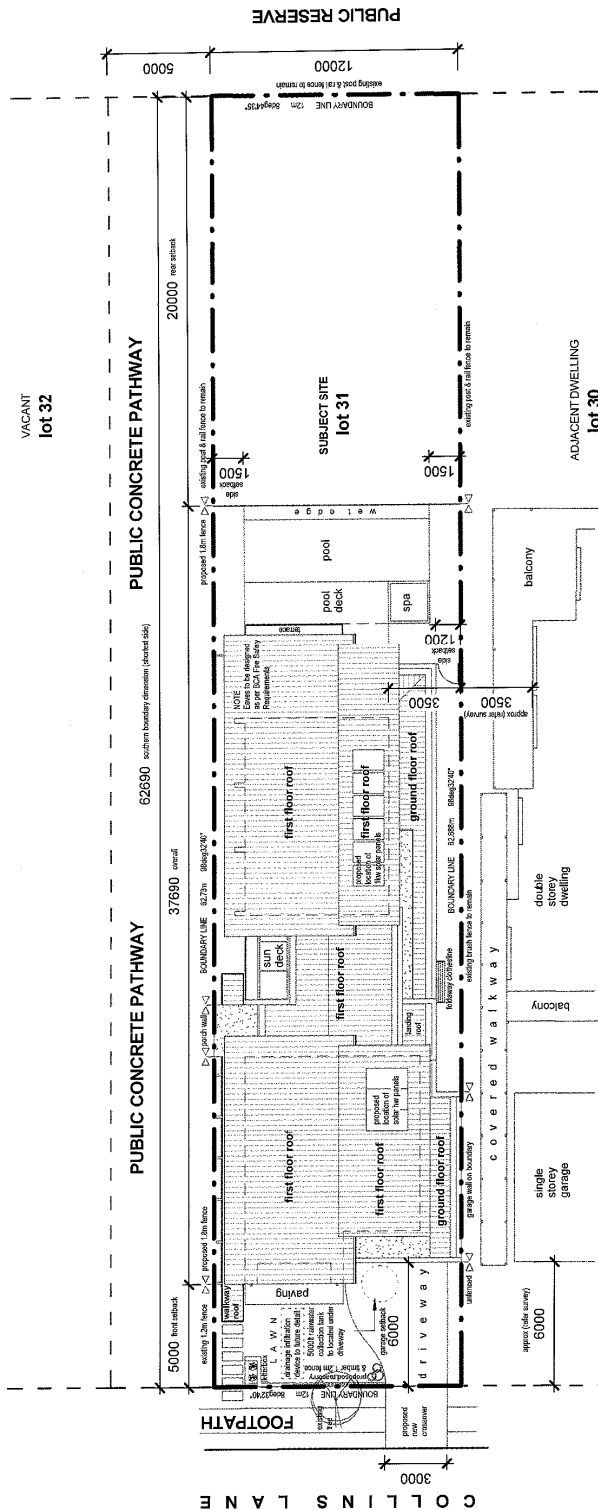
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Civic and Cultural Centre  
3 Turbulgan Road  
Murrumbidgee NSW 2464  
PO Box 876  
Murrumbidgee NSW 2464  
T: (02) 6670 2400 / 1300 382 872  
F: (02) 6670 2480  
W: www.tweed.nsw.gov.au  
E: alan.hingford@tweed.nsw.gov.au



**TWEED**  
SHIRE COUNCIL

DEVELOPMENT PLANS:



<b>SITE AREA</b>	792.5m2
<b>lot 31</b>	
<b>BUILDING AREAS</b>	
ground floor	230m2
garage	50m2
porch	5m2
deck	315m2
<b>SUB TOTAL</b>	<b>315m2</b>
<b>IMPERVIOUS AREAS</b>	
first floor	190m2
balcony	3m2
deck	32m2
terrace	32m2
<b>SUB TOTAL</b>	<b>235m2</b>
<b>TOTAL</b>	<b>550m2</b>
<b>FSR AREAS</b>	
ground floor	216m2
first floor	162m2
<b>TOTAL</b>	<b>378m2 (50%)</b>
<b>IMPERVIOUS AREAS</b>	
roof	322m2
deck non porous	10m2
paving non porous	10m2
porch	5m2
terrace	32m2
<b>TOTAL</b>	<b>422m2 (53%)</b>

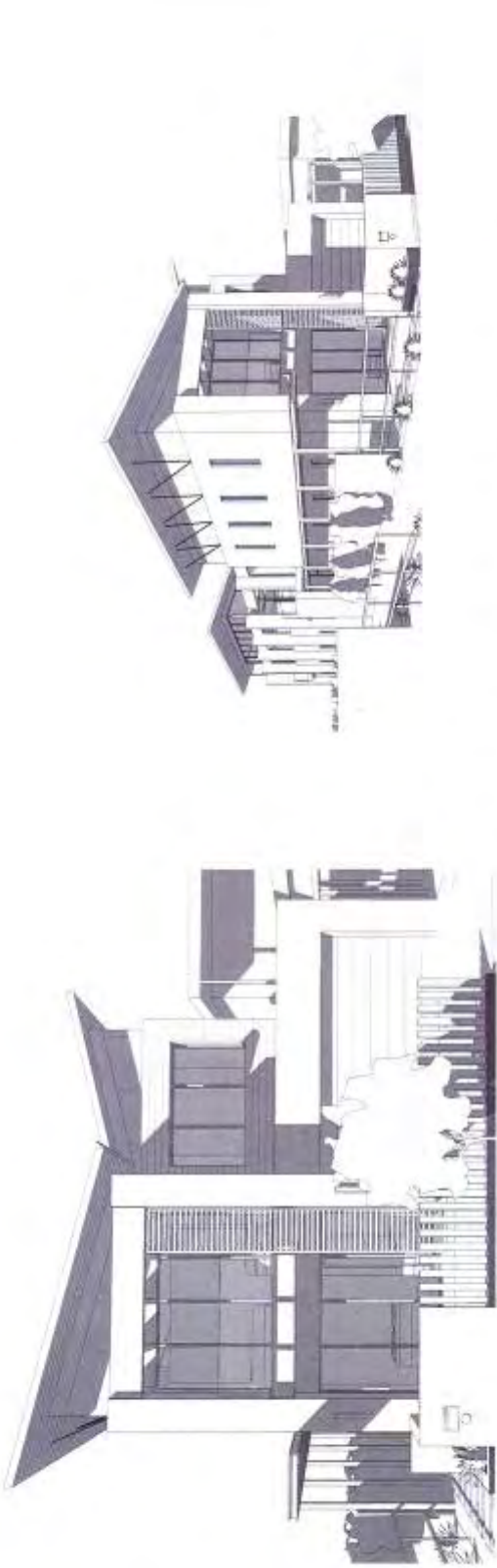
**design response**

1:200



Rev A  
**TP04**

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



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

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



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 ARCHITECTS  
 100/102 MILL'S DRIVE  
 WARRIMOO NSW 2580  
 www.jackandbrothers.com.au



**TP01**  
 Rev A  
 DATE 05/11/2009  
 Drawn by AM

**DRAWING** contents & perspectives  
 SCALE nis @ A3  
 1 of 11

**CLIENT** graeme croft

**ADDRESS** lot 31 collins lane  
 casuarina  
 NSW

**PROJECT** proposed new dwelling



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



2. Looking southeast from Collins Lane towards adjacent dwelling



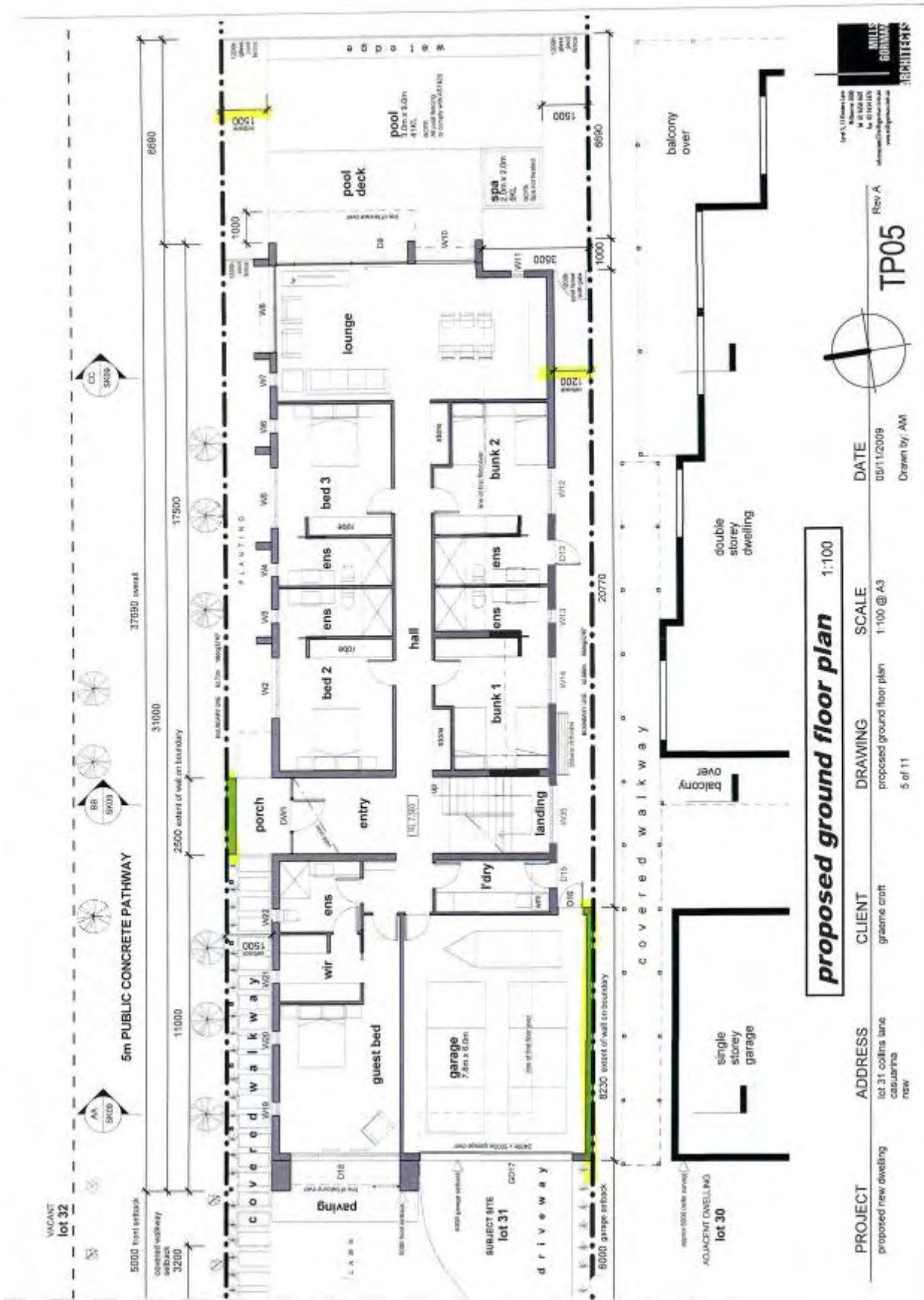
looking southeast towards beach

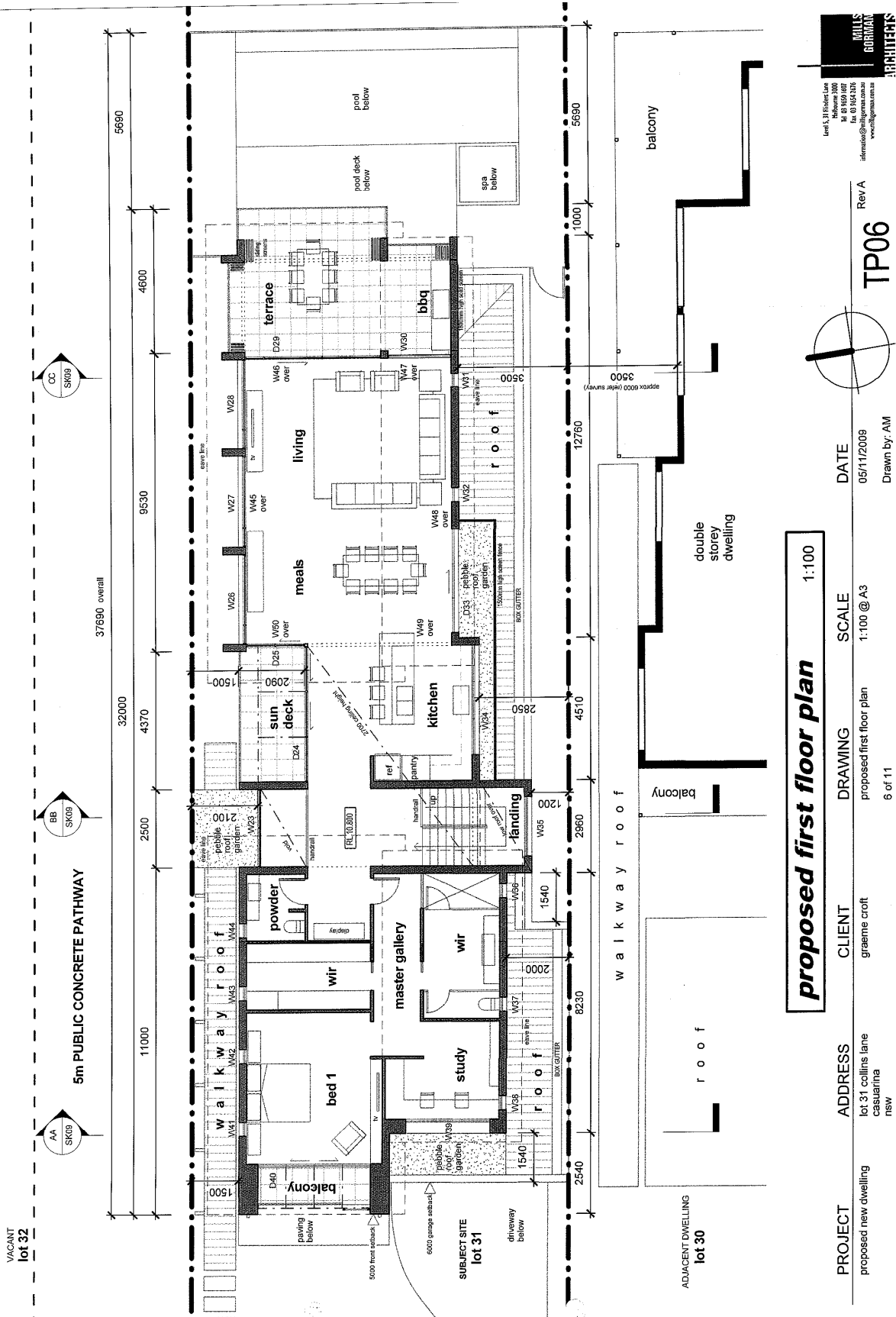
looking south towards adjacent dwelling

looking southwest towards street

3. Panoramic view of subject site from northern boundary

**site photos**  
lot 31 collins lane  
CROSSING  
FRM  
TP03 Rev A  
www.millsburn.com.au  
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BURN  
ARCHITECTS





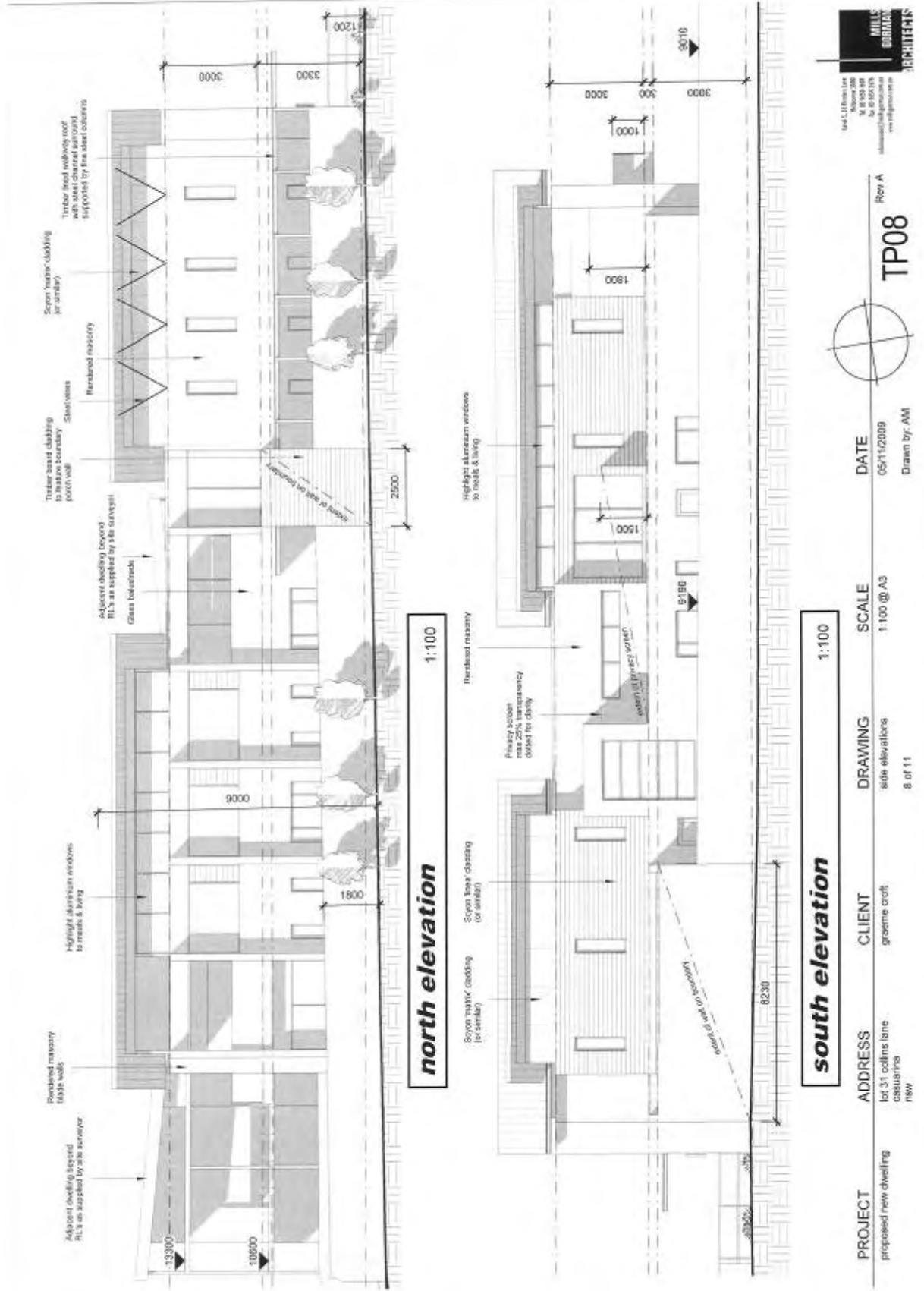
**proposed first floor plan** 1:100

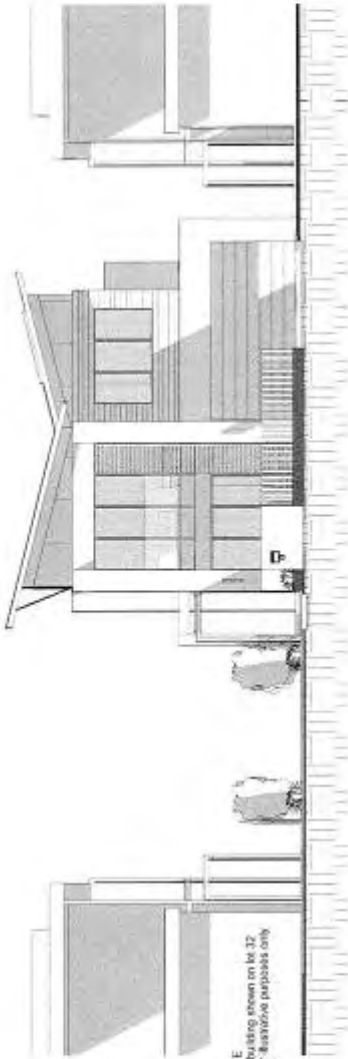
<b>PROJECT</b>	proposed new dwelling	<b>CLIENT</b>	grame croft	<b>DRAWING</b>	proposed first floor plan	<b>SCALE</b>	1:100 @ A3	<b>DATE</b>	05/11/2009	<b>RevA</b>	TP06
<b>ADDRESS</b>	lot 31 collins lane casuarina new	<b>CLIENT</b>	grame croft	<b>DRAWING</b>	proposed first floor plan	<b>SCALE</b>	1:100 @ A3	<b>DATE</b>	05/11/2009	<b>RevA</b>	TP06
<b>ADJACENT DWELLING</b>	lot 30	<b>CLIENT</b>	grame croft	<b>DRAWING</b>	proposed first floor plan	<b>SCALE</b>	1:100 @ A3	<b>DATE</b>	05/11/2009	<b>RevA</b>	TP06
<b>VACANT lot 32</b>		<b>CLIENT</b>	grame croft	<b>DRAWING</b>	proposed first floor plan	<b>SCALE</b>	1:100 @ A3	<b>DATE</b>	05/11/2009	<b>RevA</b>	TP06

Lewis J. Millis, Architect
   
 10 949 407
   
 10 949 407
   
 10 949 407
   
 info@millisgorham.com.au
   
 www.millisgorham.com.au

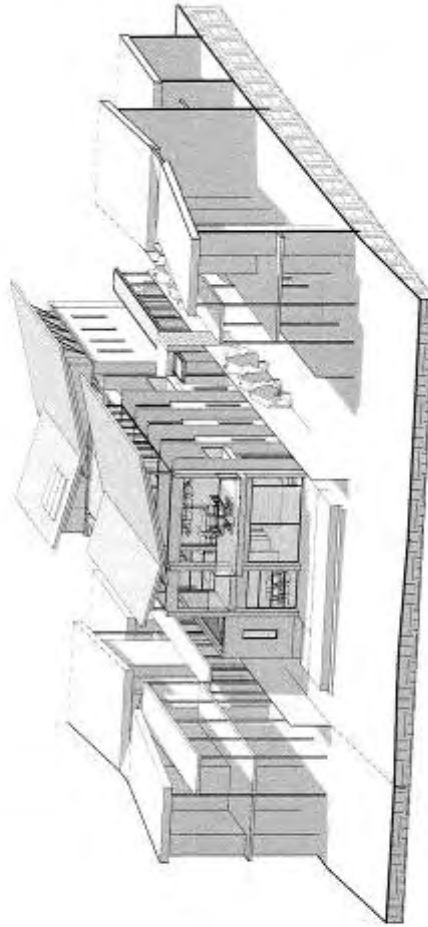
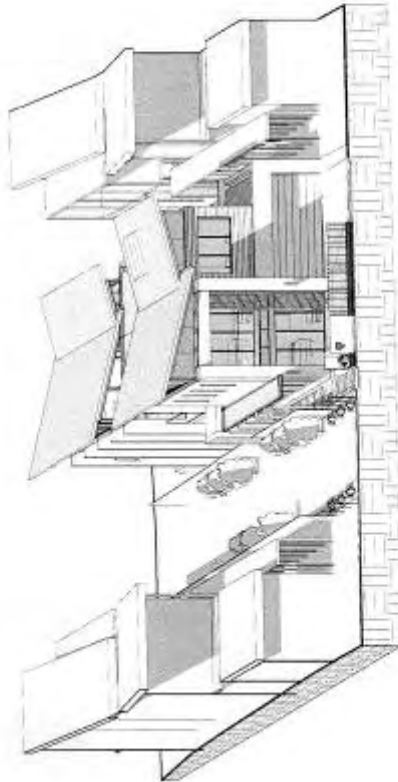








NOTE  
 All shading shown on lot 32  
 is for illustrative purposes only.



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

NOTE  
 Shadows as per  
 Spring Equinox  
 21.09 Brisbane

SHADOW DIAGRAMS SHEET LIST

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



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

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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

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

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

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 - Zone objectives

The proposed development is consistent with the zone objectives.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The dwelling will be two storeys and it is considered that the height and scale of the development will be appropriate for its location, the surrounding development and the environmental characteristics of the land. This comment is made on the basis that the external southern wall of the garage which will have an overall height of 3300mm is to be setback not less than 450mm from the boundary.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The area contains class 4 Acid Sulphate Soils, which exist at a depth of greater than 2 metres below surface level. The deletion of condition 7 from the consent will not have any bearing on Acid Sulphate Soils.

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

The deletion of Condition number 7 from the consent will not affect this requirement.

Clause 39A – Bushfire Protection

Council's records indicate that a small portion of the rear of the 7 (f) zone is bushfire prone. The deletion of Condition number 7 from the consent will not affect this requirement.

Clause 33: Coastal hazard areas

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

SEPP No 71 – Coastal Protection

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

SEPP (Building Sustainability Index: BASIX) 2004

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

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

Draft Tweed Local Environmental Plan 2010.

This document was publicly exhibited by Council between 27 January 2010 and 31 March 2010.

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

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

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

## Public Domain Amenity

### **Streetscape**

The Casuarina area is characterised by sites with front and side yards that are significantly landscaped and allow a transition to be achieved between the built and natural form. The construction of a rendered masonry wall in close proximity to the boundary will prevent this transition from occurring between the boundaries and will result in unsympathetic development.

The positioning of the external garage wall in close proximity to the southern boundary is not consistent with the existing character of the adjacent development. The adjacent development at 30 Collins Lane Casuarina has existing landscape planting and a brushwood fence positioned in close proximity to the common boundary and these features provide a visual break between the boundary and the built form. The construction of a 3.3 metre high rendered masonry wall on the boundary will require the removal of the existing brushwood boundary fence and will adversely impact on the adjacent development in an unsympathetic manner.

Conversely, maintaining the required 450mm boundary setback will allow the existing brushwood fence to be maintained which will not adversely impact on the appearance and the amenity of the adjacent dwelling. The 450mm setback will also allow access along the southern side of the garage to allow for future external maintenance of the structure.

It is considered that opportunity exists to slightly alter the internal floor plan of the proposal to accommodate a 450mm boundary setback without impinging upon existing adjacent development. That is, the guest bedroom/Walk-in robe room as shown on the submitted floor plan currently has a floor area of approximately 24 square metres. A reduction in the floor area of this room by approximately 3.5 square metres would allow the 450mm required side boundary setback to be achieved. This would result in a total floor area for the room of greater than 21 square metres. This minor reduction in the floor area of one room is not considered to be an unreasonable request given that the dwelling contains 6 bedrooms and 6 ensuites.

### **Public Views and Vistas**

The proposal will not result in an unreasonable view loss of the beach and foreshore given that the dwelling is 2 storey and the garage will have an overall height of 3300mm. The proposed dwelling will provide for view corridors for dwellings located on the western side of Collins Lane. An additional view corridor is also available via the public walkway that is positioned on the northern side of the property.

### **Deep Soil Zones**

The property contains two areas of deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling adjacent to the eastern property boundary. The deep soil zones are not affected by this proposal.

### **Impermeable Site Area**

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

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

The requirement to achieve a 450mm side boundary setback will marginally reduce the footprint of the building and result in a marginal improvement in the area of the site that will allow for storm water infiltration.

### **Setbacks**

The front boundary setback will not be altered by this proposal.

Section B5 of the TDCP is a specific locality development control and this development control permits external walls to be constructed up to 900mm from side boundaries.

As previously noted it is proposed to construct the external southern wall of the garage which has a length of 8.23 metres, up to the southern boundary.

The proposal was originally notified prior to the development being approved subject to conditions, and was again notified as a result of the submission of the current proposal. Each notification resulted in the submission of an objection in relation to the proposed position of the external garage wall.

Section A1 of the TDCP permits garages to be positioned up to 450mm from side boundaries.

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

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

In a submission made by the applicants planning consultant, Planit Consulting, the Consultant has advised the following:

*The proposal to delete Condition number 7 of the consent is justified in the following way:*

*Demonstration of compliance with relevant planning provisions and the provision of examples whereby Council has previously approved a zero side boundary setback for a garage within the Casuarina locality.*

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

### **Visual Privacy**

Visual privacy will not be affected by the proposal, however the visual amenity could be depending on the side boundary setback required by Council.

### **Floor Space Ratio (FSR)**

Section A1 of the TDCP controls the maximum allowable floor area of a dwelling in relation to the total area of the site as a means of matching the building scale with the capacity of the site and local area.

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

The site area of the subject property is 752.5m<sup>2</sup> and the total floor area of the proposed dwelling is 378m<sup>2</sup> which represents an FSR of 0.5:1 This complies with the requirements of Section A1 of the TDCP. A marginal reduction in the overall width of the dwelling will be achieved if Council upholds its previous decision in relation to the side boundary setback of the garage. This marginal decrease in the width of the dwelling will marginally reduce the floor space ratio if the setback is achieved by reducing the width of the guest bedroom.

### **A2-Site Access and Parking Code**

The current application will not effect the development in relation to vehicle access and parking. Two car spaces have been provided through a ground level double garage.

### **A11-Public Notification of Development Proposals**

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

It is again proposed to address the concerns of the adjacent property owners by recommending that Condition Number 7 not be deleted from the consent.

B5-Casuarina Beach

This is the locality specific development control plan for the Casuarina area. This control requires that the side boundary setback from any dwelling should be not less than 900mm when measured to the wall and 675mm when measured to the outer most projection of the eave.

The controls relating to setbacks have been addressed previously in this report.

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

Clause 92(a) Government Coastal Policy

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

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

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

Access, Transport and Traffic

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

Flora and Fauna

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

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

Surrounding Landuses/Development

The site is suitable for sympathetic residential development.

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

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

**(e) Public interest**

On the basis that Council requires that a 450mm side boundary setback be achieved, the proposal will not prejudice the public interest .



**OPTIONS:**

1. Council resolve to uphold its previous decision in relation to the 450mm side boundary setback and refuse this application that requests that condition number 7 be deleted from the development consent dated 19 March 2010.
2. Council approve to allow the deletion of condition number 7 from the development consent dated 19 March 2010.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

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

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

Nil.

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17 [PR-CM] Urliup Road Compliance Matter

**ORIGIN:**

**Development Assessment**

**FILE NO: PF5720/1930**

**SUMMARY OF REPORT:**

Council has received a complaint regarding unauthorised earthworks at Lot 12 in DP 810164 (48 Urliup Road, Urliup).

The owner of the site has acknowledged that such works occurred in September 2009 in association with the production of sugar cane.

It appears that part of a natural rise in the land has been reduced in size with the excess fill being used to fill adjoining sugar cane paddocks.

Aerial photography shows that similar work occurred on the site after 2000 but before 2004.

Agriculture is permissible without consent, while earthworks require development approval. This report seeks Council determination on whether the works undertaken constitute agriculture or earthworks and thus whether the works require any compliance action from Council.

It should be noted that this compliance matter adjoins a site to which another recent compliance matter was reported to Council (that matter was for an equestrian pad in Tomewin Road, Dungay). In the equestrian pad compliance matter Council resolved to request a DA from the applicant to legalise the works undertaken.

**RECOMMENDATION:**

**That:**

1. ***ATTACHMENT 1 and 2 is CONFIDENTIAL in accordance with Section 104(2)(a) of the Local Government Act 1993, because it contains personnel matters concerning particular individuals (other than councillors).***
2. **Council adopts one of the following options or form an alternative view:**
  - A. **Council determines that the works undertaken constitute “agriculture” thus representing development permitted without consent.**

**OR**

- B. **Council investigates the extent of earthworks further.**

**OR**

- C. Council advises the owners of Lot 12 in DP810164 that a development application for earthworks must be lodged with Tweed Shire Council to reflect the current level of the land as modified in September 2009 (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development).**

**Failure to lodge the required application (within 60 days from the date of notification) will result in Council pursuing this matter legally.**

**REPORT:**

**Owner:** Mr Thomas W Gresham Mrs Colleen Mary Gresham  
**Location:** 48 Urliup Road, Urliup  
**Zoning:** 1(a) Rural and 1(b2) Agricultural Protection  
**Cost:** N/A

**BACKGROUND/REPORT:**

In November 2009 Council received information that works were being undertaken at Lot 12 in DP 810164 in Urliup Road, Urliup.

The letter specifically stated

*“Our clients do not complain about the activity, rather, they are desirous of directing Council’s attention to the earthworks on the neighbouring property in the event of future flooding”.*

The letter was received and noted.

On 21 July 2010 Council received a second letter of complaint regarding the lawfulness of works that had been undertaken at Lot 12 DP810164 in September 2009.

The second letter specifically states:

*“GPS survey data obtained by Tweed Shire Council during the course of Council’s inspection of our clients and neighbouring properties on 27 May 2010...clearly discloses significant fill activities by the owners in what appears to be the absence of Council’s consent.*

*In light of the above, and the potential increased risk of our clients being adversely affected by the above activities during a flood event, we are instructed our clients now wish to formalise their complaint to Council in relation to the filling activities on the adjoining property”.*

The GPS data referred to above was in regard to a related compliance matter in association with an equestrian pad at Tomewin Road, Dungay (Council File PF5510/1295).

In May 2010 a site visit of the equestrian pad 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 (one of which is the landowner of the subject Lot 12 in DP 810/164) and took further GPS data of adjoining property levels and photos of any adjoining matter pointed out by the then complainants.

In that associated compliance matter Council resolved on 20 July 2010 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 lodge a*

*development application for the current configuration of the fill pad (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development)*

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

The owner of Lot 12 in DP 810164 was asked to respond to the complaint and advise Council of:

- The extent of works which were undertaken;
- When the works were undertaken;
- Who the works were done by; and
- Why or under what authority the works were undertaken.

On 3 September 2010 the owner of Lot 12 in DP810164 responded to Council's please explain letter as follows:

*"In reply to your letter dated 17 August 2010 re works on Lot 12 in DP810164 Uriup Road.*

*The works done adjacent to Dungay Creek were done over a period from 20 August 2009 till when the cane paddocks were finished being replanted on 20 September 2009 and were done to recontour and level cane paddock and headland to make drainage and harvesting of cane paddocks better.*

*The photos of excavator parked next to hill were where we battered the bank on the topside of the headland which was cut around the foot of the hill to allow for cane harvester to safely turn on levelled cane paddock headlands when cane was first planted in September 2001.*

*The topsoil heaps in photos were when we stripped the topsoil back to the subsoil to recontour low section of paddock then relax topsoil prior to planting cane.*

*All the works were done by myself and my two sons with our machines to improve water flow across centre of cane paddock to allow better drainage."*

This letter does not provide Council with the original levels of the hill or the volume of material involved in the works undertaken. Furthermore, it is unclear how much of the hill was removed in between 2000 and 2004 and what was removed in the more recent site activities in September 2009.

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

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 normally uses the Planning & Infrastructure Engineer’s comments to establish whether any impact has been associated with the works.

In this instance Council’s Planning & Infrastructure Engineer has stated that:

*“The potential impact of the fill cannot be determined based on the information provided to date. Ideally in situations such as this pre and post development levels are needed, and then if the landforming changes within the floodplain are significant, a flood impact modelling exercise should be undertaken and the results provided with a DA. These requirements are very costly however, and are generally unreasonable to apply to minor agricultural works that are located clear of obvious flow paths.”*

Based on this information Council needs to determine whether Council should:

- A. Determines that the works undertaken constitute “agriculture” thus representing development permitted without consent.

OR

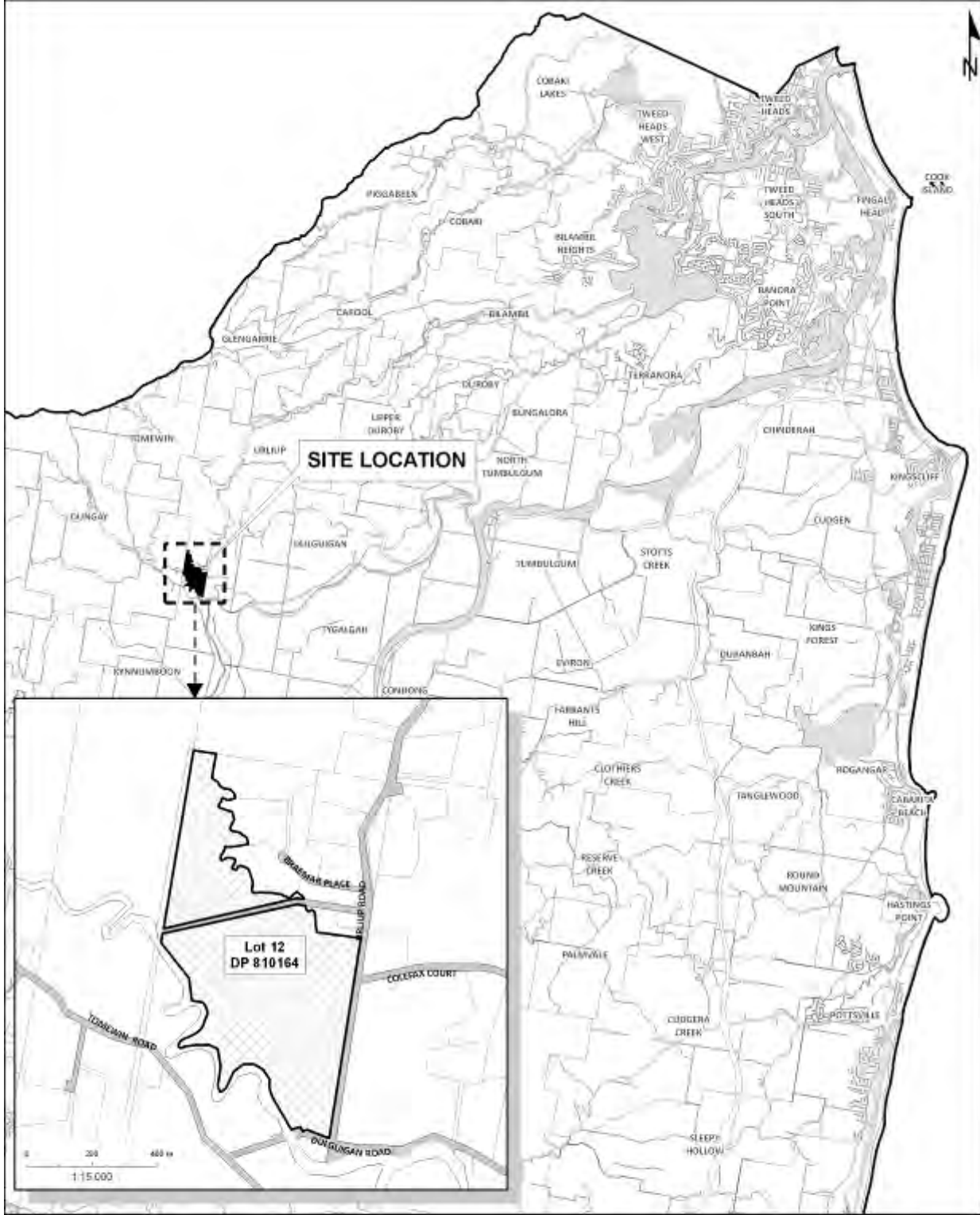
- B. Council investigates the extent of earthworks further.

OR

- C. Council advises the owners of Lot 12 in DP810164 that a development application for earthworks must be lodged with Tweed Shire Council to reflect the current level of the land as modified in September 2009 (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development).

Failure to lodge the required application (within 60 days from the date of notification) will result in Council pursuing this matter legally.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
 Lot 12 DP 810164  
 No.48 Urliup Road, Bilambil

<p><b>GDA</b></p> <p>Coordinate System: MGA Zone 55              101961 - GDA 94</p>	<p>Created: 26 September, 2010              © Dept. of Lands &amp;              Tweed Shire Council</p>	<p>0 1 2 3 Km</p> <p>1:125,000</p> <p>DO NOT SCALE              COPY ONLY - NOT FOR REUSE</p>	<p>Civic and Cultural Centre              5 Tweedgate Road              Murwillumbah NSW 2464              PO Box 818              Murwillumbah NSW 2464              T: (07) 6615 2400 / 1300 010 972              F: (07) 6678 2403              W: www.tweedshire.gov.au              E: planning@tweedshire.gov.au</p>	<p><b>TWEED</b> SHIRE COUNCIL</p>
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**AERIAL IMAGES SHOWING SITE OVER TIME WITH CONTOURS:**



**AERIAL PHOTO - taken September 2000**  
 Lot 12 DP 810164  
 No.48 Urluiup Road, Bilambil

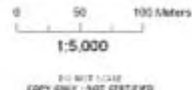
Filename: c:\veriflashing\mod\AAP\_B&W\_SitePlan.mxd

Author: J.Bathfelter - Planning Reference Unit

Date Printed: 06 September, 2010

**GDA**  
 Coordinate System - MGA Zone 56  
 Datum - GDA 94

**GDA**  
 © Dept. of Lands & Towns Shire Council  
 Date: 06 September, 2008



Civic and Cultural Centre  
 5 Tumbidgee Road  
 Murrumbidgee NSW 2544  
 PO Box 830  
 Murrumbidgee NSW 2544  
 T: (02) 6678 2400 / 1300 292 872  
 F: (02) 6678 2465  
 W: [www.shire.murrumbidgee.nsw.gov.au](http://www.shire.murrumbidgee.nsw.gov.au)  
 E: [planning@shire.murrumbidgee.nsw.gov.au](mailto:planning@shire.murrumbidgee.nsw.gov.au)





**AERIAL PHOTO - taken June 2004**

Lot 12 DP 810164  
No.48 Urlup Road, Bilambil

Filename: c:\parrplanning\map\AAP\_B&W\_VisPlan.mxd

Author: J.Buchanan - Planning Reference Unit

Date Printed: 06 September, 2010

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**GDA**  
Cadastral: 06 September, 2008  
© Dept. of Lands & Survey  
Tweed Shire Council  
Coordinate System: GDA Zone 56  
Datum: GDA 94

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GDA 94  
NOT CERTIFIED

Civic and Cultural Centre  
3 Tankersley Road  
Murrumbidgee NSW 2484  
PO Box 810  
Murrumbidgee NSW 2484  
T: (62) 6678 2400 / 1300 292 872  
F: (62) 6673 2465  
W: www.tweed.nsw.gov.au  
E: planning@twweed.nsw.gov.au





**AERIAL PHOTO - taken October 2009**

Lot 12 DP 810164  
No.48 Urlup Road, Bilambil

Filename: c:\planplans\proj\AAP\_Altin\Aerial.mxd

Author: J.Blaugher - Planning Services Unit

Date Printed: 08 September 2010

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 **GDA**  
Copyright: 04 September 2009  
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Coordinate System: MGA Zone 56  
GDA94 - GDA 94

  
Scale: 1:5,000  
GDA 94 - GDA 94  
GDA 94 - GDA 94

Civic and Cultural Centre  
1 Turakina Road  
Bilambil NSW 2484  
PO Box 816  
Bilambil NSW 2484  
T: (02) 6678 2430 / 1589 292 972  
F: (02) 6678 2403  
W: www.tweed.shire.nsw.gov.au  
E: planning@tweed.shire.nsw.gov.au



**GPS DATA SHOWN ON AERIAL - EARTHWORKS IN QUESTION & FILL PAD:**



**PHOTOGRAPHS:**

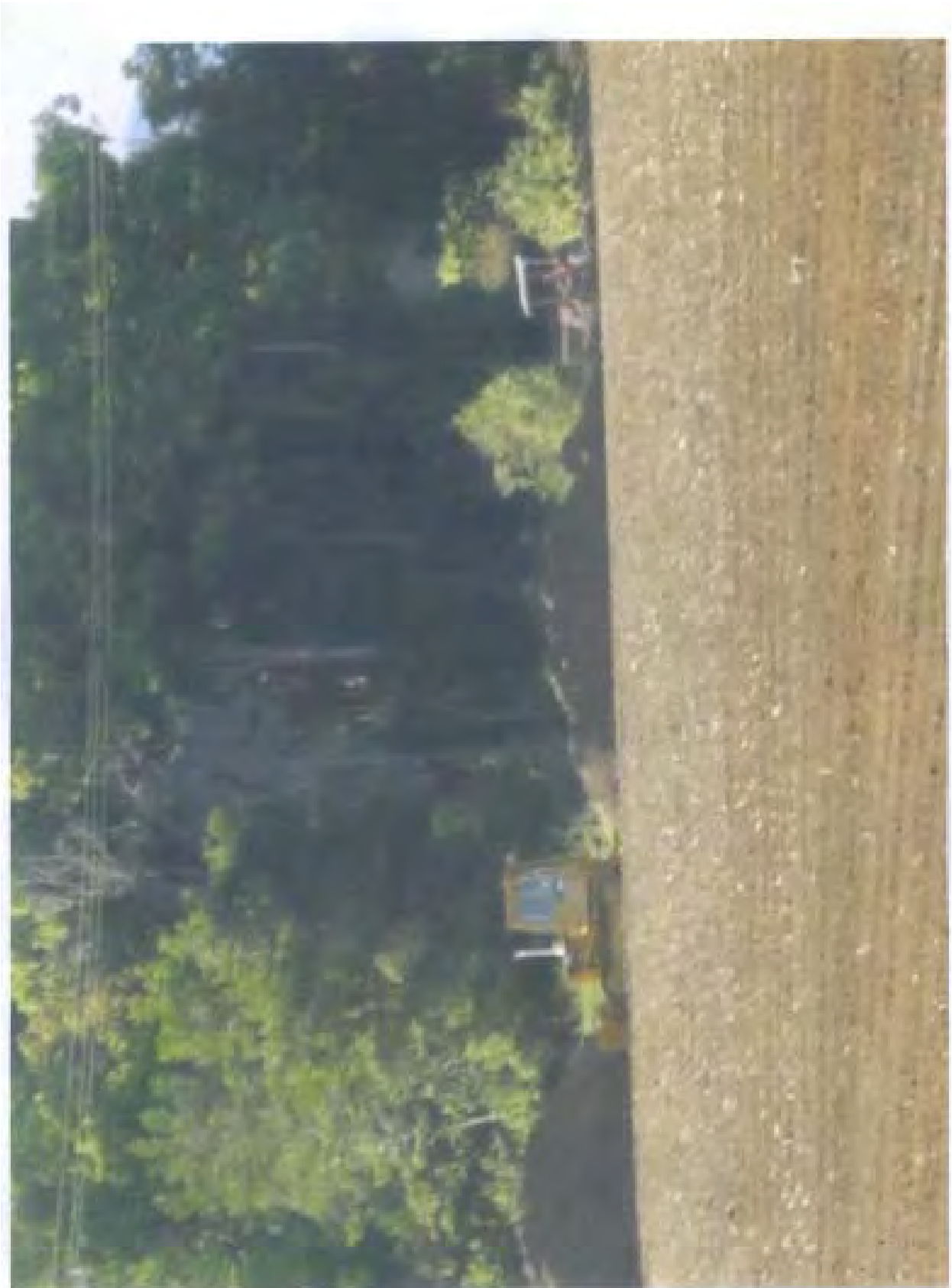




















**OPTIONS:**

- A. Council determines that the works undertaken constitute “agriculture” thus representing development permitted without consent.

OR

- B. Council investigates the extent of earthworks further.

OR

- C. Council advises the owners of Lot 12 in DP810164 that a development application for earthworks must be lodged with Tweed Shire Council to reflect the current level of the land as modified in September 2009 (the DA must be accompanied by a flood impact assessment, including flood modelling, of the development).

Failure to lodge the required application (within 60 days from the date of notification) will result in Council pursuing this matter legally.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The owners may challenge any request for the lodgement of a Development Application and any subsequent legal action. Council would 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:**

Council needs to determine whether the subject complaint requires greater investigation or whether based on the information at hand Council can determine whether the works constitute agriculture or earthworks.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. **Confidential Attachment** Letter of complaint dated 11 November 2009 (ECM 21164799)
  2. **Confidential Attachment** Letter of complaint dated 21 July 2010 (ECM 21164806)
  3. Council Report on Equestrian Pad (a related compliance matter) from 20 July 2010 (ECM 21165855)
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**18 [PR-CM] Planning Reform Unit Project Update on Draft Tweed Local Environmental Plans, Review of Development Control Plan Section A1 (Residential and Tourist Development Code) and Hastings Point Locality Based Development Control Plan**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2000 Pt10**

**SUMMARY OF REPORT:**

This report provides a further update on the progress of the Draft Tweed Local Environmental Plan 2010 and Draft Tweed City Centres Local Environmental Plan 2009, following the earlier report to the Council Meeting of 20 July 2010. In addition, a progress report of the review of the Tweed Development Control Plan, Section A1 – Residential and Tourist Code, and the Draft Hastings Point Locality Based DCP is also provided.

The officers' report to the July Council Meeting on the Draft LEPs anticipated that further advice would be received from the Department of Planning (DOP) which would inform this report in providing Council with a broader context of the comprehensive review, particularly relating to the DOP's response to issues raised about the 'standard instrument' and the difficulties relating to its implementation.

The DOP is still working through the many technical issues in adapting the LEP template to local areas, particularly those raised by regional councils, and as such, has yet to provide a comprehensive response to Tweed Council. Consequently, there remains a degree of uncertainty about the resolution of key policy conflicts such as those relating to environmental protection and rural lands, as well as the more specific LEP drafting anomalies identified by Tweed Council. Preliminary indications are that the DOP will be making significant amendments to the standard-instrument in early 2011 following the public exhibition and apparent high level of acceptance of their recently exhibited *potential amendments*, consultation draft – March 2010.

The adoption of the potential amendments and recent release of additional 'local' clauses will have a substantial bearing on the drafting of the Shire-wide DLEP in particular.

In the interim, Council officers will continue to seek formal feedback from the DOP on the issues raised by Council and the community, and Council will be kept informed of any emerging progress.

The Draft Tweed City Centres LEP 2009 poses significantly less technical challenges relating to the standard-instrument and consequently steady progress is being made with the redrafting amendments following its public exhibition. It is expected that a further report on the LEP will be prepared for the Council Meeting of 16 November 2010 for the endorsement of a further public exhibition.

The report concludes that the Planning Reform projects are progressing relatively well, with the primary goal of securing positive community outcomes.

**RECOMMENDATION:**

**That the report on Planning Reform Unit Project Update on Draft Tweed Local Environmental Plans, Review of Development Control Plan Section A1 (Residential and Tourist Development Code) and Hastings Point Locality Based Development Control Plan be received and noted.**



**REPORT:**

**DRAFT TWEED LOCAL ENVIRONMENTAL PLAN 2010**

The submission review for the draft Shire-wide Plan comprises about 450 public submissions of varying technicality and issues. The assessment is being undertaken in parallel with the management of the Unit's other priority projects and is progressing steadily. Based on the breadth of issues and the need for staff within other Divisions of the Council to also undertake assessment on specific issues or groups of issues, it is expected that the review of submissions, sufficient to distil all issues requiring further investigation or amendment to the Plan, will not be finalised prior to November.

Following the completion of the review and subject to a response from the Department of Planning (DOP) on the issues raised, relating to the standard-instrument template, an amended draft LEP will be drafted and reported to Council for endorsement to re-exhibit.

The DOP's target deadline for the gazettal of the Shire-wide Plan is June 2011. It is expected that an amended draft Plan will be reported to the Council Meeting in early 2011 however, this is subject to the DOP either making or permitting necessary amendments to the standard-instrument either by amending legislation or through the inclusion of additional local clauses.

**DRAFT TWEED CITY CENTRES PLAN 2009**

The boundary area defining the extent of application of this Plan is quite limited and fundamentally comprises the more heavily urbanised and least environmentally constrained areas of the Tweed. Consequently the challenges presented with the implementation of the standard-instrument on a Shire-wide basis have not by comparison dominated the issues or presented any insurmountable technical challenges with the drafting of the City Centres LEP.

Council officers are working collaboratively with the DOP to progress the LEP ahead of the Shire-wide LEP, with the view to a potential gazettal by early 2011.

About 55 submissions were received against the City Centres LEP, with the preliminary review of submissions having been completed, what remains is a final drafting of the issues responses and the redrafting of the LEP and DCP to reflect the necessary amendments.

Subject to the DOP finalising a satisfactory resolution in the amendment of the airport/aircraft operational clauses it is expected that the draft LEP will be reported to the Council Meeting of November for Council's endorsement to re-exhibit the draft LEP and DCP.

**TWEED DEVELOPMENT CONTROL PLAN – SECTION A1 - RESIDENTIAL AND TOURIST DEVELOPMENT CODE**

A review of Section A1 (Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools, Tennis Courts)) of the Tweed Development Control Plan 2008 was commenced in May 2010 to coincide with the two year period of its operation. This was seen to be an appropriate time-frame within which to review the effectiveness of the Plan because of the significant and rigorous 'testing' resulting

from the significant number of development applications lodged in particular between June 2008-2009, resulting from Tweed sustained high level of growth.

The implementation and application of the Plan to date has generally delivered much improved urban design, environmental and site planning outcomes in the relevant Part A developments, notwithstanding some early transitional hurdles that arose in-part because of the fundamental and significant change in the DCP format and coverage comparative to its predecessor. As was expected, there were teething issues that would prove to be manageable as well as other issues that would require a reactive and adaptive management response because of their sustained character. It is this latter class of issues that have necessitated a review, and includes:

- cut & fill
- deep soil zones
- development within the building line
- FSR and site cover

Although staff have applied adaptive and pragmatic measures in dealing with the early implementation issues, general feedback from the development industry and other users of the DCP have highlighted some key areas for improvement and clarification, for which the review should ultimately increase the effectiveness of the DCP, and provide greater certainty, consistency and confidence for Council's decision making..

The Planning Reform Unit established an internal working group comprising of staff from Council's engineering, building and planning Unit's, which have been successful in the identification of the issues from an operational perspective.

The next stage of the review process is the engagement of the community and key stakeholders, which has commenced with the first of several meetings having been held with the Housing Industry Association (HIA). A discussion paper highlighting the main areas for improved controls is being finalised with the view to future public release and promotion through the Tweed Link. An initial breakfast forum is also being planned for late September, for which key development, business and community group representatives will be invited. The Forum will provide an opportunity for Council staff to provide an overview of the Review process, and to seek feedback from external users of the DCP document on the key concerns and areas for improvement. Further consultation events will take place throughout the Review process.

The process of issues identification and workshopping of options and solutions is expected to take several months, with an expected completion and, subject to Council endorsement, general public exhibition of a draft Plan in early 2011.

It is also intended to seek the input and feedback of Councillors at key points of the Review process.

## **TWEED DEVELOPMENT CONTROL PLAN – SECTION B23 -HASTINGS POINT LOCALITY BASED DEVELOPMENT CODE**

The draft Hastings Point locality based planning project was commenced with Council's consultant, Ruker and Associates, in May 2009, with a draft Plan having been publicly exhibited between 28 April and 2 July 2009. There were about 112 submissions received and which are currently being reviewed by Council's project officer and the consultant.

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The level of community engagement in the project has been high, with several workshops run from inception through to public exhibition covering all stages of the project development and drafting, and the community participation per capita for the areas has been extraordinary. It has highlighted the significance and importance of the 'place' characterisation of Hastings Point to the local community and their strong desire to retain its unique small coastal settlement composition and character. As expected there are a divergence of views and issues that raise tensions between "the right to develop" and "the right to preserve" the existing environment. Consequently the level of input and assessment by Council officers and the consultant in developing a balanced outcome has resulted in the project running beyond the allocated schedule.

It is expected that the consultant will finalise a draft Plan, with amendments, to allow for the Plan to be reported to the October Council Meeting.

### **CONCLUSION:**

An important part of the Planning Reform Work Program is to ensure that each new policy project is accompanied by effective and meaningful community engagement. Whilst adding to some of the projected timelines, this approach adds to the integrity and outcomes of each project.

As highlighted in this report, each of the major policy projects are progressing relatively well, albeit with certain external constraints.

Council officers will continue to liaise closely with the DOP and keep Council informed on the progress of its major Draft LEPS. Further, significant advances on the local planning projects for the review of Section A1 (Part A) of the Tweed DCP 2008, and the Draft Hastings Point Locality Based DCP are expected in the later part of 2010, and early part of 2011.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

### **POLICY IMPLICATIONS:**

Nil.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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**19 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning and Regulation**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That Council notes the August 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, no Development Applications have been supported where a variation in standards under SEPP1 has occurred.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (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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