



TWEED
SHIRE COUNCIL

Mayor: Cr K Skinner (Mayor)

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

Agenda

Ordinary Council Meeting Tuesday 15 February 2011

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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CONFIRMATION OF MINUTES

- 1 **Minutes of the Ordinary and Confidential Council Meeting held Tuesday 18 January 2011**

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Minutes of the Ordinary Council Meeting held Tuesday 18 January 2011 (ECM 27406480)
 2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 18 January 2011 (ECM 27406474)
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SCHEDULE OF OUTSTANDING RESOLUTIONS

2 Schedule of Outstanding Resolutions

FOR COUNCILLOR'S INFORMATION:

17 November 2009

ORDERS OF THE DAY

55 [NOM-Cr D Holdom] Local Government Aboriginal Network Conference 2012

444

Cr D Holdom

Cr K Skinner

RESOLVED that Council staff investigate and report back to Council on lodging a bid to hold the Local Government Aboriginal Network Conference in the Tweed Shire in 2012.

Current Status: To be reported to a future Council Meeting.

18 May 2010

ORDERS OF THE DAY

62 [NOM-Cr K Skinner] Community and Operational Land

358

Cr K Skinner

Cr D Holdom

RESOLVED that Council officers investigate and bring forward a preliminary report on parcels of Council owned "Community" and "Operational" land that could potentially be considered for alternative and more appropriate use, acknowledging that Council and community needs and circumstances change over time.

Current Status: A Council workshop has been scheduled to review the land use options.

21 September 2010

ORDERS OF THE DAY

54 [NOM-Cr B Longland] Museums

664

Cr B Longland

Cr D Holdom

RESOLVED that in view of Council's 2004 Memorandum of Understanding with the combined Historical Societies involving Council's 7-Year Plan commitment to a purpose-built Museum at Tweed Heads and the extension of the Murwillumbah Museum, could a comprehensive report be brought forward on the following:

- the scope for revisiting the design and cost estimates for both projects with the architect with a view to identifying substantial savings. In the case of the Murwillumbah project, an amount of approximately \$2million being a more realistic estimate;
- how it is intended that the \$1million Museum commitment from the Federal Government will be utilised before its expiry on 30 June 2011;
- assuming significant cost reductions can be found, plans for the urgent completion of a Development Application for the Murwillumbah Museum extensions in order that funding opportunities can be exploited as and when they become available;
- reassurance of Council's commitment to these projects (and possible planned commencement dates), for the dedicated volunteer Historical Society workforce involved in the acquisition, care, maintenance and display of the valuable collection that is now in the ownership of Council.

Current Status: A Workshop has been held with the Museum Advisory Committee and a report will be submitted to a future Council meeting.

56 [NOM-Cr D Holdom] Workshop-Department of Environment, Climate Change and Water NSW 2010 Border Ranges Rainforest Biodiversity Management Plan - NSW and Queensland, Department of Environment, Climate Change and Water NSW, Sydney

666

Cr D Holdom

Cr K Milne

RESOLVED that the General Manager organises a workshop for Councillors on the Department of Environment, Climate Change and Water NSW 2010 Border Ranges Rainforest Biodiversity Management Plan - NSW and Queensland, Department of Environment, Climate Change and Water NSW, Sydney, similar to the public workshop held on 4 September 2010 at the Canvas and Kettle Restaurant, Murwillumbah.

Current Status: Workshop to be scheduled.

19 October 2010

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

23 [CNR-CM] Tweed District Water Supply - Demand Management Strategy

686

Cr K Milne

Cr B Longland

RESOLVED that Council:

....

6. *Develops a water friendly garden Policy.*

Current Status: Policy to be developed.

16 November 2010

48 [NOM-Cr Milne] Public Transport Strategy

803

Cr K Milne
Cr B Longland

RESOLVED that Council brings forward a report on developing a long term Public Transport Strategy and how future transport corridors can be preserved in the Tweed.

Current Status: A scoping meeting has been held and a report is being prepared for a future Council meeting.

51 [NOM-Cr Milne] Marine Litter Volunteer Groups

806

Cr K Milne
Cr K Skinner

RESOLVED that Council brings forward a report on:

1. How Council could assist/enhance or provide support for the establishment of permanent volunteer groups in the removal of rubbish and fishing line along the riverbanks and waterways.
2. Ways to establish a mechanism to fund the removal of this rubbish along the waterways.

Current Status: Report to be prepared.

14 December 2010

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 19 [PR-CM] Development Application DA10/0480 for the Demolition of Existing Dwellings and Construction of a Function Centre at Lots 9 and 10 Section 4 DP 2974; Nos. 9 and 11 River Street, South Murwillumbah

835

Cr J van Lieshout
Cr W Polglase

RESOLVED that this item be deferred, with amended plans to be reported, at a future Council meeting.

Current Status: Report being prepared.

ORDERS OF THE DAY

- 47 [NOM-Cr Polglase] Regional Funding

870

Cr W Polglase
Cr D Holdom

RESOLVED that Council arranges a meeting with Regional Development Australia - Northern Rivers (RDA-NR) to consider key community infrastructure projects for Tweed Shire. This meeting to be arranged to enable the Federal Member for Richmond, Justine Elliot, to be in attendance.

Current Status: Meeting to be organised.

18 January 2011

ORDERS OF THE DAY

- 26 [NOM-Cr Milne] Fast Food Capital

NOTICE OF MOTION:

34

**Cr K Milne
Cr K Skinner**

RESOLVED that Council holds a Workshop on fast food outlets.

Current Status: Workshop to be scheduled.

29 [NOM-Cr Milne] Green Spaces for Small Lots

NOTICE OF MOTION:

37

**Cr K Milne
Cr D Holdom**

RESOLVED that Council brings forward a report on the implications on developing a policy that small lot housing should only be approved only where they back onto green spaces.

Current Status: A report to be prepared.

MAYORAL MINUTE (REPORT)

3 [MM] Mayoral Minute (Report) for the Period 5 January to 1 February 2011

Councillors,

COMMITTEE MEETINGS

Attended by the Mayor

- 20 Jan 2011 - Tweed River Art Gallery (TRAG) Foundation, Board Meeting – TRAG, Mistral Rd, Murwillumbah
-

INVITATIONS:

Attended by the Mayor

- 13 Jan 2011 - Chris Appo's Funeral - St Cuthberts Anglican Church, Florence St, Tweed Heads – (Crs Holdom and van Lieshout also advised their attendance)
- 26 Jan 2011 - Australia Day Awards & Citizenship Ceremony, Main Event – Bogangar Public School – (also attended by Crs Polglase, Holdom and van Lieshout)
- 28 Jan 2011 - Homelessness Tour and discussion re Drop-in centre with the Honorable Justine Elliot and John Lee from "You have a Friend" – Tweed Heads area
- 31 Jan 2011 - Cabarita Community Meeting re South Precinct Proposal, Caravan Park and Sandalwood Estate - Cabarita Beach Sports Club Restaurant – (also attended by Crs Milne and Longland)

Attended by other Councillor(s) on behalf of the Mayor

- NONE

Inability to Attend by or on behalf of the Mayor

- 29 Jan 2011 - Andrew Veivers Recital – Tyalgum Hall
-

REQUESTS FOR WORKSHOPS:

Date of Request	Requested by Councillor	Topic	Councillors For	Councillors Against	Proposed Workshop Date
31/12/2010	Cr Holdom	"Modernising Local Government" Discussion – further to the Mayor and GM's attendance at the 24 November seminar (Discussion Papers previously issued to Councillors)	Holdom Polglase Longland Milne Van Lieshout	Skinner Youngblutt	

CONFERENCES:

Conferences attended by the Mayor and/or Councillors

➤ NONE

Information on Conferences to be held

- 9-10 Mar 2011 - 7th Annual Australian Roads Summit – The Sebel, King George Square, Brisbane – Registration cost \$1992 plus 1-2 nights accommodation - *This industry forum will focus on the key issues surrounding the planning, financing, construction and maintenance of Australian roads. It will feature presentations and delegations from federal, state and regional government departments and agencies, case studies drawn from projects across Australia.* - Refer www.acevents.com.au/roads2011
- 19-22 Jun 2011 - 2011 National General Assembly of Local Government (NGA) – National Convention Centre, Canberra – Registration Cost to be advised, plus 3 nights accommodation – *The Australian Local Government Association (ALGA) is calling for motions for the 2011 NGA under this year's theme 'Growing with our Community – Partnership, Place and Position'. To be eligible for inclusion in the NGA Business Papers, motions must follow the principles:*
 1. *Fall under one of the themes – Partnership, Place, Position*
 2. *Be relevant to the work of local government nationally; and*
 3. *Complement or build on the policy objectives of state and territory associations.*

View discussion paper at www.nga.alga.asn.au

- 28-29 Jul 2011 - Healthy Cities, 4th Making Cities Liveable Conference – The Outrigger, Little Hastings Street Resort & Spa, Noosa – Registration \$700 early bird by 20 May plus 2 nights Noosa accommodation - *A platform for Government and Industry sector professionals to discuss causes, effects and solutions that relate to population health, sustainability, natural resource management, transport, climate change and urban design and more. Delegates will examine the impact of urban and transport planning on the health and well-being of the population and the planet.*
Refer www.healthycities.com.au
-

SIGNING OF DOCUMENTS BY THE MAYOR:

- 11 Jan 2011 - Request – lots 1 – 7 DP 1151832
- 11 Jan 2011 - Transfer Releasing Easement – Lot 8 DP 1141215
- 18 Jan 2011 - Transfer – Lot 3 DP 1143290
- 25 Jan 2011 - Section 88B Modification Restriction – Lots 117 and 127 SP 79995 and
Deed Poll Varying restriction on use of land
- 18 Jan 2011 - Transfer – Lot 3 DP 1143290

RECOMMENDATION:

That:-

- 1. The Mayoral Minute for the period 5 January to 1 February 2011 be received and noted.**
 - 2. The attendance of Councillors at nominated Conferences be authorised.**
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4 [MM] Mayoral Minute (Report) - Chinderah Service Centre

Councillors,

Chinderah Service Centre

Given the ongoing negative impact of the Chinderah Service Centre on the amenity of the surrounding community, the Mayor moves that arrangements be made for Council to meet with senior NSW Roads and Traffic Authority staff to discuss operational aspects of the existing centre and to raise concerns regarding the potential for a further centre on the northern side of the Chinderah Interchange.

RECOMMENDATION:

That arrangements be made for Council to meet with senior NSW Roads and Traffic Authority staff to discuss operational aspects of the existing centre and to raise concerns regarding the potential for a further centre on the northern side of the Chinderah Interchange.

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5 [MM] Mayoral Minute (Report) - Chinderah Land Use

Councillors,

Chinderah Land Use

Following from concerns and issues that have surfaced during the recent debate regarding the Ozone Street subdivision application, the Mayor moves that a workshop be held with staff to review alternative land uses for parts of Chinderah.

RECOMMENDATION:

That a workshop be held with staff to review alternative land uses for parts of Chinderah.

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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE GENERAL MANAGER

6 [GM-CM] Lease Arrangements - Bob Whittle Murwillumbah Airfield

ORIGIN:

Business and Economic Development

SUMMARY OF REPORT:

Council currently leases land at the Bob Whittle Murwillumbah Airfield. Two of these leases are due for renegotiation as one is due to expire in April and the other is on a month by month basis awaiting renewal.

One of these lessees, Scenic Rim Aviation, has proposed a re-development of their existing flight instruction school building which would see it raised to accommodate hangar space underneath. To achieve their proposed developments they would require a minor increase in their existing lease area, so that they can accommodate a wider hangar bay opening. This proposed change in lease area would cause a reduction in the area of the adjoining lessee, Murwillumbah Aero Club, by 23.7m².

Both parties have made attempts at resolving this issue independent of Council. However it has now reached an impasse and they have now called upon Council to help resolve the situation. This report presents the background and the aspirations of both parties and then makes a recommendation.

RECOMMENDATION:

That Council:

- 1. Advises the Murwillumbah Aero Club that it is prepared to enter into a new lease but that the site / area to be leased will be reduced by approximately 24m² to provide for an expansion of Scenic Rim Aviation's proposed redevelopment**
- 2. Gives owners consent to Scenic Rim Aviation to lodge a development application for the redevelopment of the existing flight training building on Lot 17 DP 712954, to allow for aircraft hangar space below, pending a new lease being executed by Council and Scenic Rim Aviation**

3. Treats ATTACHMENTS 1 and 2 as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because they contain commercial information in relation to lease negotiations, the disclosure of which would be likely to prejudice the commercial position of the lessees if it was provided. If disclosed, the information would be likely to prejudice the commercial position of the lessee in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:

Council currently leases land at the Bob Whittle Murwillumbah Airfield. Two of these leases are due for renegotiation as one is due to expire in April and the other is on a month by month basis awaiting renewal.

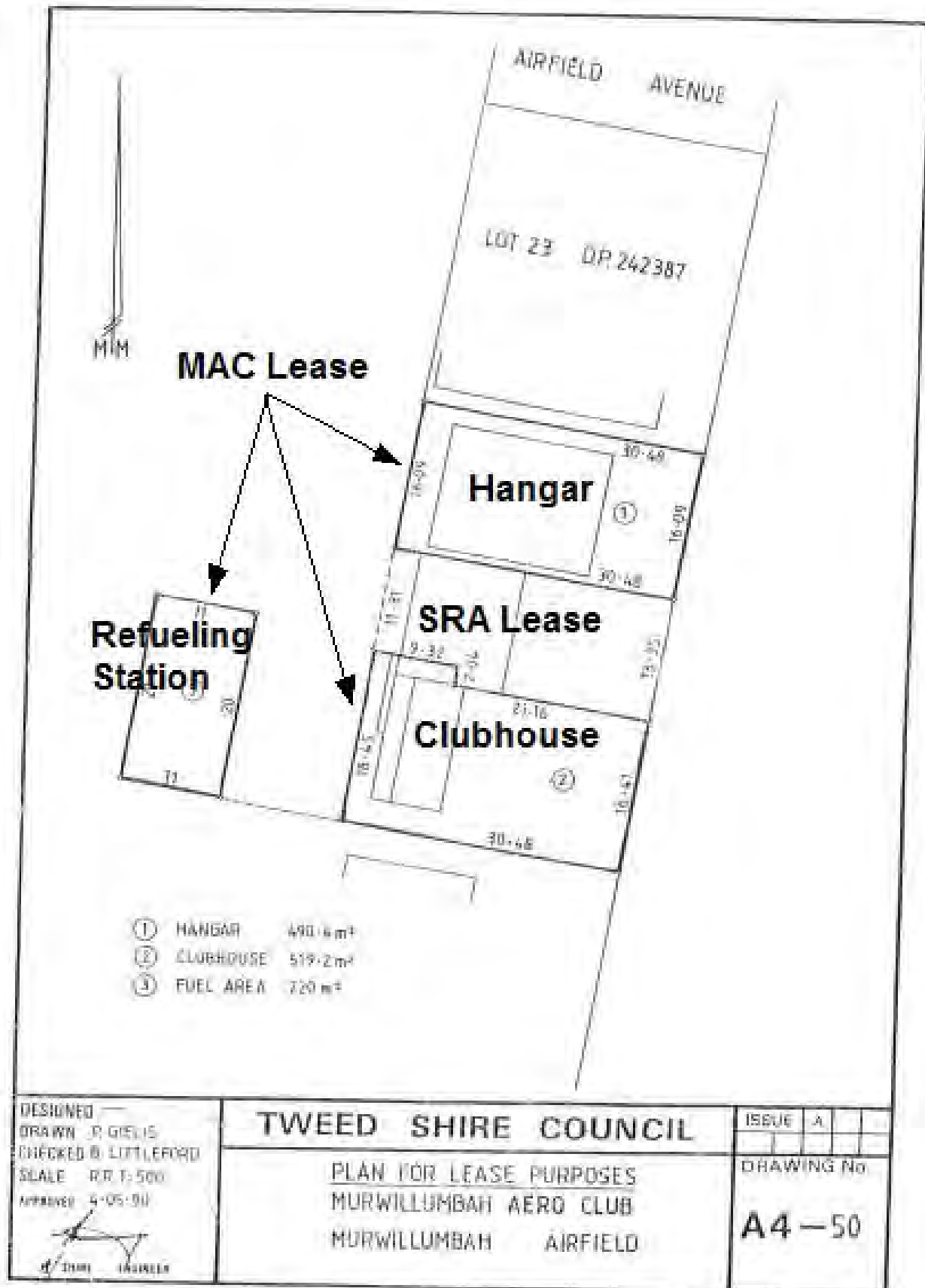
Lease Renewal

Murwillumbah Aero Club's (MAC) Lease is due to expire on 11 April 2011. They currently lease three separate portions of land (refer map below). These portions include:

Refuelling Area	220m ²
Hangar Area	490m ²
Clubhouse Area	519m ²

Scenic Rim Aviation's (SRA) lease expired on 30 September 2010. They are currently on a month by month basis under the existing lease terms pending resolution of development proposal. SRA's current lease area is 392m².

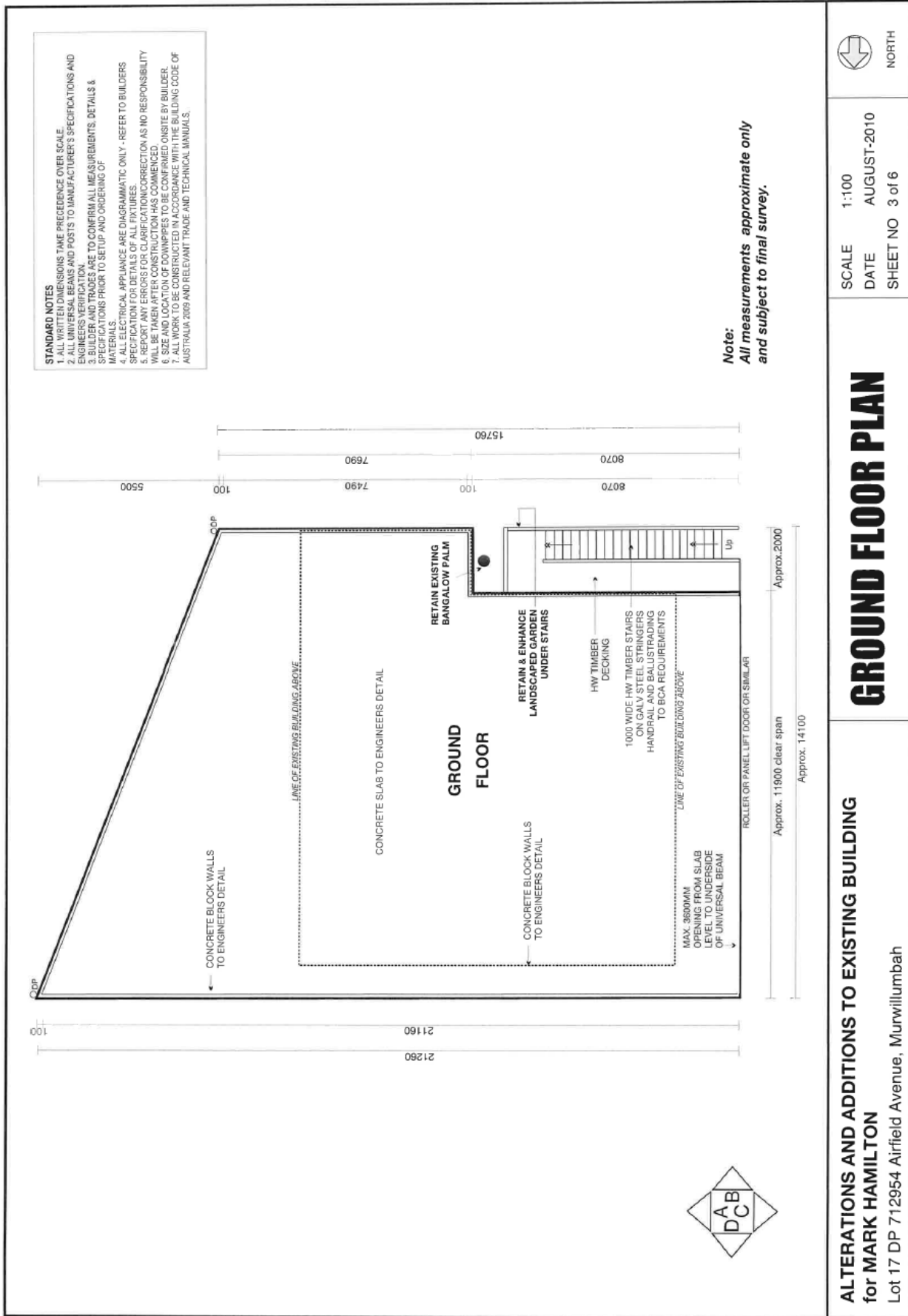
Both of these leases need to be renewed and to date no negotiations have been entered into on lease terms pending the resolution over the lease areas discussed in this report.

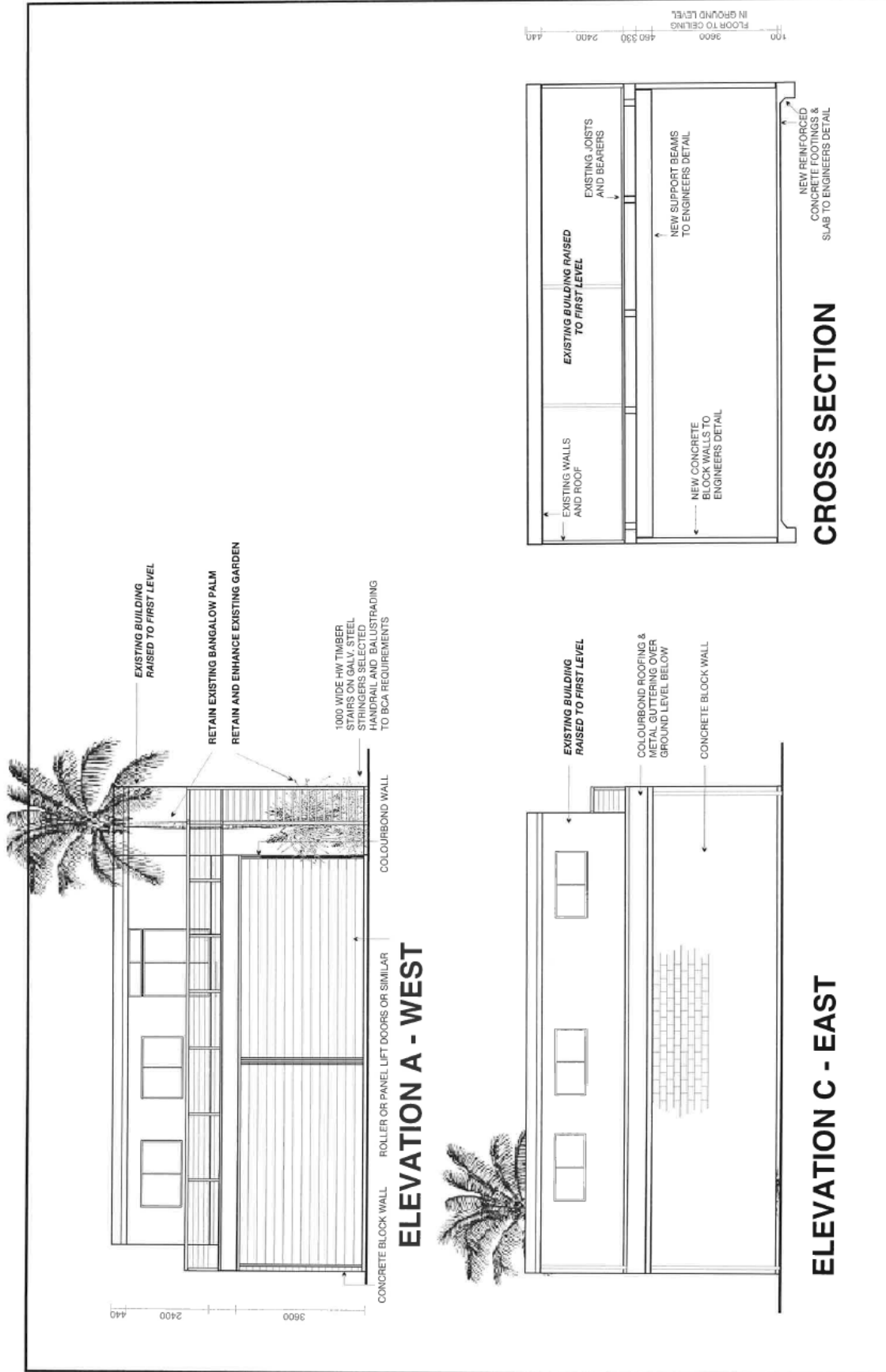


Proposed Redevelopment of Flight Training School

Scenic Rim Aviation has proposed to redevelop their existing flight instruction school building located between the MAC hangar and the MAC clubhouse. SRA has proposed that the existing building be raised to accommodate hangar space below. To achieve this, the lessee has requested that a minor expansion of the lease area be afforded to SRA so that they can accommodate a wider hangar bay opening. This would be achieved from an airside lease frontage of 13.75m. With allowances for stairs and wall dimensions this would accommodate an aircraft wingspan of 11.5m and achieve a clear span hangar opening of 12m. Refer to the attached plan of the proposed development. SRA's current lease has an airside frontage of 11.31m, leaving a deficient of 2.44m and they have proposed to achieve this shortfall by utilising 0.55m of land to the north and 2.04m on the northern side.

This change in lease area would reduce the Murwillumbah Aero Club lease area by 23.7m².





<p>ALTERATIONS AND ADDITIONS TO EXISTING BUILDING for MARK HAMILTON Lot 17 DP 712954 Airfield Avenue, Murwillumbah</p>	<p>ELEVATIONS & CROSS SECTION</p>	
	<p>SCALE 1:100 DATE AUGUST-2010 SHEET NO 5 of 6</p>	<p>SCALE 1:100 DATE AUGUST-2010 SHEET NO 5 of 6</p>

Lessee Negotiations

In April 2010 Mark Hamilton, proprietor of Scenic Rim Aviation, approached Council to request the following:

- Renewal of lease with revised lease area, including additional area currently leased to MAC, including garden area
- Owners consent from Council for SRA to submit a DA for the redevelopment of existing office building to be raised and a hangar area developed underneath (draft plans attached)

In May 2010 Council officers advised SRA to attend Development Assessment Panel to determine if proposal is feasible in a planning / building context. Subsequently in June 2010 Council officers requested SRA to seek consent from MAC to proposed changes to lease areas.

By October 2010 negotiations had stalled and a meeting with MAC and the General Manager and a second meeting with SRA and the General Manager. The outcome of these meetings was that both parties would continue negotiations with a view to reach an amicable arrangement over the lease areas. Some elements of compromise were flagged by both parties at these meetings.

One particular issue that was raised by MAC at this time was that in their opinion the garden in their lease areas has some heritage value.

To allow negotiations to continue SRA revised their proposed plans to accommodate some of MAC requests which allowed for some of the garden to remain, including the palm, underneath the proposed stair case. However disagreement over garden area remains.

Garden Bed

The garden area which separates the two existing buildings, MAC clubhouse and SRA training school building, was retained in the 1980s when the original lease areas were drawn up to allow for a flight school to be developed on the adjoining land. It is put forward by MAC that this was at the wishes of the now late Bob Whittle, decorated pilot who flew with the allied forces during World War 2.

It is also put forward by the MAC that the palm along with the rest of the area provides amenity to the club members as a picnic / recreational area.

A review of the relocation of the Bangalow Palm to the Bob Whittle memorial garden at the entrance to the Airfield by Council's arborist indicates that the cost of relocation would be cost prohibitive. It would require a specialised jet water blasting truck to cut through the roots, a crane as well as the power lines to be lowered by Country Energy during the removal.

Conclusion

In January 2011 SRA wrote to Council and advised that in their opinion negotiations had reached an impasse and requested that the matter be considered by Council. Due to the nature of this situation a Workshop was held with Council on 25 January 2011 to discuss the matter and both parties were afforded time to discuss their position on the matter. As a result of this workshop it was agreed that the matter be put forward to Council for its determination.

This situation has reached an impasse in negotiations between the parties and they have called upon Council to resolve the situation. This report presents recommendations to resolve this situation.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

This report makes recommendations about two lease renewals at the Murwillumbah Airfield.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. **Confidential Attachment** - Murwillumbah Aero Club Hand Out – Council Workshop 25/1/2011 (ECM27988680)
 2. **Confidential Attachment** - Scenic Rim Aviation Hand Out – Council Workshop 25/1/2011 (ECM27988679)
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7 [GM-CM] Code of Conduct - Complaint against Cr Polglase

ORIGIN:

General Manager

FILE NO: Complaint; Code of Conduct; Code of Conduct Review

SUMMARY OF REPORT:

A Code of Conduct complaint from Ms Elizabeth Jack and Mr Jeremy Cornford against Cr Polglase was referred to a Sole Reviewer for determination in accordance with the relevant sections of the Code of Conduct and the Conduct Review Committee/Sole Reviewer Policy.

RECOMMENDATION:

That Council receives and notes the report and findings of the Sole Reviewer into the complaint against Cr Warren Polglase and determines any appropriate action.

REPORT:

On 15, 16 and 23 November 2010 Ms Elizabeth Jack lodged a complaint against Cr Polglase and on 24 November 2010 a further complaint was received from Mr Jeremy Cornford on the same matter. The complaints referred to a comment made by Cr Polglase to Ms Elizabeth Jack.

The complaint was referred to Mr David Gibson who was engaged as a Sole Reviewer to investigate the complaint.

The following report was received from Mr David Gibson on 22 January 2011.

Report and Findings of the Sole Reviewer, David Gibson into Complaints against Cr Warren Polglase by Ms Elizabeth Jack and Mr Jeremy Cornford

TWEED SHIRE COUNCIL

Report and Findings of the Sole reviewer into complaints against Cr Warren Polglase

1 The Complaints

- 1.1 In e-mails to Council dated 15, 16 and 23 November 2010 Ms Elizabeth Jack lodged a complaint against Cr W Polglase alleging that Cr Polglase spoke to her in a derogatory manner saying “get a job” and, in so doing breached clauses 4.8, 6.1, 6.2, 6.3 and 6.4 of Council’s Code of Conduct (the Code). Ms Jack subsequently advised that Cr Polglase allegedly shouted the remark to her as he was returning to the Council Chambers after the dinner adjournment on 19 October 2010.
- 1.2 A further complaint over the same incident was received by Council’s General Manager in a letter dated 24 November 2010. The complainant was not present when the remark was alleged to have been made and the description of the circumstances leading to the remark are different to those recounted by Ms Jack. Consequently I have placed no weight on this complaint.

2 Code of Conduct

2.1 Clause 4 of the Code sets out the eight key principles the Code is based on. Whilst the principles may be used as an aid in interpreting the substantive provisions of the Code, they do not themselves constitute separate enforceable standards of conduct.

2.2 Clause 4.8 states:

“Respect

You must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.”

2.3 Clause 6.1 states:

“You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:

- a) *contravenes the Act, associated regulations, council's relevant administrative requirements and policies*
- b) *is detrimental to the pursuit of the charter of a council*
- c) *is improper or unethical*
- d) *is an abuse of power or otherwise amounts to misconduct*
- e) *causes, comprises or involves intimidation, harassment or verbal abuse*
- f) *causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment*
- g) *causes, comprises or involves prejudice in the provision of a service to the community."*

2.4 Clause 6.2 states:

"You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act."

2.5 Clause 6.3 states:

"You must treat others with respect at all times."

2.6 Clause 6.4 states:

"Where you are a councillor and have been found in breach of the code of conduct, you must comply with any council resolution requiring you to take action as a result of the breach."

3 Appointment of the Conduct Review Committee

3.1 I was appointed as Sole Reviewer by Mr M Rayner, Council's General Manager, in an e-mail dated 6 December 2010. As required by Council's Conduct Review Committee / Sole Reviewer Policy, I formally accepted the appointment in an e-mail to the General Manager dated 7 December 2010. In that e-mail I advised the General Manager that I did not have a conflict of interest and that the complaints did not constitute protected disclosures.

4 Proceedings

4.1 On 8 December 2010 I contacted Ms Jack by phone to obtain information about the incident that would assist me in assessing her complaint.

4.2 On 9 December 2010 I assessed the complaints against the Complaint Assessment Criteria in section 13.1 of the Code as follows:

- a) *“whether there is any prima facie evidence of a breach of the code of conduct”*
There is prima facie evidence of breaches of clauses 6.1(e) and 6.3 of the Code.
- b) *“whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager”*
Based on the information available, yes.
- c) *“whether the complaint is trivial, frivolous, vexatious or not made in good faith”*
No.
- d) *“whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct”*
Yes, the complaints could reasonably constitute a breach of the code of conduct.
- e) *“whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police”*
No.
- f) *“whether there is an alternative and satisfactory means of redress”*
No alternative means of redress is acceptable to the complainant.
- g) *“how much time has elapsed since the events the subject of the complaint took place”*
Alleged comments were made on 19 October 2010.
- h) *“how serious the complaint is and the significance it has for council”*
The complaints are serious, at least to the complainant.
- i) *“whether the complaint is one of a series indicating a pattern of conduct.”*
No.

4.3 On 9 December 2010 I sent letters to the complainants advising them that after assessing the complaint I had determined to enquire into the matter. In that letter I advised them that I would follow the Conduct Review Committee / Sole Reviewer Investigations Procedure adopted by Council and sent them a copy of that procedure. I also attached a copy of the Confidentiality Undertaking and asked them to sign and return it to the General Manager. Ms Jack and Cr Polglase signed the Confidentiality Undertaking.

4.4 I conducted telephone interviews with Ms E Jack on 21 and 24 December, Ms M Jack on 21 December, the second complainant on 23 December and Cr Polglase on 23 December 2010.

5 Material examined

5.1 Material examined included the Tweed Shire Council Code of Conduct (Version 1.6) and the Conduct Review Committee/ Sole Reviewer Policy (version 1.1).

6. Analysis of Evidence

6.1 Ms Elizabeth Jack informed me that she attended the Council Meeting on 19 October 2010 with her daughter, Ms Megan Jack, and that just prior to the dinner adjournment Council had been debating its water options. Cr Polglase had supported the Byrrill Creek Dam option. Ms E Jack and her daughter had returned to the Council to pick up the daughter's placard and were standing near the doors to the Council Chambers. When Cr Polglase was passing, Ms E Jack said "shame" to him. According to Ms Jack, Cr Polglase turned around and shouted "get a job" to her. She responded by shouting back "I'm 80 years old – what do you think I'm doing". Ms Jack said she was "pretty disgusted" by the remark. She said most people had gone home when the incident occurred and she could not recall others standing by the door to the Council Chambers at that time.

6.2 Ms Megan Jack confirmed that she had been at the first part of the Council Meeting on 19 October with her mother. She said that she went back to pick up her placard which she had left in the stairwell. She and her mother were outside the Council Chambers' doors when Cr Polglase passed. He said he could not read the placard. After he passed he turned and said "get a job" or "get a real job".

6.3 Cr Polglase said that did not recall the incident. He said that he may or may not have said "get a job" and that if two or three people say he said it then he probably said it. He said he may have said it in general terms – to no one in particular. He denied that he would have shouted the remark.

7 Findings

- 7.1 I am satisfied that Cr Polglase made the remark “get a job” and can understand that Ms Jack thought the remark was levelled at her following her taunt “shame”.
- 7.2 The remark was not said in the Council Meeting but rather in passing, following a taunt. As such I do not believe it brings the Council or the holders of civic office into disrepute and specifically it does not constitute intimidation, harassment or verbal abuse as required by clause 6.1(e). Consequently I find that there has been no breach of clause 6.1 of the Code.
- 7.3 I do not find that Cr Polglase has breached clause 6.2 of the Code which requires councillors and others to whom the Code applies to “...act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out (their) functions under the Act or any other Act”.
- 7.4 I can understand that Ms Jack was offended by the comment. I find that Cr Polglase has breached clause 6.3 of the Code which states that “you must treat others with respect at all times”. Clearly he has not met this standard.
- 7.5 The operation of clause 6.4 of the Code only arises after a councillor has been found in breach of the Code. Consequently there has been no breach of this clause.

8 Recommendations

- 8.1 That Council adopt this Report and Findings.
- 8.2 That Council require Cr Polglase to apologise to Ms Elizabeth Jack for any offence caused by his remark.

David Gibson

Sole Reviewer

22 January 2011

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

UNDER SEPARATE COVER:

Nil.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

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

ORIGIN:

Director Planning 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 January 2011 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 (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.

9 [PR-CM] Planning Proposal PP10/0002 - Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights (Royal Terranora Resort)

ORIGIN:

Development Assessment

FILE NO: PP10/0002 Pt1

SUMMARY OF REPORT:

A planning proposal, PP1/0002, for Lot 30 DP 850230 No 61 Marana Street, Bilambil Heights (Royal Terranora Resort) seeking a rezoning from the current 6(b) Recreation under the Tweed LEP 2000 to a low density residential zone was considered by Council at their meeting of 20 July 2010.

Council at this time resolved not to refer the planning proposal to the Department of Planning for a gateway determination and that an additional traffic assessment to address the traffic capacity within the Kennedy Drive catchment is required.

The additional traffic assessment was received on 20 October 2010 and has been reviewed internally.

This report provides a summary of the planning proposal and the additional information required, a discussion on the additional traffic assessment and makes recommendations to proceed with the planning proposal, subject to a linked Development Control Plan (DCP) which outlines a staging plan for the future redevelopment of the site, capping initial redevelopment at the equivalent traffic generation as would currently and reasonably be permitted under the 6(b) zone, until such time as the Kennedy Drive bypass (consisting of dedication and construction of the full length of Cobaki Parkway, the new bridge over Cobaki Creek and the Scenic Drive Deviation) is completed and dedicated to Council.

RECOMMENDATION:

That:

- 1. Council notes the revision to the Tweed Planning Proposal Assessment Process.**
- 2. Council proceeds with the Planning Proposal PP10/0002 – Lot 30 DP 850230 No. 61 Marana Street, Bilambil Heights (Royal Terranora Resort), to seek additional studies as required to support and inform the amended planning proposal, and that the planning proposal be linked to the preparation of a Development Control Plan for the subject site.**
- 3. Any Development Control Plan for the site provide a staging strategy for the redevelopment and ensure future redevelopment of the site is capped at the equivalent traffic generation as would currently and reasonably be**

permitted under the 6(b) zone, until such time as the Kennedy Drive bypass (consisting of dedication and construction of the full length of Cobaki Parkway, the new bridge over Cobaki Creek and the Scenic Drive Deviation) is completed and dedicated to Council.

4. The amended planning proposal and supporting studies be subject to a subsequent report to Council seeking resolution to refer the Planning Proposal to the Department of Planning for a gateway determination.

REPORT:

At the Council meeting of 20 July 2010, Council considered a planning proposal report seeking the rezoning of No 61 Marana Street, Bilambil Heights (Royal Terranora Resort) from the current 6(b) Recreation under the Tweed LEP 2000 to a low density residential zone.

Council resolved (in part) that:

- “1. Planning Proposal PP10/0002 for Lot 30 DP 850230 No 61 Marana Street, Bilambil Heights not be referred to the Department of Planning for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979 based on insufficient capacity within the Kennedy Drive catchment to accommodate urban growth exceeding that which already has potential under existing Local Environmental Plan 2000 zonings west of Cobaki Bridge*
- 2. The proponent be advised that additional traffic assessment is required and should be submitted as an addendum to the planning proposal that clearly demonstrates the capacity of the catchment.....”*

On 20 October 2010 Council received the additional traffic report.

On 17 November the traffic report was referred for internal review and comment. A response was received on 10 December 2010. Subsequently a meeting between senior staff and the proponent was held on 28 January 2010 to discuss the traffic assessment findings and identify a way forward.

Summary of the Planning proposal:

The site is located off Marana Street at the western periphery of Bilambil Heights urban area. The site is approximately 6.7 ha and is bounded to the north east by 2(a) Low Density Residential, to the south east by 7(d) Environmental Protection and to the northwest, west and south west by 6(b) Recreation zoned land.

The site is identified within the Town and Village Growth Boundary of the Far North Coast Regional Strategy 2006 (FNCRS) and is in the vicinity of the wider Bilambil urban release area.

The site is currently (and historically) used for approved tourist accommodation (48 units), restaurant and associated facilities. These facilities were part of the now closed Royal Terranora Resort, a timeshare facility that ceased active operation several years ago.

The planning proposal seeks to rezone the site to either 2(c) Urban Expansion (under the Tweed LEP 2000) or R1 General Residential (under the draft LEP 2010) to enable the redevelopment of the site.

Assessment of the Planning Proposal:

An assessment of the planning proposal against the requirements of the Department of Planning's *Guide to Preparing Planning Proposals* was undertaken.

The initial assessment finds that the proposal is broadly consistent with the requirements. Notwithstanding, the Department of Planning (DoP) have now provided advice that they consider that submission of a planning proposal to the Department of Planning for a gateway determination effectively becomes Council's Planning Proposal (not the applicant's) and as such Council should be comfortable that the proposal is:

- well justified,
- meets the objectives of the strategic framework for local growth and development,
- meets the objectives of the state and regional strategic framework for growth and development,
- has considered and addressed all potential social, economic and environmental impacts,
- results in a net community benefit, and
- identifies an appropriate plan for future zoning of the site.

Assessment identifies that the subject planning proposal may require additional supporting information and/or studies in the following areas:

- Water and sewer provision, including any required additional sewer pump station and easements;
- Stormwater management;
- Geotechnical and subdivision landforming and design assessment addressing the steep topography;
- Baseline ecological survey to determine the ecological suitability for the site;
- Traffic generation and the capacity of Kennedy Drive (this is discussed in detail following);
- Aboriginal cultural heritage due diligence assessment, to be a standard requirement for all planning proposals.

It is also noted that additional supporting information may be required to fully address the compliance with State and Regional Plans and Policies, including the Ministerial s117(2) Directions, and the social, economic and environmental impacts.

Planning proposal process update:

A number of early planning proposals, previously referred to the DoP gateway for determination, are now being delayed due the need to undertake additional studies to inform and support the proposals.

In order to ensure that Council may be confident in supporting any planning proposal, the process has been revised to bring forward any additional studies, prior to referral to the Gateway for a determination to proceed.

This approach is supported by the DoP and provides a number of benefits.

1. The planning proposal is reviewed, by a cross Council team, against the requirements of the Department of Planning's *Guide to Preparing Planning Proposals* and within the context of the strategic framework for local growth and development to identify any gaps or inconsistencies in the information provided in the proponent's planning proposal.

2. This enables the cross Council team to identify and seek any additional information and studies required to support the proposal's justification, prior to referral to the gateway process.
3. The additional studies are undertaken up front and inform Council's decision to proceed with the planning proposal.
4. The progress of the planning proposal following gateway determination will not be delayed by Council requirements for additional studies, thus enabling the progress within DoP general timeframe of 12 months.

Following the resolution of Council to consider proceeding with a planning proposal, a Memorandum of Understanding (MOU) will be drafted to identify any additional study requirements and outline the roles and responsibilities of both Council and the landowners.

Signing of the MOU will trigger the movement of the planning proposal into stage 2 of the Council's Planning Proposal Process. It is noted, however, that a planning proposal does not become a planning proposal of Tweed Council until Council resolves to refer to the DoP for a Gateway determination, and it is approved by the Minister or their delegate.

Following completion of acceptable additional supporting information a further report will be prepared for Council outlining this information and seeking a resolution to refer an updated 'Tweed Council Planning Proposal' to the DoP for a gateway determination, where appropriate.

Additional Traffic assessment:

The most significant impact of this subject proposal is in relation to the road capacity, particularly to Kennedy Drive, should the land use change and intensify traffic generation.

On 20 October 2010 Council received an additional traffic report by Carter Rytenskild Group, provided in attachment 1 to this report.

The additional traffic assessment was undertaken to provide evidence to Council:

1. Showing a current baseline traffic generation (based on the current use);
2. Identifying a baseline traffic generation for an expansion of use of the site, consistent with the current 6(b) Recreational zoning; and
3. Evidence that the proposal will not exceed possible traffic generation arising from an expansion of currently permitted uses.

The additional traffic assessment has been premised on a comparison of the preliminary redevelopment plan (included in the planning proposal) against two scenarios showing potential development expansion that may (theoretically) currently be permitted on the site under the current 6(b) Recreation zoning.

The proposed development assessed is for:

31 detached dwelling lots; 40 attached dwelling townhouses; and redevelopment of the 48 existing units, totalling 119 dwellings. The plan also nominates refurbishment of the existing office to residential uses, additional residential apartments and a health spa.

The “current” scenarios assessed are for:

1. 90 tourist accommodation units, with each self contained unit having 1-3 bedrooms, and
2. 152 tourist accommodation units, with each self contained unit having 1-3 bedrooms.

All scenarios also include redevelopment of the existing 48 tourist accommodation units and refurbishment of the existing office to residential uses, additional residential apartments and a health spa. Traffic generation was based on the Tweed Contributions Plan No 4.

Whilst traffic generation on this basis has been assessed as approximately the same, the question of the suitability of the scenarios remains.

Both scenarios represent full development of the site for tourist accommodation. Whilst tourist accommodation is a permitted use with consent, the zoning objectives are:

*“To designate land, whether in public or private ownership, which is or may be used **primarily** for recreational purposes.” [emphasis added]*

In the absence of a full development assessment of the scenarios, it is considered that the scenarios do not represent a realistic development outcome that is likely to be approved under the current zone and its objectives. Development of the site for tourist accommodation would generally be required to be compatible and ancillary with a primary recreational use, which has not been shown, rather than as a outright tourist accommodation development.

Internal review of the additional traffic assessment by the Development Assessment and Engineering Units broadly concurs with this view, stating, among other things:

“...We do not agree with the traffic generation calculations provided since these calculations should use traffic generation figures provided by the publication “Guide to Traffic Generation Developments” by the Roads and Traffic Authority of NSW, not Council’s Tweed Road Contribution Plan (CP No 4).

...We have not been provided with an independent urban planning justification that the submitted development plans would constitute acceptable development within the current and proposed zoned.

...As you are aware, there is a traffic capacity limit applying to future developments in the Bilambil area based on the capacity of Kennedy Drive at the Cobaki Creek Bridge. There will be insufficient trip ‘credits’ available to cater for any additional traffic generated above and beyond that which can be degenerated from the existing zoned land. Traffic generation from the acceptable use of the site under its current zoning is acceptable; however any increase in traffic generation from the proposed rezoned land above that which could be generated from the current zoned land is unacceptable.”

“...the applicant has used hypothetical yields to argue that the proposed rezoning to residential development will create no additional traffic generation compared to the current zoning. Whilst this may or may not be the case [due to time constraints and the scale of the plans assessment has not been able to be undertaken], it is important

to consider that any proposed tourist accommodation at the site would be required to demonstrate that adequate traffic capacity is available through the existing Kennedy Drive trip capacity or through the future road infrastructure (Cobaki Parkway and Scenic Drive upgrade / diversion).

However, if we assume that there is no difference in density, but a subdivision is more likely to occur in the short term compared to tourist accommodation, it is my view that any rezoning application should be required to demonstrate that sufficient capacity on Kennedy Drive is available or future road infrastructure (Cobaki Parkway and Scenic Drive upgrade / diversion) is imminent.”

In summary, the additional traffic assessment does not provide sufficient quantifiable evidence that the traffic generation will NOT impact on the capacity of Kennedy Drive.

The proposal, as presented, may create traffic impacts unacceptable in advance of the dedication and construction of Cobaki Parkway, the new bridge over Cobaki Creek and the Scenic Drive Deviation (Kennedy Drive bypass works) associated with the land release areas of ‘The Rise’ and Cobaki urban release areas. However, should Council consider supporting the proposal, there is scope to consider rezoning of the site for low density residential land uses, informed by a Development Control Plan (DCP) for the site.

This would allow, subject to the decision of Council, the site to be rezoned for low density residential and to cap the amount of development that may occur in advance of the bypass works associated with the land release areas of The Rise and Cobaki, thus allowing staged redevelopment of the site to occur, with the initial stage capped essentially by the level of traffic generation acceptable under the current zoning.

This would require confirmation from the proponent to support this approach and amendment to the planning proposal.

Engineering staff have indicated that the dedication of the Cobaki Parkway is forecast to occur in approximately seven years or 2018 (based on the Statement of Commitments for the Cobaki Lakes Concept Plan). However this is just the first step in completing a Kennedy Drive Bypass and the remaining works could take many more years.

A DCP for the site would be triggered by the requirement to identify the site as an urban release area, as occurs in the standard LEP template and the draft LEP 2010. The DCP would be required to outline:

- A development structure plan for the site;
- A staging plan for the site that would permit and identify redevelopment of the site, within the current traffic generation permitted within the current zoning;
- Trigger points for consideration of further development permitted under a residential zone, based on the completion of the bypass works associated with the land release areas of ‘The Rise’ and Cobaki.

The DCP would be subject to separate preparation, following making of an LEP amendment arising from this planning proposal. It is noted that the site is to be nominated as an urban release area and thus a development application may not be determined until such time as a DCP is adopted.

CONCLUSION:

The rezoning of No 61 Marana Street, Bilambil Heights (Royal Terranora Resort) from the current 6(b) Recreation under the Tweed LEP 2000 to a low density residential zone is broadly consistent with the requirements of the Department of Planning's *Guide to Preparing Planning Proposals*.

There is a range of additional information/studies that are required to be undertaken to ensure that Council may be confident in supporting and preparing a planning proposal.

The key issue of traffic generation and impacts on Kennedy Drive has been subject to an additional traffic assessment. This traffic assessment is based on a development hypothesis, which is considered to be inconsistent with the zone objectives. Thus there remains concern that this assessment may not be appropriate and that redevelopment of the site may increase the level of traffic generation on Kennedy Drive beyond acceptable levels, at this time.

It is proposed that the planning proposal may be able to proceed, subject to linking to a DCP for the site. The DCP should effectively provide staging of the redevelopment of the site linked to traffic generation and completion of the Kennedy Drive bypass.

It is proposed that any additional studies required to support the planning proposal be undertaken and that following their completion the amended planning proposal then be reported to Council seeking resolution to refer the proposal to the DoP for a gateway determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There are no legal implications.

Should Council be of a mind to proceed with the planning proposal as outlined, premised on the preparation of a DCP to manage the staging of the development, Planning Reform resources would be required to either prepare, or manage a consultant to prepare, the required DCP following gazettal of the planning proposal LEP amendment.

This is likely to require the full time equivalent of 0.25 - 0.5 staff resources over a 6-9 month period.

Council has a fees and charges structure to enable the application to be managed internally or through external consultants and ensures cost recovery.

POLICY IMPLICATIONS:

Nil

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Traffic Assessment for 61 Marana Street, Bilambil Heights, October 2010 (ECM 22968386)
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10 [PR-CM] State Emergency Services

ORIGIN:

Building and Environmental Health

SUMMARY OF REPORT:

From 1 July 2009 local government authorities were required to contribute to a newly introduced State administered fund to cover the costs of the NSW State Emergency Service. This report overviews the arrangements prior to the introduction of the levy and provides recommendations for moving forward.

RECOMMENDATION:

That:

- 1. Council advises the State Emergency Service that it intends to cease voluntary contributions from 1 July 2011 and seeks to enter into discussions to develop a memorandum of understanding with the State Emergency Service.**
- 2. Council officers prepare a draft memorandum of understanding between Tweed Shire Council and the State Emergency Service and report to Council for adoption prior to signing.**

REPORT:

Background

The NSW *State Emergency Service Act 1989* establishes the State Emergency Service (SES), defines its functions and makes provision for the handling of certain emergencies. The functions of the SES are to protect persons from dangers to their safety and health, and to protect property from destruction or damage, arising from floods, storms and tsunamis. They are the combat agency for these emergencies and co-ordinate the evacuation and welfare of affected communities. They carry out rescue operations and assist other emergency service organisations as requested.

Under the provisions of Section 17 of the Act NSW councils are required to provide (free of charge) suitable training/storage facilities and office accommodation to the standard determined by the Commissioner of the SES.

Within Tweed Shire there are two established SES Units, Tweed Heads and Murwillumbah.

Tweed Heads SES Unit

The Tweed Heads SES Unit is located at Lot 682 DP 41192, Pioneer Parade, BANORA POINT. It has occupied the site for approximately thirty two (32) years. It shares the site with a community arts group, Unlimited Arts.



Murwillumbah SES Unit

The Murwillumbah Unit relocated to its current site at Lot 1 DP 1092091 Riverview St MURWILLUMBAH in 2005 from the “old bakery building” behind the Murwillumbah Civic and Cultural Centre. It shares its facilities with the Murwillumbah Rural Fire Service (RFS) Unit.



The land for the Murwillumbah site was purchased by Council in 2004 for \$265 500 (excl. GST) and Council expended a further \$275 000 to extensively refurbish and extend the existing building. Funding for the project included subsidies from the SES and RFS.

Pottsville SES Unit

In addition to the above two Units a third Unit is currently being developed at Lot 508 DP 728257 Centennial Dr POTTSVILLE. A three bay shed has been built and the second stage will see the construction of a training, office and storage facility to be shared with the RFS already located on the site. The total project value is approximately \$150 000, of which Council has received a \$50 000 subsidy from the SES. Further contributions will be forwarded from the SES and RFS.



Emergency Service Levees

In November 2008 the NSW State Government announced that as of 1 July 2009 the NSW State Emergency Service (SES) would be brought under a similar contributory funding system as the NSW Rural Fire Service (RFS) and NSW Fire and Rescue (NSWFR) (previously known as the NSW Fire Brigades) and to be administered by Emergency Management NSW. NSW legislation provides for the requirement of NSW councils, so too State Government and the Insurance industry, to contribute to each of the emergency service organisations funding schemes. NSW council's contributions were then amended

across the two services from 13.3% for the RFS and 12.3% for the NSW Fire and Rescue, to a standard 11.7% across the three emergency service organisations.

Tweed Shire Council's Emergency Service Levees (ESL) for 2009/10 and estimates for 2010/11 is therefore:

	2009/10	2010/11
NSWFR	\$326 652	\$326 652
RFS	\$125 145	\$136 120
SES	\$33 764	\$47 215
	\$488 561	\$509 987

Emergency Service Levy – NSW Fire and Rescue

The ESL contribution for the NSWFR is based on the total estimated expenditure for each Fire District and apportioned accordingly between the State 14.6%, affected local governments 11.7% and insurance companies 73.7%. Fire Districts are constituted under the provisions of the *Fire Brigades Act 1989* and are reviewed periodically. Local governments hold no further funding obligations to NSWFR.

Emergency Service Levy – NSW Rural Fire Service

The ESL contribution for the RFS is based on the total estimated expenditure for each Rural Fire District which reflects the boundaries of each local government authority excluding those areas constituted under the *Fire Brigades Act 1989*. The roles and obligations of the RFS and each council are set out within a Service Level Agreement. Tweed Shire Council recently adopted a renewed agreement in July 2010. There are no further financial obligations outside of the Agreement.

Emergency Service Levy – State Emergency Service

Unlike the arrangements with NSWFR and RFS, the new ESL contribution for the SES is in addition to the existing statutory obligations of Council under the provisions of Section 17 of the *State Emergency Services Act* that requires a council of a local government area to provide (free of charge) suitable training/storage facilities and office accommodation. Standards for accommodation are determined by the Commissioner of the SES.

In addition to the ESL, and as detailed below, Council allocated \$311 760 to the SES in the 2009/10 financial year budget. This incorporated \$83 460 as voluntary contributions.

Council Expenditure - Last four (4) years and current year budget in support of SES Activities

	2006/07	2007/08	2008/09 ¹	2009/10	2010/11
Building Maintenance	\$2 780	\$8 000	\$10 550	\$9 400	\$37 020
Building Construction	\$75 980 ⁵	\$114 550 ⁵	\$144 220 ⁵	\$18 300 ³	\$135 500 ⁴
Plant Maintenance⁶	\$7 250	\$16 830	\$14 780	\$17 330	\$17 960
Plant Purchase & Replace't⁶			\$78 520	\$7 500	\$61 500
Operational Costs⁶	\$12 600	\$8 490	\$7 520	\$7 880	\$4 000
	\$98 610	\$147 870	\$270 370	\$60 410	\$255 980
Loan Repayments²	\$53 370	\$54 950	\$33 100	\$42 570	\$55 780
	\$151 980	\$202 820	\$303 470	\$102 980	\$311 760

Note¹: On 1 November 2008 the SES transferred its vehicular fleet to the ownership of Tweed Shire Council. Council agreed to cover cost of maintenance, insurance and fuel expenses and a 50% share in the purchase of new vehicles.

Note²: Loan repayments are costs incurred from the acquisition of land for the purpose of provision of accommodation for the SES as required under the legislation.

Note³: Stage 1 construction of Pottsville Unit (Does not include SES/RFS contributions)

Note⁴: Stage 2 construction Pottsville Unit and Stage 1 additions to Tweed Heads Unit (Does not include SES/RFS contributions)

Note⁵ Construction of RFS/SES Murwillumbah Units (Including RFS contribution \$110 000 & SES subsidy \$50 000)

Note⁶ Voluntary contributions

Voluntary contributions consisted of running costs of vehicles such as insurance, registration, vehicle maintenance, fuel and oils, 50% share in the purchase of new vehicles and allocations for future replacement. Council also contributes to the administrative costs of running the SES.

In April 2010 the SES further advised that the calculation of the SES contribution would change from 1 July 2010. Council's contributions would now be calculated on its population base and phased in over a five year period with increments of 20% per year until 2014/15. As such the estimates, based on current population, are as below:

	10/11	11/12	12/13	13/14	14/15
SES ESL Contribution	\$47 215	\$56 658	\$67 990	\$81 588	\$97 906

Phase Out of Voluntary Contributions

Prior to the introduction of the ESL Council assisted the SES through the provision of both statutory commitments and voluntary contributions. With the introduction of the ESL it was accepted there would be a period of transition to the new arrangements. To allow the SES to determine and implement its budgetary requirements the voluntary contributions in their entirety were continued into the 2010/11 financial year. However it is now deemed prudent to revise the voluntary contributions prior to the consideration of the 2011/12 budget.

As part consideration a review of other Northern Rivers Councils has revealed the following:

Kyogle Shire Council - Ceased voluntary contributions 10/11 and interprets Sec 17 provisions as only a requirement to provide accommodation needs to the local controller/headquarters and not units.

Lismore City Council – Reduced voluntary contributions from \$27 000 to \$17 000 in 09/10. Stays open to review at all times.

Richmond Valley Council – No voluntary contributions. Sec 17 obligations currently under review.

Ballina Shire Council – Provides for and maintains SES headquarters only. Some vehicles were also purchased, registered and insured by Council until vehicles are replaced.

Given that Council has continued voluntary contributions in parallel with the SES Emergency Services Levy for the last two years this report recommends that voluntary contributions cease as of 30 June 2011 and, furthermore, Council enters into a formal agreement with the SES regarding the occupation of its buildings detailing the responsibilities of each party and the arrangements for other assets Council holds an interest within. The final draft agreement will be reported to Council prior to adoption.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Initially the withdrawal of voluntary contributions will result in a net decrease in Council's financial contributions. This however will diminish as further incremental increases in the levy are applied.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

11 [PR-CM] Visitor Carparking at Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: PF4980/130 Pt2

SUMMARY OF REPORT:

In accordance with Council's resolution of 16 November 2010 advice has been received from Council's solicitors regarding options for the visitor carparking issue at No. 4 Second Avenue, Tweed Heads.

RECOMMENDATION:

That:

- 1. ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege**
- 2. The Owners Corporation for Strata Plan 35133 be advised in writing that Council is taking no further action in this matter and that the vehicles being parked on the driveway that is part of the common property not designated as visitor spaces either on the plans subject of the development consent or building approval is a private matter that can and should be dealt with by the Owner's Corporation for the Strata Plan.**

REPORT:

Council considered reports regarding this issue on 17 August and 16 November 2010. At the 17 August meeting Council resolved to seek advice from its solicitors regarding options for appropriate action for the carparking issue at Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads (SP35133).

Legal advice has been received dated 22 December 2010 and a copy is provided in the attachments.

The options provided in the advice are summarised as follows:

1. Issue an Order to provide the visitor carparking space as per the plans.
2. Request a s.96 amended application to delete the requirement for the visitor space.
3. Take no further action given the carparking exceeded the requirements that applied at the time the development consent was granted and that the issue is a private matter that can and should be dealt with by the Owner's Corporation.

Option 3 is recommended.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Option 1 is likely to result in legal expenses given it is unlikely the Order will be complied with.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. 17 August 2010 Council report and resolution (ECM 23643382)
 2. 16 November 2010 Council report and resolution (ECM 27500026)
 3. **Confidential Attachment** Marsdens Legal Advice 22 December 2010 (ECM 27500028)
-

12 [PR-CM] Legal Assistance Ballina Shire Council

ORIGIN:

Development Assessment

SUMMARY OF REPORT:

A request from the Local Government Shires Association of NSW has been received to assist Ballina Shire Council with legal expenses incurred as a result of a Class 4 Matter in the NSW Land and Environment Court.

RECOMMENDATION:

That Council declines to provide assistance with the legal fees and advises the Local Government and Shires Association of NSW accordingly.

REPORT:

A request from the Local Government Shires Association of NSW (LGSA) has been received to assist Ballina Shire Council with legal expenses incurred as a result of a Class 4 Matter in the NSW Land and Environment Court. A copy of the request from the LGSA and judgement are provided in the attachments. It is requested that Council contribute \$906.88. Ballina Shire's costs were \$90,000.

Ballina Shire Council received a development application to stockpile 100,000m³ of soil and rock on land that is adjacent to the Ballina by-pass road works that was surplus to those works.

The case related to whether the proposed development should be classified as designated development and therefore accompanied by an Environmental Impact Statement.

The Council contended that the development fell under Schedule 3 of the Environmental Planning and Assessment Act Regulations as an extractive industry.

The applicant contended that the stockpiling of soil and rock was not an extractive industry and as an alternate position argued that the stockpile was ancillary to the road works and therefore not an independent use that triggers the designated development provisions.

The Court via judicial review found in favour of the applicant that the stockpile was not an extractive industry and therefore not designated development. The Court determined that the stockpile did not involve an ongoing industrial process. The Court however did not consider the proposal to be ancillary development.

OPTIONS:

1. Contribute to Ballina Shire Council's legal fees as requested.
2. Decline to contribute to Ballina Shire's legal fees.

Whilst it is acknowledged that the NSW Environmental Planning and Assessment Act lacks clarity with many of its provisions that give rise to disputes such as in this example it is not considered that the case has broad significance to Council's activities. Additionally it is likely that Tweed Shire Council Officers would have interpreted the designated development provisions differently to Ballina Shire Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There is no legal budget for such contributions. The funds would need to be sourced via Council's Donations Policy.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. LGSA letter of request (ECM 27358500)
 2. Copy of judgment. SJ Connelly Pty. Ltd. v Ballina Shire Council (2010) NSWLEC 128 (ECM 27358502)
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13 [PR-CM] A Sustainable Population Strategy for Australia

ORIGIN:

Planning Reforms

SUMMARY OF REPORT:

The Department of Sustainability, Environment, Water, Population and Communities has released an Issues Paper entitled "A Sustainable Population Strategy for Australia" (hereafter referred to as 'Strategy') and is seeking comments by 1 March 2011.

At its meeting of 14 December 2010 Council resolved, in part, to include in the Community Strategic Plan (CSP) the establishment of a mechanism to determine the preferred population or environmental carrying capacity for the Tweed.

The CSP calls for action by Council in responding to the challenges of projected population growth, sustainable population, public transport, sustainable development, and seek additional support from both the State and Commonwealth Governments.

This report responds to the above resolution and provides an overview of the draft Strategy. It also further defines the correlations between the Strategy and current and proposed actions of Council enunciated in the Community Strategic Plan (CSP), and recommends that dialogue be entered into with the Government to seek support for local initiatives that relate to a locally relevant definition of 'sustainable population', and assistance in managing the impact of rapid population growth on the sustainable development of the Tweed.

RECOMMENDATION:

That Council endorses:

- 1. This report be forwarded to the Department of Sustainability, Environment, Water, Population and Communities as Council's formal response to the public exhibition of the issue paper "A sustainable population strategy for Australia"; deadline 1 March 2011; and**
- 2. Council continues to actively seek community views and co-ordinate input in any further consultation relating to the advancement of a national Sustainable Population Strategy.**

REPORT:

At its meeting of 14 December 2010 Council resolved:

“A. *That:*

1. *The Community Strategic Plan 2011/2021 be adopted in accordance with Section 402(6) of the Local Government Act 1993, and*
2. *In accordance with Section 402(7) of the Local Government Act 1993, a copy of the Community Strategic Plan 2011/2021 be posted on Council’s website and a copy made available to the Director-General of the Division of Local Government.*
3. *The ATTACHMENT 3 be treated as CONFIDENTIAL in accordance with Section 10A(2)(a) of the Local Government Act, 1993, because it contains personnel matters concerning particular individuals (other than Councillors). Accordingly, disclosure of the information is not in the public interest.*

B. *The following be included in the delivery program for the Community Strategy:*

1. *Council includes in the Community Strategic Plan that they will establish a mechanism to determine the preferred population or environmental carrying capacity for the Tweed.*
2. *Council recognises the international significance of this national iconic landscape and biodiversity and emphasis on protection is provided accordingly.*
3. *Council promotes a carbon reduced and ecologically sustainable economy.”*

This report responds to resolution B1, and provides an overview of the Department of Sustainability, Environment, Water, Population and Communities Issues Paper entitled “A Sustainable Population Strategy for Australia” (hereafter referred to as ‘Strategy’) and defines the correlations between the Strategy and current and proposed actions in Council’s Community Strategic Plan (CSP).

This report is divided into two sections:

1. A summary of the Issues Paper “A Sustainable Population Strategy for Australia”, and correlations with Council’s CSP, and
2. A proposed response to the public exhibition of the draft Strategy highlighting Council’s local initiatives through the Community Strategic Plan, a request for dialogue and support for local initiatives relating to defining what a ‘sustainable population’ means for Tweed, and assistance in managing the impact of rapid population growth on the sustainable development of the Shire.

1. About the Sustainable Population Strategy for Australia

While the strategy is being prepared to fulfil a national agenda, many of the comments made in the Issues Paper and elsewhere have applicability to the Tweed, the community's expectations, and have the potential to open meaningful dialogue with national counterparts on a range of mutual issues relating to sustainable population growth and management within the Tweed.

As an introduction to the Issues Paper, the Minister for Sustainability, Environment, Water, Population and Communities, Tony Burke, points out that population issues play out at a national, regional and community level. They are also heavily entwined with other major drivers affecting Australia such as economic forces (domestic and international), the rise of Asia, technological advances such as the National Broadband Network and climate change.

Defining sustainability

Ecologically sustainable development has been defined in Council's LEP and many other sources as requiring consistency with the following four concepts:

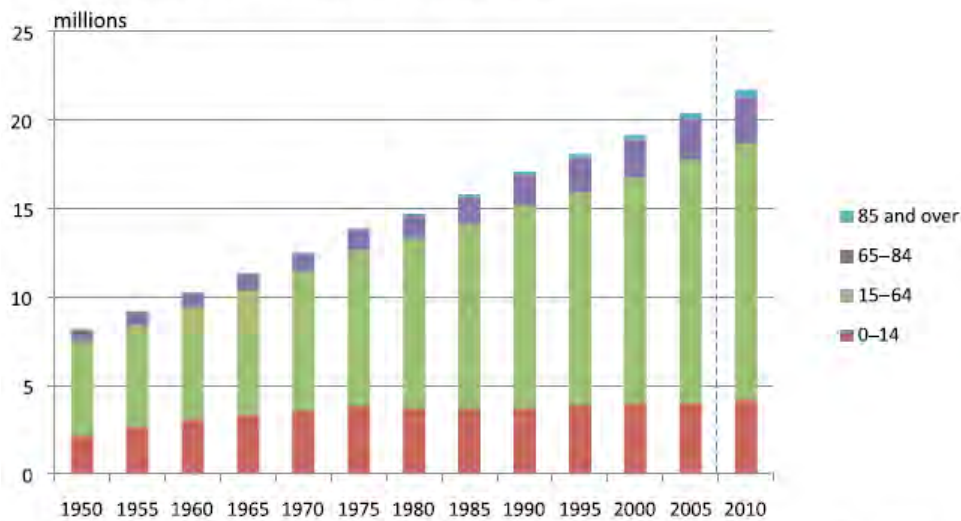
1. The precautionary principle;
2. Inter-generational equity;
3. Conservation of biodiversity and ecological integrity, and
4. Improved valuation, pricing and incentive mechanisms.

However, the Issues Paper provides a more succinct definition; "the maintenance or improvement of wellbeing now and for future generations".

Wellbeing, being a term aimed at capturing all of the economic, environmental and social aspects of people's lives; not a single measure, but rather a tool incorporating a wide range of indicators across each or all of the three aspects.

A sustainable population is suggested to be one where changes in the population's size, distribution or composition are managed to provide for positive economic, environmental and social outcomes.

Figure 1: Australia's population by age (1950–2010)



Source: 1950–2005: Australian Bureau of Statistics 3105.0.65.001 - Australian Historical Population Statistics, 2008–2010: projection from the 2010 *Treasury Intergenerational Report*.

As figure 1 shows, changes in Australia's population are inevitable as a result of fertility, life expectancy, internal movements, and migration levels. Such changes include not just the growth and overall size of our population, but importantly where people live and the composition of our population – our skills, age and cultural background, as well as food security.

The objective of a Sustainable Population Strategy will be to ensure that future changes in Australia's population (size, growth rate, composition and location) are compatible with the sustainability of our economy, environment and communities, and thereby ensure positive economic, environmental and societal outcomes.

The ultimate goal of the Strategy is to improve the wellbeing of current and future generations through more effective recognition and management of the impacts of population changes.

The Sustainable Population Strategy will also work to identify how government policy settings can support the significant growth which is already occurring in some locations in Australia. A strategy that enables growth in areas rather than nominating or prescribing new growth areas will be most effective, and be achieved by ensuring that growth areas are adequately served by economic and social infrastructure, and that environmental assets are protected and costs managed.

The Strategy will acknowledge that many of the practical levers available to governments to support changes in population are held at state/territory and local level. These include the host of infrastructure investment and planning decisions which effect local communities.

Local implications will differ again and be felt most directly in areas such as housing planning and transport infrastructure, while regional and community implications are also affected by state, territory and local government policy settings.

Understanding and responding to the varied ways in which our population is changing has different implications when planning at the national, regional and community levels, and is critical to the considerations that underpin an effective Sustainable Population Strategy.

The natural environment is highly valued by our communities and forms part of our national character. This couldn't be more so than for internationally recognised destinations such as Australia's Green Cauldron (refer to report to Council meeting of 15 February on the National Iconic Landscape Strategy), and world heritage national parks.

Australia is heavily dependent on its natural environment as it provides the ecosystem services (for example, natural pest control, soil fertility, and erosion regulation) and the resource base that underpins both our economy and lifestyle. Carefully planned, sustainable management of this natural capital is essential to ensure it remains healthy and available to current and future generations. The value of the natural environment of the Tweed cannot be understated in its ability to contribute to the sustainable development of the Tweed as defined in this Strategy.

A large area of State significant agricultural land has been mapped and protected by legislation, but the loss of other productive agricultural land through closer settlement, loss of markets due to the incremental diminution of production in the Tweed, albeit a location recognised for its highly fertile volcanic soils and excellent climate, is seen as a direct threat to the food security of the local area and region generally.

As the population changes, particularly in terms of its size and location, it has the potential to increase the pressure on our natural environment. Without appropriate management responses, this pressure may exacerbate a number of significant existing environmental challenges, such as managing the variability of key natural resources like water and valuable agricultural and horticultural land. Many of the necessary policy responses are levers shared by all levels of government.

Through the Sustainable Population Strategy, the Australian Government seeks to identify and take action in areas where population change may lead to unsustainable environment and natural resource management practices. While such action has not been identified at this stage, it does represent an opportunity for establishment of meaningful dialogue in attempts to secure funding and other support for protection and enhancement of the already recognised national and international natural resource assets of the Tweed. Council has the opportunity to invite Federal action in support of local initiatives to address sustainable population growth in the Tweed.

What is the sustainable population issues paper?

The Issues Paper, "A Sustainable Population Strategy for Australia" on exhibition until 1 March 2011, is seeking community input into development of the final Strategy which will be released in 2011.

Three independent advisory panels have provided advice to the government on a wide range of community concerns, which inform the Issues Paper and the reports that are appendices to it.

Copies of the Issues Paper and advisory panel reports are available at www.environment.gov.au/sustainablepopulation.

What will the Strategy cover?

While the strategy will consider the policies and programs required to ensure that we can shape and respond to changes in our population to build a sustainable Australia, the ultimate goal of the strategy is to improve the wellbeing of current and future generations through more effective recognition and management of the impacts of population changes. With population projections for the Tweed showing it to be twice the national average and one of the most popular destinations in New South Wales, the need to explore opportunities to capitalise on the 'programs' mentioned in the Issues Paper should be considered in a future strategy for sustainable population in the Tweed.

The sustainability of our communities encompasses many aspects of our daily lives, including our health, safety, education, social connectedness, and the infrastructure that supports us. State, territory, and local governments are at the heart of policy responses to many of these issues, and require more direct Federal support to overcome the limitations imposed by limited local resources.

Key threats

The three panel reports highlight some of the key areas where existing population pressures and future population changes may affect community liveability and wellbeing, including:

- access to adequate infrastructure, services and employment opportunities
- improving housing supply and affordability, and
- access to facilities which promote connections within communities, all of which are highly relevant to the future of the Tweed. While this is only a summary of key areas, the issues of food and water security must rank highly on both the local and national priorities.

While the Strategy will also identify additional initiatives required to support a sustainable Australia; and the Government has acknowledged a need to remain responsive in the face of pressures created by market and population drivers which are already affecting the Australian economy, environment and communities, it would be opportune to pursue dialogue with the government regarding how it can support local initiatives in defining what a sustainable population means for the Tweed, and to provide tangible responses once the needs identified in a definition and needs study.

Important population issues

There are a wide range of areas where existing population pressures and future population changes may potentially exert unsustainable pressure on our environment and natural resources. The three panel reports highlight the following issues concerning population change and sustainability:

- water resources;
- food security;
- biodiversity decline, and
- the impacts of climate change.

With the Tweed Shire, being a coastal locality with substantial low-lying land potentially affected by sea level rise, with one of the most rapidly expanding populations demanding

infrastructure and resources, with biodiversity recognised for its local and international significance, it a valley know for its climate and soil inductive of significant agricultural production, clearly drawing the Tweed into the key threats to sustainability both locally, nationally and internationally, identified by the Federal government, a good case could be made for requesting more direct input by the national government in developing the Tweed.

The three panel reports canvass a range of important population issues which have clear implications for the future sustainability of the Australian economy and again, are highly relevant to the future of the Tweed, and include:

- our prosperity;
- the ageing of our population, and
- the availability of labour (in terms of skills, location and numbers).

Population advisory panels

The Minister for Sustainability, Environment, Water, Population and Communities established three advisory panels on 15 July 2010 to help guide the development of a Sustainable Population Strategy for Australians. The panels were asked to look at population change through three different lenses - demography and liveability; productivity and prosperity; and sustainable development.

The advice received from the panels has formed the basis of the Government's sustainable population issues paper which was released on 16 December 2010.

Membership of the panels can be seen in Attachment 1.

Further information on the Sustainable Population Strategy for Australia can be found at www.environment.gov.au/sustainablepopulation.

Email responses can be made to: sustainablepopulation@environment.gov.au

2. Council's Response to Sustainable Population Strategy for Australia

The issues Paper for the Sustainable Population Strategy for Australia while obviously presented with a national focus and agenda, makes numerous references to the need for local action and the potential for involvement at the local level, not just through development of policy, but, the development of an understanding of the roles of and opportunities for involvement by each level of government.

Tweed Shire Council, in response to requirements under section 406(5) of the Local Government Act 1993 for a new integrated planning and reporting framework to replace the former Management Plan and Social Plan has recently completed a long-term Community Strategic Plan (CSP) and is in the process of preparing a Resourcing Strategy to support implementation of the CSP.

The framework has encouraged Council to bring its various plans together and engage the local community in discussions regarding funding priorities, service levels and preservation of local identity for a more sustainable future.

The focus of a sustainable future is a clear message from both the Sustainable Population Strategy for Australia, and Council's CSP. The threats and important population issues

facing the Tweed are a direct reflection of those issues identified by the three advisory panels established to advise government and inform the preparation of the draft national Strategy.

The linkages between these two documents is further explored below with attention drawn to similarities and opportunities for engagement with the Federal Government in support of the implementation of Council's CSP and the realisation of a sustainable population strategy for the Tweed.

About the Tweed population

The Far North Coast Regional Strategy 2006 identifies the Tweed as the fastest growing area of the Region, requiring an additional 19,100 dwellings for a projected increase in population of 22,620 persons by 2031; departmental projections place the Shire's population at around 131,900 by 2036.

The Far North Coast Regional Strategy 2006 also identifies the need for the protection of productive agricultural land from development pressures, as an imperative, stating that it is critical to keep farmland intact to ensure a viable agricultural industry in the future. The protection of the natural environment also receives special attention with a major outcome of the Strategy being the protection of high biodiversity value and productive natural resources.

The Tweed Urban and Employment and Land Release Strategy 2009 estimates that the population of the Tweed will increase at the rate of 43% to the year 2031, compared with the State average of just 20.7% for the same period.

Apart from such a dramatic increase in population numbers, projections of changes in the age distribution of the Tweed population are also of concern; with the median age projected to increase significantly from 48 in 2011, to 56 in 2031, again well in excess the projected State median age of just 42 in 2031.

Such dramatic changes in population number and composition will have highly significant impacts on the sustainability of the local economy, its ability to provide a labour force for local industries, and its ability to provide revenue for rapidly escalating demands for infrastructure and services.

The Tweed is also home of National Heritage parks and wilderness areas, and one of Australia's few internationally recognised iconic Australian Landscapes, in Australia's Green Cauldron, referring to the Mt. Warning caldera which is at the centre of the Tweed. With the clear impact of rapidly increasing populations and associated escalation in demand for infrastructure and services, the impact on the sustainability of this national and internationally recognised natural environment is a matter of highest priority.

These are all issues identified as key drivers and matters for action requiring attention by the Federal Government, and matters which should be brought to the attention of the appropriate national agencies and Ministers for their action.

Tweed Shire Council Community Strategic Plan 2011/2021

In 2010 Council embarked on a comprehensive community engagement process to seek the thoughts, concerns and expectations of the local community for the future of the Tweed. More than 400 public submissions were received, with the public feedback delivering strong messages about the priorities and objectives to be included in the Community Strategic Plan. The complete document can be seen in Attachment 2.

Sustainable development, public transport, safe and healthy communities and protecting the viability of agriculture were among the key issues that emerged regularly during the engagement process.

As key priorities, the community expects Council to:

- make decisions based on sustainability;
- address the issue of sustainable population;
- provide public transport – particularly rail services, footpaths and cycleways;
- protect village character;
- provide safe communities;
- provide health services;

strengthen the economy through:

- protection of agriculture/agricultural land;
- creation of employment opportunities;
- support of ecotourism;
- establishing Tweed as clean, green food bowl;
- provide public transport, and

care for the Environment through:

- protection of biodiversity;
- improved water management;
- more sustainable development/housing, and
- a sustainable population.

The expectations of the community for a sustainable Tweed are clearly reflected in the CSP which Council is now mandated to implement.

The community was quite vocal in expressing its desire for sustainable development of the Tweed, as the sample submissions below reveal:

1. If things are not sustainable it simple means they're doomed. Ensuring economic, social and environmental sustainability is imperative and the impact all decisions made should be linked to the joint sustainability of these three factors. The other point for sustainability is to ensure that Council has the correct mix of financial, human and material resources to be able to sustain and develop the type of community in which we want to live;
2. I think it's important that Council balances population growth, urban development and environmental protection;

3. For Council to do its job and meet our expectations it must have the resources and it must manage and plan for a balance between population growth, urban development and environmental protection to be able to make decisions based upon sustainability. To me the key to provide this capacity is open dialogue. As a community we must openly assist and guide Council and occasionally this means a bit of give and bit of take, sometimes tempering our passions for a more holistic result that meets the broad interests and sectors within the whole community, and
4. We have the privilege of living in one of the most ecologically diverse regions of the world. With the right vision we can keep this wealth for future generations. We have the local knowledge for sustainable growth based on ecotourism, local farmers markets, encouraging renewable energy technologies, best practice water management in any new building development etc.

A broader collection of the community's thoughts expressed in submissions to the public exhibition of the CSP can be seen in Appendix 3.

The issue of a sustainable population has been reflected on numerous occasions throughout the CSP. Apart from other initiatives to be implemented, Council will:

- contribute to State and Commonwealth policy on sustainable population;
- implement strategies to prepare for population growth in accordance with the Far North Coast Regional Strategy, and
- support improvement in health care service in the Tweed;
- promote the development of a regional transport plan, to improve public transport in the Tweed;
- implement planning policies for urban consolidation that will avoid loss of further agricultural land to housing development and address issues of traffic and transportation.

The following extracts from the CSP reinforce the linkages between the CSP and need for establishing meaningful dialogue with the federal Government:

- "1. The demand for infrastructure and services means councils will never be fully equipped with the resources to do everything desired for the well-being and prosperity of their communities and environment";
- "2. Many decisions about planning, development, transport and health services will be made outside Council's control by government, land owners and business. Resources are limited and Council cannot adopt policies that are beyond its financial capacity";
- "3. Council must therefore be an influential regional leader, partner and promoter, drawing together the skills and resources of other government agencies, businesses and community organisations";
- "4. Council must be a strong advocate for the Tweed and seek additional support from both the State and Commonwealth Governments, in addition to necessary investment from the private sector";

- “5. Council must respond to the challenges of predicted population growth. It will support any national or State review of sustainable population and in the meantime will facilitate population increases in accordance with the Far North Coast Regional Strategy”;
- “6. Council will fund and work with ‘Destination Tweed’ to attract business, grow employment and create tourism opportunities that take advantage of the Tweed’s natural environment and assets”;
- “7. Council will increase its focus on protecting, regulating and maintaining the natural and built environment”;
- “8. Council will address issues of sustainable population, public transport, sustainable development and housing and urban design by implementing strategies identified in the other themes”;
- “9. Council will promote and encourage sustainable and innovative agricultural practices”;

CONCLUSION:

The draft Sustainable Population Strategy for Australia establishes a key Federal initiative aimed at recognising and responding to the social, economic and environmental impacts of an escalating national population, yet within the confines of limited natural resources, infrastructure and services. The Strategy discusses at length the need for recognition at the local level and support of local initiatives through all levels of government.

The issues concerning population change and sustainability, identified in the Strategy are highly relevant to the future of the Tweed, and include:

- water resources;
- food security;
- biodiversity decline;
- the impacts of climate change;
- our prosperity;
- the ageing of our population, and
- the availability of labour (in terms of skills, location and numbers).

The Tweed Community Strategic Plan completed in 2010 reads as a mirror image of the draft Sustainable Population Strategy for Australia, with numerous references to the need for Council to consider as a high priority the issue of sustainable population and associated economic and environmental outcomes.

The CSP calls for action by Council in responding to the challenges of predicted population growth, address issues of sustainable population, public transport, sustainable development and housing and urban design, and seek additional support from both the State and Commonwealth Governments.

Recommendations to this report reflect these expectations of the community and intentions of Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Population advisory panels (Informed the Draft Strategy) (ECM 28174290)
 2. Tweed Shire Community Strategic Plan 2011/2021 (ECM 28174327)
 3. Sample responses received during public exhibition of the Tweed Community Strategic Plan 2011/2021 (ECM 28174291)
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14 [PR-CM] National Iconic Landscape Strategy

ORIGIN:

Planning Reforms

SUMMARY OF REPORT:

At its meeting of 14 December 2010, Council resolved:

"... that Council brings forward a report on developing a National Iconic Landscape Strategy to protect the National Iconic Landscape Values of the Tweed Shire including a review of the Scenic Landscape Evaluation Report."

This report responds to the above resolution and provides an overview about the Australian National Landscapes program, establishes a connection between it and the Tweed Scenic Landscape Evaluation 1995 as well as providing an update on the status of this latter plan.

The report concludes that whilst the Tweed Scenic Landscape Evaluation (TSLE) was pioneering at that time and has served as a valuable resource its ultimate use and application has been severely restricted because of the absence of a strategic application focus, which was beyond the scope of the initial study. For any practical implementation, the TSLE would need to be updated, and new planning controls produced in the form of a development control plan.

The officers estimate that an additional resource of \$60,000 would be required for the necessary strategic review of the TSLE.

It is therefore recommended that Council considers whether to allocate additional funds to this project in the upcoming review of the Planning Reforms Unit Work Program and related 2011/12 Management Plan and budget planning processes.

RECOMMENDATION:

That:

- 1. The report on National Iconic Landscape Strategy be received and noted;**
- 2. Council considers whether to allocate funding to the update of the Tweed Scenic Landscape Evaluation 1995 and to prepare a scenic landscape protection strategy / development control plan and revision of the landscape provisions of DCP A5, as part of the upcoming review of the Planning Reforms Unit Work Program and related 2011/12 Operational Plan and Budget processes.**

REPORT:

At its meeting of 14 December 2010, Council resolved:

"... that Council brings forward a report on developing a National Iconic Landscape Strategy to protect the National Iconic Landscape Values of the Tweed Shire including a review of the Scenic Landscape Evaluation Report."

This report seeks to:

1. Provide a summary of the Australia's National Landscapes program and its role in the identification of iconic Australian Landscapes;
2. Report on the status of the Tweed Scenic Landscape Evaluation 1995; and
3. Proposes options for a contemporary approach to managing the scenic landscapes of the Tweed with recommendations for development of a holistic scenic landscape strategy for the Tweed.

This report will differentiate between the broader focus of developing national tourism destinations under the Australia's National Landscapes program, and the need for Council to consider the more local requirement of protecting the Tweed's scenic and cultural landscapes, consistent with this national initiative and the Tweed Community Strategic Plan.

1. Australia's National Landscapes

In 2005, Tourism Australia and Parks Australia formed a unique partnership to create the Australia's National Landscapes program. Australia's national Landscapes program was developed to provide a long term strategic approach to tourism and conservation in some of Australia's most outstanding natural and cultural environments.

Australia's National Landscapes aims to achieve conservation, social and economic outcomes for Australia and its regions via the promotion of superlative nature based tourism experiences through partnerships between tourism and conservation to:

- promote Australia's world class, high quality visitor experiences;
- enhance the value of tourism to regional economies;
- enhance the role of protected areas in those economies, and
- build support for protecting our natural and cultural assets.

In June 2008, Australia's Green Cauldron (referring to the Mt Warning Caldera) along with other iconic landscapes was named a National Landscape at the Australian Tourism Exchange. Australia's National Landscapes are:

- Australian Alps;
- Australia's Coastal Wilderness;
- Australia's Green Cauldron;
- Australia's Red Centre;
- Flinders Ranges;
- Greater Blue Mountains;

- Great Ocean Road;
- Kakadu;
- Kangaroo Island, and
- The Kimberley.

Each National Landscape extends beyond local area boundaries and jurisdictions and is defined by the world class visitor experience on offer. This focus on Australia's natural and cultural assets and world class experiences has encouraged collaboration across wide stakeholder interests.

All National Landscapes must have effective locally driven management arrangements in place that are committed to the protection of Australia's distinctive natural and cultural assets. Local Steering Committees play a critical role in cooperative regional planning and in building and sharing knowledge across the region.

Tweed Tourism (now Destination Tweed) has been instrumental in the establishment of Australia's Green Cauldron as a National Landscape. A broad regional working group has been established including representatives from across community, including Queensland.

The recently appointed local working group comprises:

- Shane O'Reilly – O'Reilly's;
- Mitch Lowe – Lismore City Council;
- Jonathan Fisher – Currumbin Wildlife Sanctuary – Chair;
- Mark Johnston – NSW Parks & Wildlife Group;
- Emily Callahan – Gold Coast Tourism;
- Russell Mills – Northern Rivers Tourism;
- Sarah Workman – Byron Shire Council;
- Cathie Johnston – Scenic Rim Regional Council, and
- Tracy Armstrong – Destination Tweed.

Local engagement is complemented by a high level Reference Committee, jointly convened by Tourism Australia and Parks Australia with senior representation from the Australian Tourism Export Council, Ecotourism Australia, IUCN World Commission on Protected Areas, Tourism and Transport Forum, Australian and state government protected area and tourism agencies.

This national strategic approach to nature-based tourism seeks to differentiate Australia's iconic natural and cultural destinations from anywhere else. Australia's National Landscapes was recognised in the National Long Term Tourism Strategy as a successful model for aligning the plans and actions of government, communities and industry for destination development; however, there is no specific funding available from national sources for implementation of activities linked to this program.

With international focus now being placed on Australia's Green Cauldron, and the Tweed at its heart, not just as a tourist destination, but also a place of national scenic and biodiversity value, the need for a comprehensive review of Council's strategy for protection of the scenic and cultural landscapes of the Tweed is appropriate.

2. Tweed Shire Scenic Landscape Evaluation 1995

In recognition of the value which the community held for the landscape of the Tweed, as identified in the Tweed Tourism Strategy (1991), Council commissioned a study to facilitate the incorporation of scenic landscape values and management mechanisms into local planning processes.

The study's objectives were:

1. Identify and analyse the scenic landscape of the Tweed Shire to determine its aesthetic and cultural heritage value, with specific reference to the National Estate items within the Shire;
2. Identify ways of protecting view corridors of high value and their context from unsympathetic forms of development in both rural and urban areas, and
3. Provide methods for the management of the scenic value of the Shire as whole with priority given to those items listed on the register of the National Estate.

The study was expanded by the consultant, Catherine Brouwer Landscape Architect, to include the preparation of a detailed resource of the scenic landscape features and values of the whole Shire and formulation of a planning process and scenic landscape management strategy that addresses possible changes to scenic landscape that may arise from development proposals.

The Evaluation procedure established a classification of the Shire's landscape into:

- Landscapes of relative scenic quality;
- Scenic management zones;
- Scenic routes and viewpoints;
- Scenic features, and Townships and scenic cultural places.

The Evaluation also provided a scenic landscapes resource portfolio of:

- Data sheets – for each scenic district, scenic setting unit, including features, townships and scenic cultural places, and
- Maps of the scenic assessment, management zones and survey information.

While written more than 15 years ago, the following extracts from the document are possibly as pertinent today as they were then:

1. The Tweed's landscape values were classified as generally of a high scenic quality with its high diversity of landform and vegetation patterns, predominantly natural character and frequent views of water, either of the coast or rivers.
2. The natural landscape was identified as the major attraction of visitors to the Tweed Shire, with a long coastline that is visually diverse, encompassing river estuaries and mangrove wetlands of the Tweed River and Cudgen and Cudgera Creeks.

3. The natural landscape structure of the Tweed Shire was classified as being frequently open to wide views and being highly legible. The landscape plays a dominant and important role in the Shire's identity and image.
4. The long and rich history of the Tweed has been integral in the formation of the scenic landscape now enjoyed; a landscape that has been radically transformed through each stage of its European history.
5. The significant World Heritage landscape of the Scenic Rim, Border Ranges and Mt Warning National Parks are the dominant features of the west of the Shire, which highlight the cultural landscape by the contrast of wilderness forest and steep rugged terrain with the dairying pastures or canefields.
6. Recent or current landscape changes in our culture are also strong in our perception of the landscape's scenic value. New residential developments, highways and large scale commercial or tourist structures represent the rapid change occurring in the Tweed Shire and often the loss of naturalness and scenes recently valued.
7. The Aboriginal peoples of the Shire had and hold a special association with the landscape and its features. Knowledge of this spiritual association and significance can enhance the perception of scenic value even for non-aboriginal viewers.
8. The Tweed Shire is currently experiencing rapid and sizeable growth particularly in residential and tourist developments. Changing agricultural practices are also changing parts of the Tweed landscape. Generally, the parts of the landscape that are experiencing significant change are:
 - Coastal hillslopes;
 - Some rural valleys, and
 - Edges and setting of villages.
9. The characteristics that give the Tweed landscapes their scenic quality and prominence are amongst the major reasons it has a high sensitivity to change of its visual character and a loss of scenic quality. These characteristics are:
 - The openness of the Tweed and Rous River valleys and the wide, long views this presents;
 - The uniformity of the canefields and of the forested hillsides that accentuates any intrusion or clearing;
 - The steepness and closeness to view of the hillsides that form the prominent natural edge to many settings of villages and the view from roads, and
 - The location of scenic, historic villages and townships along main or tourist roads, with developments there occurring in the foreground of views of the village setting or landscape.
10. The Tweed landscape is also vulnerable through its proximity to the large and rapidly growing population centre of South East Queensland. Its scenic and predominantly natural landscapes are a contrast in character to much of south

east Queensland and present a highly attractive destination for visitors or a location for development.

More than fifteen years has passed but the perception of threats remains relevant, as do the recommendations for management: "State regional management plans can set the objectives for protection of the scenic landscape resource; however, specific planning measures and management is best carried out at the Local Government level, where community values and concerns can be identified and incorporated in planning provisions".

The report stated that "the Tweed Shire Council can protect and manage the landscape's aesthetic values, through formulation of a Shirewide scenic landscape policy, planning mechanisms and guidelines", and the basis for that was presented in the final evaluation document.

While the Evaluation presented a pioneering document at that time, it has become outdated, with much of the highly valuable resource material under-utilised, and the important planning outcomes not well enunciated, which has resulted in less effective management outcomes through strategic and regulatory (development assessment) planning.

Implementation of "Tweed Shire Scenic Landscape Evaluation 1995" by Tweed Development Control Plan

The Tweed Shire Scenic Landscape Evaluation Report was implemented as part of the development control process through the 2002 amendment to DCP 16 (Now DCP Section A5) Subdivision Manual, Section A5.4.2 "Urban Structure" which states:

"Landscape visual character

- All master plans must be accompanied by a "Scenic Impact Assessment"
- The neighbourhood and subdivision design should protect the landscape character of the locality by contributing to the scenic amenity of the landscape and the distinct identity of the area.
- Neighbourhood and subdivision design must protect the visual landscape character of the locality.
- Proposed subdivisions of more than 50 lots or subdivisions that include more than 15,000 m² of earthworks must include a "Scenic Impact Assessment Report" in the development application which shall:
 - Demonstrate that the proposal does not detract from and will contribute to the significant landscape characteristics of the site (see Tweed Shire Scenic Landscape Evaluation -1995, Catherine Brouwer)
 - Illustrate the nature and visibility of the proposal from both within the site and from significant viewpoints outside the site
 - Detail the local urban or cultural context in regard to township and scenic-cultural identity."

While the Brouwer Evaluation provided valuable resource material, the useability of the material and the ability to implement the intentions of the document through a comprehensive strategic planning, assessment and determination process, apart from the above clauses in DCP A5 has not been fully explored.

Where to from here?

With the notification of Australia's Green Cauldron as a National Landscape, and active participation in the promotion of the Tweed internationally through Australia's National Landscapes program, and the local working group, the opportunity exists to review and build upon the work of the Tweed Scenic Landscape Evaluation 1995.

A number of stages will be required to complete the project and would be contingent on appropriate levels of resourcing.

The following recommendations are presented as a holistic approach to the revitalisation of scenic landscapes as a significant feature of the Tweed and an important component of Council's planning and assessment procedures:

- (a) Review of the 1995 Scenic Landscapes Evaluation:** This should research innovations in methodology and opportunities to update the already extensive information provided, in a format consistent with current technology capabilities and Council's GIS requirements. This will involve liaison with the local working group and Destination Tweed amongst other local and regional partners. It is estimated that \$15-20,000 will be required to complete this task.

The Tweed Scenic Landscape Evaluation of 1995 noted that the study did not undertake a comprehensive cultural heritage mapping and recording, such a review would be required. The findings of such a review would provide essential resource material for development of other actions, such as a Scenic Landscape DCP as discussed below, with an estimated cost of \$35-45,000;

- (b) Development of Scenic and Cultural Landscapes Policy:** This should represent a clear enunciation of the community's expectations for the protection of the scenic amenity and character of the Tweed through a clear statement of intent in a Council policy for protection and enhancement of the Shire's scenic landscape. Consultation and engagement of the community in development of the policy will be integral for the development of a document which is relevant, well targeted, owned by the community, and efficiently applied by Council;
- (c) Review of planning mechanisms:** This would include the development of new strategies and regulations, and review of existing controls, for the integration of scenic landscape planning and assessment into Council's planning processes, including, but not limited to preparation of a scenic landscape development control plan, and integration into Council's broader planning framework, through which certainty about assessment and management of proposals likely to adversely impact the scenic landscapes of the Shire are properly identified, investigated and reported on.
- (d) Preparation of planning, assessment and review guidelines:** With the completion of the actions above would come the need for preparation of guidelines and information sheets on how the policy, DCP and other planning

strategies are to be interpreted and applied to individual circumstances; such user-friendly information is essential for the understanding by the broader community and for effective of application by all users.

- (e) **Consideration of regional and cross-border opportunities** to secure regional support and contributions for development of a regional approach consistent with the benefits proposed through the Australia's National Landscapes program and opportunities for funding from local and regional organisations, public and private.

CONCLUSION:

Apart from the Tweed hosting a natural environment with some of the highest biodiversity in Australia, it can also boast as being one of a select few iconic Australian landscapes under the Australia's National Landscapes program, both of which have brought significant international acknowledgement.

Prior to this international recognition, Council prepared a pioneering document called the Tweed Scenic Landscape Evaluation in 1995. Unfortunately, while presenting a wealth of information, the document in its format did not lend itself to ready adoption and integration into the broader planning framework of Council and as such has not resulted in the full recognition of the value of the scenic landscape to the character and tourism potential of the Shire.

This report recommends that Council considers whether to allocate funding to the a review and update of the Tweed Scenic Landscape Evaluation 1995 document as a first step in a holistic implementation of a scenic landscape strategy for the Tweed, consistent with the intentions of the Australia's National Landscapes program, as part of the upcoming review of the Planning Reforms Unit Work Program and related 2011/12 Management Plan and Budget planning processes.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The review of the Tweed Scenic Landscape Evaluation 1995 and or preparation of a scenic landscape protection strategy / development control plan would impact on Council's future budget estimates in the amount of \$60,000.

POLICY IMPLICATIONS:

The review of the Tweed Scenic Landscape Evaluation 1995 and or preparation of a scenic landscape protection strategy / development control plan would strengthen and uphold Council's current policy on environmental protection.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Catherine Brouwer 'Scenic Landscape Evaluation 1995' – Volume 1 (ECM 28034588)
 2. Catherine Brouwer 'Scenic Landscape Evaluation 1995' – Volume 2 (ECM 28035595)
 3. Catherine Brouwer 'Scenic Landscape Evaluation 1995' – Volume 3 (ECM 28037683)
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15 [PR-CM] Development Application DA10/0430 for the Erection of a Second Dwelling to Create a Dual Occupancy at Lot 494 DP 755740 No. 15 Adelaide Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA10/0430 Pt1

SUMMARY OF REPORT:

Council at its meeting of 14 December 2010 resolved as follows:

“RESOLVED that this item be deferred to schedule a workshop to include consideration of this Development Application in addition to Sellicks Lane.”

A Workshop was held on 25 January 2011 with Councillors and Senior Management to discuss the development application in more detail. There is no change to the officers' original recommendation resulting from the Workshop. A full copy of the original report to Council's meeting of 14 December 2010 is reproduced below.

Council is in receipt of a Development Application for the addition of a second dwelling to the subject site which has an existing residential use in order to create a detached dual occupancy. Councillor Skinner has requested that the development application be reported to Council.

The proposal is best defined as 'multi-dwelling housing' in accordance with the Tweed Local Environmental Plan 2000 (LEP 2000).

Multi-dwelling housing is permissible under Item 2 in the 2(b) Medium Density Residential zone, taking into consideration that it is a land use not included in Item 1, 3 or 4 of the zoning table. The character and form of existing residential development in the vicinity is also taken into account in the assessment of the proposal.

The proposed development has issues regarding access from Sellicks Lane, intensity of land use, non-compliance with mandatory controls and unsuitability for the site given the steep and established, predominantly low density residential character of the area. Total impact of the development could not be assessed given the lack of detail provided relating to issues such as overshadowing and cut and fill.

The addition of the proposed second dwelling represents an increase in floor space ratio for the site that exceeds the maximum allowed for detached dual occupancy development by 11.34% (77.52m²).

Good urban design outcomes are not achieved by the proposed development. The applicant's solution has been to locate a second, poorly articulated dwelling in a tight, physically constrained location where rear setback and deep soil zone provision is

compromised, proximity to adjacent dwellings is increased and primary vehicular access is unviable.

It is submitted that the proposal (detached dual occupancy) is a form of residential development within an established residential area that is unsuitable in scale, form and purpose. The proposal increases the density of the site beyond the zoning objectives and is considered to have adverse effects on the character and amenity of the area.

Should the proposed development be approved, it would set an unacceptable precedent for future development of steep residential areas due to its general non-compliance with development standards and criteria for the location of detached dual occupancies.

Following inspection of Sellicks Lane by Council's Traffic Engineer, Engineering Assistant Traffic and the Road Safety Officer, the following was clarified:

- Sellicks Lane is steep containing an existing poorly constructed driveway from Charles Street and an existing poorly constructed retaining wall (about 1.2m high) which provides access to an existing garage (13 Adelaide Street)
- The existing driveway and retaining wall appear not to have been constructed to professional engineering standards and most likely were not approved by Council
- The driveway and retaining wall were most likely built by the property owner who owns the garage
- Sellicks Lane from the retaining wall to Adelaide Street is unconstructed and very steep (>20%)
- While this remains a lawful point of access for the subject development, considerable upgrade works to the laneway are required in order for the proposed development to proceed.

The following engineering works would be required to be undertaken by the applicant in order to upgrade Sellicks Lane to an acceptable condition to support additional access points:

- Reconstruction of the retaining wall to a structural engineer's design and construction certification with pedestrian railing and warning (end of road) signage
- Reconstruction of the lane to Council's standards from Charles Street to the retaining wall
- Provision of a vehicle turnaround facility in accordance with AS 2890.1 suitable for a standard vehicle (5.2m length; 1.94m width) at the end of the driveway to be located totally within the lane road reserve. This may involve dedication of private land from 15 Adelaide Street to Council as road reserve.

The proposed development attracted two individual objections. The objections were focused on the impacts of the development upon adjacent properties, inconsistency with residential development controls and the unsuitability of access arrangements.

Having regard to the objections received, an assessment against Clause 8(1) of the Tweed LEP 2000 and non-compliance with Development Control Plans A1 and A2, the proposed detached dual occupancy is not considered suitable for the location and therefore the proposed development is recommended for refusal.

RECOMMENDATION:

That Development Application DA10/0430 for the erection of a second dwelling to create a dual occupancy at Lot 494 DP 755740, No. 15 Adelaide Street, Tweed Heads be refused for the following reasons:

- 1. The proposed development does not comply with Development Control Plan A1: Residential and Tourist Development Code (Part B), in particular:**
 - Rear setback
 - Rear deep soil zone
 - Impermeable site area
 - Floor space ratio
 - Overshadowing
- 2. The proposed development does not comply with Development Control Plan A2: Site Access and Parking Code, in particular:**
 - On-site car parking
 - Driveway access
- 3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

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

The Tweed LEP 2000:

- **Clause 4: Aims of this plan - – proposed density of the site is not compatible with the existing and future streetscape and amenity of the area**
 - **Clause 8(1): Consent Considerations - the proposal sets an unacceptable precedent for densification of steep residential areas**
 - **Clause 11: Zoning - the proposal does not achieve a good urban design outcome.**
- 4. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

The use of the rear portion of the subject site for the location of a second dwelling results in an overdevelopment of the site. This is considered an unacceptable outcome for the site due to its requirement for multiple variations to development controls, unsupported access from the laneway and impact upon existing residential uses within close proximity of the site.

- 5. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed LEP 2000 specifically as it relates to residential development controls and the objectives of the 2(b) Medium Density Residential zone.

REPORT:

Applicant: Ms MA D'arcy
Owner: Ms MA D'arcy
Location: Lot 494 DP 755740, No. 15 Adelaide Street, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$170,000

BACKGROUND:

The Subject Site

The subject land is described as Lot 494 DP 755740 Adelaide Street, Tweed Heads and has a total area of 683m². The site has a 15m frontage to Adelaide Street and is approximately 36m in length. The rear boundary has a length of 27.177m. The allotment is irregularly shaped in that it is not a regular, rectangular shape and it exhibits steep topography with an overall 22.5% gradient.

The site is located on the western side of Adelaide Street where the land rises steeply to Charles Street and beyond to Razorback Road providing easterly views over Tweed Heads and Coolangatta.

Current improvements include a three-bedroom two-storey single dwelling with frontage to Adelaide Street and a 12m setback to the rear boundary, the result of recent additions and alterations to a timber framed dwelling which was located on the site until 2009.

On-site parking and manoeuvring is provided for a minimum of three cars within a single garage at ground level and at the front of the dwelling underneath the deck that extends forward from the upper level towards Adelaide Street.

Remaining open space behind the existing two-storey dwelling where the proposed second dwelling is to be located amounts to an average area of 294m² constituting 12m (depth) x 24.5m (width), as indicated below.



A single, uncovered cement parking 'platform' is located to the rear of the site adjacent to the rear boundary and Sellicks Lane.



The site is located in an area generally characterised as low-density residential despite its current medium density residential zoning. Adjoining land to the south was developed as a detached dual occupancy in 2007.

Sellicks Lane

Sellicks Lane adjoins the northern boundary of the subject site. Sellicks Lane is a steep, narrow, Council-owned laneway that has historically linked Adelaide Street with Charles Street. The lower portion of Sellicks Lane (below) is unformed and currently not suitable for pedestrian access.



The upper portion of the laneway is a poorly constructed “driveway” that currently provides limited vehicular access from Charles Street to an approximate mid-way point down the hill to Adelaide Street.



A small concrete platform and a 1.2m poorly constructed retaining wall (that drops off sharply to the lower portion) are located at the mid-point.



Mid-way drop-off point

Currently, the laneway provides primary vehicular access to one (1) adjoining property at 13 Adelaide Street. The driveway was originally intended to service this single dwelling which, due to topographical site constraints, has never had vehicular access available from Adelaide Street. As such, a garage associated with the dwelling at 13 Adelaide Street is located adjacent to the small platform and retaining wall at the mid-point of the laneway (below).



Garage associated with 13 Adelaide Street

The laneway also provides secondary vehicular access to three (3) adjoining properties that contain single dwellings: 14 Charles Street (not currently utilised due to difficulty of access), 16 Charles Street and 15 Adelaide Street (subject site).



These properties have primary access to their properties and suitable off-site parking arrangements from either Charles or Adelaide Street.

The Proposed Development

Council is in receipt of a Development Application for the addition of a second dwelling to the subject site which has an existing residential use in order to create a detached dual occupancy. The application was lodged 29 June 2010.

Many of the issues identified during the assessment of the development application were raised by Council in an informal pre-lodgement meeting in August 2009.

The proposal includes:

- Construction of a three-bedroom, two-storey dwelling with single carport and decking within the rear setback of the subject site
- Associated earthworks, landscaping and retaining walls
- Primary access to the second dwelling from the secondary Sellicks Lane frontage
- Location of a rear deep soil zone adjacent to the southern boundary between the existing dwelling and the proposed dwelling
- Provision of services through the front portion of the site from the primary Adelaide Street frontage
- Pedestrian access to the proposed dwelling along the northern boundary of the site (as amended by the applicant in correspondence dated 25 October 2010 with the intention to replace a proposed pedestrian access within Sellicks Lane).

The proposed, benched dwelling is located adjacent to the rear boundary of the site. It has a long, narrow shape, unlike surrounding dwellings, with a consistent width of 4.4m for a length of 21m inclusive of the carport. The dwelling maintains a two-storey height from

ground level to the eastern (front) elevation, to the southern (side) elevation and to the majority of the western (rear) elevation.

Due to lack of detail provided with the application, it is not possible to ascertain the degree of cut and fill and resultant height / impact of retaining walls.

The applicant states that the development is proposed to be subdivided to create two Strata Titled lots and that Adelaide Street is considered to be the primary frontage for the proposed dwelling (as contained within Lot 494 DP 755740), not Sellicks Lane.

Site History

The subject site was most likely originally developed 50 or 60 years ago, consistent with adjoining development to the north at 13 Adelaide Street. A two-storey single dwelling occupied the site up until at least April 2009 (below) with access from Adelaide Street.



Previous dwelling at 15 Adelaide Street

The application for “dwelling additions & alterations including elevated deck located with primary & secondary setback” (DA09/0171) was lodged 2 April 2009 soon after the applicant acquired the property. Notification of the application was provided to four (4) adjacent property owners. No objections were received.

Plans for the upper floor consisted of three bedrooms, living rooms, media room, kitchen and ancillary wet areas. A 50.95m² deck was included to the front elevation. Plans for the ground floor consisted of a single garage and an internal storage area with internal stairs. Additional undercover car parking would be provided under the deck area.

Calculation of gross floor area (GFA) was limited to the upper level at 150.4m² with a floor space ratio of 0.22:1. A privacy screen was required for the southern end of the front deck.

A concession was granted in respect of the front setback to the deck during the assessment of the application due to the irregular shape of the front boundary and wide, not easily identifiable road reserve.

A similar concession was granted in respect of the northern side setback to the deck and the upper living area due to the likelihood of Sellicks Lane (as a secondary road frontage) only

ever being developed for pedestrian use at that point on the lower section in proximity to Adelaide Street.

An application to amend DA09/0171 was lodged 24 June 2009 (DA09/0171.04) after it became apparent to the owner that the original design was 'too costly to construct'. To reduce costs, a redesign of the roof (pitched roof to skillion roof), deletion of the internal stairs and minor changes to the external building materials was submitted for consideration.

The amendment was approved 13 July 2009.

A second application to amend DA09/0171 was lodged 14 December 2009 (DA09/0171.06) to fit out the lower floor of the dwelling by converting the storage area for use as a rumpus room, additional bathroom, study and sewing room.

An additional GFA of 88.47m² was added to the originally approved dwelling resulting in a total GFA of 238.87m² with a floor space ratio of 0.35:1. Total site coverage (including the 225.53m² area of the house and the deck) came to 33%. The impermeable site area (inclusive of roof, driveway, concrete paths and porous paving) totalled 319.4m² or 46.76% of the site, which was less than the maximum allowed of 65%.

The second amendment was approved 14 January 2010.

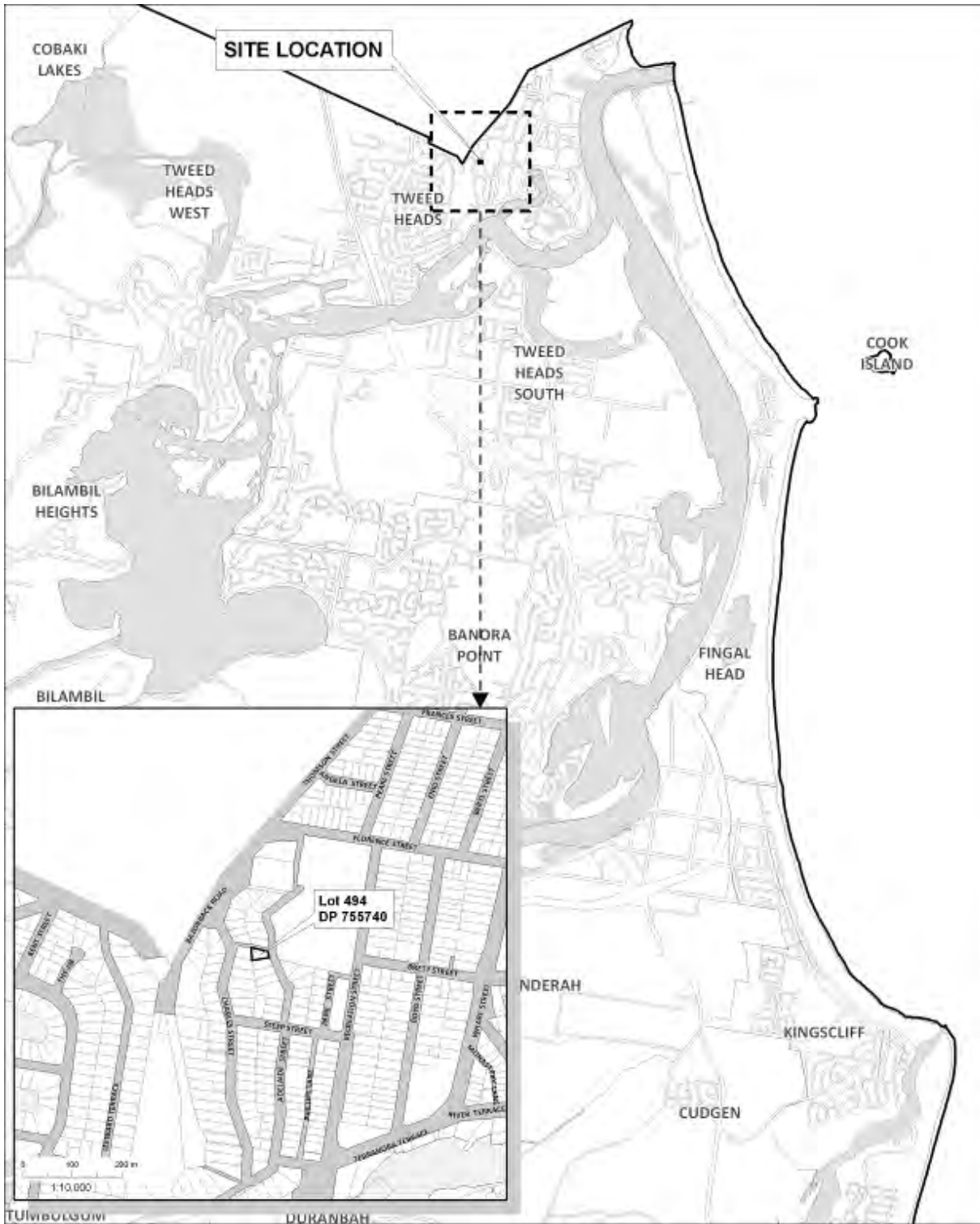
Public Submissions

The proposed development attracted two individual objections following exhibition of the application. The objections were focused on the suitability of the site given the impacts of the development upon adjacent properties, inconsistency with residential development controls and the unsuitability of access arrangements.

Conclusion

Having regard to the site's characteristics, the site history, the objections received following notification and an assessment against Clause 8(1) of the Tweed LEP 2000 the proposed detached dual occupancy is not considered suitable for the location and therefore the proposed development is recommended for refusal.

SITE DIAGRAM:



Locality Plan
 Lot 494 DP 755740
 15 Adelaide Street, Tweed Heads

<p>Disclaimer: A person's use of this site is for the purpose of the address of this site. Council does not warrant or accept liability for 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 purposes, losses, damages (including indirect or consequential damages) and costs) which may be incurred as a result of data being available to any user, and for any reason. This information is supplied for the general public and is not for commercial purposes and is provided only if it should be used for the safety or comfort of persons and prior to any transactions. This information is not to be used for trading. The information contained on this document creates valid law if it is only from the date of supply.</p>	<p>Calendar: 30 November 2010 10 Land and Property Management Authority (LPMMA) Tweed Shire Council Some sites shown should be considered appropriate only.</p>	<p>0 0.5 1.0 km 1:50,000 A4 Portrait 0.5m map - not suitable Map of Australia The Australian Geospatial Infrastructure Authority 2008. Map data of Australia, 2008.</p>	<p>Civic and Cultural Centre 1 Tallangulla Road Murrumbidgee NSW 2484 PO Box 835 Murrumbidgee NSW 2464 T (02) 6670 2838 (1300 292 672) F (02) 6670 2429 W www.tweed.nsw.gov.au E information@tweed.nsw.gov.au</p>
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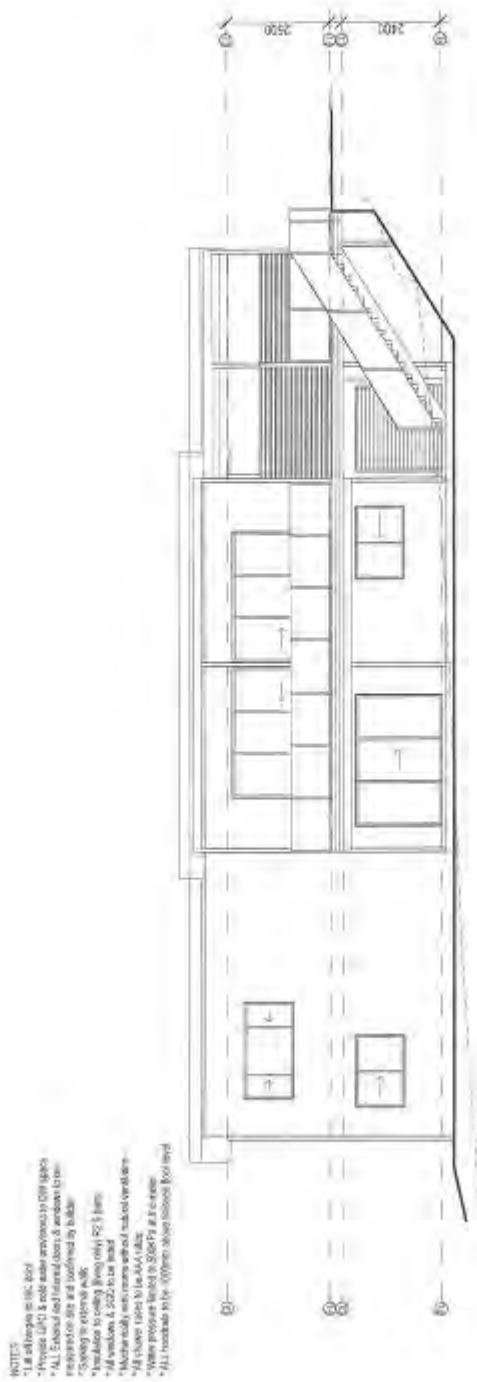
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 PROPOSED
 DUAL OCCUPANCY
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 15 ADELAIDE ST
 TWEED HEADS
 QLD 4270

CLIENT
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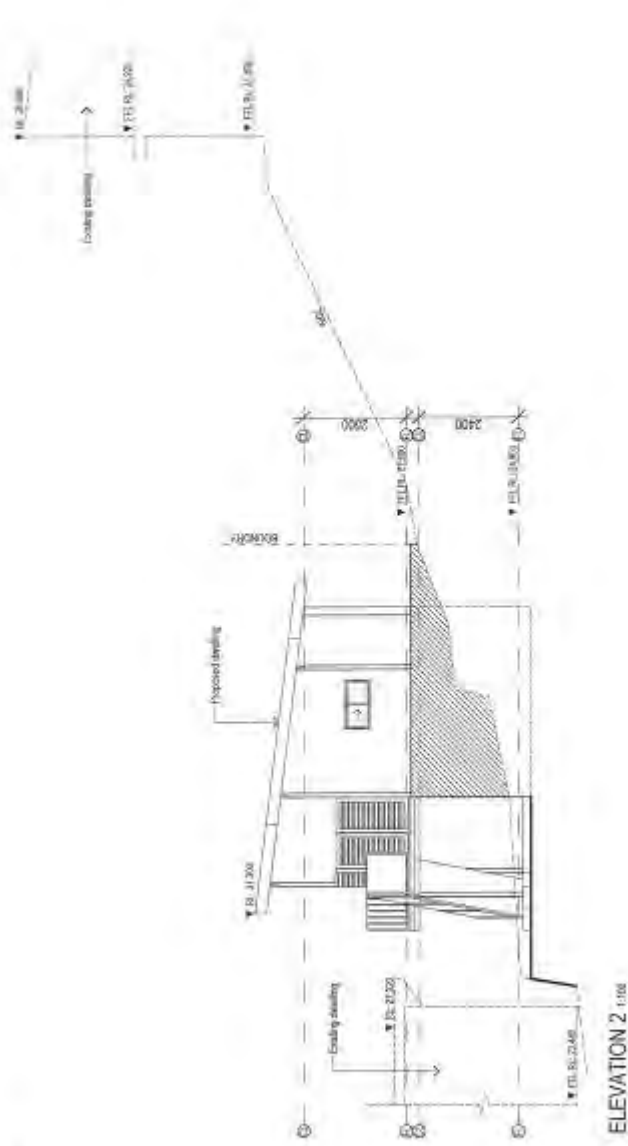
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 I 1:3906.25
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ELEVATION 1 1:100



ELEVATION 2 1:100

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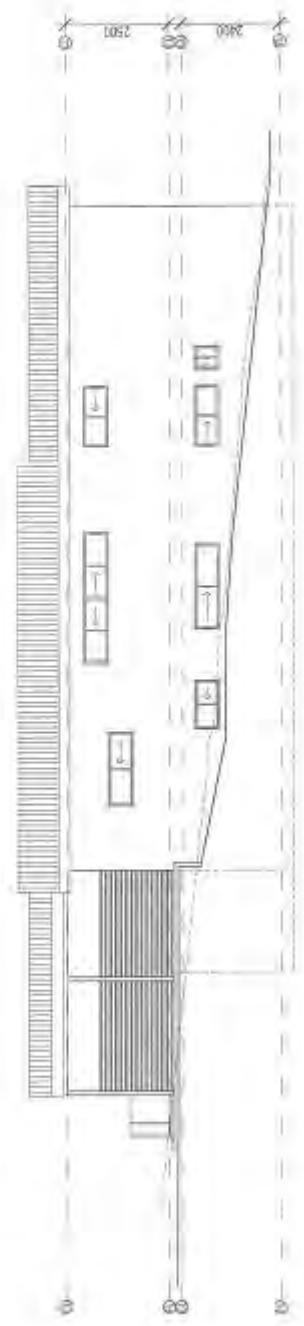
PROJECT
PROPOSED
DUAL OCCUPANCY
LOT 494
15 ADELAIDE ST
TWEED HEADS
NSW



DESIGNER	BRND
DESIGN DATE	05/03/10
DATE	17/11/2009
SCALE	1:100 @ A3
MARKING	M 1802/10 C 18/03/10
SHEET NUMBER	7 of 18
DWG NUMBER	*****

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- NOTES:**
- 1. In all stages to MC 60/1
 - 2. Provide GPO & cold water provision to all spaces
 - 3. ALL external and internal doors to be automatic fire
 - 4. All windows to be fire rated
 - 5. All windows to be fire rated
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ELEVATION 3 1:100



ELEVATION 4 1:100

REVISED
7730008
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ARCHITECT: **ARCHITECTURE**
 11/11/11
 11/11/11
 11/11/11

CLIENT: **M D WARC**
 PROJECT: **PROPOSED DUAL OCCUPANCY LOT 494 1A ADELAIDE ST TWEED HEADS 9281**

QUANTITY: **DN**
 ZONING: **RES2**
 CUSTOM: **YES**
 DATE: **11/11/11**
 SCALE: **A 1:1000/5000**
 SHEET: **E 104 OF 102**
 SHEET NO: **1040008**
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 SHEET NO: **1040008**

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SHEET NUMBER: **1040008**
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 SHEET NUMBER: **1040008**



MANDATORY CONTROL PLAN

SCALE 1:200

BRAD RUSSELL
BUSINESS DESIGN

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PH: 214.343.8888
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BRADSHAW
100 BRADSHAW, SUITE 1110, MOUNTAIN VIEW, TEXAS 75241
PROJECT NO. 100 BRADSHAW, SUITE 1110, MOUNTAIN VIEW, TEXAS 75241
DATE: 11/10/10
SCALE: 1/8" = 1'-0"
DRAWN BY: BRAD RUSSELL
CHECKED BY: BRAD RUSSELL
DATE: 11/10/10

CLIENT
MORACY

PROJECT
PROPOSED
DUAL OCCUPANCY
LOT 454
16 ADELAIDE ST
TWEED HEADS
NSW

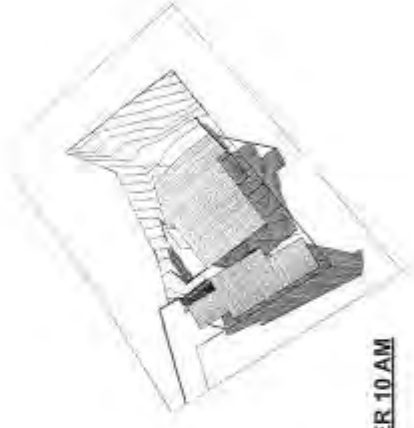
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1/8" = 1'-0"
REVISIONS
B: 11/10/2010
C: 11/10/2010

SHEET NUMBER
E OF 19
JOB NUMBER
4444

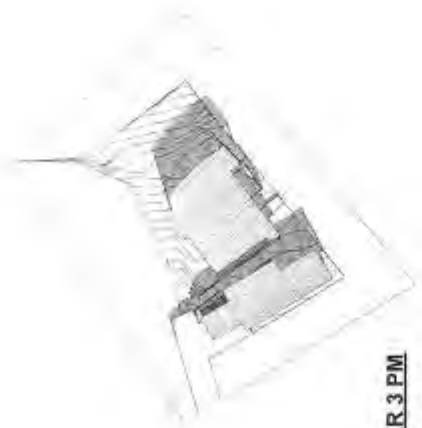
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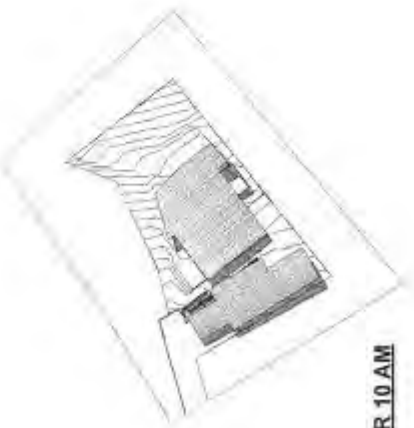
WINTER 3 PM



WINTER 10 AM



SUMMER 3 PM



SUMMER 10 AM

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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”.

The proposed development is not considered to meet the provisions of Clause 4 as the maximisation of density of the property is not compatible with the existing and future streetscape and amenity of the area.

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.

Although the proposal has little impact on biological diversity or ecological integrity, it does not provide a suitable area for the regeneration of vegetation to the rear of the site.

Clause 8 – Consent Considerations

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

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

Assessment of the proposal as outlined below in relation to Clause 11 results in the development being inconsistent with the primary objective of the 2(b) Medium Density Residential zone.

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

The proposed development is best suited to a larger, more regular shaped site with fewer topographical and access constraints.

Should the proposed development be approved, it would set an unacceptable precedent for future development of steep residential areas due to its general non-compliance with development standards and criteria for the location of detached dual occupancies.

Clause 11 - Zone objectives

The subject site is located within the 2 (b) Medium Density Residential zone.

The primary objective of the 2(b) Medium Density Zoning is *to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.*

Medium density housing is encouraged within the 2(b) zone to the north-east and east of Adelaide Street where 6 storey, 12 storey and 50m AHD height limits apply where the land is generally free of topographical constraints.

Secondary objectives of the 2(b) zone allow for non-residential development that supports the residential use of the locality, tourist accommodation that is compatible with the character of the surrounding locality and discourages the under-utilisation of land for residential purposes in this particular area.

It is not considered that the subject site currently under-utilises land for single dwelling purposes at a floor space ratio of 0.35:1 given the topographical constraints of the site.

The addition of the proposed second dwelling represents an increase from medium density with an increase in floor space ratio for the site that exceeds the maximum allowed for detached dual occupancy development by 11.34%.

Good urban design outcomes are not achieved by the proposed development. The applicant's solution has been to locate a second, poorly articulated dwelling in a tight, physically constrained location where rear setback and deep soil zone provision is compromised, proximity to adjacent dwellings is increased and primary vehicular access is unviable.

It is submitted that the proposal (detached dual occupancy) is a form of residential development within an established residential area that is unsuitable in scale, form and purpose. The proposal increases the density of the site beyond the zoning objectives and is considered to have adverse effects on the character and amenity of the area.

Clause 15 - Essential Services

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

The subject land is provided with town water, reticulated sewer, electricity and telecommunications services. However, the plans do not indicate how the second dwelling will access these services.

Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to two storeys. The proposed dwelling complies with this criterion at a maximum height of 6.5m from finished ground level.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The site exhibits Class 5 Acid Sulfate Soils (ASS) and is located within 137m of Class 2 ASS to the east. The Clause states that works within 500m of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1m AHD in that adjacent land are classified as specified works. However as the site is elevated, Acid Sulfate Soils are not considered a constraint for the proposed development.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B of the NCREP is applicable to this proposal as the subject land falls under the jurisdiction of the NSW Coastal Policy.

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies.
- (b) Council is also required to consider the Coastline Management Manual
- (c) A consideration of the North Coast: Design Guidelines is required
- (d) Public access to the foreshore must not be impeded.
- (e) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space.

The proposal is considered not to be inconsistent with Clause 32B (a), (b) (d) and (e) as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent public open space.

Consideration of the proposal raises concerns in relation to several design principles of the North Coast: Design Guidelines, as follows.

Four principles from the North Coast Urban Design Guidelines that apply to all future coastal development are:

- Ensure development responds sensitively to the density and scale of the existing settlement
- Ensure planning and development respond to the local topography and climate
- In multi-dwelling development, provide a street entry for each dwelling, avoid battle-axe, villa-style development and design appropriately to topography, climate and aspect
- Reinforce original subdivision patterns and streetscapes that characterise the settlement, maintain consistent setbacks from front and rear of lots in low density areas and continuous street and awning edges along core streets/perimeters of major blocks
- Encourage deep soil zones to centre of blocks to allow the cultivation of large trees with large canopies and to permit infiltration of rainwater to the watertable.

The proposed development substantially increases the density and scale of the existing locality west of Adelaide Street on a constrained site unsuitable for such an arrangement. It represents a departure from the original (low density) subdivision pattern of single dwellings on larger allotments and does not maintain a consistent rear setback in line with the predominant character of the locality.

A street entry (such as Adelaide Street) is not provided for the proposed dwelling. In addition, the deep soil zone (currently adjoining the rear deep soil zone of 16 Charles Street) is not proposed to be aligned with the rear boundary. It is proposed in the middle of the subject site adjacent to the southern boundary and between the existing and proposed dwelling. This placement does not enable deep soil zones to be located in the centre of 'blocks' ('blocks' meaning a consolidated block of residential lots, as illustrated below).



In this respect, the proposal is not consistent with (c) – a consideration of the North Coast Urban Design Guidelines.

Clause 43: Residential development

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

Considerations within this clause relate to satisfactory:

- density in relation to impact upon environmental features
- road widths
- access to services (and physical suitability of the land)
- design of the road network, and
- site erosion control.

This proposal impacts upon the above considerations in that the proposed density is unsuitable for a topographically constrained site and that site erosion control has not been addressed.

SEPP No 71 – Coastal Protection

The matters for consideration under Clause 8 of this SEPP have been addressed and summarised below:

The subject land does not have frontage to the coastal foreshore reserve and therefore many of the objectives from a) to p) do not apply to the subject site.

Of note is matter for consideration (d):

The suitability of the development and its type, location and design and its relationship with the surrounding area.

The proposal is not considered suitable in its type (detached), location, design and relationship with the surrounding area. Previous discussions in this report raise issues of non-compliance of the proposed development with the zone objectives of Tweed LEP 2000 and the provisions of Council's Development Control Plan A1.

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

The draft Tweed City Centre Local Environmental Plan 2009 was on exhibition in early 2010. The draft LEP decreases the density of the subject site from medium density to R2 – Low Density Residential with a minimum allotment size of 450m² per dwelling. Detached dual occupancy is a permitted form of residential development within this zone on sites with a minimum area of 900m². Floor space ratio requirements remain consistent with current DCP A1 provisions.

Discussion with the Planning Reform Unit has revealed that the purpose of the decrease in density is due to the topographical constraints of the site which are considered to be unsuitable for medium density development. Dual occupancy development would be prohibited on this steep 683m² undersized site under the draft LEP provisions. A 25% variation to the development standard would apply.

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

Tweed Development Control Plan

The applicant states in correspondence dated 25 October 2010:

“The assertion by Council that the proposal requires a significant number of variations to DCP Section A1 and A2 is entirely refuted. Council’s planning assessment is flawed and is based on subjective interpretations of the controls within the DCP.”

A1-Residential and Tourist Development Code

DCP A1 controls prevail over dual occupancy developments in low and medium density residential zones within the Tweed City Centre.

Council’s assessment of the proposal has been merit based and consistent with the assessment of dual occupancies located on dual public road frontages from which primary vehicular access is achieved exclusively for each dwelling (Design Control 3 – Setbacks – Front Setbacks - Control b.).

Mandatory Controls

Accordingly, an assessment of the proposal against DCP A1 revealed numerous inconsistencies (15) with the controls contained therein. When variations occur, the applicant is required to supply a ‘mandatory control plan’ that provides examples of compliant options for the site and offers justification for any departure from development standards.

The ‘mandatory control plan’ provided to Council with application documentation upon lodgement (attached) addresses only the rear setback variation and merely shows the overlapping of building envelope lines. It serves to demonstrate why the applicant has submitted a non-compliant proposal based on one fixed scenario that requires maximum building separation distances from the existing dwelling and a significant encroachment on rear setback requirements.

As such, the applicant has not demonstrated how and why mandatory controls cannot work on this site through the provision of a detailed design of a compliant proposal. This is contrary to the process outlined on Page 5 of DCP A1 (Introduction) titled “Mandatory Controls”.

The applicant states in the Statement of Environmental Effects that *“strict adherence to the rear setback control would result in the development being unworkable, and would prevent the intensification of development on the site.”*

It was suggested to the applicant in correspondence dated 1 October 2010 that mandatory controls may be met through further investigation of alternative attached dual occupancy forms. The applicant responded as follows:

“This concept is entirely unacceptable to the owners of the property, who recognise that a detached dwelling which capitalises on the views of the site

is the only option that is economically viable. It is considered pointless to prepare architectural plans for an attached dual occupancy as the owners are well aware that the economics of such a development would make such a development unviable."

Following a meeting with the applicant on 14 October 2010, Council conceded to the alternative view that Adelaide Street could be considered the primary frontage of the proposed dwelling and the subject site given that Sellicks Lane is unformed to the majority of the northern boundary of the subject site.

As such, a revised A1 assessment of the plans as submitted was undertaken in accordance with an amended interpretation of front setback controls considering the site as 'infill development' (Design Control 3 – Setbacks – Front Setbacks - Control c.).

Eight (8) significant variations to DCP A1 controls remain indicating that the proposal results in an undesirable overdevelopment of the site:

Suitable locations for dual occupancy housing

Control a.

- a. Dual occupancy developments on residentially zoned and must be located:
- on sites with a minimum area of 900m², or
 - if the land is within the 2(b) zone it has a minimum area of 450m²; and
 - on significantly regular, rectangular or square, shaped lots.

The allotment is not a 'significantly regular, rectangular or square' shaped lot. In addition, the subject site exhibits steep 'irregular' topography with a 22.5% gradient over the site and a 35% gradient on the rear portion of the site upon which the new dwelling is proposed to be located.

Control g.

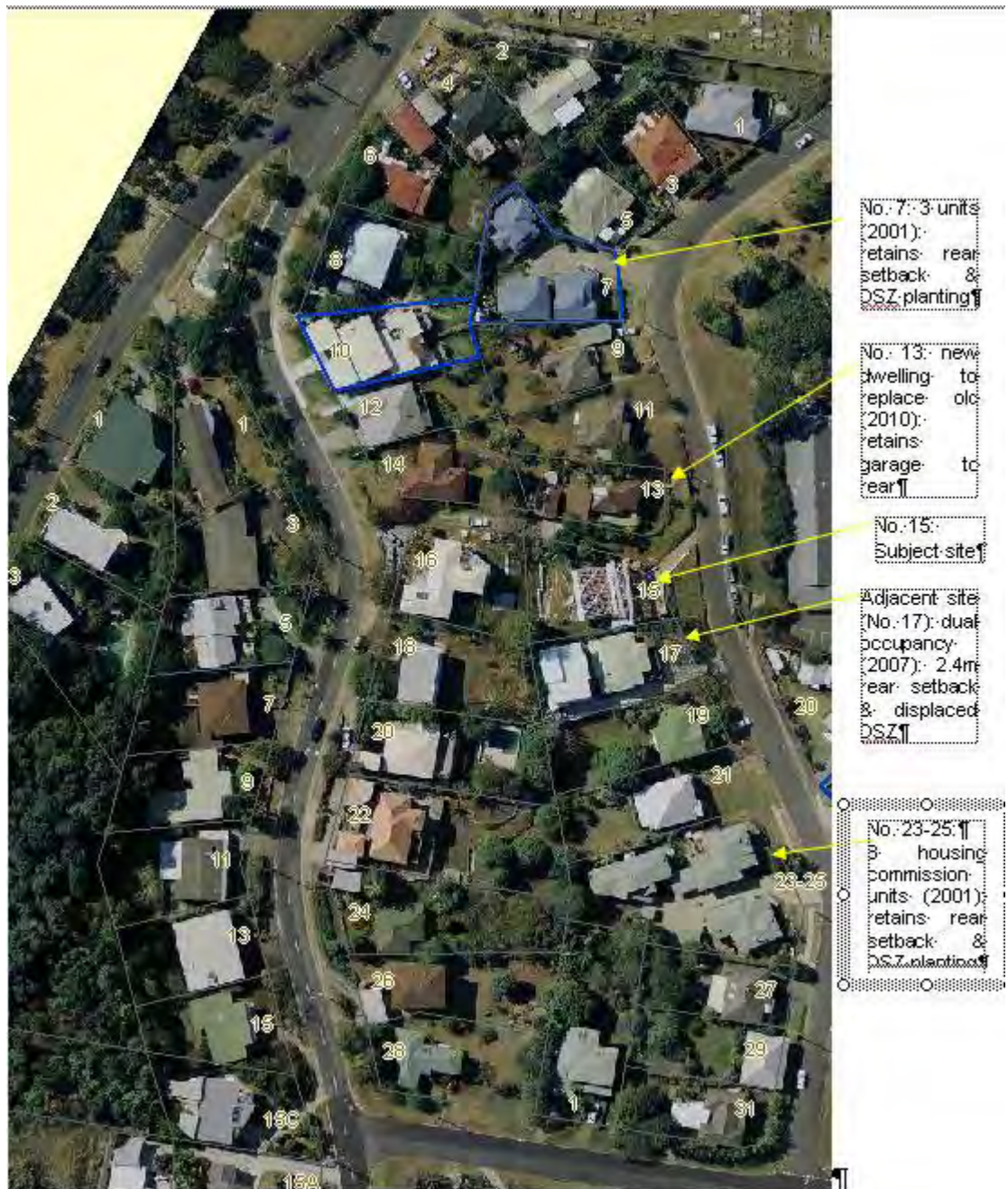
- g. Dual occupancy housing is to be compatible with residential streetscape character.

The proposed dual occupancy is only similar to a dual occupancy development adjacent to the south at 17 Adelaide Street that was approved in a similar, but less constrained configuration 22 November 2007 via DA07/0930 under separate controls, prior to DCP A1 coming into force in April 2008.

Review of the assessment of the adjacent dual occupancy development against prior controls (A1 – Multi Dwelling Housing) indicates that only three minor variations to standards needed to be considered (600mm encroachment into required 3m rear setback; 1m² exceeding the building envelope; 50m² shortfall of private open space) and that the proposal was considered consistent with the performance criteria. In addition, the overall Floor Space Ratio of the development was low at 39%. There was no requirement for a rear deep soil

zone. These standards are no longer considered acceptable for residential development.

October 2009 aerial imagery (below) indicates that the adjacent development is not compatible with the predominant residential streetscape character. The existence of the adjacent development, as an isolated case, cannot be utilised as justification or a precedent for the duplication of similar development that may breach controls within DCP A1 and in turn, set an undesirable precedent for future dual occupancy development within the locality, and even within the Shire. This is a variation to Control g.



Residential Streetscape Character

Deep soil zones

Controls b, c and g.

- b. All sites are to provide two Deep Soil Zones, one to the rear and one to the front of the property.
- c. Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 5.5m. Greater than 8m may be provided if desirable.
- g. Deep Soil Zones cannot be covered by impervious surfaces as concrete, terraces, outbuildings or other structures.

Calculation rules:

Two dimensions are used to measure deep soil zones; depth and width.

Depth: Depth is measured perpendicular to the boundary (front or rear) towards the centre of the site to the edge of the building footprint.

Width: width is measured as a percentage of the length of the boundary (front or rear).

In accordance with calculation rules (above), the required 48.64m² rear deep soil zone for this site is as follows:

- Width of 8m (30% of average width of 21.45m is 6.43m). The eastern frontage has a dimension of 15.74m. The western rear boundary has a dimension of 27.177m.
- Depth of 6.08m (18% of average length at 33.8m). The northern side boundary has a dimension of 31.046m. The southern side boundary has a dimension of 36.566. This is clear from both the site plan and the landscape intent plan.

Application details indicate the placement of a 'rear' deep soil zone with a total area of 45.2m² (8m width x variable length from 5m to 6.3m = average of 5.65m) in the centre of the site adjacent to the southern boundary.

It is clear from the calculation rules and all diagrams accompanying DSZ controls that the rear deep soil zone is intended to be located along the rear boundary. This is reinforced by a Design Guideline that states:

It is preferable that deep soil zones on the rear boundary extend along the full length of the boundary as this is generally where the opportunity exists to create or expand on a vegetation corridor between properties and is often an area where established trees and vegetation exists already.

The applicant states:

“There is no potential benefit to be achieved by locating the Deep Soil Zone at the rear boundary.”

The proposed dwelling is setback 1.54m from the rear boundary removing the opportunity for a rear deep soil zone to be located in the required location adjacent to the rear boundary and in association with the rear deep soil zone for 16 Charles Street. This is a variation to Control b.

The dwelling should be setback from the rear boundary by 6.08m for a width of 8m to cater for the correct dimensions of the rear deep soil zone. However, it can only cater for a depth of 1.54m. This is a variation to Control c.

The proposed structure is located over the rear deep soil zone which represents a variation to Control g.

Impermeable site area

Control g.

g. The maximum areas for impervious surfaces are:

- 70% of the allotment – On lot sizes less than 500m²
- 65% of the allotment – On lot sizes between 500m² and 750m² inclusive
- 60% of the allotment – On lot sizes greater than 750m².

Plans supplied in support of the proposed dwelling indicate a total impermeable site area (for the 294m² site at the rear of the lot) of 172.1m². Alterations to the existing dwelling on the subject site resulted in an overall impermeable site area of 319.4m², including the concrete paths at the rear of the lot.

Taking this into account (and granting a concession of 14.4m² for some of the concrete paths to the rear), an overall impermeable site area for the whole allotment is assessed at 477.1m² or 69.85% which exceeds the 65% maximum allowed on an allotment of 683m² by 33.15m² or 4.85%.

Rear setback

Control c.

c. The minimum rear boundary setback is 5m or the deep soil zone whichever is the greater. The minimum building separation distances must be met.

The proposal provides a consistent rear setback of 1.54m which is a 70% variation from the control standard (5m minimum) and a 75% variation (6.08m minimum) where the deep soil zone should be located.

A compliant rear setback consists of a 6.08m rear deep soil zone for a width of 8m with the balance of the rear setback at a minimum of 5m.

Floor space ratio

Control c.

a. The maximum FSR for Dual Occupancy housing is:

- 0.55:1 for attached dwellings except where the dwellings do not cover more than 50% of the site in which case the max. is 0.65:1.
- 0.45 for detached dwellings.

Council's records on file indicate that the gross floor area (GFA) of the upper level of the existing dwelling is 150.4m² and the GFA of the lower level of the existing dwelling is 88.47m², consistent with the most recent Section 96 amendment. This is a total of 238.87m² GFA.

The GFA of the proposed dwelling as indicated on the BASIX certificate as conditioned floor area is 146m².

Therefore, with a site area of 683m² and a total GFA of 384.87m² for both dwellings, the Floor Space Ratio is 0.5634:1 which exceeds the maximum allowable of 0.45:1 for detached dwellings by 11.34%. This represents an additional GFA of 77.52m².

Further possible variations

The applicant stated that they would not address outstanding issues until it was known whether Council would support the application. As such, an assessment of the following was not possible and may have resulted in further variations to development controls in addition to those identified above.

Overshadowing

Shadow diagrams provided for the proposal are not satisfactory. They are too small in scale, do not include 12 noon in winter or the context of adjacent buildings envelopes. The shadow diagrams indicate the potential for a significant degree of overshadowing to the southern adjoining allotment, including the area designated as private open space for Unit 2.

Amended shadow diagrams for June 21 9am, 12 noon and 3pm should be provided indicating the degree of overshadowing to adjacent allotments, in particular, the southern adjoining allotment at 17 Adelaide Street.

View sharing

A visual impact assessment has not been submitted in accordance with DCP B2 and therefore it is not clear as to what degree views are impacted. A preliminary assessment of the application indicates that the second dwelling will obscure some views to the adjoining properties behind and to the south of the subject site.

In accordance with DCP B2, a visual impact assessment is required with development applications west of Adelaide Street indicating graphically and by

use of photo-montages, the impact of the proposed development on the views from adjacent properties.

Topography, cut and fill

It is not possible to verify the degree of excavation within and beyond the building footprint from the level of information provided on the plans. Accurate spot levels, cross-sections, minimum and maximum amounts of cut and fill and proposed heights of retaining walls have not been provided.

It is recommended that a Geotechnical Engineering Assessment be carried out on site given the site's steep terrain and the proposed cut and fill. This information would be required prior to determining the extent of possible variations to Topography, Cut and Fill controls.

Landscaping

Proposed plantings include several species that are undesirable and / or cultivars. The landscaping plan needs to be amended to reflect more suitable local native species, as follows:

	Proposed	Amended
1	Wodyetia bifucata (foxtail palm)	Archontophoenix cunninghamiana (Bangalow palm)
2	Alpinia zerumbet varigata (ginger)	Alpina arundelliana or caerulea (native ginger)
3	Westringia jervis gem (dwarf native rosemary)	Westringia fruiticosa (native rosemary)
4	Lomandra bunyip (small mat rush)	Lomandra hystrix (slender mat rush)
5	Dypsis lutezens (golden canes)	Linospadix monostachya (walking stick palm)

BASIX

As per BASIX requirements, a skylight (located in the upper floor toilet which does not have access to natural light) is to be shown on the plans.

Waste management

A waste management plan is recommended for the proposed site for ongoing waste management, demolition of existing structures and construction waste management.

In particular, and in consideration of the degree of excavation proposed, the waste management plan submitted should include information to address Control b. of Waste Management (below).

- b. Excavation that will result in waste material having to be transported off-site must be minimised through the use of site response building design. Where practical excavated material should be reused on site.

A2-Site Access and Parking Code

In accordance with DCP A2, dual occupancy developments are to provide car parking as follows:

1 spaces per 1 bed, 2 per 2 bed or more plus provision for driveway parking of another vehicle

The existing dwelling has three (3) bedrooms. It provides parking for one vehicle within a single garage and driveway parking for a second and third vehicle. A total of 3 spaces is provided which is satisfactory.

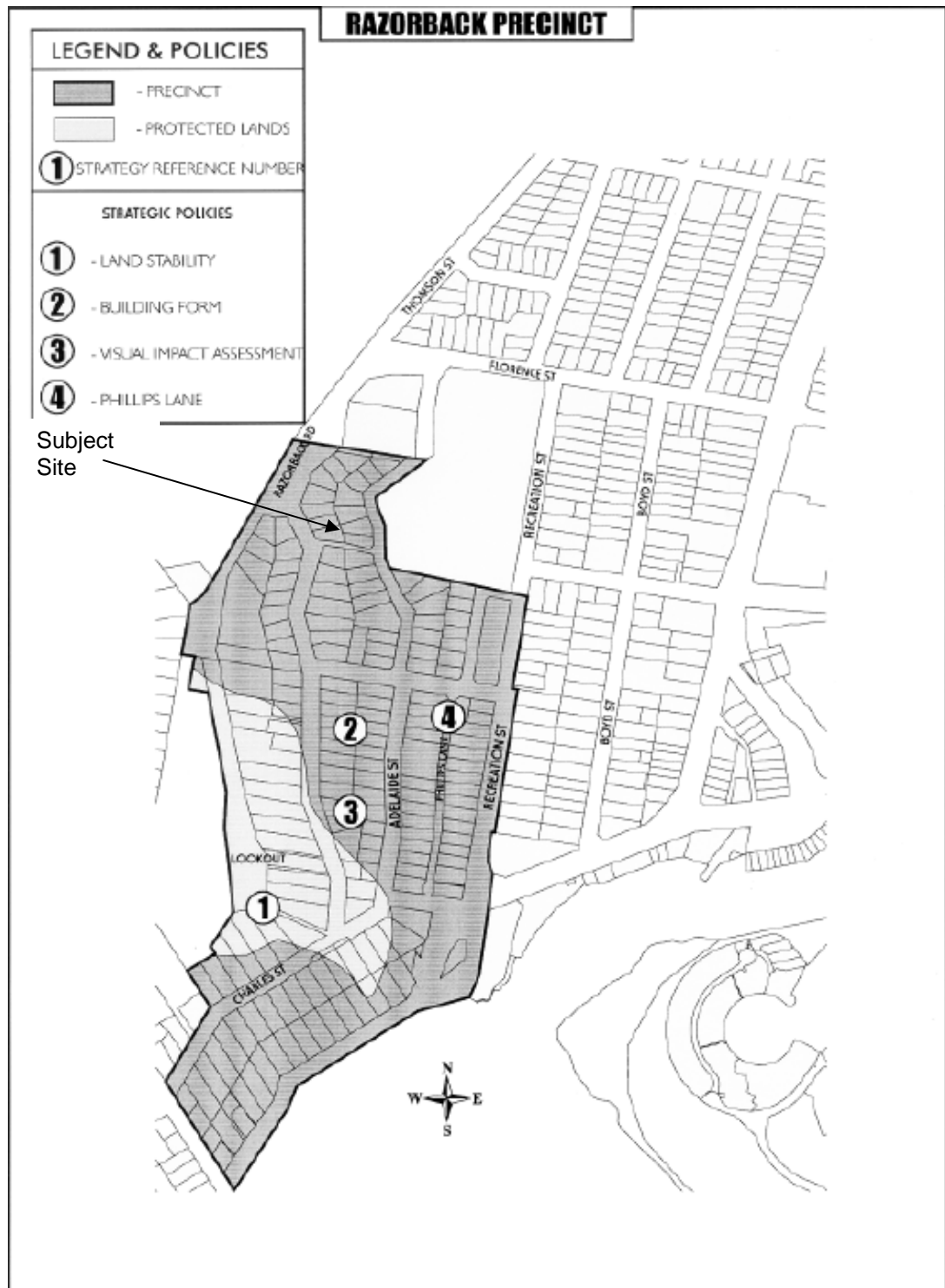
The proposed dwelling has three (3) bedrooms. It provides carport parking for a single vehicle and driveway parking for a second vehicle adjacent to Sellicks Lane. A total of two (2) spaces are provided. As such, the proposal does not meet the minimum requirement for the parking of 3 vehicles.

Proposed access to and egress from the site does not comply with Council's "Driveway Access to Property Design Specification". A detailed assessment of the inadequacy of Sellicks Lane as a primary access to the proposed development is outlined below in this report.

B2-Tweed Heads

The subject site is located north of First Avenue and west of Adelaide Street within the Razorback Precinct. It is currently zoned for medium density residential development and has a building height limit of two storeys. This precinct is characterised by its 'exceptional views' over Tweed Heads. The Precinct plans provide details on how the precincts are to be developed.





Objectives within the Razorback Precinct section of this DCP include (as specific to the site):

- facilitate the development of the area north of First Avenue as a predominantly medium density area (NB: not exclusively medium density)
- retain an attractive residential area – buildings that respect the slope of the land and allow retention of views from adjoining land
- ensure that development on visually prominent sites is relatively unobtrusive.

These objectives detail the broad planning intent for the precinct.

A visual impact assessment is required with development applications west of Adelaide Street indicating graphically and by use of photo-montages, the impact of proposed developments on the views from adjacent properties. The applicant has not supplied a visual impact assessment.

In B2.1.4 and B2.1.5 of DCP B2, the reader is directed to DCP Section A1 for the assessment of residential buildings less than four (4) storeys in height, as follows:

A1 – Multi dwelling Housing

Section A1 applies only to residential developments comprising of three storeys or less. For such development, section A1 is to be used in lieu of the Design Guidelines contained in Clauses B2.9 and B2.11 of this Section.

The applicant has relied on the Razorback Precinct's objective for the location of residential development of a predominantly medium density character to justify the location of a second dwelling on the subject site which results in an overdevelopment of the site with undesirable and unjustified variations to controls under DCP A1.

B2.7.4 states that development in the Razorback precinct may be supported only where the proposal is in accordance with the provisions of A1 – Multi Dwelling Housing (in addition to the general Vision for Tweed Heads, the precinct objectives and any relevant strategic policies for the precinct).

Draft B2-Tweed City Centre

Draft B2 – Tweed City Centre of the Tweed Development Control Plan 2009 will repeal the current DCP B2. It applies to the North and South Tweed City Centre. The subject site is within the northern area. The subject site is located within the "Ridgeline & Razorback Precinct". The draft DCP states:

The Ridgeline and Razorback precinct is located on the western edge of the city centre, generally west of Recreation Street. Development in the precinct is predominantly single detached dwellings stepping up the escarpment to take advantage of easterly views.

The development controls anticipate minimal changes to the precinct with a two storey height limit for the majority of the precinct and some medium density buildings on the flatter areas east of Adelaide Street.

The subject site is west of Adelaide Street and has an overall gradient of 22.5% (9m fall over 40m).

In addition, the draft DCP B2 states at 7.7 Dual Occupancy (under 7.0 Residential Development Controls) that:

The Tweed Shire Development Control Plan 2008 applies to dual occupancy development in the Low Density and Medium Density Residential Zone in the Tweed City Centre.

In summary, DCP A1 – Residential and Tourist Code controls prevail over dual occupancy developments in low and medium density residential zones within the Tweed City Centre.

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

Clause 92(a) Government Coastal Policy

The subject site is governed by the requirements of Clause 92(a) Government Coastal Policy. The proposal does not pose a threat to coastal processes.

(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

Pedestrian Access

The development application originally proposed a pedestrian footpath linking Adelaide Street with the mid-point of Sellicks Lane. On 2 September 2010, the applicant was requested to demonstrate:

- Pedestrian safety if the proposed footpath is to have shared access with an existing driveway
- That the longitudinal gradient of the footpath will comply with Tweed Shire Council's maximum grades, cross fall and safety standards eg. handrails.

The applicant addressed these matters by suggesting deletion of the proposed pedestrian pathway shown on Sellicks Lane with an alternative path proposed on the subject site adjacent to the northern boundary of the property. The applicant did not lodge amended plans to support this arrangement.

Earthworks

The application details state that all fill earthworks external to the building footprint will have a maximum height of 900mm and the proposed retaining walls to be a maximum of 1.2m in height. However, the plans provided do not illustrate the proposed retaining wall heights.

From the elevations provided, the ground floor level is proposed at RL 24.9m AHD. The proposed finished surface level externally is 300mm less (slab thickness) being RL 24.6m AHD.

The proposed retaining wall adjacent to the existing dwelling on site has natural surface levels ranging from RL 25m AHD on the northern property boundary to RL 23m AHD on the southern property boundary. Calculations from the drawings

provided indicate the proposed retaining wall to be 1.6m at the highest point, exceeding the maximum of 1.2m as stated in the application details.

As mentioned previously in this report, a Geotechnical Engineering Assessment should be carried out on site to verify the degree of proposed earthworks.

Access from Sellicks Lane

Sellicks Lane is a public laneway accessed from Charles Street with a width of approximately 6m. It is located on Council land and partially over an existing private driveway on Charles Street. It may at any time be used by members of the general public for either pedestrian or vehicular purposes.

The current condition of the existing laneway is unacceptable and does not meet Tweed Shire Council standards.

The applicant has ongoing use of Sellicks Lane only as a secondary vehicular access to the existing dwelling fronting Adelaide Street.

On 2 September 2010, the applicant was required to demonstrate how Sellicks Lane will:

- Meet Tweed Shire Council's standard road formation for Laneway access
- Allow larger vehicles such as trucks to turn around at the cul-de-sac
- Provide a safe cul-de-sac so that vehicles' wheels do not go over the edge of the road formation.

The applicant has not addressed these matters.

Following inspection of Sellicks Lane by Council's Traffic Engineer, Engineering Assistant Traffic and the Road Safety Officer, the following was clarified:

- Sellicks Lane is steep containing an existing poorly constructed driveway from Charles Street and an existing poorly constructed retaining wall (about 1.2m high) which provides access to an existing garage (13 Adelaide Street)
- The existing driveway and retaining wall appear not to have been constructed to professional engineering standards and most likely were not approved by Council
- The driveway and retaining wall were most likely built by the property owner who owns the garage
- Sellicks Lane from the retaining wall to Adelaide Street is unconstructed and very steep (>20%)
- While this remains a lawful point of access for the subject development, considerable upgrade works to the laneway are required in order for the proposed development to proceed.

The following engineering works would be required to be undertaken by the applicant in order to upgrade Sellicks Lane to an acceptable condition to support additional access points:

- Reconstruction of the retaining wall to a structural engineer's design and construction certification with pedestrian railing and warning (end of road) signage
- Reconstruction of the lane to Council's standards from Charles Street to the retaining wall
- Provision of a vehicle turnaround facility in accordance with AS 2890.1 suitable for a standard vehicle (5.2m length; 1.94m width) at the end of the driveway to be located totally within the lane road reserve. This may involve dedication of private land from 15 Adelaide Street to Council as road reserve.

Council has also received requests from the community and the State Member to provide a pedestrian link between Charles and Adelaide Streets along Sellicks Lane.

As such, any required access works must be compatible with the ultimate provision of a disabled person compliant and continuous pedestrian access within the lane.

The above access works are expected to add considerable expense to the proposed development and are not considered to be feasible in relation to the current proposal.

Any detail submitted by the applicant in relation to the upgrading of Sellicks Lane would be subject to further assessment in accordance with Council standards.

Contamination

An aerial photography check (1962, 1970, 1976) did not reveal any potentially contaminating activity at the site. A dwelling appears to have existed on the site since at least 1962. A check of the Tweed Topographical maps from 1974 and 1985 revealed no evidence of crops within the immediate locality.

Flora and Fauna

The subject site does not contain any vegetation of note. The adjacent Sellicks Lane contains a mature Poinciana Tree on the upper section.

Contrary to November 2009 aerial imagery, photographs submitted by the applicant 12 August 2010 indicate removal of mature vegetation from the lower portion of Sellicks Lane adjacent to the northern boundary of the subject site.

A site visit by the assessing officer on 22 September 2010 confirmed the removal of at least three (3) mature trees on Council's unformed portion of public laneway as per the circled area in the photograph below.



A photograph of the site / laneway obtained from the Building Services Unit (below) dated 26 May 2010 indicates that vegetation within the circled area was intact at that time.



Approval for the removal of vegetation on Council land was not granted within the development consent for DA09/0171 (additions and alteration to the existing dwelling at 15 Adelaide Street) or either of the two subsequent Section 96 amendments.

It is Council's policy that tree removal from road reserves may only be undertaken with Owner's Consent and by Council staff or contractors working on behalf of Council.

This matter has been referred to the Recreational Services Unit for further investigation.

(c) Suitability of the site for the development

Services

The applicant has stated that all required services to the proposed dwelling such as water, sewer, garbage disposal and stormwater are to be provided through the existing dwelling site fronting Adelaide Street.

The applicant has not provided further detail to support this arrangement.

Reticulated Sewer

Council's piped effluent disposal infrastructure runs down Sellicks Lane from Charles Street to a manhole adjacent to the rear of 14 Charles Street. It would be possible for further connections to be made to the infrastructure at this point in accordance with Council's standards.

Stormwater

There is no lawful point of discharge or connection to water supply within Sellicks Lane. The applicant would be required to supply a stormwater management plan that clarifies the proposed method of roof water disposal to Adelaide Street.

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

The application was not considered integrated and therefore not referred to public agencies for comment.

The application was notified to adjoining owners for a two-week period from 12 July 2010 to 26 July 2010 in accordance with DCP A11. Two submissions were received during the exhibition period objecting to the proposal.

Issues raised in the submissions by the two objectors include:

- Overshadowing
- Impact upon visual and acoustic privacy – noise impact precedent set with adjacent dual occupancy
- Blocking of views
- Proposed development and fencing as 'visual barrier'
- Inconsistency with DCP A1 with specific objection to minimal rear setback
- Lack of foresight of landowner when completing recent rear extensions to the existing dwelling to consider alternative renovation designs to allow compliance with rear boundary requirements
- Lack of consultation in relation to the Section 96 amendments to the original approval for the existing dwelling on the subject site

- Traffic / safety impact upon Sellicks Lane including traffic flow, pedestrian flow, visitor parking, construction vehicle access, congestion on Charles Street, illegal parking, use of lane by heavy vehicles
- Degraded nature of the Sellicks Lane road surface currently and following development
- Consideration of aesthetic appeal of 50 year old Poinciana tree (encroaches 500mm into the alignment of Sellicks Lane) necessary should any upgrade to Sellicks Lane occur.

	Applicant's Response	Council Assessment
1	There is a distance of over 3m between the proposed dwelling and the adjacent dwelling to the south.	The proposed dwelling is setback 1.622m from the southern boundary. The adjacent dwelling is setback 1.9m to 2.1m from the adjoining boundary. Overshadowing impact could be accurately demonstrated on an amended shadow diagram.
2	Ample access to light will be retained by the existing duplex.	An amended shadow diagram would confirm the impact of overshadowing to the southern adjacent development.
3	The proposed development contains only two high level windows on its southern facade.	Impact arises from the location of a 6.5m building height to the bedroom windows, patio and private open space of the adjacent dwelling.
4	The applicant agrees to install a privacy screen to the southern end of the upper floor verandah if required.	Council would condition for this to occur.
5	The variation to DCP A1 is fully justified.	Multiple variations to DCP A1 have not been justified.
6	Development consent for the existing dwelling was amended on two occasions: first being to alter the roof profile, second to install additional rooms within the lower floor.	As no objections had been received during the notification of the original proposal, minor amendments to the proposal not considered to impact upon adjoining properties were not notified.
7	It is doubtful whether views towards the cemetery and beyond to Coolangatta can be obtained from the adjacent property to the south.	A visual impact assessment provided by the applicant would verify the nature of views obtained from the adjacent property to the south.
8	The development will generate only a minor increase in traffic flow on Sellicks Lane.	The three-bedroom proposal generates an additional 6.5 trips per day via Sellicks Lane.

	Applicant's Response	Council Assessment
9	An increase of approximately 5 vehicle trips per day at the intersection of Sellicks Lane and Charles Street is not anticipated to result in any traffic safety issues	Traffic safety has been assessed by Council officers. It is not considered that intensification of the use of Sellicks Lane in its current condition is safe.
10	Safety of the Sellicks Lane access was not raised as an issue of concern in relation to the redevelopment of No. 13 Adelaide Street.	There was no change or intensification proposed to the primary vehicular access and use of Sellicks Lane in the assessment of DA10/0315 (demolition of existing dwelling; construction of two-storey dwelling /swimming pool).
11	As the laneway is not a thoroughfare, it does not, and should not be used by pedestrians in its current state.	Sellicks Lane may at any time be used by members of the general public for either pedestrian or vehicular purposes.
12	Traffic and deliveries during the construction period would not be excessive and would be of a short term nature.	The condition of Sellicks Lane is not suitable for such traffic, even of a short-term nature.
13	Ample on-street parking is available on Adelaide Street for worker's vehicles.	This would need to be outlined in a traffic management plan for the construction period and include delivery vehicles.
14	Opportunity was not available to reposition or reconfigure the original dwelling on the site.	There was opportunity to amend the original application twice. The lower floor area of the existing dwelling was capable of containing a separate dwelling unit.
15	The proposed dwelling has a low height particularly at the rear boundary	The proposed dwelling has a maximum height of 5.6m at the rear boundary.
16	There are minimal windows and openings at the rear of the proposed dwelling directing sound levels eastward, not towards the existing dwelling at the rear of the site	There are 3 windows to the lower level (rumpus, bathroom, laundry) and 3 windows to the upper level (bathroom, lounge and dining). Regardless of positioning of these windows, the proximity of the openings to the rear boundary and elevation of 16 Charles Street gives rise to some impact of an acoustic and visual nature.
17	Construction of the second dwelling will add to the modern appearance of the site	Construction of the second dwelling on the site will add to congestion on the site and on Sellicks Lane. It is not consistent with the future character of the Razorback precinct.

	Applicant's Response	Council Assessment
18	With regard to the Poinciana tree, it is not anticipated that any significant upgrading works will be required to Sellicks Lane.	Significant upgrading of Sellicks Lane is required that may impact upon the existing Poinciana Tree.

(e) Public interest

The issues raised within the submissions are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for intensive utilisation of steep residential land with unsuitable access for multi-dwelling purposes and therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.
2. Grant in-principle support for the proposal, and that the officers bring back a further report to Council with recommended conditions of development consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

The proposed development could potentially set an unwarranted precedent for over-intensification of residential land on topographically constrained sites.

CONCLUSION:

Having regard to the objections received following notification, an assessment against Clause 8(1) of the Tweed LEP 2000, the residential character of the area, the proposed density and the proximity of the development to adjacent residential properties the proposed use is not considered suitable for the location and therefore the proposed development is recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

16 [PR-CM] Development Application DA10/0842 for an In-ground Swimming Pool, Dwelling House Additions, Carport and Shed within 30m of Designated Road at Lot 3 Section 1 DP 30012, No. 663 Terranora Road, Terranora

ORIGIN:

Development Assessment

FILE NO: DA10/0842 Pt1

SUMMARY OF REPORT:

An application has been lodged to construct additions to an existing dwelling with attached carport, in-ground swimming pool and shed on the subject allotment.

The allotment fronts Terranora Road which is a designated road requiring a thirty metre building alignment under the provisions of part 5, clause 24 of the Tweed Local Environment Plan (LEP) 2000.

The Applicant has submitted an objection under the provisions of State Environmental Planning Policy (SEPP) 1 for the dwelling house additions to observe a building alignment of 15.28m and for an in-ground swimming pool to observe a building alignment of 9.49m.

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

The proposal also does not satisfy the mandatory controls of Tweed Development Control Plan (DCP) A1 in relation to the location of the swimming pool between the dwelling and the front property boundary.

The Applicant has lodged a submission requesting that Council accept these areas of non compliance with the DCP due to the particular circumstances of the application.

The SEPP 1 objection and the variation to the DCP mandatory controls are considered to be worthy of support.

RECOMMENDATION:

That:

- 1. Council assumes the concurrence of the Director-General of the Department of Planning for the approval of the SEPP1 objection to vary the thirty metre (30m) building setback requirement.**
- 2. Development Application DA10/0842 for an in-ground swimming pool, dwelling house additions, carport and shed within 30m of designated road**

at Lot 3 Section 1 DP 30012, No. 663 Terranora Road, Terranora be approved subject to the following conditions:

GENERAL

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

[GEN0015]

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

[GEN0115]

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

[GENNS01]

PRIOR TO COMMENCEMENT OF WORK

5. 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]

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

- (b) the person having the benefit of the development consent has:

- (i) appointed a principal certifying authority for the building work, and

- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- (c) the principal certifying authority has, no later than 2 days before the building work commences:

- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

8. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

9. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

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

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

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

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

14. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the

requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

18. 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]

19. 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]

20. Swimming Pools (Building)

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

[DUR2075]

21. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

22. 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]

23. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

24. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

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

[DUR2485]

25. Plumbing

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

[DUR2495]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0205]

27. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

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

[POC1055]

USE

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]

30. Swimming Pools (Building)

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

[USE1295]

31. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

REPORT:

Applicant: Mr P Wilson
Owner: Mr JW Cooper and Mrs MN Cooper
Location: Lot 3 Section 1 DP 30012 No. 663 Terranora Road, Terranora
Zoning: 1(c) Rural Living
Cost: \$75,000

BACKGROUND:

An application has been lodged to construct additions to an existing dwelling house with attached carport, in-ground swimming pool and shed on the subject allotment.

The land is zoned 1 (c) - *rural living* under Tweed Local Environmental Plan 2000, is located on the southern side of Terranora Road, has an existing two storey dwelling house and has a moderate slope downhill towards Terranora Road.

The allotment has frontage to Terranora Road which under the provisions of the Tweed Local Environmental Plan 2000 is a designated road.

The allotment has a maximum depth of 41.554 metres and encompasses an area of 878.9m².

Under the provisions of part 5, clause 24 of the Tweed LEP 2000 the proposed dwelling additions are required to observe a minimum building alignment to Terranora Road of thirty (30) metres.

The dwelling house is proposed to be set back 15.28 metres from Terranora Road and the in-ground swimming pool is proposed to be set back 9.49m from Terranora Road.

It is not physically possible for the proposed additions to the dwelling to observe a thirty metre set back on this allotment as the length of the allotment is only 41.554m and is subject to mandatory rear boundary setbacks under the provisions of DCP A1. In addition the existing dwelling house on the site is encroaching into the thirty metre setback.

The Applicant has lodged an objection to this requirement under the provisions of State Environmental Planning Policy No. 1 (SEPP 1) to consider a reduced building alignment of 15.28 metres for dwelling house additions and 9.49 metres for an in-ground swimming pool to the Terranora Road frontage of the allotment.

The SEPP 1 objection is considered below in this report.

Other allotments in this subdivision, which front Terranora Road, have been granted SEPP 1 objections for a building alignment of less than thirty metres as follows :-

- Lot 13 - dwelling setback 9.60 m from front boundary,
- Lot 14 - dwelling setback 15.755 m from front boundary,
- Lot 15 - dwelling setback 10.545 with pool between house & front boundary,

- Lot 16 - dwelling setback 8.55 m with pool between house and front boundary,
- Lot 17- dwelling setback 10m, bali hut setback 3.27m & pool between house & front boundary.

The proposal does not satisfy the mandatory controls of Development Control Plan A1 in relation to the location of the swimming pool within the primary building alignment. These matters are further considered below in this report.

SITE DIAGRAM:



Locality Plan

Lots 3 Section 1 DP 30012;
No. 663 Terranora Road, Terranora

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council and its representatives do not warrant or represent or hold any liability, directly or indirectly, in respect of any person's personal and financial interests, and all liability (including without limitation, liability in respect of all persons, losses, damages, including interest or consequential damages, and costs) shall be deemed to be waived by a user of this data. This information is supplied for the general public and is to be used for general information only. It should not be used for any other purpose and is not to be relied upon. The information contained in this document remains valid for 11 days only from the date of issue.</p>	<p>0 0.4 0.8 1.2 Km 1:50,000 @ A4 Portrait copy only - not for sale</p> <p>GDA The Geospatial Data Infrastructure Australia's Geospatial Information Authority</p>	<p>CIVIC AND COMMUNITY 3 Tweed Heads Road Murrumbidgee NSW 2484 PO Box 615 Murrumbidgee NSW 2484 T 1 (02) 6670 2400 F 1300 242 872 E 1 (02) 6670 2429 W www.tweedshire.nsw.gov.au E participation@tweedshire.nsw.gov.au</p>
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DEVELOPMENT PLANS:



EASTERN ELEVATION

WESTERN ELEVATION

NORTHERN ELEVATION

EXISTING DWELLING

COLORBOND SHEET ROOFING

SELECT CLADDING TO MATCH ORIGINAL

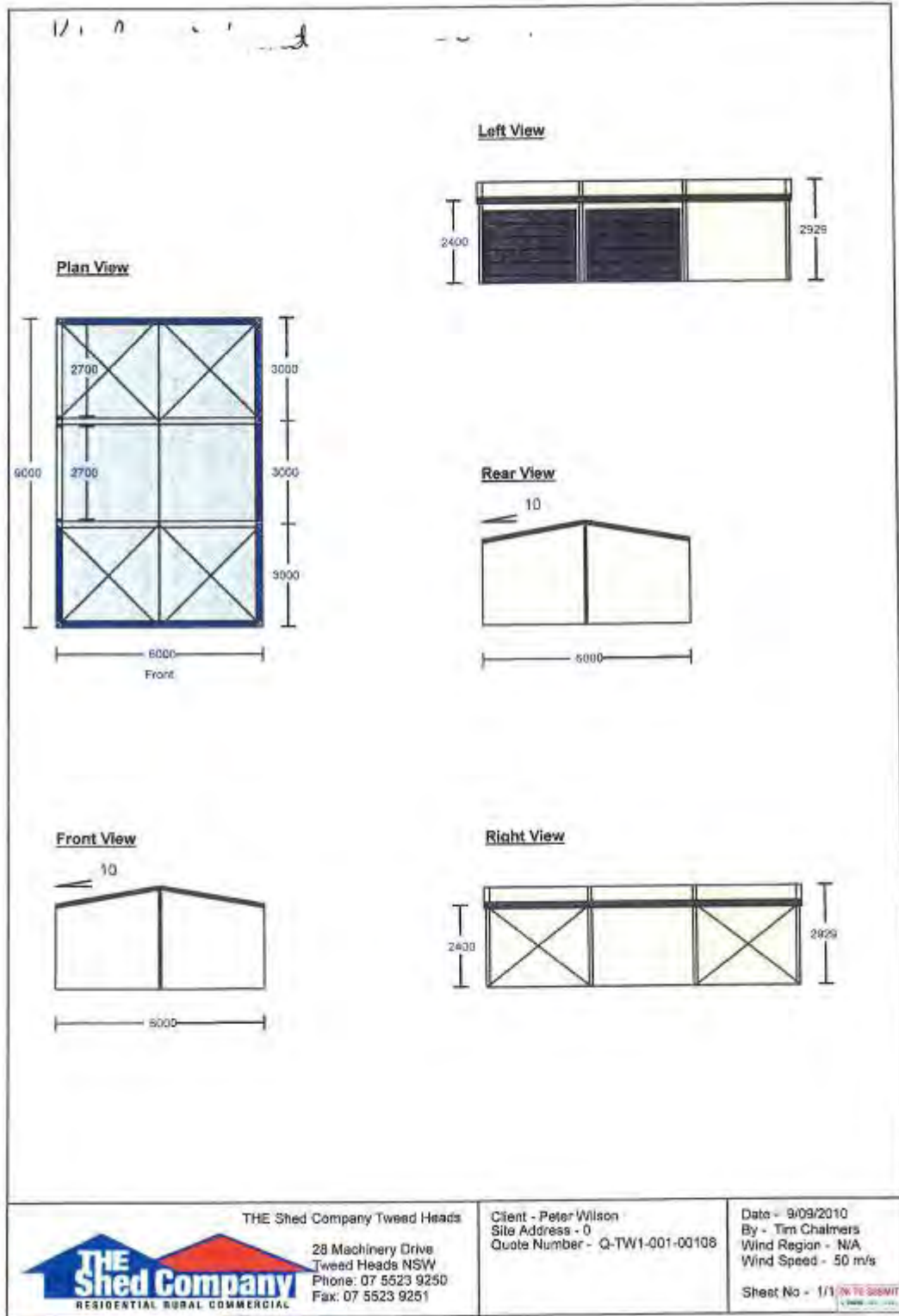
EXISTING DWELLING

EXISTING DWELLING

SELECT STAINLESS STEEL WIRE BALUSTRADE

SELECT STAINLESS STEEL WIRE BALUSTRADE

CLIENT	PETER WILSON	SCALE	1:100
PROPERTY DESCRIPTION	PROPOSED EXTENSIONS ON LOT 3 SEC 1 D.P. 30012 No. 663 TERRANORA ROAD, TERRANORA.	REF.	G2742
		DATE	20.12.10
		SHEET 4 OF 7	
GAVIN DUFFIE CONTRACT DRAFTSMAN		26 MURRABA CRES. TWEED HEADS, 2485. PH.-07 55368203 FAX.-07 55362800	



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal satisfies the aims of the plan.

Clause 5 - Ecologically Sustainable Development

Proposal satisfies the objectives of this plan.

Clause 8 - Zone objectives

The proposal is consistent with the primary objective of the zone.

Clause 15 - Essential Services

All required essential services are available and adequate.

Clause 16 - Height of Building

The dwelling additions will be two storeys which is permissible in this area. The proposed swimming pool will be in-ground. The height & scale of the proposal is consistent with surrounding development.

Clause 17 - Social Impact Assessment

Approval of the proposal is considered to be unlikely to result in any negative social impact issues.

Clause 35 - Acid Sulfate Soils

Allotment is not affected by acid sulfate soils.

Other Specific Clauses

N/A

Specific Clauses

Clause 24 – Designated Roads.

Terranora Road is a designated road which requires a thirty metre building alignment. The proposal does not satisfy this requirement and a SEPP 1 objection has been lodged in this regard.

The SEPP 1 objection is supported and is discussed below.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

N/A

Clause 15: Wetlands or Fishery Habitats

N/A

Clause 18: Extractive industry

N/A

Clause 29A: Natural areas and water catchment

N/A

Clause 32B: Coastal Lands

N/A

Clause 33: Coastal hazard areas

N/A

Clause 36: Heritage items, generally

N/A

Clause 36A: Heritage items of state & regional significance

N/A

Clause 36C: Conservation areas of state & regional significance

N/A

Clause 36D: Advertising heritage applications

N/A

Clause 43: Residential development

N/A

Clause 47 Principles for Commercial and Industrial Development

N/A

Clause 66: Adequacy of community and welfare services

N/A

Clause 75: Tourism development

N/A

Clause 76: Natural tourism areas

N/A

Clause 81: Development adjacent to the ocean or a waterway

N/A

Clause 82: Sporting fields or specialised recreation facilities

N/A

SEPP No. 1 - Development Standards

A SEPP 1 objection has been lodged against the requirement under clause 24 of the Tweed LEP 2000 for the dwelling house to observe a thirty (30) metre building alignment to Terranora Road, which is a designated road.

The Applicant has made the following submission in support of their request for a SEPP 1 variation:

"This objection accompanies a development application for dwelling additions, swimming pool and shed at Lot 3 Section 1 DP 30012 – 663 Terranora Road, Terranora.

The objective of this Development Standard include:

- *To control development along designated roads.*

The proposed dwelling additions will be located a minimum of 15.28m from the alignment of Terranora Road and the pool 9.49m and therefore the development does not comply with the 30m setback requirement. It is submitted that the development standard requiring a 30m setback is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *There are other similar structures located along Terranora Road on other properties that also encroach within the 30m setback from the designated road.*
- *The existing house is also within the 30m setback being approximately 19m.*
- *The verandah addition will improve the functionality of the house by improving the interconnection and allowing an improved external living area.*

- *The verandah will also allow an observation area of the swimming pool.*
- *The pool is at ground level and is not likely to be seen from the road.*
- *It is unlikely that the structures would significantly compromise traffic safety along Terranora Road.*
- *No additional vehicular accesses are proposed. The existing access arrangements will be retained.*
- *The subject lot is only 41m deep so full compliance is not achievable.”*

For the above reasons, Council is requested to uphold the objection and grant consent to the development application proposed.”

Application of the 30m setback requirement to dwelling houses is an anomaly as it was not intended to apply to small lots fronting roads with low travel speeds.

The site has a maximum depth of 41.554 metres and therefore enforcing a thirty metre (30m) set back to Terranora Road would result in an unusable building envelope.

Other dwellings houses and associated structures in this subdivision, which front Terranora Road, have previously been granted SEPP 1 objections for setbacks less than 30 metres.

The floor level of the dwelling will be substantially above Terranora Road and therefore it is considered that traffic using Terranora Road will not be impacted on by the proposed development in relation to sight lines or other distractions nor will traffic have an adverse impact on the dwelling.

The objectives of part 5 (Roads) clauses 22, 23 and 24 of the Tweed LEP and a response to each objective is as follows –

Clause 22 – Development near designated roads

- **To protect and improve the capacity, efficiency and safety of designated roads.**

Response – The existing vehicular access to the subject site off Terranora Road will be retained and therefore the capacity, efficiency and safety of this road will not be compromised.

- **To prevent development on designated roads that would detract from the scenic attractiveness of the area of the Tweed.**

Response - the proposed development will comprise residential dwelling house additions which will be consistent with the rural residential character of the area.

This subdivision was approved to permit the construction of single dwelling houses and due to the physical limitations of the allotments it is impractical to enforce a thirty metre building alignment to Terranora Road.

The proposal will therefore not have an adverse impact on the scenic attractiveness of the area.

- **To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.**

Response - the dwelling house will be set back 15.28 metres from Terranora Road with an open roofed verandah being the closest part of the dwelling to the roadway.

Due to the slope of the allotment and the level of the allotment above Terranora Road the dwelling house will be at a level considerably above Terranora Road which will lessen the impact of traffic noise on the proposed dwelling house additions.

Clause 23 – Control of access

- **To control access to designated roads.**

Response – no additional vehicular access is proposed off Terranora Road. The existing vehicular access will be retained.

Clause 24 – Set backs to designated roads

- **To control development along designated roads.**

Response - the allotment exists in an area which is zoned for rural residential use and in a subdivision which was specifically created for residential dwelling houses therefore the proposal is considered to be consistent with the objectives of the zoning of the area.

SEPP No 71 – Coastal Protection

The proposal is located outside the boundary of the SEPP and therefore this has not been assessed as part of this application.

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

There is no draft planning instrument currently in force for this proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling house additions are proposed to observe a building alignment of 15.28m to Terranora Road which is a designated road under the provisions of the Tweed LEP 2000 (see SEPP 1 comment above in relation to the reduced building alignment).

A swimming pool is proposed in the front yard to benefit from the northern aspect and it is considered that this location is the preferred location for such a structure as there is no other more suitable location on the site.

Other allotments in this subdivision which face Terranora Road have swimming pools located in the front yard. Notwithstanding that these were constructed prior to the implementation of DCP A1 it is considered that a precedent has been set in the immediate area and that the orientation of the allotments is conducive to swimming pools being located in front of the dwelling house.

The variation to the design control is supported due to the particular circumstances of the site.

DESIGN CONTROL 10 - Swimming Pools & Spas

Objectives

- To provide a place for recreation & enjoyment
- To provide a high level of child safety
- To minimise the impact of swimming pools & spas on neighbours
- To require swimming pools to comply with all relevant legislation and Australian Standards.

Controls

- a. The outer edge of the pool concourse or coping shall be setback a minimum 1 metre from the side or rear boundaries with the water line being a minimum 1.5 metre from these boundaries.
- b. Swimming pools must be surrounded with a child resistant barrier in accordance with the provisions of the Swimming Pools Act and the requirements of Australian Standard AS 1926.
- c. Spas must be surrounded by a child resistant barrier as for swimming pools or access to the water restricted at all times when the spa is not in use in accordance with the Swimming Pools Act.
- d. New swimming pools and spas shall comply with the current requirements of Basix.
- e. Swimming pools and spas are to have a suitable means for drainage and disposal of overflow water.
- f. Filters and pumps are to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- g. The wall of a residential building may form part of the child resistant barrier so long as the wall contains no openable door, window or other opening through which access may at any time be gained to the swimming pool.
- h. Pools are not to be located between the building and the street, except on sites where private open space can only be accommodated in this location.

- i. Pools and spas cannot be located in the Deep Soil Zones.

Justification

Tweed Development Control Plan section A1- Residential and Tourist Development Code allows for variations to the mandatory controls in the following circumstances:

“Only in exceptional circumstances will Council consider a relaxation or variation to a mandatory control.

A variation or relaxation will only be considered where it has been demonstrated (through architectural and/or landscape drawings) how and why the mandatory controls cannot work on a particular site. This requires the Applicant to design a solution using the mandatory controls.

Generally Council will only consider a relaxation or variation to a mandatory control due to excessive constraints including;

- the site being located as an infill (infill development is any allotment that is neighboured or adjoins a property that supports a building, including sites within new subdivisions, where that development has already occurred, and to the extent only that an existing building hinders the achievement of the mandatory control).*
- established dwellings located in subdivisions created prior to the year 2000*
- sites with highly irregular geometry,*
- sites with major topographical or geotechnical constraints.*

The location of the swimming pool is considered to acceptable for the following reasons:

- The location of the swimming pool in the front yard, between the dwelling house and the front property boundary is considered to be acceptable in the circumstances as it satisfies the controls apart from its location.
- Pools are permitted in the front yard where open space can only be accommodated in this area.
- The area at the rear is considered to be unsuitable due to overshadowing, lack of northerly aspect, encroachment on the rear deep soil zone and proximity to the property to the west.
- Other allotments in this subdivision which front Terranora Road have been granted consent to locate swimming pools between the dwelling house and street boundary.

- The allotment is located substantially above Terranora Road therefore the location of the pool will have no adverse impact on the streetscape.
- Access to the pool from the dwelling house is preferable via the front verandah/living area.

The proposal, whilst not fully consistent with the requirements of the Design Controls, is considered to be generally consistent with the objectives of the DCP.

The location of the swimming pool is considered to be the desired location with respect to solar access and connection to the dwelling house.

The proposal is regarded as being worthy of approval.

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

Clause 92(a) Government Coastal Policy

The subject allotment is outside the boundaries of the policy and therefore the Coastal Policy has not been considered.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

This clause is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

A condition will be added to require that Smoke Alarms be installed and connected to the consumer mains power in accordance with the Building Code of Australia.

(a) (v) Any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*)

N/A

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

Context and Setting

The allotment is located in a residential subdivision and contains a variety of dwelling types.

The proposal is considered to be consistent with the existing and future character of the area.

Access, Transport and Traffic

The existing vehicular access to the property from Terranora Road will be retained.

Flora and Fauna

The site does not contain any flora or fauna of any significance.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The allotment is surrounded by similar residential allotments to the east, south and west.

Flora and Fauna

The site does not contain any flora or fauna of any significance.

Topography

The allotment slopes moderately downhill from south to north.

Site Orientation

The allotment has a northern orientation; living areas and the swimming pool have been located on the northern side of the allotment to take advantage of this solar access.

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

There have been no submissions made in relation to this application.

(e) Public interest

There is no adverse public interest issues anticipated should this application be approved.

OPTIONS:

1. Approve the application with conditions, or
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Refusal of the application may expose Council to a challenge in the Land & Environment Court.

POLICY IMPLICATIONS:

Approval of this application is considered to be unlikely to undermine the enforcement of Council's policies in this matter.

Each application is considered on its merits and the variations from Development Control Plan A1 and the Tweed LEP 2000 have been considered and are regarded as being worthy of approval due to the particular circumstances of the site.

CONCLUSION:

Under the circumstances it is considered that the proposal to construct the dwelling house additions with a minimum building line of 15.28 metres together with a swimming pool at 9.49 metres to Terranora Road is reasonable for conditional approval.

The SEPP 1 objection to reduce the statutory building line has been considered and under the circumstances it is considered that the variation is justified and should be supported.

The variation from the statutory controls in Development Control Plan A1 is considered to be justifiable due to the circumstances of the site and acceptance of this variation is recommended.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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17 [PR-CM] Development Application DA10/0790 for a Three (3) Lot Subdivision at Lot 1 and 2 DP 746783, No. 58 McCollums Road, Duranbah

ORIGIN:

Development Assessment

FILE NO: DA10/0790 Pt1

SUMMARY OF REPORT:

The proposed development involves two (2) parcels of land within the 1(b1) Agricultural Protection zone.

The applicant is seeking approval for a 3 lot subdivision and boundary adjustment over Lots 1 & 2 DP 746783, McCollums Road, Duranbah.

The proposal incorporates a SEPP 1 Objection in relation to the 1(b1) zone being less than the minimum lot size (10ha). The proposal is being reported to Council for determination as a result of the variation being greater than 10% of the development standard in accordance with the Department of Planning requirements.

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

RECOMMENDATION:

That Development Application DA10/0790 for a three (3) lot subdivision at Lot 1 and 2 DP 746783, No. 58 McCollums Road, Duranbah 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 1A prepared by Planit Consulting, 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 roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device**

and adequately maintained to ensure a safe and suitable drinking water supply, where applicable. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be 15,000L per bedroom with a minimum 20,000L to be provided.

[GEN0310]

5. The design and installation of the on-site sewage management system on proposed lot 1 shall comply with the recommended on-site sewage treatment and disposal method as detailed in the HMC On-Site Sewage Management Design Report, March 2007 (HMC 2006.171A) including all recommendations of that report to the satisfaction of the General Manager or his delegate.

[GENNS01]

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

[DUR1005]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

7. 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]

8, 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 @ \$861 per Trips	\$5597
(\$782 base rate + \$79 indexation)	
S94 Plan No. 4	
Sector6_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) Community Facilities (Tweed Coast – North)	
1 ET @ \$1305.6 per ET	\$1306
(\$1305.6 base rate + \$0 indexation)	
S94 Plan No. 15	
(g) Extensions to Council Administration Offices & Technical Support Facilities	
1 ET @ \$1759.9 per ET	\$1759.90
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(h) Regional Open Space (Casual)	
1 ET @ \$1031 per ET	\$1031
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	

(i) Regional Open Space (Structured):

1 ET @ \$3619 per ET

\$3619

(\$3619 base rate + \$0 indexation)

S94 Plan No. 26

[PCC0215/PSC0175]

- 9. 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]

- 10. 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) Right of carriageway

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]

- 11. 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]

- 12. 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]

13. **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]

14. **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]

15. **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 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]

16. **Prior to the issue of a subdivision certificate the applicant is required to lodge a Section 68 application to operate the two existing on-site sewage management systems on proposed lots 2 & 3, pay the appropriate fee and be issued with an approval.**

[PSCNS01]

17. **The proposed right of carriageway access through future Lot 3 to future Lot 2 is to be constructed in accordance with Council's Development Design specifications. The proposed right of way is required to be a minimum pavement width of 3.6m with a two coat bitumen seal.**

[PSCNS02]

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

1. **A 20 metre APZ shall be maintained around the existing dwelling and sheds. The APZ's shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.**

REPORT:

Applicant: Grant Marshall Family Trust
Owner: Mr GA Marshall
Location: Lot 1 and 2 DP 746783 No. 58 McCollums Road, Duranbah
Zoning: 1(b1) Agricultural Protection
Cost: Nil

BACKGROUND:

Development application DA08/0490 for a 2 lot subdivision (lodged over Lot 2 DP 746783 only) was granted approval on 6 November 2008. The application proposed 2 allotments of 11ha which complied with the 1(b1) rural agricultural zoning which requires a minimum lot size of 10 ha. The consent has not yet been acted upon and a subdivision certificate has not been issued.

Development application DA07/0313 for a 2 lot subdivision and boundary adjustment (lodged over Lots 1 & 2 DP 746783) and was withdrawn on the 29 February 2008, due to the proposed lot sizes being under the minimum lot area and concurrence not given by the Department of Planning.

Consent is now sought for a 3 lot subdivision and boundary adjustment over Lots 1 & 2 DP 746783, McCollums Road, Duranbah. The development application proposes the following lots and respective areas:

- Proposed Lot 1 – 10.78 Ha with proposed dwelling site (no existing dwelling)
- Proposed Lot 2 – 2.012 Ha (with a realigned boundary, contains existing dwelling and stables)
- Proposed Lot 3 – 11.608 Ha (contains existing dwelling and stables).

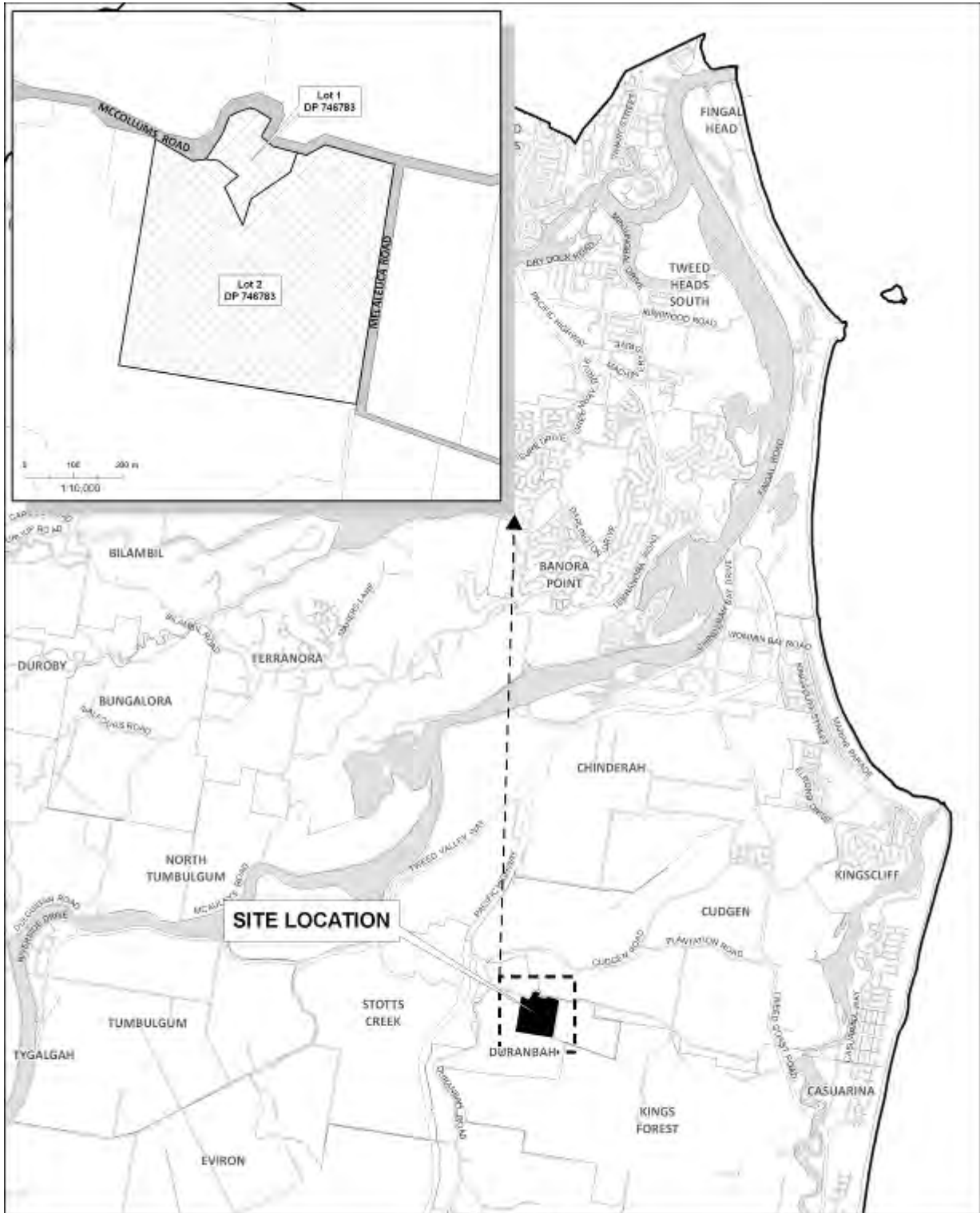
Two dwellings currently exist over the parent parcels. The subdivision proposes to create a future house site on proposed Lot 1 with the existing dwellings to be located on proposed Lots 2 & 3.

A right of carriageway is also proposed over future Lot 3 to provide access to the existing house and stables located on future Lot 2 (though it is noted that access is presently provided off McCollums Road).

Currently the parent Lot 1 DP 746783 is used as a residential allotment and Lot 2 DP 746783 is used for grazing purposes.

The land is zoned 1(b1) Agricultural Protection. Clause 20 of the Tweed LEP 2000 states that consent may only be granted to the subdivision of land within Zone 1 (b1) if the area of each allotment is at least 10 ha. Proposed Lot 1 is under the minimum lot size and a SEPP 1 Objection was lodged in this regard and the application forwarded to the Department of Planning who granted their concurrence (necessary as proposed Lot 2 is less than 90% of the prescribed minimum lot size). As such, the application is being reported to Council.

SITE DIAGRAM:



Locality Plan
 Lots 1 & 2 DP 746783;
 No. 58 McCollum's Road, Duranbah

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or guarantee as to the accuracy, reliability, completeness or suitability for any particular purpose and assumes no responsibility for any liability (including indirect liabilities), injury or damages of any nature, kind, or description, arising from or in connection with the use of this information. This information is supplied for the general reference and is to be read in conjunction with the relevant legislation. The information contained on this document remains valid for 10 days only from the date of supply.

Cadastre: 01 February 2011
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 Management Authority (LPM&A)
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 Boundaries shown should be
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0 0.5 1 1.5 km
 1:85,000 @ A4 Portrait
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Map provided by the Land and Property Management Authority (LPM&A) of the State of New South Wales. The information is provided for general reference only. The information is not to be used for any other purpose.

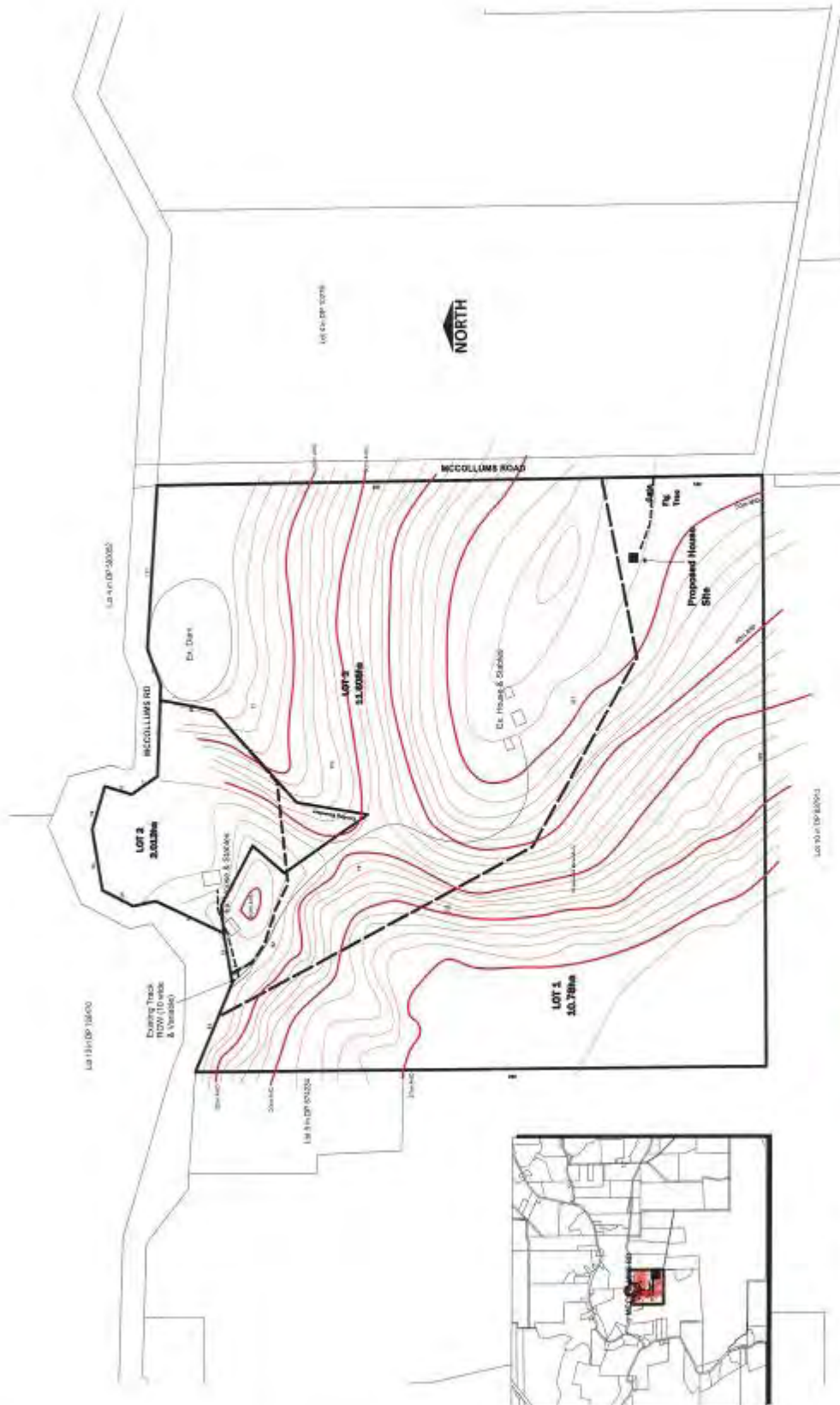
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SUBDIVISION PLAN:



Proposed Three (3) Lot Subdivision

Lots 1 & 2 in DP 746783
McCullums Road, Durambah
SCALE: 1:3000
Client: G. Marsden



Plan Prepared by PLANIT CONSULTING
Plan No. 3A
Source: DCD9 - Lands Titles
NB: All measurements to be verified by on site survey



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed three lot subdivision is consistent with the aims of the Tweed Local Environmental Plan.

Clause 5 - Ecologically Sustainable Development

The proposed subdivision is minor and consistent with the principles of ecologically sustainable development.

Clause 8 - Zone objectives

The site is zoned 1(b)(1) agricultural protection which has a minimum lot size of 10 ha. Proposed Lot 2 is under the minimum lot size (2.012 ha) and a SEPP 1 Objection was lodged in this regard (and concurrence granted by the Department of Planning).

The objectives of the 1(b) zone are as follows:

Primary Objective

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

Secondary Objective

- To allow other development that is compatible with agricultural activities.

With the exception of proposed Lot 2 (which it is acknowledged is presently undersize at 2ha – currently Lot 1 DP 746783), the proposed development meets the minimum lot size prescribed for the 1(b1) zone and the proposed subdivision is not considered to adversely fragment the subject location, which has a current approval for a two lot subdivision. Site inspection has indicated that the sites are not presently used for any intensive agricultural purpose with only grazing observed on each proposed lot. The proposed subdivision is not considered to prejudice the ability of the area to maintain or intensify its agricultural use in accordance with the zone objectives.

The proposed development is consistent with the objectives of the 1(b1) zone.

Clause 15 - Essential Services

Essential services are available to all allotments. Connection would be required for any future dwelling on proposed Lot 1.

Clause 16 - Height of Building

There are no building works associated with the subdivision which require a consideration of building heights.

Clause 17 - Social Impact Assessment

The proposal is minor and will not generate any significant social impacts.

Clause 19 – Subdivision Generally

This clause provides that subdivision may be carried out with development consent.

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

This clause prescribes the 10ha minimum lot size for allotments zoned 1(b1). The applicant has submitted a SEPP 1 Objection to Clause 20 to enable the proposed subdivision to be undertaken. This is assessed further under SEPP 1 – Development Standards below.

The application seeks to create a lot of 2.012ha in the 1(b1) zone. It is noted that the allotment is presently undersize (2ha) and the application will actually slightly increase the area of the lot to encompass existing farm facilities (stables).

Clause 20 aims to:

- 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.

With regard to the above, it is noted that the subject allotment is already undersize and no further reduction is proposed by the subject application. As such, this application does not result in further fragmentation of agricultural land beyond the boundaries of the existing site and the existing subdivision consent DA08/0490. No physical changes are proposed which would impact the ecological or scenic values of the land or the Tweed's water supply.

The proposal is subsequently considered to be consistent with Clause 20, notwithstanding the SEPP 1 Objection which is addressed elsewhere in this report. In this instance, it is considered that strict application of the 10ha lot size control is unreasonable due to the proposed Lot 2 being already undersize and the SEPP 1 Objection is worthy of support.

Clause 35 - Acid Sulfate Soils

The subject site exhibits Class 3 and Class 5 soils, with Class 3 only occurring in a small portion of the north east corner of the site. Council's Environmental Health Officer has reviewed the application with regard to ASS and returned no objection to the application.

Clause 39A – Bushfire Protection

The western side of the site is bushfire prone, thus triggering 'integrated development' to the NSW Rural Fire Service. The NSW RFS returned a Bushfire Safety Authority with the following condition:

“A 20 metre APZ shall be maintained around the existing dwelling and sheds. The APZ's shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.”

Clause 39 – Remediation of Contaminated Land

There is a dwelling house proposed to be located on proposed Lot 1 (subject to future consent). This dwelling is in exactly the same location as previously proposed (and approved) under DA08/0490, and is supported by the same contaminated land and on site sewage management reports as were accepted previously. The previously submitted contaminated land report identified that the site had previously been used for crop growing. Soil sampling was completed and contaminants of concern were not identified above relevant levels. No further concerns were raised by Council's Environmental Health Officer with regard to contaminated land.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12 – Impact on Agricultural Activities

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

In this instance, the proposed subdivision meets the minimum lot size provisions prescribed by the TLEP 2000 (with the exception of the SEPP 1 Objection for the lot that is already undersize) that are set to minimise fragmentation of agricultural land. Further, the site is not identified as regionally significant or state significant

farmland. Site inspection has indicated that the subject site and nearby lots are utilised generally as cattle grazing, with the property immediately to the south used as a plantation. The Department of Primary Industry's Living and Working in Rural Areas (2007) suggests a buffer of 50m between residential development and stock grazing, and a site specific determination for residential development and plantations.

Site inspection has indicated that the proposed dwelling site (on proposed Lot 1) is in excess of 100m from any adjoining properties and the nearest property utilised for cattle grazing is in excess of 50m from the proposed dwelling site. The site is in excess of 100m from the adjacent property used as a plantation.

Based on the above, it is considered that the proposed subdivision will not have an adverse impact on the use of adjoining or adjacent agricultural land and will not cause a loss of prime crop or pasture land. The subject application is consistent with Clause 12 of the NCREP.

Clause 43: Residential development

Clause 43 specifies that the council shall not grant consent to development for residential purposes unless satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land, road widths are not excessive, caravan parks are appropriately located, the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and that site erosion will be minimised in accordance with sedimentation and erosion management plans.

The proposed subdivision is accessed via the existing road network, does not require any additional road construction, will not adversely affect the environment or services and will not result in an unacceptable increase in traffic to and from the site. As such, the proposed subdivision is considered to be consistent with Clause 43.

SEPP No. 1 - Development Standards

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

The applicant has submitted a SEPP 1 Objection as proposed Lot 2 does not meet the 10ha minimum lot size for the 1(b1) zone prescribed by the Tweed Local Environmental Plan 2000, having a proposed area of only 2.012 hectares.

This lot is presently 2ha in size and contains an existing established dwelling (under 1220/91B– Building Application for a dwelling approved in 1991).

The basis of the applicant's SEPP 1 Objection is that the 10ha minimum lot size for the 1(b)1 zone is unreasonable and unnecessary in the circumstances because:

- *“The undersized allotment has a dwelling entitlement;*
- *The undersized allotments contains an existing dwelling house upon it which has been approved by Council;*
- *No additional undersized allotments will be created;*
- *No additional dwelling entitlements will be created on undersized allotments;*
- *The smaller allotment is currently utilised for Rural Residential purposes. The increased size of the allotment will enable issues of effluent disposal and bushfire hazard reduction to be better managed, whilst also providing a better buffer from the larger allotments;*
- *The development will not affect the ability of the two larger parcels to be utilised for agricultural purposes such as small crops and the like.*
- *The development will not impact upon the quality of Tweed Shires Water supply, being outside of the catchment area for Clarrie Hall Dam and the Bray Park Weir.*
- *The proposal will not impact upon the ecological values or scenic quality of the land.*
- *The proposal is not inconsistent with the objectives of the 1(b) Agricultural Protection Zone;*
- *The proposed subdivision will in no way jeopardises Council's planning controls and does not set a dangerous precedent in this regard; and*
- *The proposed variation does not raise any matters of significance relative to state or regional environmental planning”.*

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston articulated the SEPP 1 test as follows:

- 1 The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;
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 Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979; and
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.

Preston CJ then expressed the view that there are 5 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 non-compliance 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.

Though not stated by the applicant, the subject SEPP 1 Objection seems to rest upon point one above, in that the objectives of the 1(b1) zone are achieved notwithstanding the undersize allotment (which is presently undersize) and granting consent to the smaller allotment does not limit the ability of proposed lots 1 and 3 to be used for agricultural purposes commensurate with the zone objectives.

Based on the above, the objection is considered to be well founded, as existing Lot 1 is already well below the required 10ha minimum lot size and the proposed subdivision will not further reduce its size.

In addition to being satisfied that the SEPP 1 Objection is well founded, the consent authority must also 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.

The aims of the policy are as follows:

"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act".

Sections 5(a) (i) and (ii) are as follows:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

With respect to Sections 5(a) (i) and (ii) the proposed subdivision is not considered to hinder the proper management, development and conservation of any resources, in particular the subject agricultural land and rural/residential development surrounding the subject site. Negligible impact upon resources and the social and economic welfare of the community is anticipated to result from approval of the application.

Further, non compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning. As no additional dwelling potential will be created by the proposed subdivision, no public benefit would be gained by maintaining the standard in this instance.

The proposed subdivision is considered to be consistent with the aims of SEPP 1.

Based on the above, support of the subject SEPP 1 Objection is considered appropriate in this instance.

SEPP (Rural Lands) 2008

This SEPP aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes and reduce land use conflicts through utilising Rural Planning Principles and Rural Subdivision Principles. It also aims to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land.

Clause 10(3) specifies the following matters to be considered in determining development applications for rural subdivisions or rural dwellings:

- (a) *the existing uses and approved uses of land in the vicinity of the development;*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

In this instance, the proposed subdivision is considered to be consistent with the surrounding agricultural land use, which includes crop growing and pasture land. The proposal is not considered to impact upon any such uses, nor will it prejudice the ability for the subject site to be used for agricultural purposes commensurate with the zone objectives. The proposal is consistent with Clause 10(3)(a).

The preferred land uses in the 1(b1) Agricultural Protection zone are considered to be agriculture and forestry (both allowed without consent in the zone). The subject proposal is not considered to have a significant impact on either such land use given the subdivision does not involve any works. The proposal is consistent with Clause 10(3)(b).

Given the proposal is for subdivision only, it is not considered to be incompatible with the land uses mentioned in (a) or (b) above. The proposal is not considered to reduce the agricultural viability of the subject site or surrounding properties. The proposal is consistent with Clause 10(3)(c).

The subject site is not located adjacent to a rural/residential zone and Clause 10(3)(d) is considered satisfied.

No measures to avoid or minimise land use conflict have been proposed by the applicant as the proposal is not considered to generate any significant issues in this regard. The recommended buffers (detailed by the Department of Primary Industry) are exceeded by the proposed development. Clause 10(3)(e) is considered satisfied.

The proposed subdivision has no further ramifications for SEPP (Rural Lands) 2008 and is considered to be consistent with the Policy in its entirety.

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

The subject sites are zoned RU1 – Primary Production under the draft Tweed Local Environmental Plan 2010, with a corresponding minimum lot size of 10ha. The proposed subdivision, inclusive of the SEPP 1 Objection would remain permissible under the draft LEP 2010.

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

Tweed Development Control Plan

A5-Subdivision Manual

Physical Constraints

The subject property is generally free from physical constraints, despite being bushfire prone. The site is undulating, with contours ranging from 50m at the south east corner of the site down to 6m at the south western corner.

A future dwelling site is proposed on proposed Lot 1. This location is the same as that approved under the previous DA for a two lot subdivision (DA08/0490) and HMC Environmental Consulting prepared an OSSM report for the site associated

with DA08/0490. Council's Environmental Health Officer has reviewed this report and returned no objections to the proposal, subject to conditions of consent in this regard.

Rural Watercourses and Drainage

The subject site does not contain any significant watercourses. Council's Development Assessment Engineer has indicated that stormwater drainage is rural in nature, discharging as overland flow which remains appropriate.

Rural Subdivision Structure

The objectives of Clause 5.3 aim to facilitate rural subdivision which is consistent with zone objectives, provides for uses that are suitable for agricultural areas and protects rural character and amenity. The proposed subdivision is considered to be consistent with the objectives of the 1(b)1 zone as it generally preserves the existing layout and use of the land, inclusive of the two lot subdivision approved by DA08/0490.

Rural Subdivision and Lot Layout

A future house site has been nominated within proposed Lot 1. The location is consistent with the Rural Subdivision and lot layout provisions and has been reviewed by Council's Environmental Health Officer with regard to contaminated land and on site sewage management and found to be acceptable.

Rural Movement Network

The existing road network is adequate for servicing the new subdivision according to Council's Development Assessment Engineer. The application proposes to maintain the existing access from Melaleuca Road (Lot 1), McCollums Road (Lot 2) via a right of way through proposed Lot 2. Lot 3 will maintain its existing access via the convergence point of the right of way at McCollums Road.

Conditions have been applied by Council's Development Assessment Engineer with regard to the right of way who has also noted that the surrounding road network will not be affected by the creation of one additional new dwelling in this location. Negligible impacts on the existing rural movement network are envisaged as a result of approval of this application.

It is considered that the proposed subdivision complies with DCP A5.

B9 - Tweed Coast Strategy

Much of the Tweed Coast Strategy relates to matters such as urban design in the Kingscliff Town Centre, as well as planning principles for the now established Salt and Casuarina developments. With particular relevance to the subject application for subdivision, the strategy details the following objective under Part TSC.S.7.11:

Council will retain the protection of the District's agricultural land i.e. land currently zoned 1(b) Agricultural Protection as a finite resource and given its

scenic value and ensure that it remains protected from any non-agricultural forms of development that conflict with agriculture.

With regard to the above, it is noted that the proposed subdivision does not limit the ability of the subject land to be used for agricultural purposes and is not considered to be a development type which conflicts with agriculture. The Tweed Local Environmental Plan permits dwellings to be located on agricultural land where the minimum lot size is met (or the property is a council approved subdivision). With regard to the subject application, the minimum lot size will be met by two of the three allotments, with the third being increased slightly to incorporate existing farm facilities. Development consent has been issued for the dwelling on this lot and as such, no additional dwelling entitlements are created by the subject application.

The proposed development is consistent with the relevant parts of DCP B9 – Tweed Coast Strategy.

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

Clause 92(a) Government Coastal Policy

The site is not covered by the Government Coastal Policy.

Clause 92(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

(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 complies with the prescribed minimum lot size for the 1(b1) zone (with the exception of proposed Lot 2 which increases slightly in size) and applicable clauses of the TLEP and the NCREP with respect to the protection of agricultural land. Based on this and the fact that no works (apart from minor driveway works for access) are required to facilitate the subdivision, the proposal is considered to be consistent with the context and setting of the subject locality.

It is also noted that the proposed realigned boundary for proposed Lot 2 results in a more 'regular' area, essentially removing an existing triangle shaped portion of the lot from jutting into proposed Lot 3. Such an outcome is considered to be

beneficial for an agricultural property in terms of creating a larger space of useable area which has improved manageability than an irregular boundary.

Access

The provision of access to each proposed allotment is summarised as follows:

- Proposed Lot 1 is to gain access from Melaleuca Road. The proposed driveway is sealed from the road to the property boundary, with a culvert and headwalls located in the table drain. The driveway is located adjacent to a large fig tree and is in good condition.

The topography is relatively flat to the proposed house site; therefore 2 wheel drive access to the proposed site can be achieved.

- Proposed Lot 2 will retain the current access from McCollums Road via a right of carriageway through proposed Lot 3 to proposed Lot 2. The driveway servicing the existing dwelling on proposed Lot 2 is sealed and is in good condition. The development application is lacking in detail in regards to the proposed right of carriageway and the existing driveway servicing proposed Lot 2.

It is noted that the sealed driveways servicing the existing dwellings located on proposed Lots 2 & 3 converge at the same point on McCollums Road and it is assumed that the right of way will be located over the existing sealed driveway to proposed Lot 2.

Council's rural road standards require a right of carriageway to be constructed to a pavement width of 3.6m with a two coat bitumen seal. The right of way standards have been included as a condition of consent.

- Proposed Lot 3 will gain access from the McCollum Road at the same access point where the right of way access is proposed. The driveway to the existing dwelling is sealed from the property boundary to the house and is in good condition.

Council's Development Assessment Engineer has reviewed the proposed access arrangement and applied relevant conditions.

Farmland of Regional or State Significance

The subject site is not identified as regionally or state significant farmland.

Concurrence

Concurrence was required from the Director General, Department of Planning as one of the lots to be created is less than 90% of the required standard. Concurrence was issued by the Department on 23 December 2010, for the following reasons (excerpt from letter dated 23 December 2010):

- The boundaries of the small proposed lot of 2.012 hectares will be adjusted marginally from and will be similar in size to the existing Lot 1;
- As no additional dwelling potential will be created by the proposed subdivision, no public benefit would be gained by maintaining the standard in this instance.

Dwelling Entitlement

As noted above, no additional dwelling potential is created by the subject application. It is noted however that proposed Lot 2 (existing Lot 1) was created as part of a Council approved subdivision in 1987, thus the property enjoyed a dwelling entitlement. While a dwelling has since been approved and constructed on this lot, the proposed subdivision will result in the dwelling entitlement being extinguished and the dwelling house having to rely on existing use rights for any future development.

(c) Suitability of the site for the development

Surrounding Land Uses/Development

The proposal is considered to be consistent with the surrounding agricultural land use.

Bushfire

The western part of the subject site is bushfire prone. The NSW Rural Fire Service have reviewed the application and issued a Bushfire Safety Authority pursuant to Section 100B of the Rural Fires Act 1997 with the following condition:

“A 20 metre APZ shall be maintained around the existing dwelling and sheds. The APZ’s shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service’s document ‘Standards for Asset Protection Zones’.”

This condition has been applied.

Contaminated Land

An excerpt from Council’s Environmental Health Officer’s assessment for the previous subdivision DA08/0490 is supplied below. No further matters with regard to contaminated land were raised by the subject application and no new conditions were required.

*“The creation of one dwelling site is proposed on Lot 1. A Preliminary Site Contamination report, HMC March 2007 has been submitted for consideration. The site history included small cropping and therefore soil sampling has been completed. Contaminants of concern were not identified above relevant HILs and the report concludes the site is suitable for the proposed use.
Council’s Enlighten shows that there are no dip sites within 200m of the subject property. No further considerations required”.*

Onsite Sewage Management

Amended conditions have been provided by Council's Environmental Health Officer with regard to OSSM, which have been applied.

Potable Water Supply

The application notes that water harvesting will be utilised for any future dwelling on proposed Lot 1. Appropriate conditions have been applied.

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

The proposal did not require advertising or notification under Council's Development Control Plan Section A11 – Public Exhibition of Development Proposals. No submissions were received from the public though it is noted that concurrence was received from the Department of Planning and a Bushfire Safety Authority was returned by the NSW Rural Fire Service. Conditions have been applied where required.

(e) Public interest

The proposed development is minor and maintains the agricultural nature of the Duranbah locality. No adverse impacts are envisaged as a result of approval of the application, nor the construction of an additional dwelling in the proposed location.

The proposed SEPP 1 Objection is considered reasonable in this instance based on the subject lot being already considerably undersize and no additional dwelling potential being created. The proposed development generally complies with all relevant matters for Council's consideration, being considered suitable for the subject site and without significant environmental impacts.

The proposed development is therefore considered to be in the public interest.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If dissatisfied with the decision, the applicant has the ability to appeal.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is minor and detailed assessment has been undertaken of all relevant issues, with the conclusion drawn that negligible environmental impacts are envisaged as a result of approval of this application.

The proposed development is considered to be suitable for the subject site and will not reduce agricultural use of the site or the subject locality.

Approval in accordance with the recommended conditions is therefore recommended.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Delegated report for Development Application DA08/0490 (ECM 28031428)
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18 [PR-CM] Development Application DA10/0099 for a Five (5) Lot Subdivision at Lot 192 DP 217678, Lot 22 DP 1058759 Poplar Avenue and Lot 2 DP 873399 Poinciana Avenue, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA10/0099 Pt2

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied within the range of 80% to 99.02%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of zoned land within each allotment created is at least 40 hectares.

Proposed Lot 3 has a total area of 18.37ha and is inclusive of 1.622ha of 1(a) zoned land, 1.7ha of 7(a) zoned land and 3200m² of 7(l) zoned land, all of which are less than 40ha as required by the development standard.

Proposed Lot 2 has a total area of 50.29ha and is inclusive of 8.2ha of 7(l) zoned land which is less than 40ha as required by the development standard.

The applicant seeks consent for a five (5) lot rural residential subdivision, including a road extension of Poinciana Avenue and earthworks to be undertaken on proposed Lots 4 and 5.

Assessment of the application has taken into account indicative dwelling sites located on proposed Lots 1, 4 and 5 in order to ascertain the extent of Asset Protection Zones (APZ's) required for future dwellings and the impact that APZ's may have on sensitive vegetation, koala habitat and mapped wetlands located upon or adjacent to the proposed lots.

Concurrence was not granted by the Director General in this instance to permit the creation of proposed Lot 3 of 18.37ha for the following reason:

The subdivision would create an undersized lot on rural and environmental protection land that would result in a total of four undersized lots in this location in the same ownership. This amounts to rural-residential development outside the strategic planning process and is not in the public interest.

The proposal was required to be notified to adjoining owners for a period of 14 days. A petition with 70 signatures and 41 individual submissions were received during the notification period.

Having regard to relevant statutory controls and an assessment against SEPP 14 and Clause 20(2)(a) in particular, of the Tweed LEP 2000, the proposed five (5) lot subdivision is not considered suitable and therefore the proposed development is recommended for refusal. This recommendation is in accordance with direction from the Department of Planning.

RECOMMENDATION:

That Development Application DA10/0099 for a five (5) lot subdivision at Lot 192 DP 217678; Lot 22 DP 1058759 Poplar Avenue and Lot 2 DP 873399 Poinciana Avenue, Bogangar be refused for the following reasons:

- 1. The Department of Planning has not issued concurrence.**
- 2. The proposed subdivision does not comply with the 40 hectare minimum development standard contained within Clause 20(2)(a) of the Tweed LEP 2000.**
- 3. The SEPP 1 objection has not demonstrated that the development standard is unnecessary and unreasonable.**
- 4. The applicant has not addressed matters for consideration under Clause 7 of SEPP 14 in relation to clearance of mapped wetland and concurrence for the proposal is required by the Director of National Parks and Wildlife.**

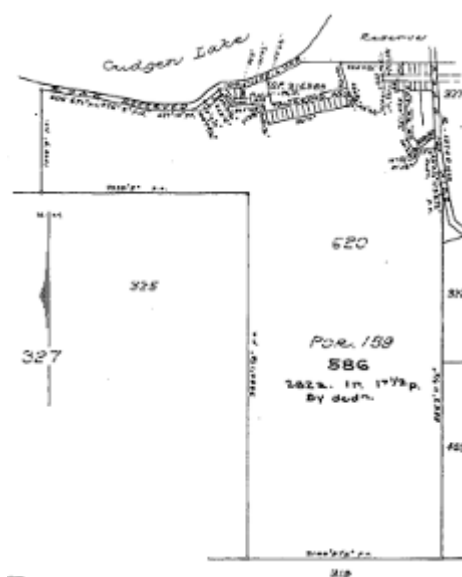
REPORT:

Applicant: Kenmar Farms Pty Ltd
Owner: Hansen Developments Pty Ltd
Location: Lot 192 DP 217678, Lot 22 DP 1058759 Poplar Avenue and Lot 2 DP 873399 Poinciana Avenue, Bogangar
Zoning: 1(a) Rural, 2(a) Low Density Residential, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), 7(l) Environmental Protection (Habitat) and Unzoned Land
Cost: N/A

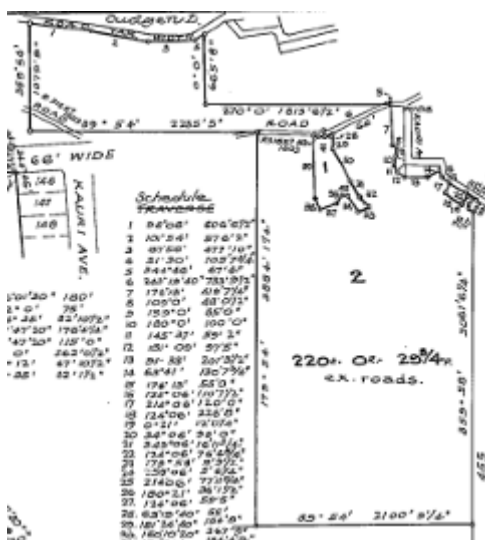
BACKGROUND:

History

The applicant has ownership of multiple parcels adjacent to the subject site and within the locality of Bogangar.

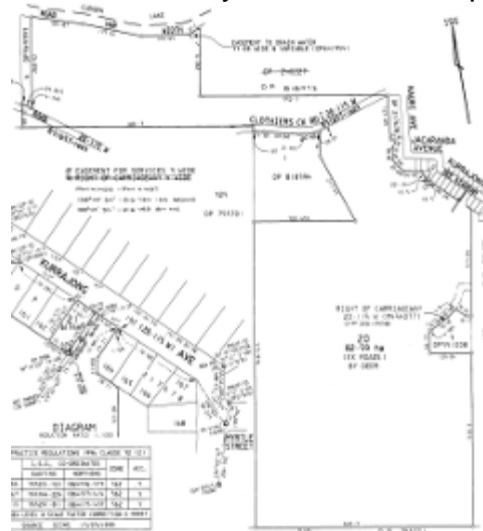


In 1963 (left), the subject site consolidated land not then bisected by Clothiers Creek Road known as Portion 189 in the Cabarita Estate.

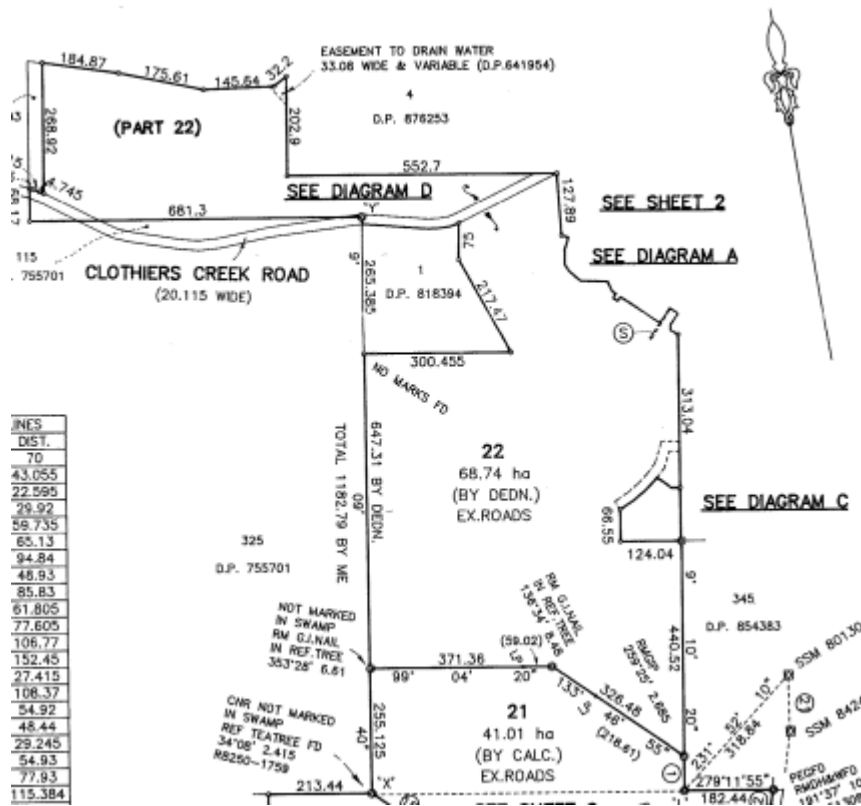


In 1970 (below left), the parcel was bisected by Clothiers Creek Road and resulted in a reduction in size and a fragmented division configuration.

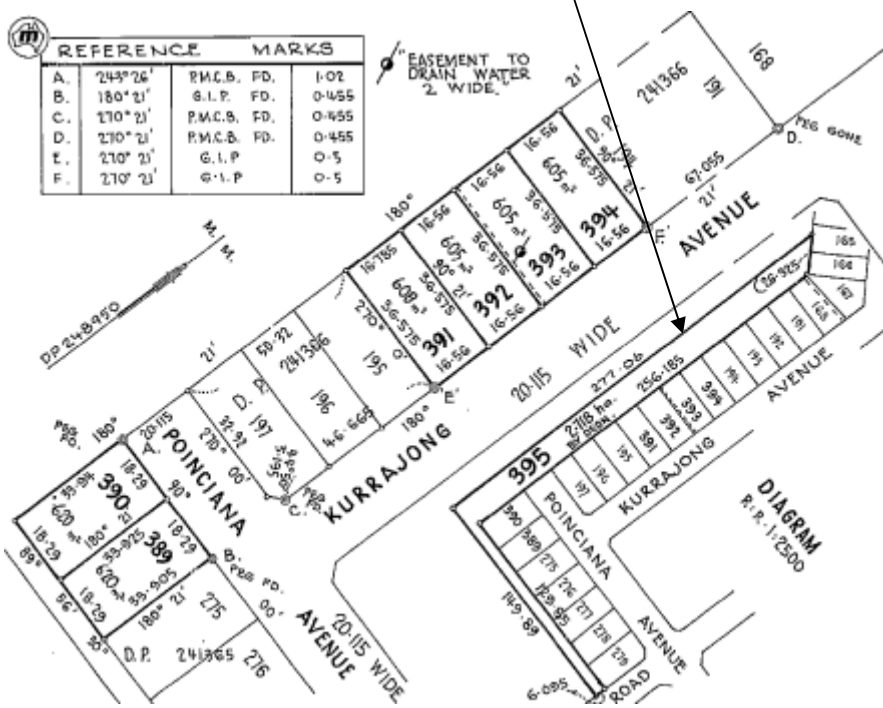
In 1999 (below), a realignment of boundaries resulted in two internal allotments of different sizes and configurations over the north-eastern sections of both portions of the site, retention of access to Kurrajong Avenue and acquisition of community land by Council on the eastern boundary of the southern portion.



Finally, in 2003 (below), the lower portion of Lot 22 was transferred to the southern adjoining allotment (Lot 21), resulting in the current configuration of allotments bisected by Clothiers Creek Road.



Lot 2 in DP 873399 was created in 1975 as Lot 395 in DP 248950 (below) with a narrow 'handle' that linked with Cabarita Road. It was created in association with residential allotments along Kurrajong Avenue and at the end of Poinciana Avenue. In 1997, current Lot 2 was created and the 'handle' was removed.

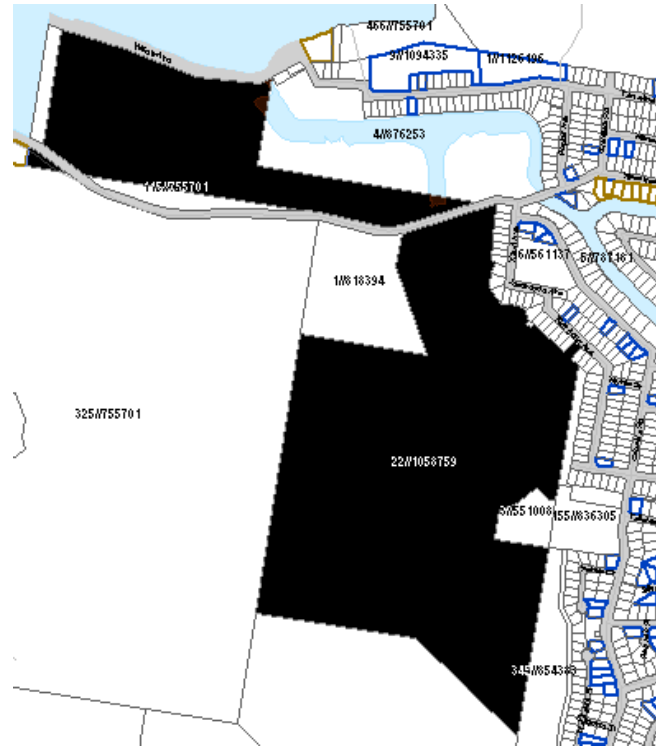


The small 'toe' of Lot 192 in DP 217678 was created in 1963 for unknown reasons.

The Subject Site

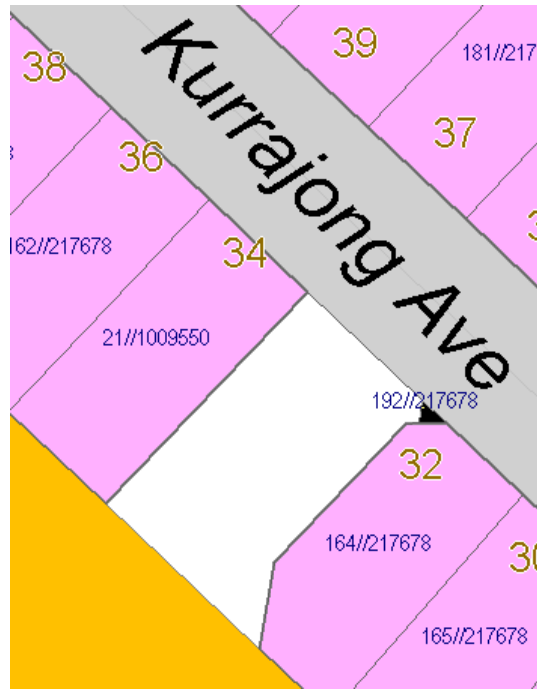
The subject site which is located north and south of Clothiers Creek Road currently comprises a total area of 74.634ha. It comprises three (3) parcels described as:

- Lot 22 in DP 1058759 – this parcel contains land to the north and south of Clothiers Creek Road with an area of 68.74ha. Land zoning within this parcel is varied – 1(a), 2(a), 7(a), 7(l) and unzoned land.



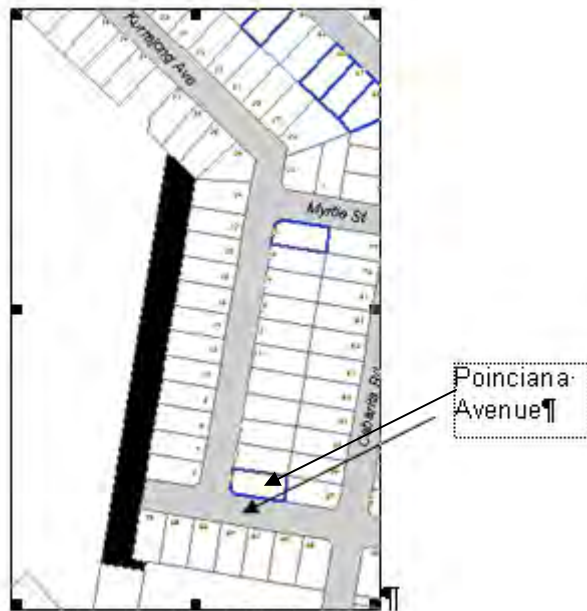
Lot 22 in DP 1058759

- Lot 192 in DP 217678 – this tiny unzoned parcel has an area of 5.2m² and is located adjacent to Kurrajong Avenue and the unzoned portion of Lot 22 that is proposed to be Lot 1. The purpose of this small fragment of land is unknown.



Lot 192 in DP 217678

- Lot 2 in DP 873399 – this parcel of land has a total area of 5706m² and is zoned entirely 2(a). Currently, the land serves as an informal hazard buffer and recreational open space along the rear of properties fronting Kurrajong Avenue to the end of Poinciana Avenue. The section north of Poinciana Avenue (proposed Lot 4) is highly constrained.

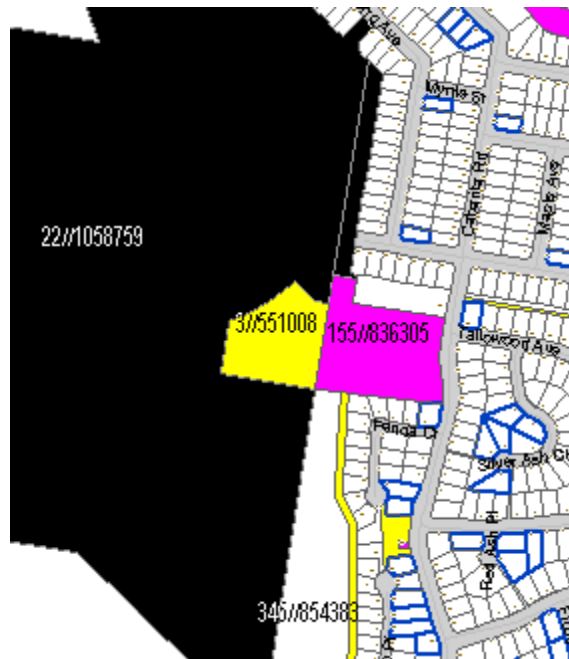


Lot 2 in DP 873399

Adjacent to the site to the south east (below) are two pieces of land owned by Council and one that is privately owned.

- Lot 3 in DP 551008 – this is a 1.278ha piece of community land managed as a public reserve

- Lot 155 in DP 836305 – this is a 1.829ha piece of operational land managed for water treatment works
- Lot 345 in DP 854383 – this is a 3.83ha, privately owned piece of environmentally sensitive land.



Adjacent parcels

To the east of the site is the western fringe of residential development associated with Bogangar. Residential properties fronting Kauri, Jacaranda, Kurrajong and Poinciana Avenues are adjacent to the subject site where development is proposed.

To the south of the subject site is a 41 hectare piece of environmentally sensitive land (Lot 21 DP 1058759) in the same ownership as the subject site. Similarly, located 'between' the northern and southern portions of the subject site adjacent to Clothiers Creek Road is a 6.102 hectare piece of environmentally sensitive land (Lot 1 DP 818394) in the same ownership as the subject site.

The Proposed Development

The proposal includes:

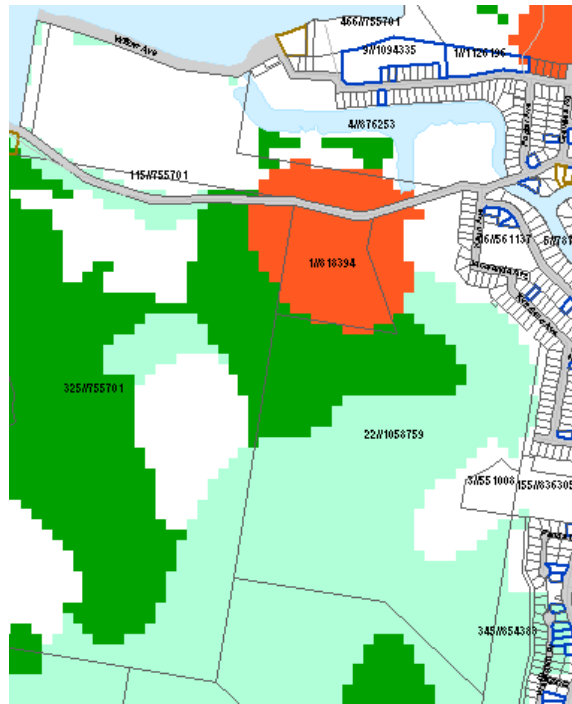
- Subdivision of the site into five (5) lots:
 - Lot 1 = 768m² (an existing 3m wide easement for services is located along the north-western boundary from Kurrajong Avenue into existing Lot 22 (proposed Lot 2))
 - Lot 2 = 50.29ha
 - Lot 3 = 18.37ha
 - Lot 4 = 4306m²
 - Lot 5 = 900m²

- A new cul-de-sac head at the end of Poinciana Avenue to extend the public road
An existing 10m wide right of carriageway exists at the end of Poinciana Avenue over existing Lot 22 (proposed Lot 2) to allow Council access to Lot 3 in DP 551008.
- Earthworks in association with proposed Lots 4 and 5 to facilitate future dwelling construction above design flood level at RL 3.1m AHD
The southern end of Lot 4 and a small portion of the cul-de-sac head are proposed to be filled to at least RL 3.4m AHD with 450m³ of material 'cut' from proposed Lot 5 and the bulk of the cul-de-sac head.
- Indicative dwelling sites on proposed Lots 1, 4 and 5
Dwelling pads are 10m x 15m in dimension.
- Associated off-site Asset Protection Zones (APZ's) for Lots 1, 4 and 5
The proposed subdivision plan indicates that the APZ associated with proposed Lot 1 extends 20m into proposed Lot 2.
The proposed subdivision plan indicates that the APZ's associated with proposed Lots 4 and 5 extend 25m into proposed Lot 2.
The proposed APZ's shown in figures provided in association with the ecological assessment are reduced in size and inconsistent with those proposed in the subdivision plan.
APZ's require management of vegetation in order to keep fuel loads low in the event of bushfire threat. Clearing of vegetation is required to maintain a covering of no more than 20% within the APZ area.

The original proposal included the location of dwelling pads and associated earthworks on proposed Lots 2 & 3. The proposed dwelling pads were subsequently withdrawn given their prohibited status.

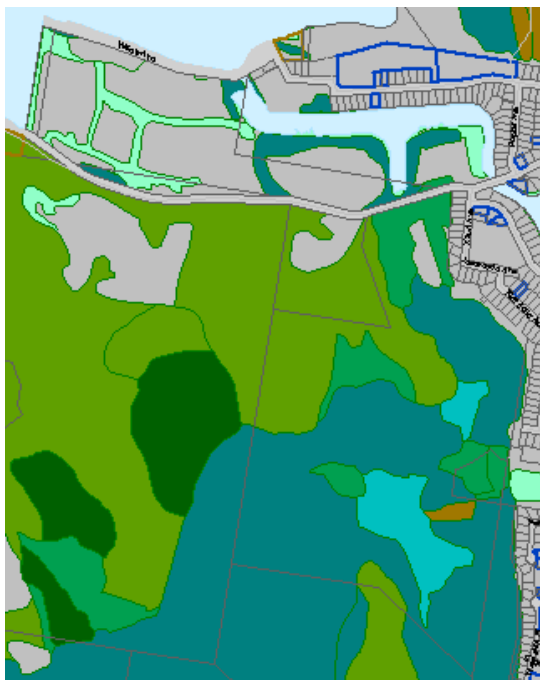
Site Constraints

The site contains primary and secondary (Classes A and B) Koala Habitat as sourced from the Australian Koala Foundation. Secondary Class B Koala Habitat is located within proposed Lot 4 and the associated Asset Protection Zone (APZ) areas for proposed Lots 4 and 5. Potential impact upon Koala Habitat is discussed elsewhere within this report.



Primary (orange), Secondary Class A (dark green) and Class B (light green) Koala Habitat

In accordance with the Vegetation Management Strategy 2008, significant vegetation located on site is mainly contained south of Clothiers Creek Road. Sclerophyll forests / woodlands and Melaleuca / Swamp She-oak forests are located within close proximity to earthworks and future dwelling sites associated with proposed Lots 4 and 5.

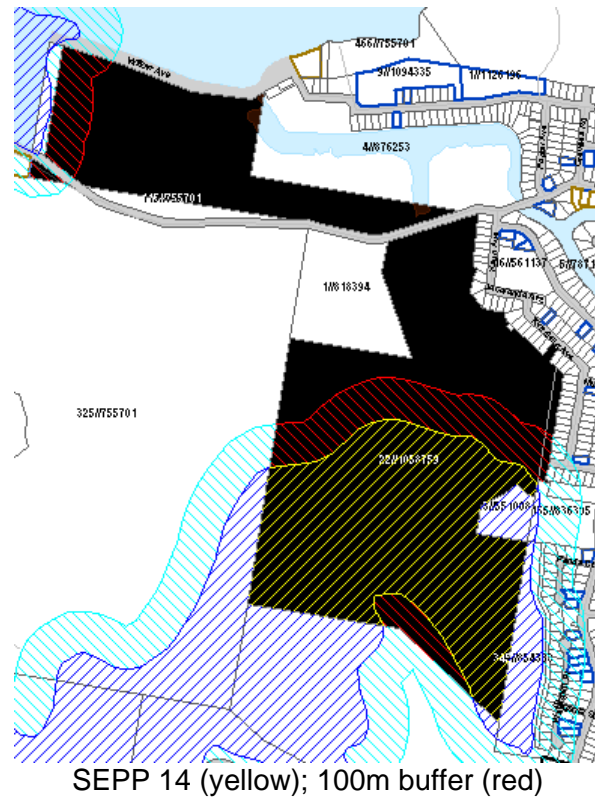


Key to mapped vegetation within the site:

Heathlands
Highly Modified / Disturbed
Melaleuca and Swamp She-oak Forests
Miscellaneous Map Units
Rainforest and Riparian Communities
Sclerophyll Forests / Woodlands on Sand Substrates
Sclerophyll Open Forests on Bedrock Substrates
Sedgeland and Related Communities

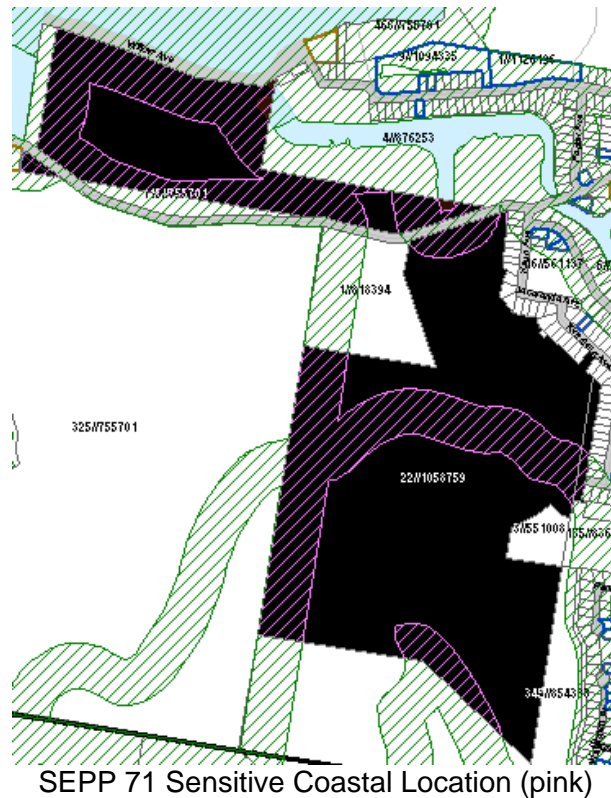
Tree Protection Orders apply to proposed Lot 2 (2004) and proposed Lot 3 (1990).

The north-eastern and southern portions of current Lot 22 (proposed Lot 2) within the site contain areas mapped as Coastal Wetland under State Environmental Planning Policy (SEPP) No. 14. The 100m buffer to this area extends into proposed Lots 4 and 5 where future dwellings are to be located.



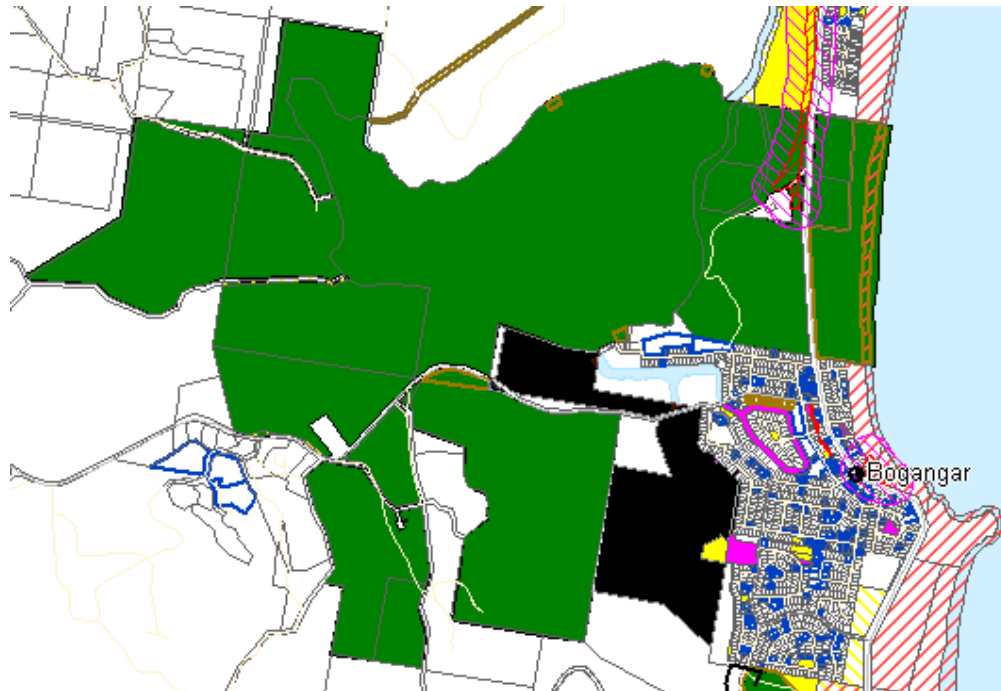
SEPP 14 (yellow); 100m buffer (red)

The entire site is located within the SEPP 71 Coastal Protection Zone. The site is also designated as a sensitive coastal location. Indicative dwelling pads for proposed Lots 4 and 5 are located within a sensitive 'strip' of such land.



SEPP 71 Sensitive Coastal Location (pink)

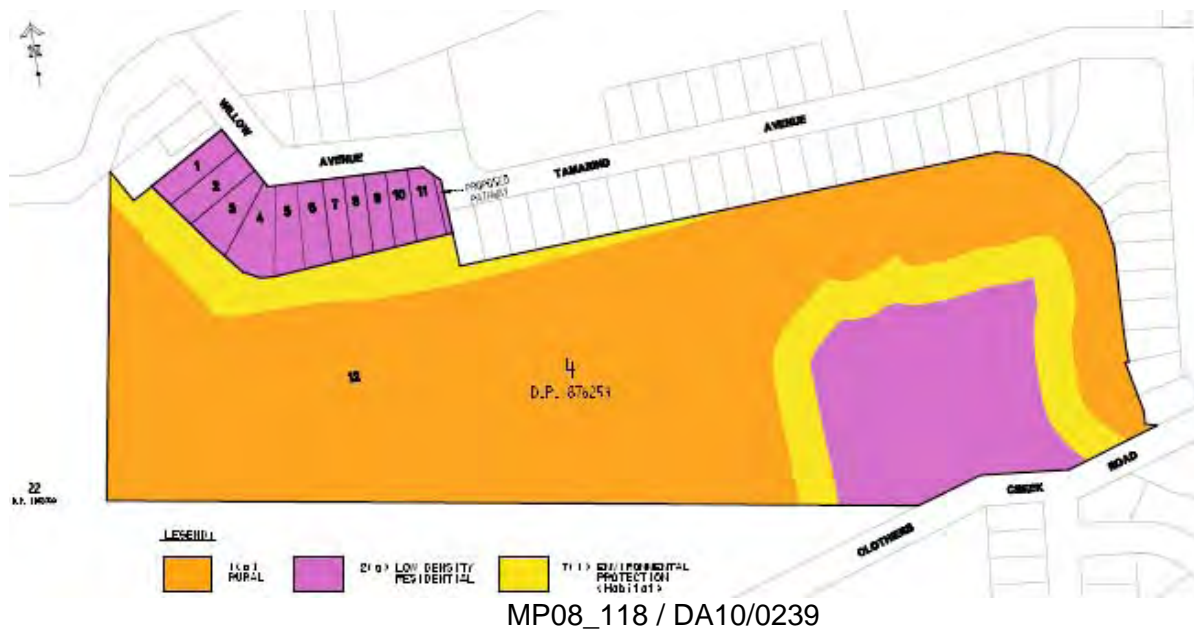
The subject site is located adjacent to Cudgen Nature Reserve and Cudgen Lake. As such, the application was referred to National Parks and Wildlife (DECCW) for comment, the content of which is addressed elsewhere within this report.



Cudgen Nature Reserve (green); Subject Site (black)

Major Project adjacent to subject site

A 12-lot residential subdivision of Lot 4 DP 876253 Willow Avenue, Bogangar (MP08_118 / DA10/0239) was approved by the Minister for Planning on 2 December 2010. This site is to the north of Clothiers Creek Road and is adjacent to proposed Lot 3. The residential subdivision (below) includes Lot 12, an 11.37ha residue lot comprising of 1(a), 2(a), 7(a) and 7(l) zoned land.



The application has been determined, however, the proposed lots are yet to be legally created.

Road Widening along Clothiers Creek Road

Council is currently in the process of acquiring land owned by the applicant in order to carry out road widening works along Clothiers Creek Road to correct an existing road alignment anomaly.

The proposed road widening impacts upon Lot 22 DP 1058759 (subject site north and south of Clothiers Creek Road) and Lot 4 DP 876253 (major project site).

In summary, approximately 0.18ha is to be acquired by Council from the northern side of Lot 22 with approximately 0.27ha to be granted to the southern side of Lot 22. Council will also acquire approximately 0.12ha from Lot 4. Road widening is not expected to significantly impact upon the proposed subdivision but will result in alteration of Lot areas.

Public Submissions

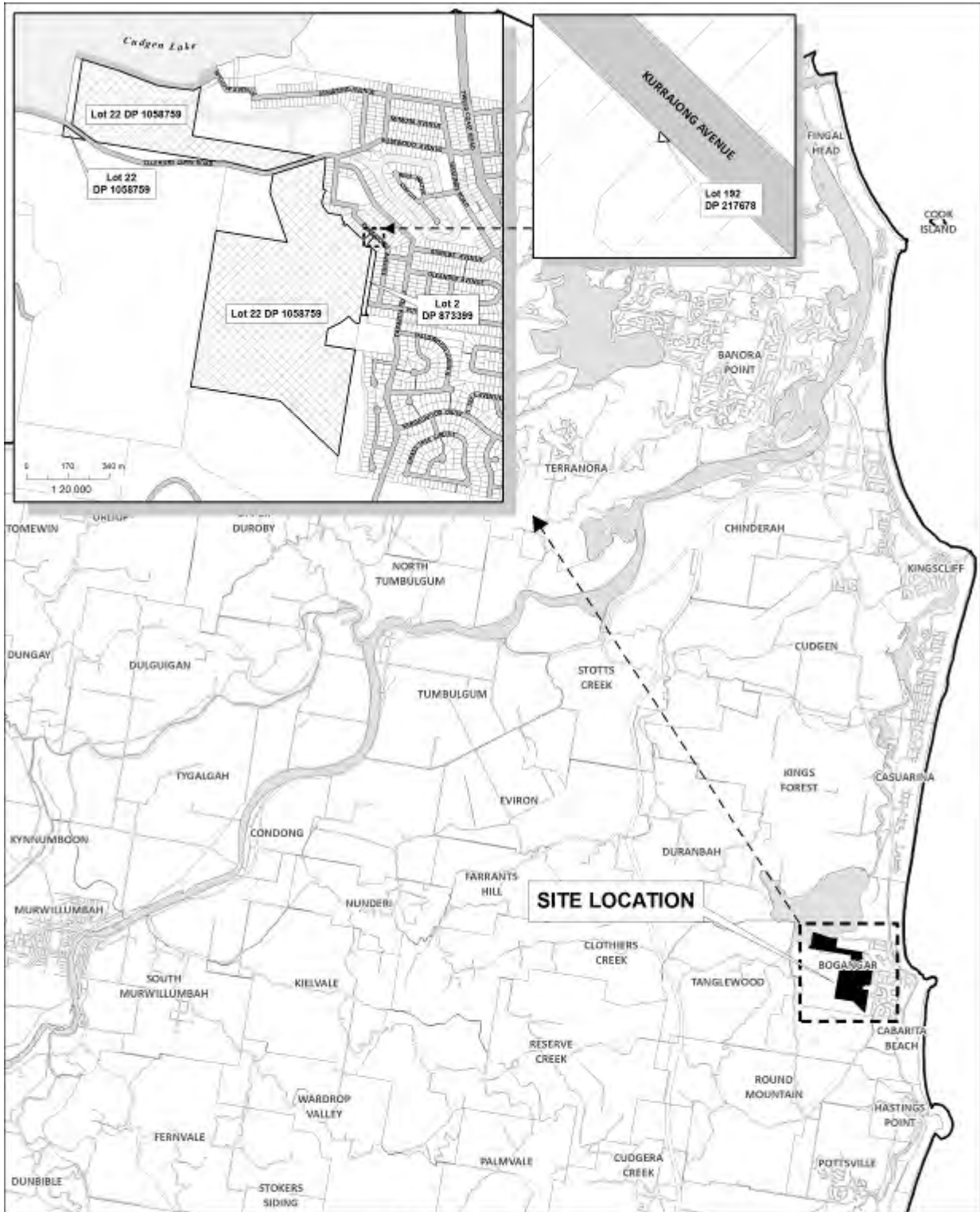
The proposed development attracted 41 individual objections and a petition containing 70 signatures following notification of the application.

The objections were focused on the suitability of the site given the impacts of the development upon the sensitive environment, threatened species, koala habitat (in particular at the end of Poinciana Avenue), introduced domestic pets, amenity of adjacent residential properties, 2005 flooding, 2004 and 2009 bushfires, increased traffic movements and restriction of access to proposed Lot 2 via proposed Lot 1 for Emergency Services.

Summary

Having regard to relevant statutory controls and an assessment against SEPP 14 and Clause 20(2)(a) in particular, of the Tweed LEP 2000, the proposed five (5) lot subdivision is not considered suitable for the location and therefore the proposed development is recommended for refusal.

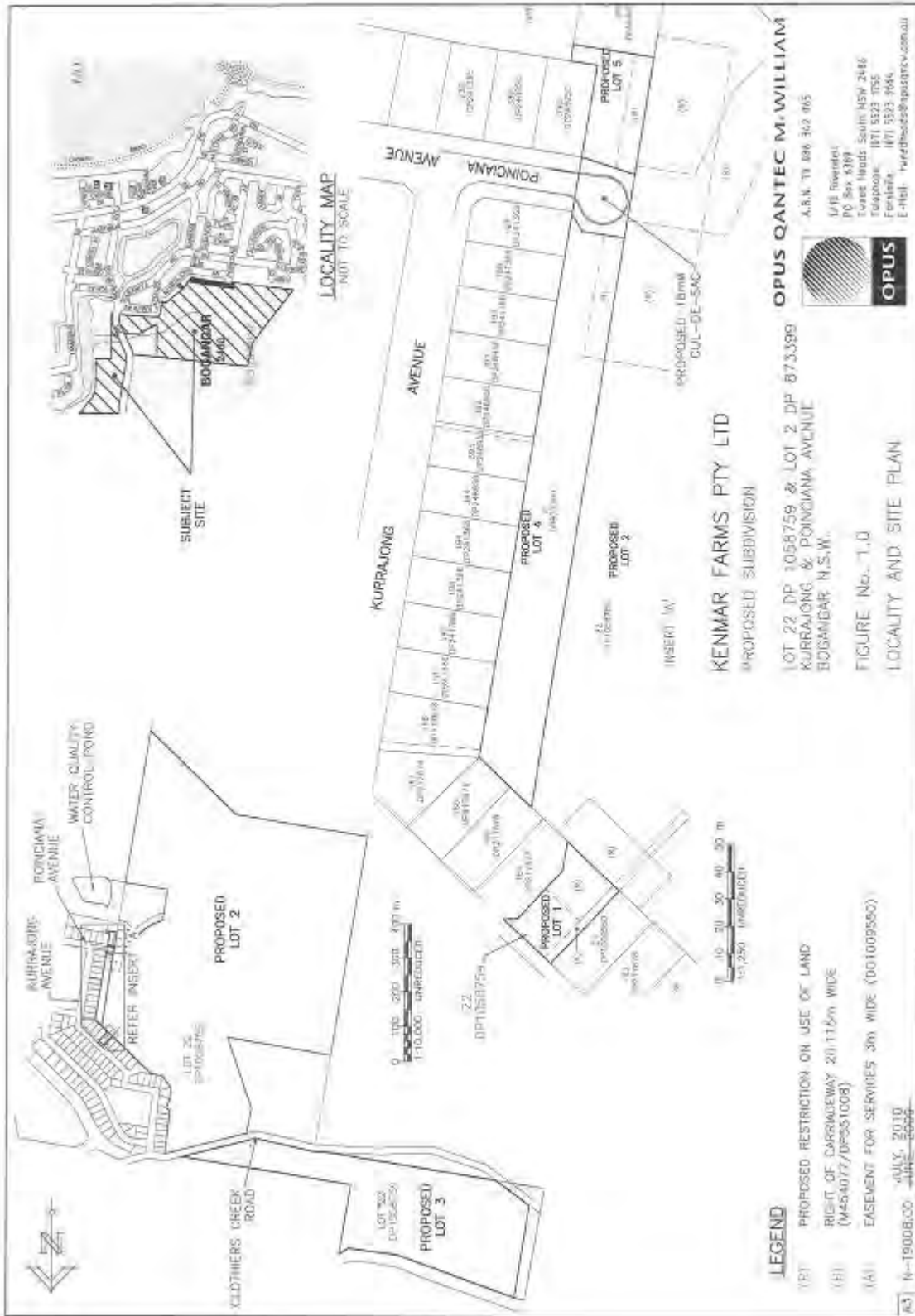
SITE DIAGRAM:



Locality Plan

Lot 192 DP 217678, Lot 22 DP 1058759 Poplar Avenue and
 Lot 2 DP 873399 Poinciana Avenue, Bogangar

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being incorrect in any way and for any reason. This information is provided for the general guidance and is to be considered as advisory and diagnostic only. It should not be used for survey or construction purposes and prior to any expenditure a "Site before Building" enquiry must be made by calling 1100. The information contained on this document remains valid for 12 days from the date of supply.</p>	<p>Cadastral: 23 January, 2011 © Land and Property Management Authority (LPMMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 1 2 Km 1:100,000 @ A4 Portrait GDA 94 GDA 94 - NOT CORRECTED</p>	<p>Civic and Cultural Centre 3 Tombulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T: (02) 6671 2400 1300 292 872 F: (02) 6670 2428 W: www.tweed.nsw.gov.au E: planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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LEGEND

- (RT) PROPOSED RESTRICTION ON USE OF LAND
- (H) RIGHT OF CARRIAGEWAY 20/11.6m WIDE (M454077/D551008)
- (AE) EASEMENT FOR SERVICES 300 WIDE (D01009580)

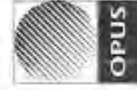
A3 N-1900B.C.O. JULY 2010
 JUNE 2009

KENMAR FARMS PTY LTD
 PROPOSED SUBDIVISION

LOT 22 DP 1058759 & LOT 2 DP 873399
 KURRAJONG & POINCIANA AVENUE
 BODAMGAR N.S.W.

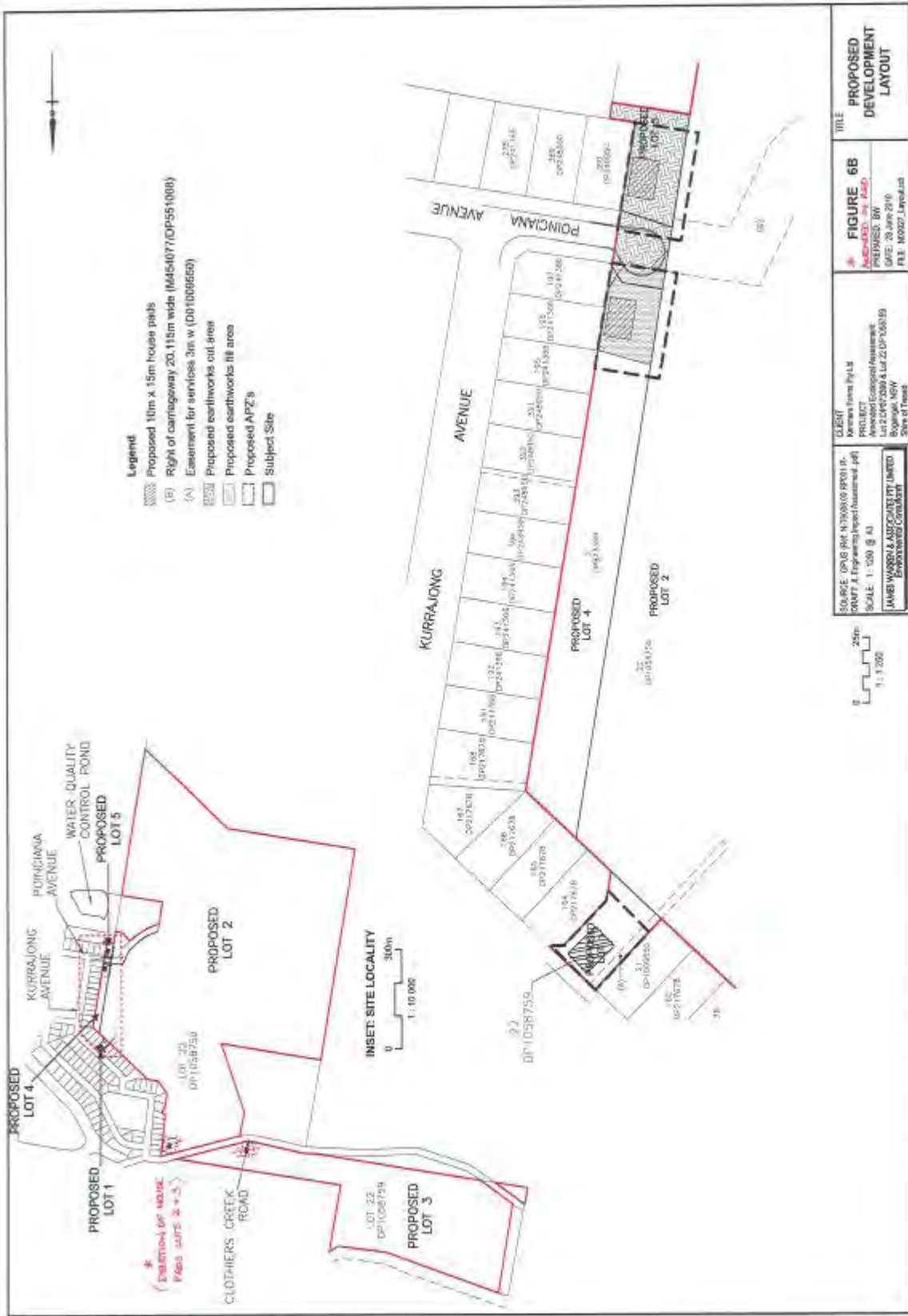
OPUS QANTEC M. WILLIAM

A.B.N. 79 086 362 865



1/18 Liverpool
 PO Box 8389
 Towns Head, South NSW 2446
 Telephone: 081 5323 1055
 Facsimile: 081 5323 2664
 E-Mail: headoffice@opusqtcv.com.au

FIGURE No. 1.0
 LOCALITY AND SITE PLAN



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

One of the aims of the plan is:

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

In order for future dwellings to be located upon proposed lots 1, 4 and 5, considerable Asset Protection Zones need to be maintained off-site that encroach into sensitive ecological land. In addition, substantial earthworks need to take place in order to create acceptable dwelling pads upon Lots 4 and 5 requiring existing sensitive vegetation to be removed in the process.

As such, it is questionable whether the proposed development sustains economic development of the area without compromising the area's environmental qualities.

Clause 5 - Ecologically Sustainable Development

Clause 5 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.

It is not clear whether irreversible environmental damage may be caused by earthworks and the off-site location of Asset Protection Zones for proposed Lots 1, 4 and 5 given the ecological significance of the site. Impacts upon inter-generational equity and conservation of biological diversity and ecological integrity have not been resolved.

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.*

Although consistent with the relevant 2(a) zone and adjacent unzoned land objectives, the cumulative impact of development where future dwellings are proposed is a concern.

It is becoming more common for applicants to request that Asset Protection Zones be located in areas other than that of the subject site, that is, beyond the proposed allotment for the future provision of a dwelling.

In this instance, Asset Protection Zones extend into areas containing sensitive vegetation, mapped wetland and evidenced Koala habitat. For this to occur, the applicant needs to demonstrate 'exceptional circumstances'. This has not been demonstrated.

Loss of important biodiversity in this locality constitutes an unacceptable cumulative impact on the community.

Clause 11 – Zone Objectives

Proposed Lot 1 consists of unzoned land. Please refer to an assessment of the suitability of the proposed development below under Clause 13.

Proposed Lot 2 consists of land zoned 7(a) and 7(l). Subdivision is permissible in these zones if the area of land within each zone totals 40 hectares or more. In this case, land within the 7(a) zone has a total area of 42.09 hectares. This is considered acceptable.

Subdivision including the undersized portion of 7(l) land (8.2 hectares) requires an application to vary the development standard. An assessment of the application to vary the development standard for proposed Lot 2 is discussed elsewhere in this report.

Bushfire hazard reduction within the 7(a) zone for the creation of Asset Protection Zones for proposed Lots 1, 4 and 5 requires development consent.

No further development is proposed for Lot 2.

Proposed Lot 3 consists of land zoned 1(a), 2(a), 7(a) and 7(l). Subdivision is permissible in the 2(a) zone with a minimum allotment size of 450m². Subdivision is permissible in the 1(a), 7(a) and 7(l) zones only if the area of land within each zone totals 40 hectares or more. In this case, land within each of these zones is undersized.

As outlined above, an application to vary the development standard is required. An assessment of the application vary the development standard for proposed Lot 3 is discussed elsewhere in this report.

No further development is proposed for Lot 3.

Proposed Lots 4 and 5, contained within the existing parcel Lot 2 DP 873399 are zoned 2(a). Subdivision (and associated earthworks) within the 2(a) zone is permissible with consent with a minimum allotment size of 450m². The location of future dwellings is permissible with consent on a minimum lot size of 450m².

Clause 15 - Essential Services

All essential services can be supplied to proposed Lots 1, 4 and 5.

Clause 16 - Height of Building

There are no buildings proposed.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

The area of the subject site where earthworks are proposed is classified as Class 3 land. A preliminary Acid Sulfate Soil Management Plan was submitted which proposes soil testing to be undertaken prior to the commencement of works, thus necessitating the submission of a detailed site investigation and detailed management plan for further consideration.

Specific Clauses

Clause 13 – Unzoned Land

Part of the subject land (proposed Lot 1) is zoned 'uncoloured' under the Tweed LEP 2000. Relevant objectives of Clause 13 are:

- to enable the control and development on unzoned land, and
- to ensure that development of unzoned land is compatible with surrounding development and zones.

In deciding whether to grant consent to development on unzoned land (above the mean high-water mark or waterways), the consent authority must consider:

- whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

Proposed Lot 1 is adjacent to developed residential land zoned 2(a). The creation of a residential lot on this unzoned land is consistent with the permissible use, future character and existing character of adjacent land.

Although Lot 1 will not have a dwelling entitlement, Clause 13(2) enables development approval to be sought for a future dwelling house which will need to be assessed on merit.

It is noted that the draft zoning for proposed Lot 1 is 2(a) in accordance with the Draft Tweed Shire LEP 2010.

Clause 19 – Subdivision (General)

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

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

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

Clause 20(2)(a) states that consent may only be granted to subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of zoned land within each allotment created is at least 40 hectares.

Proposed Lot 3 has a total area of 18.37ha and is inclusive of 1.622ha of 1(a) zoned land, 1.7ha of 7(a) zoned land and 3200m² of 7(l) zoned land, all of which are less than 40ha as required by the development standard.

Proposed Lot 2 has a total area of 50.29ha and is inclusive of 8.2ha of 7(l) zoned land which is less than 40ha as required by the development standard.

Variations to this standard are therefore the subject of a SEPP 1 Variation Report which has not received the concurrence of the Director General and is discussed in full at a later stage within this report.

Clause 22 – Development near Designated Roads

Clothiers Creek Road is a Council Designated Road. The objectives of this clause are to protect and improve the operation of designated roads and prevent development being unsuitably located near a noisy designated road, or prevent development spoiling the scenic attractiveness of such a road.

There are several existing access roads into the subject site (proposed Lots 2 and 3) from Clothiers Creek Road. No changes are proposed to access and existing land use of these lots fronting this designated road.

Therefore, the objectives of this clause are considered to be satisfied.

Clause 25 – Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The objective of this clause is to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the Tweed.

Consent must not be granted to the carrying out of development on land within Zone 7(a) or on land adjacent to land within Zone 7(a) unless the consent authority has taken into consideration:

- (a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest; and
- (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing; and
- (c) a plan of management showing how any adverse effects arising from the development can be mitigated; and
- (d) the likely effects of the development on the water table; and
- (e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavation or filling.

The five (5) proposed lots contain or are adjacent to land within Zone 7(a). As discussed previously in this report, earthworks are required for the creation of dwelling pads on proposed Lots 4 and 5. Removal of vegetation is required in association with these earthworks. In addition, off-site Asset Protection Zones (APZ's) are required in order to maintain proposed Lots 1, 4 and 5 as residential lots. These APZ's encroach into sensitive vegetation, habitat and mapped wetlands.

The degree of impact and potential for disturbance in relation to the above points is not clear and has not been adequately justified by the applicant.

The degree of impact and potential for disturbance in relation to the above points is not clear and has not been adequately justified by the applicant, nor have they provided any Plan of Management as required.

Clause 28 – Development in Zone 7(l) Environmental Protection (Habitat) and on adjacent land

The objective of this clause is to protect wildlife habitat from the adverse impacts of development. Similar points for consideration as those above apply to assessment of development proposals.

Proposed Lots 2 and 3 contain land zoned 7(l). There is no development proposed within the vicinity of, nor any change to the existing use of the land contained within the proposed lots. As such, there does not appear to be any conflict in this regard.

Clause 29 - Development adjacent to Zone 8(a) National Parks and Nature Reserves

The objective of this clause is to ensure that development of land adjacent to Zone 8(a) does not have a significant impact on wildlife habitat.

Proposed Lots 2 and 3 are adjacent to Cudgen Nature Reserve. However, the existing use of these lots will not change as a result of the proposed development.

Clause 31: Development Adjoining Waterbodies

The clause applies to land that adjoins the MHWM of a waterbody.

The objectives of this clause include:

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

The proposed development subdivision is not likely to impact upon waterbodies located within or adjacent to proposed Lot 3.

Clause 34 – Flooding

Clause 34 of the TLEP refers to flood liable land and requires Council to ensure that appropriate development occurs in order to minimise future flood damage on the local community.

Flooding impact has been considered for Lots 1, 4 and 5 where dwelling pads are proposed.

Council's adopted design level within this vicinity is RL 3.1m AHD with an adopted minimum floor level of RL 3.6m AHD applicable to any future dwellings.

Proposed Lot 1 currently provides existing ground levels within the range of RL 3.8m – 4.0m AHD and therefore complies with Council's DCP A3 requirements.

Part of proposed Lot 4 is proposed to be filled (from cut material from Lot 5) to provide a pad level above RL 3.4m AHD. Proposed Lot 5 is to be the subject of earthworks (cut) and will result in finished levels greater than 3.4m AHD.

From an engineering perspective, these levels comply with Council's DCP A3 requirements subject to works not impacting upon adjacent properties by way of causing ponding or drainage issues.

An assessment in consideration of Probable Maximum Flood (PMF) inundation requirements would take place at dwelling application stage.

Clause 39 – Remediation of Contaminated Land

This clause requires contaminated land to be remediated adequately prior to development occurring in accordance with SEPP 55.

The application was lodged with the intention to locate dwelling sites within proposed Lots 2 and 3.

An assessment of potentially contaminated land involved consideration of a former above ground fuel storage tank located approximately 300m from the (now deleted) indicative dwelling site on proposed Lot 2.

However, since this component of the proposal has since been deleted, no further consideration of potentially contaminated land is necessary.

Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the NSW Rural Fire Service on 11 March 2010 for consideration and comment, as the subject site is bushfire prone land. The first response received 16 April 2010 recommended conditions be attached to the development consent, should it be granted.

Subsequent to the applicant withdrawing proposed dwelling pads on Lots 2 and 3, clarification of the referral conditions was required. A second response was received 14 October 2010. Again, the Service recommended conditions be attached to the development consent, should it be granted.

The conditions relate to Asset Protection Zones, Water and Utilities and Access.

Asset Protection Zones that encroach upon proposed Lot 2 were generally accepted by the Service. It was advised that future dwellings were likely to require an alternative solution to meet the construction requirements of revised standards for construction of buildings in bushfire-prone areas.

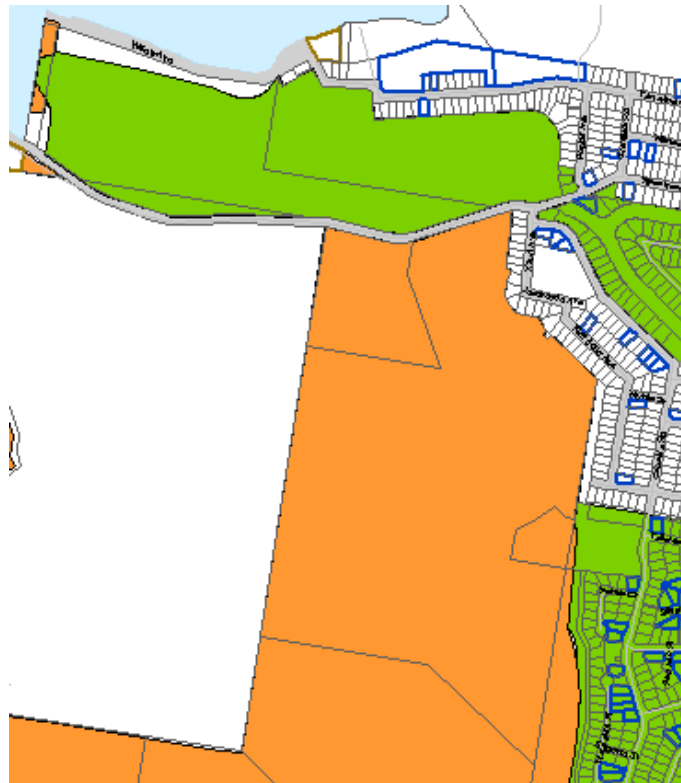
As discussed elsewhere in this report, the off-site location of Asset Protection Zones is likely to result in an unacceptable impact to sensitive 7(a) zoned land and SEPP 14 mapped land and is generally not supported in planning terms.

Clause 54 – Tree Preservation Order

The objective of this clause is to enable the protection of vegetation for reasons of amenity or ecology.

The subject site is affected by both the 1990 and 2004 Tree Preservation Orders (TPO's). The 1990 TPO affects proposed Lot 3 and the 2004 TPO affects proposed Lot 2 and a small portion of proposed Lot 3.

In effect, the TPO's prohibit clearing of vegetation without development consent.



1990 TPO (Green) and 2004 TPO (Orange)

Asset Protection Zones for proposed Lots 1, 4 and 5 encroach upon sensitive, vegetated areas within proposed Lot 2 which is zoned 7(a) and covered by the 2004 TPO.

In granting approval of Asset Protection Zones, it is expected that unacceptable clearing and subsequent maintenance of vegetation would take place for the purpose of bushfire threat reduction.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

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

Part of proposed Lot 3 is zoned 1(a). It is low quality agricultural land that is currently used for low intensity cattle grazing. This land use will not change. Therefore, the development would not lead to a loss of prime crop and pasture land, or adversely impact upon nearby agricultural activities.

Clause 15: Wetlands or Fishery Habitats

The proposal involves the location of an off-site Asset Protection Zone for proposed Lot 5 that encroaches upon land mapped as wetland in accordance with SEPP 14.

Clause 15 requires the applicant to consider the impact of the development upon the wetland.

Application documentation does not address this matter.

Clause 29A: Natural areas and water catchment

This clause considers the impact the development may have upon wildlife habitat, scenery and site erosion.

As stated previously in this report, the impact that vegetation clearing may have upon the sensitive nature of the 7(a) zone to create bushfire Asset Protection Zones for proposed Lots 1, 4 and 5 is not clear and has not been addressed adequately by the applicant.

Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 43: Residential development

The proposed road width of the Poinciana Road extension is not excessive for the function of the road and so complies with this clause.

The issue here is whether the proposed development and density upon Lots 1, 4 and 5 adversely affects 'the environmental features of the land' via the location of Asset Protection Zones upon adjacent Lot 2.

Clause 81: Development adjacent to the ocean or a waterway

Proposed Lot 3 north of Clothiers Creek Road contains a portion of canal and is adjacent to Cudgen Lake.

The proposal does not contradict the objectives of this Clause as proposed works are generally removed from the immediate lake / canal area. It does not reduce the scenic quality of the locality or impact on Cudgen Lake in this respect.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding:

- minimum allotment size in the 7(l) zone for the purposes of creating proposed Lot 2, and
- minimum allotment size in the 1(a) zone and the 7(a) zone for the purposes of creating proposed Lot 3

As contained within Clause 20(2)(a) of the Tweed LEP 2000. Council notes that the applicant has not included the undersized portion of 7(l) land within proposed Lot 3 as part of the SEPP 1 objection.

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

Consent may only be granted to the subdivision of land 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.

This clause specifically says consent may only be granted to the subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l). As such, Council's and the Department of Planning's interpretation of this clause is that each portion of zoned land must be 40 hectares in order to comply with this clause.

This being the case, a SEPP 1 variation is required for proposed Lot 2 to cater for the 8.2ha of 7(l) zoned land which is less than 40ha as required by the development standard.

A SEPP 1 variation is also required for proposed Lot 3 to cater for the 1.622ha of 1(a) zoned land, 1.7ha of 7(a) zoned land and 3200m² of 7(l) zoned land, all of which are less than 40ha as required by the development standard.

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

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

- 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**

Lot 2 - Applicant Assessment

The applicant submits that the objectives of the standard are achieved notwithstanding non-compliance with the standard, as follows:

- This part of the site is unsuitable for any form of intensive agriculture. Accordingly, it is clear that the proposed subdivision will not adversely affect the continuance of, or aggregation of, sustainable agricultural units
- The proposed development will facilitate the orderly and economic development of the land in accordance with the current land use zones
- The ecological impacts of the proposal have been addressed in the assessment prepared by James Warren and Associates. That assessment concludes that the proposal will not result in a significant effect. Therefore, the subdivision application is unlikely to have any adverse impact on the ecological or scenic values of the land

- The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment.

The applicant concludes that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Lot 2: Council Assessment

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.

- the objectives of the standard are achieved notwithstanding non-compliance with the standard
- the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
- the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable
- 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 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.

Whilst it is acknowledged that residential development is prohibited upon Lot 2 and there is no risk of creating isolated and uncoordinated residential development, and that the manner of subdivision does not alter the existing environmental purpose of the land, Council notes that further consolidation of fragmented environmentally sensitive land in the ownership of the applicant could have been achieved with the inclusion of adjacent Lot 1 DP 818394 in the proposed subdivision plan.

This would have resulted in the valuable addition of a further 6.102 hectares to consolidate the fragmented 8.2 hectares of 7(l) zoned land within proposed Lot 2, resulting in a total of 14.302 hectares and an outcome that serves to mitigate the potential for on-going and continuing fragmentation of ownership of rural land in the locality.

Applicant Assessment - Lot 3:

The applicant submits that the objectives of the standard are achieved notwithstanding non-compliance with the standard, as follows:

- The land is unsuitable for any form of intensive agriculture and is currently utilised for low intensity cattle grazing
- The proposed subdivision will not adversely affect the aggregation of sustainable agricultural units - the rural zoned land to the north contains

a drainage canal and if consolidated, does not provide the minimum 40 hectares

- The development facilitates the orderly and economic development of the land
- The subdivision does not affect the ecological or scenic values of the land as no physical works are to be undertaken
- The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment.

The applicant concludes that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Council Assessment - Lot 3

The applicant could have coordinated the proposed subdivision with the 12-lot residential subdivision of Lot 4 DP 876253 Willow Avenue, Bogangar (MP08_118 / DA10/0239) which was approved by the Minister for Planning on 2 December 2010. The residential subdivision creates an 11.37ha residue lot comprising of 1(a), 2(a), 7(a) and 7(l) zoned land that should be consolidated into Lot 3.

Other adjacent small allotments in the ownership of the applicant need to be incorporated into Lot 3.

As such, the proposed subdivision does adversely affect the aggregation of sustainable agricultural units and is not an orderly or economic development of the land. This view is upheld by the Department of Planning.

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

Applicant Assessment - Lot 2:

The applicant states that compliance with the 40 hectare development standard in relation to only land located within the 7(l) zone (within the one allotment) would preclude a logical subdivision of the land which will create an allotment of 50.29 hectares in total area.

Further, this view hinders attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

Council Assessment – Lot 2

The objects specified within Section 5(a)(i) and (ii) relate to the proper management, development and conservation of natural and artificial resources,

including agricultural land and the promotion and co-ordination of the orderly and economic use and development of land.

As stated previously, had the applicant intended to maximise the orderly and economic use of the land, the balance of 7(l) land in the same ownership within Lot 1 DP 818394 may have been added to the subdivision plan. In short, the achievement of greater consolidation of fragmented environmentally sensitive land is desirable.

Flexibility in planning controls is required here to allow the addition of an undersized value of 7(l) land to a complying value of 7(a) land to generally increase the overall size and value of environmentally sensitive land.

Applicant Assessment - Lot 3:

The applicant reiterates the points raised previously and does not believe that further consolidation of adjacent allotments is necessary or practical to increase the future agricultural potential of the site, therefore putting forth that the proposal is consistent with the aims of SEPP 1

Council Assessment Lot 3:

Flexibility in planning controls in relation to the creation of proposed Lot 3 could be applied if the applicant were to maximise consolidation of fragmented rural land within the applicant's ownership.

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.**

Applicant Assessment - Lot 2:

The applicant offers the following points:

- no change in land use results from the subdivision
- proposed Lot 2 will provide an allotment with an area of 50.29 hectares
- the boundary of proposed Lot 2 which includes all non-urban zoned land within the site south of the alignment of Clothiers Creek Road is a logical and efficient layout
- the proposed subdivision will create lots that are similar to the size of other lots in the immediate locality
- no adverse impacts are likely to be created by the proposal on the surrounding area.

In conclusion, the applicant states that there are no such significant matters raised and that there is no public benefit in maintaining the standard.

Council Assessment - Lot 2:

Matters of significance for State or regional planning would be raised if the land use were to change and if adverse impacts were to arise as the result of this change of use.

The creation of Lot 2 does not allow residential development. The use of the land is to remain as existing.

There is a public benefit in allowing the consolidation of 7(a) land with 7(l) land. That public benefit may have been greater with the inclusion of adjacent 7(l) zoned Lot 1 DP 818394 in the subdivision plan.

Applicant Assessment - Lot 3:

The applicant concludes that, since the creation of Lot 3 involves no change of land use, no physical disturbance to the landform or vegetation, a logical and efficient layout and a comparable lot size, the subdivision does not raise any matters of Regional planning significance and that there is no public benefit in maintaining the standard.

Council Assessment - Lot 3:

Matters of significance for State or regional planning have been raised consistent with the lack of opportunity within the subdivision application for consolidation of fragmented parcels in the same ownership adjacent to the subject site. Accordingly, the creation of Lot 3 is considered not to be in the public interest.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. The proposed non-compliance of Lot 3 with the Tweed LEP 2000 is not considered to be justified in this instance and is likely to result in an adverse planning precedent within the Shire that perpetuates fragmentation of environmentally sensitive and rural land. As such, the granting of this application is likely to impact upon public benefit.

Concurrence

As stated previously in this report, concurrence was not granted by the Director General in this instance to permit the creation of proposed Lot 3 of 18.37ha for the following reason:

The subdivision would create an undersized lot on rural and environmental protection land that would result in a total of four undersized lots in this location in the same ownership. This amounts to rural-residential development outside the strategic planning process and is not in the public interest.

Conclusion

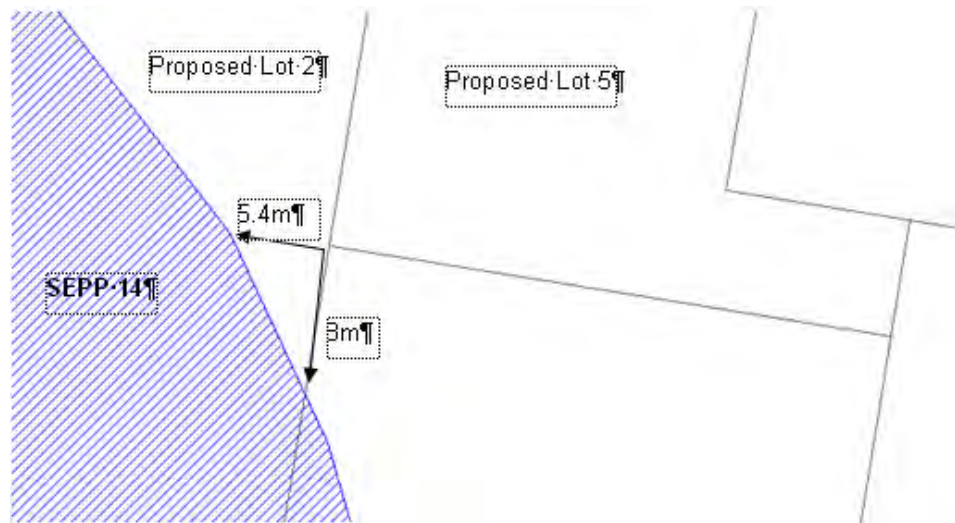
Council does not support the request to vary the development standard regarding minimum allotment sizes as specified in Clause 20(2)(a).

SEPP No. 14 - Coastal Wetlands

The north-eastern and southern portions of current Lot 22 (proposed Lot 2) within the site contain areas mapped as Coastal Wetland under State Environmental Planning Policy (SEPP) No. 14. Refer to the map located within the "Site Constraints" section for overall location details.

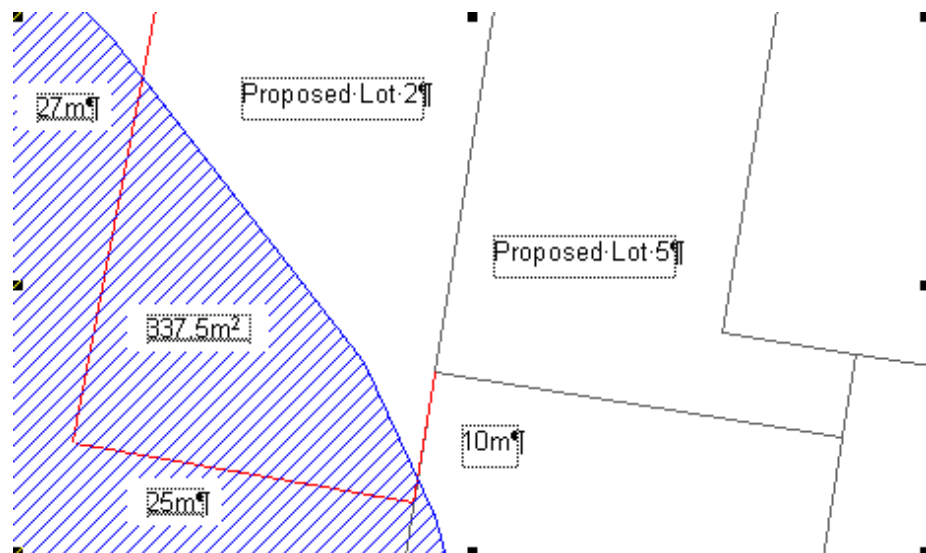
The applicant has stated that the proposal does not involve any of the works within the mapped area as nominated in Clause 7 of the policy (ie. clearing, constructing a levee, draining, or filling that land).

However, the edge of the mapped wetland is located approximately 8m south and 5.4m west of the south-west corner of proposed Lot 5 as indicated below.



The proposed Asset Protection Zone for Lot 5 as indicated on the proposed subdivision plan extends into proposed Lot 2 including the area 10m south and 25m west of the south western corner of proposed Lot 5.

As such, an approximate area of 337.5m² of SEPP 14 wetland is included in the proposed Asset Protection Zone for proposed Lot 5, as outlined in red below.



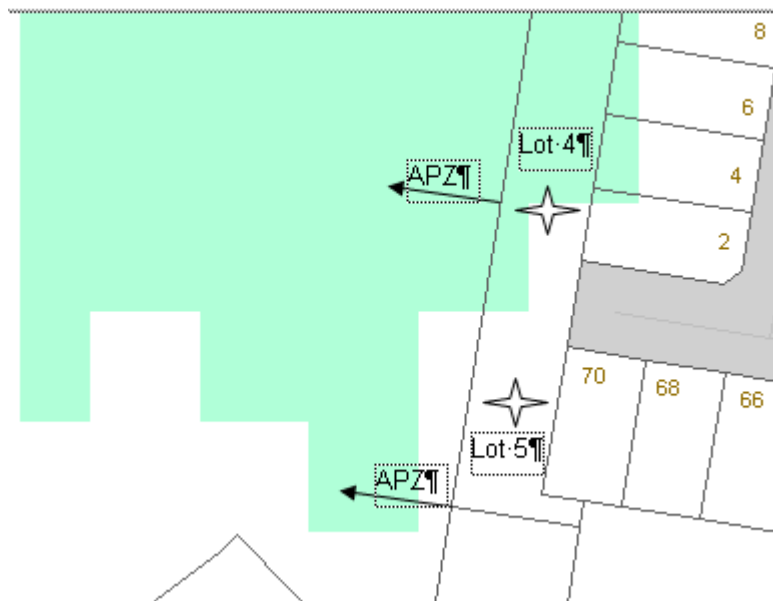
It is expected that maintenance and clearance works may be undertaken within an Asset Protection Zone for the purpose of bushfire threat reduction.

The inclusion of this APZ in the proposal results in a significant area of vegetation and habitat mapped as wetland being compromised which is contrary to Clause 7(1)(a) of SEPP 14 which states that a person shall not clear the land without the consent of the Council and the concurrence of the Director of National Parks and Wildlife. Such development is determined as “designated” and requires an Environmental Impact Statement (EIS).

SEPP No. 44 - Koala Habitat Protection

The site which is greater than 1ha in area contains primary and secondary (Classes A and B) Koala Habitat as sourced from the Australian Koala Foundation. Refer to the map located within the “Site Constraints” section for overall location details.

Secondary Class B Koala Habitat is located within proposed Lot 4 and the associated Asset Protection Zone (APZ) areas for proposed Lots 4 and 5 as indicated below. Indicative dwelling pad locations are starred.



As previously discussed, it is intended that maintenance and clearance works may be undertaken within an Asset Protection Zone (APZ) for the purpose of bushfire threat reduction.

The applicant states that there are no trees listed in Schedule 2 as Koala feed trees on the narrow Lot 2 DP 873399 where proposed Lot 4 and 5 are to be located. A vegetation survey in support of this statement has not been supplied by the applicant.

It was agreed that there was evidence of Schedule 2 Koala food tree species and koala activity upon Lot 22 DP 1058759 (proposed Lot 2). However the applicant did not supply a vegetation survey or discuss the impact of clearance and earthworks activities in association with the indicative dwelling sites and APZ's for

proposed Lots 4 and 5. Council acknowledges that there are Swamp Mahogany Koala Food Trees within the associated APZ's for proposed Lots 4 and 5.

The majority of submissions objecting to the proposed development make reference to koala activity within the vicinity of Kurna, Jacaranda and Poinciana Avenues.

As such, it is unclear as to the degree of impact the proposal may have upon Koala habitat within the subject site.

SEPP No. 55 - Remediation of Land

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

The application was lodged with the intention to locate dwelling sites within proposed Lots 2 and 3. An assessment of potentially contaminated land involved consideration of a former above ground fuel storage tank located approximately 300m from the (now deleted) indicative dwelling site on proposed Lot 2.

However, since this component of the proposal has since been deleted, no further consideration of potentially contaminated land is necessary.

SEPP No 71 – Coastal Protection

The proposed development does not compromise public access to, or result in any overshadowing of the coastal foreshore.

Clause 8 of SEPP 71 sets out matters for consideration. Of note is:

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

Application documentation does not clarify the impact that the proposal may have, in terms of earthworks for proposed Lots 4 and 5 and the location of Asset Protection Zones for proposed Lots 1, 4 and 5 on sensitive adjacent land and habitat located within the 7(a) zone, some of which is mapped as wetland under SEPP 14.

Clause 18 of this policy provides that a Development Control Plan is required if the subdivision relates to land within a residential zone and creates 25 lots, or less if the land proposed to be subdivided and any neighbouring land in the same ownership could be subdivided into more than 25 lots.

The site is within a sensitive coastal location (refer map in "Site Constraints" section) and when considered in association with adjoining land owned by the applicant, the total land holdings for the purpose of the SEPP would yield more than 25 lots.

Therefore, in accordance with Clause 18, a Development Control Plan would normally be required. However, the Department of Planning has waived the requirement for a Development Control Plan in accordance with Clause 18(2) of the Policy.

SEPP (Major Development) 2005

The Major Development SEPP was gazetted on 25 May 2005. Schedules 1 and 2 of Clause 6 of the SEPP identify State Significant Development. The proposal was caught by Schedule 2 of the SEPP.

The applicant sent a submission to the Department of Planning on 15 September 2008 seeking a declaration of Local Planning Significance. The Minister for Planning declared that the project was only of Local Planning Significance on 26 February 2009.

Following amendments to the SEPP on 1 July 2009, Schedule 2 was amended and no longer includes the proposed development. As such, Tweed Shire Council is the consent authority for the development application.

SEPP (Rural Lands) 2008

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

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

Measures designed to reduce these land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities.

Proposed Lot 3 contains a small portion of Regionally Significant Farmland along the boundary with Clothiers Creek Road. However, this SEPP does not specifically apply to this development as no dwellings (indicative dwelling sites) are proposed on rural land.

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

The Shire-wide Draft Local Environmental Plan was placed on exhibition in early 2010. In accordance with the draft Plan, draft zonings for the subject site are as follows:

Current Zone	Min. Lot Size	Draft Zone	Min. Lot Size
Unzoned Land	Not specified	R2	450m ²
1(a)	40 hectares	RU2	40 hectares
2(a)	450m ²	R2	450m ²
7(a)	40 hectares	E2	40 hectares
7(l)	40 hectares	E2	40 hectares

Proposed Lots 1, 4 and 5 with areas greater than 450m² and indicative dwelling sites are permitted with consent within the draft R2 – Low Density Residential zone.

The entirety of proposed Lot 2 on the southern side of Clothiers Creek Road (which currently contains 7(a) and 7(l) zoned land) is draft zoned E2 – Environmental Conservation. The proposed lot has an area greater than 40ha within the draft zone and therefore complies with the minimum lot size. There would be no need for further consideration of the creation of this lot by the Director-General as is currently required through SEPP 1.

Proposed Lot 3 would consist of undersized components of RU2 and E2 zoned land that are less than 90% of the minimum area specified for such a lot by the 40 hectare minimum lot size development standard. As such, concurrence would be required from the Director-General, consistent with the current application process.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

Flooding impact has been considered for Lots 1, 4 and 5 where dwelling pads are proposed.

Council's adopted design level within this vicinity is RL 3.1m AHD with an adopted minimum floor level of RL 3.6m AHD applicable to any future dwellings.

Proposed Lot 1 currently provides existing ground levels within the range of RL 3.8m – 4.0m AHD and therefore complies with Council's DCP A3 requirements.

Part of proposed Lot 4 is proposed to be filled (from cut material from Lot 5) to provide a pad level above RL 3.4m AHD. Proposed Lot 5 is to be the subject of earthworks (cut) and will result in finished levels greater than 3.4m AHD.

From an engineering perspective, these levels comply with Council's DCP A3 requirements subject to works not impacting upon adjacent properties by way of causing ponding or drainage issues.

An assessment in consideration of Probable Maximum Flood (PMF) inundation requirements would take place at dwelling application stage.

A5-Subdivision Manual

Part A5 of the Tweed Consolidated DCP provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State.

Physical works and provision of services are not proposed to take place on proposed Lots 2 and 3.

Indicative dwelling pads are located on proposed Lots 1, 4 and 5 with 10m x 15m building envelopes possible on these sites. Minimum lot sizes are met.

Earthworks are proposed for proposed Lots 4 and 5.

Existing title restrictions (fencing, rights of carriageway, easements for services) are to remain. Additional easements are required to cater for the provision of existing and proposed drainage, stormwater and sewer services.

Council's Development Assessment Engineer has reviewed the proposal with regard to compliance with DCP A5 and agrees that these are reasonable restrictions to place on the title.

B19-Bogangar/Cabarita Beach Locality Plan

Council's vision for Bogangar/Cabarita Beach is:

To retain and enhance the unique natural environmental character and coastal lifestyle offered by Bogangar/Cabarita Beach, whilst embracing high quality development promoting the area as a popular location for residential living, tourism and business.

Objectives for Bogangar/Cabarita Beach that are relevant in particular to the proposed subdivision include:

Land Use:

The compact village form is retained and enhanced through appropriate forms of infill development and protection of environmental attributes.

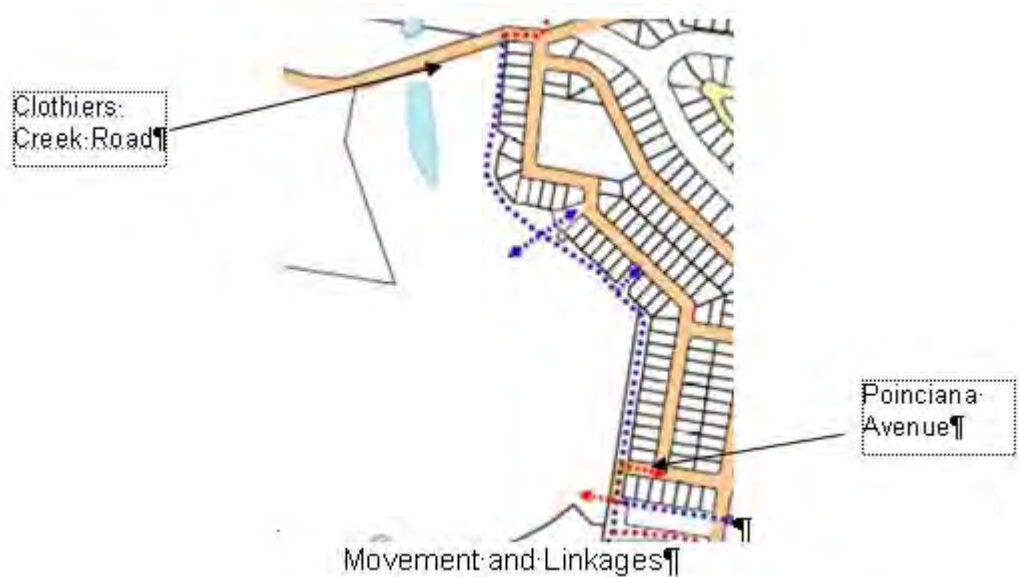
Environmental Hazards:

New development is adequately protected from environmental hazards such as flooding, bushfire risk and coastal processes.

Environmental Management:

Ecologically significant areas and the natural processes occurring therein are protected from any impact arising from existing and future developments.

The Movement and Linkages plan indicates an existing pedestrian link from Clothiers Creek Road to Poinciana Avenue to the west of Kurrajong, Jacaranda and Kauri Avenues and continues this link through proposed Lots 4 and 5 to enable such access opportunities. Residential development on proposed Lots 4 and 5 obstructs pedestrian access along this route to Poinciana Avenue.



Proposed Lot 4 is located within the Open Space and Recreation Precinct (below). This precinct comprises the structured and unstructured parks, open spaces and organised sporting venues dispersed throughout Bogangar/Cabarita. These areas are intended to continue to provide for the passive and active recreational pursuits of the local community.



Development in the Open Space and Recreation Precinct is to be supported only where the proposal does not compromise the environmental qualities or recreation function and is consistent with this policy. The proposed residential development of Lot 4 impacts upon both the environmental quality and recreational function of this parcel.

An anomaly currently exists within B19 in that Lot 2 DP 873399 (proposed Lots 4 and 5) is represented as also being located within the Detached Residential Precinct. This anomaly will require further investigation from the Planning Reform Unit in order for it to be resolved.

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

Clause 92(a) Government Coastal Policy

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

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

Flora and Fauna

Ecological Site Values

The development proposes a five lot subdivision between Bogangar village and Cudgen Nature Reserve. The site subject to the development application contains vegetation communities of very high ecological and habitat value including Endangered Ecological Communities (EECs), with numerous records of threatened species including Koala, Grey-headed Flying Fox, Wallum Sedge Frog, Black-necked Stork and Glossy Black Cockatoo, as well as known habitat for the Wallum Froglet.

Indicative dwelling locations initially proposed for each of the five lots have subsequently been removed from proposed Lot 2 and Lot 3 and this is supported. In particular, the dwelling site and surrounds on proposed lot 2 is entirely zoned for environmental protection with dwellings prohibited in the 7(a) zone, is known Core Koala Habitat (as observed by Ecologist 2008 and 2009) and has been previously assessed by Council's Design Unit as consisting of two EEC's, as illustrated by the Figure 1 below. Subtropical Coastal Floodplain Forest has not been recognised by the applicant's ecological consultant and this is not agreed by Council. Despite the submission of revised engineering plans removing the indicative dwellings from Lots 2 and 3, they remain within the ecological assessment and list significant tree removal within proposed Lot 2 as forming part of the application.

The recent Tweed Coast Koala Habitat Study (subject of a separate Council report) has mapped this area as Primary Koala Habitat (Figure 2), recording significant Koala activity. Given the very limited remaining Primary Koala Habitat on the Tweed Coast and the dramatic decline in Koala numbers and distribution over the last decade, any development which would remove primary and secondary Koala food trees, increase traffic and introduce dogs to the area should not be supported. This development proposes, or does not intend to prohibit, all three of these threats.

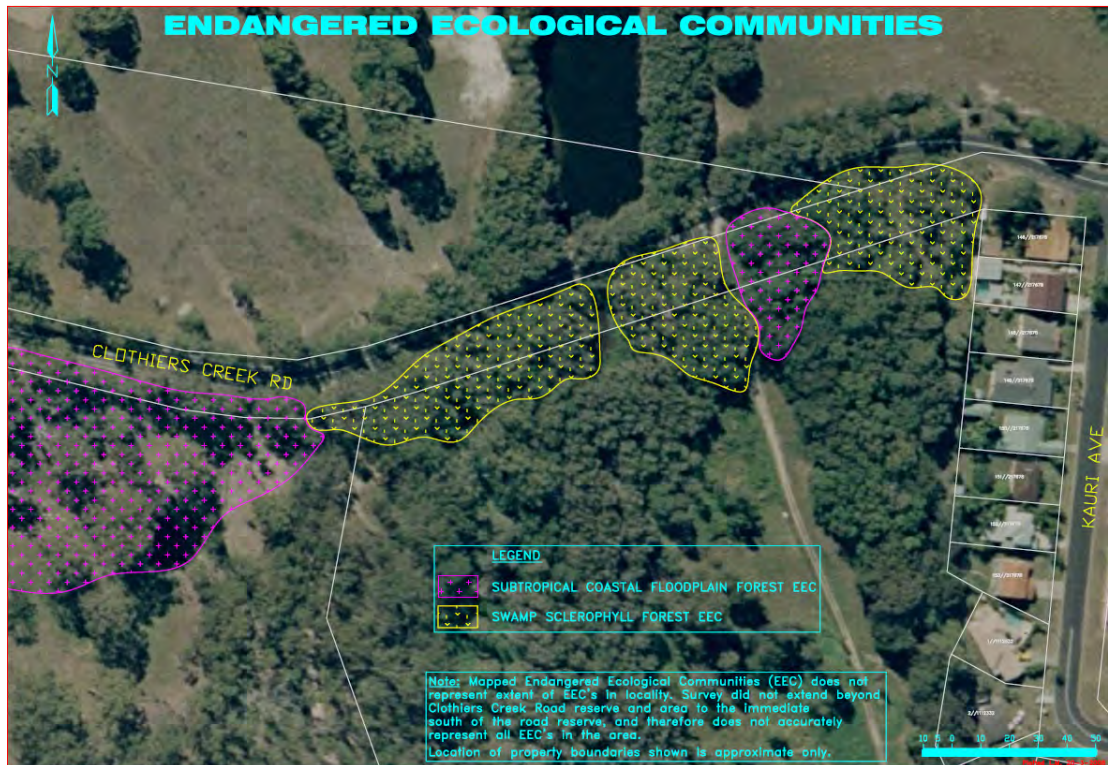


Figure 1: Extract from Council's Design Unit assessment of the previous proposed Clothiers Creek Road realignment back into the road reserve resulted in the decision not to proceed due to ecological constraints.



Figure 2: Extract from Tweed Coast Koala Habitat Study (Figure 5.3a) indicates Primary Koala Habitat (red shading) on Proposed Lot 2 dwelling location where nine larger and unknown small Primary food trees were proposed for removal.

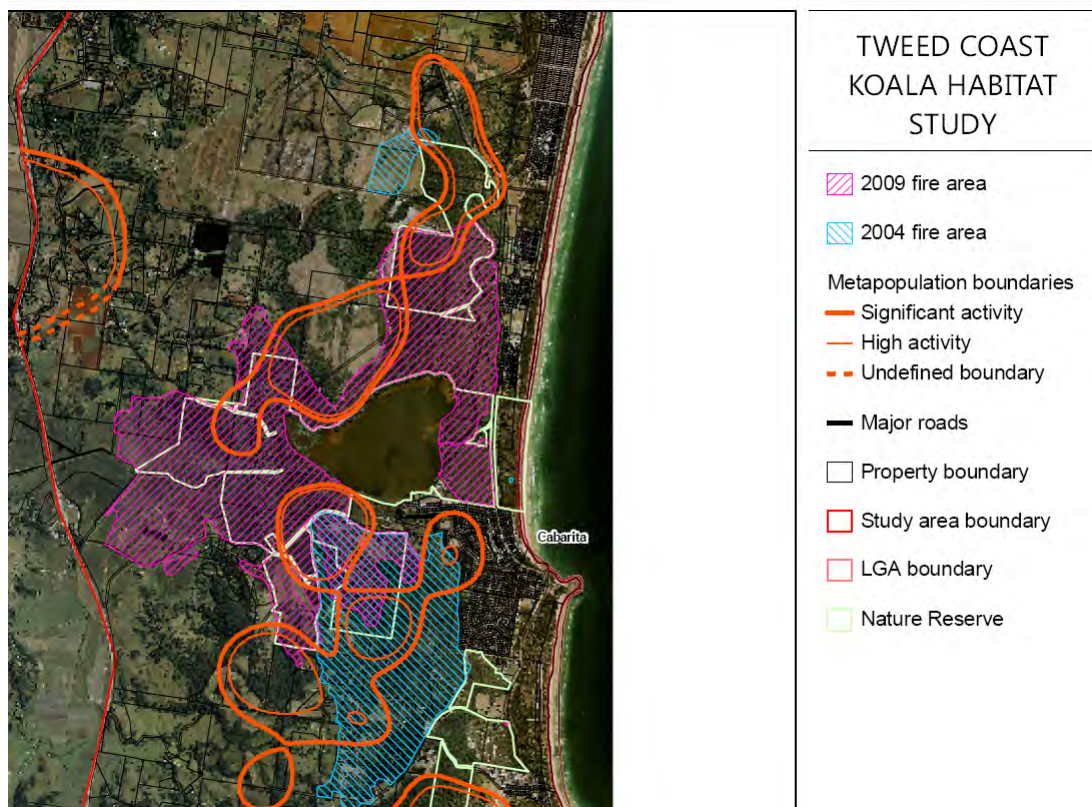


Figure 3: Extract from Figure 5.2 of Tweed Coast Koala Habitat Study indicates significant Koala activity within, and in proximity to, the proposed dwelling sites on proposed Lots 1, 2, 4 and 5. Major bushfire events are also indicated.

Ecological Assessment Deficient

The Ecological Assessment undertaken for the proposal is deficient in survey effort and impact assessment. Survey effort consisted of one day on 25th June 2009 and one additional day in October 2009. No targeted fauna survey (spotlighting, call playback, trapping, anabat recording etc.) has been undertaken at all and only observation during the day and some log turning has been done. This is not adequate to determine the suite of species reliant on the habitat on and adjacent the site for all or part of their lifecycle. Previous surveys within the vicinity have consistently recorded Koalas and other threatened species in the area.

No threatened flora were initially considered at all until requested by DECCW, despite records within close proximity to the proposal. The naturally occurring hybrid of Swamp Mahogany and Forest Red Gum (*Eucalyptus patentinervis*, also a known Koala food tree) is known from the site but has not been recognised within the assessment.

Survey effort does not accord with minimum survey requirements as per the accepted guidelines *Threatened Species Survey and Assessment: Guidelines for Developments and Activities Working draft* (DEC 2004). In the absence of sufficient survey effort, presence of threatened species must be assumed, however, this has also not been the approach taken. Assessments of significance contain only generalised statements and local populations have not been defined, such that the response that local populations will not become extinct cannot be justified. No amphibians, no reptiles and no threatened species

(besides Osprey overhead) were recorded from the site despite known records and high habitat value. Initial reports clearly refer to Cobaki Lakes and a golf course etc and information has clearly been cut and pasted from other documents. Although these anomalies have since been removed, it is indicative of the lack of care and site specificity of the ecological assessment, which cannot be relied upon, the conclusions of which in relation to presence of EEC's and core Koala habitat are contested.

SEPP 14

Clearing is proposed within mapped SEPP 14 wetland for provision of an asset protection zone for proposed Lot 5. Under Clause 7 of the policy such works comprise 'designated development' and must be submitted as an Environmental Impact Statement. This has not been undertaken, nor addressed within the application. A recent policy change allows some clearing for bushfire protection within SEPP 14, but only where an immediate hazard exists to already existing dwellings.

SEPP 44

The approach taken to the SEPP 44 assessment is considered to be flawed. An assessment of potential Koala Habitat requires consideration of whether trees (listed in Schedule 2 of the SEPP) constitute 15% of the total number of trees. The approach taken considers these species over the entire combined allotments and concludes that they do not total 15%, however, pockets of vegetation within the site, particularly along the edges of Lot 2 where impacts are proposed, are most certainly higher than 15% and would thus invoke the policy. The high level of Koala Activity as evidenced by scats and scratch marks recorded by Council's ecologists and within the Tweed Coast Koala Habitat Study as well as historical and anecdotal Koala records is considered to represent Core Koala Habitat under the policy and require a Koala Plan of Management. This has not been provided despite proposed clearing of at least nine large Swamp Mahogany trees amongst others.

Bushfire

Construction of dwellings on Lots 4 and 5 are considered by the NSW Rural Fire Service to be within BAL-FZ (flame zone) where no alternative solutions are available in terms of construction requirements, thus creation and maintenance of asset protection zones at least 35m in width is the only solution, requiring ongoing clearing. Maintenance of APZ's within mapped wetland on an adjacent allotment is not considered a sustainable development solution. The proximity of major fires in 2004 and 2009 to the proposed development is indicative of the bushfire risk within the area. Further dwellings closer to the hazard increases the risk of fire spread from residences into bushland.

(c) Suitability of the site for the development

Flora and Fauna

For all of the above reasons, the site is considered unsuitable for the development and should be refused. Apart from the stated planning reasons for

refusal, it is considered that insufficient ecological survey and assessment has been provided to support the conclusion that there will not be a significant impact upon threatened species, populations or ecological communities. Given the uncertainty over continued viability of Koalas on the Tweed Coast, it is considered that the development represents an unwarranted risk to the species.

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

Public Authority Submissions Comment

The application was referred to the Department of Climate Change and Water (National Parks and Wildlife) as the subject site is adjacent to Cudgen Nature Reserve.

An initial response was received 13 April 2010 that dealt in detail with the original proposal, in particular the deficiencies of the ecological assessment.

A final response was received 10 September 2010 following a review of the proposal following removal of dwelling sites from proposed Lots 2 and 3.

Both responses are included as separate attachments to this report.

Public Submissions Comment

The proposal was required to be notified to adjoining owners for a period of 14 days from 17 March to 31 March 2010. A petition with 70 signatures and 41 individual submissions were received during the notification period.

Two dozen of the submissions followed a template format with consolidated issues raised such as:

- Ecological sensitivity of the locality, threatened wildlife species and impact upon the Koala population
- Regular flooding of the area and high bushfire maintenance
- Impact upon flora and fauna through use of access roads by trail bikers and 4WD vehicles
- Request for Council to acquire and dedicate a hazard buffer zone to the rear of Kurrajong, Jacaranda and Kauri Avenues, similar to that behind Watergum Place
- Advice that the sewerage system is 'struggling' already.

Other submissions raise the following issues and/or offer the following information and local knowledge:

- Impact of vegetation / habitat clearing required for house and Asset Protection Zone construction (inclusive of Outer Protection Areas) on threatened species and Endangered Ecological Communities (EEC's)
- Habitats extending into back yards adjoining Lot 22 DP 1058759 include: koala, bush turkey, goanna, bearded dragons, blue tongues, tawny frogmouths, bandicoots, possums, kingfisher birds, snakes, sea eagles, wallum sedge frog and green thighed frog

- There are significant problems and inaccuracies within the various environmental impact statements
- The subject land adjoins National Parks land and forms part of a valuable wildlife corridor
- Any clearing of vegetation (especially Lots 4 and 5) will have a significant impact
- Owner has cleared land directly behind the Kauri Avenue area – is continually and significantly clearing and not allowing young saplings to grow
- Disregard of the applicability of SEPP 44 to the proposal – it is highly likely that SEPP 44 Schedule 2 trees comprise 15% of the tree strata and the site is potential koala habitat as defined by SEPP 44
- The status of the koala in the vicinity is precarious - in conjunction with development at Tanglewood and Kings Forest, we are planning the extinction of the Koala
- Koalas have a daily struggle dealing with traffic on Clothiers Creek Road
- There is a koala habitat at the end of Poinciana Avenue that continues behind the last house
- The proponent should be required to prepare a Koala Plan of Management
- The subject site is contained within an area of very high bushfire risk as demonstrated by bushfires that burnt out of control in 2004 and 2009
- The Fire Brigade should have access to the rear of Kurrajong Ave to the south west end of the village as further development puts residents in danger through lack of access for emergency vehicles – proposed Lot 1 has been used for this purpose
- Loss of the current fire protection area for existing residents through the development of proposed Lot 5
- Location of dwelling pad on Lot 5 impacts negatively upon the existing dwelling to the east and is a result of the substantial APZ required for that new lot
- In 2005, local streets were waist deep in flood and sewerage water
- Drainage issues have not been addressed in respect of the drainage pond at the rear of Cabarita Road and the drainage system fronting 10 Kurrajong Avenue which is prone to flooding the road during the wet season
- The flood plain is vital in holding back water that would otherwise end up in the village
- Developments at Salt, Casuarina and King's Forest will impact upon the release of floodwater through Cudgen Lake and Creek
- Council should not entertain thoughts of more development in low lying coastal areas
- Land reclaiming and filling to create Lots 4 and 5 will create major flooding issues
- Flood water has encroached properties at 4, 6, 8 and 10 Kurrajong Avenue in recent years
- Domestic animals should be restricted
- Lack of community consultation

Applicant's Response to the Submissions

The applicant's response to the submissions is as follows:

Issue	Comment
Ecological Impact	The ecological impact of the development has been the subject of appropriate flora and fauna studies, which have concluded that the proposal is not likely to result in significant effect. The area of the site to be developed for residential purposes will involve minimal tree removal associated with maintenance of bushfire asset protection zones.
Flood Impact	The filling proposed in association with this Development Application is very minor, in the order of 1m of fill for the dwelling site of proposed Lot 4 approximately 450m ² in area. This is considered to be minor in the context of the wider site area of 746,340m ² (0.06% of the site area).
Drainage / Runoff	The Engineering Impact Assessment provides adequate details in relation to the existing and proposed drainage.
Bushfire Hazard	An assessment of the bushfire hazard affecting the site accompanied the application and demonstrates that the proposal complies with the Rural Fire Service Guidelines for subdivision. Any future dwellings will need to demonstrate compliance with relevant building standards under AS3959-2009 at the time of the application for construction of the dwellings.
Access for Trail Bike Riding	The proposed subdivision will increase passive surveillance of the residual land and will act as a deterrent to unauthorised trail bike riding.
Access for Emergency Services	Access to proposed Lot 2 will remain from Clothiers Creek Road and Poinciana Avenue.

Council Comment on Submissions

It is clear that the ecological assessment provided in the application documentation is deficient and does not fully address the impact the proposed development may have on the sensitive environmental nature of the land and the habitat therein.

Flooding and drainage issues remain unknown as any proposed works (excavation – cut and fill) on proposed Lots 4 and 5 would be subject to a condition stipulating that filling must not cause ponding or drainage issues on neighbouring properties. This would need to be demonstrated by the applicant.

As stated previously, bushfire hazard reduction will involve the removal of vegetation and/or habitat within the environmentally sensitive zone and a portion of land protected by SEPP 14.

State Emergency Services would need to provide comment on the need for access to continue through proposed Lots 1 and 4 for emergency vehicles in time of bushfire threat or flood.

(e) Public interest

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for the location of Asset Protection Zones within environmentally sensitive land and the perpetuation of the fragmentation of such land. Therefore it is in the public interest for this application to be refused.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

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

POLICY IMPLICATIONS:

The proposed development does not take advantage of consolidation of rural and environmentally sensitive zoned land within the same ownership. This results in fragmentation of land parcels and rural-residential development outside the strategic planning process which is not in the public interest.

CONCLUSION:

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

Notwithstanding the above, as a result of the Department of Planning not issuing concurrence, Council cannot approve the application in its current form. Any future amendments to the subdivision proposal must be by way of lodgement of a fresh development application.

Having undertaken an assessment against SEPP 14 and Clause 20(2)(a) of the Tweed LEP 2000 taking into account the potential to consolidate fragmented parcels of land in single ownership and the environmental sensitivity of the area, the proposed subdivision is not considered suitable for the location and therefore the proposed development is recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. DECCW (National Parks and Wildlife) submission received 13 April 2010 (ECM 28177458)
 2. DECCW (National Parks and Wildlife) submission received 10 September 2010 (ECM 28177458)
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19 [PR-CM] Development Application DA08/1024 for a Six (6) Storey Mixed Use Development Comprising 50 Units and 1 Commercial Premise with Basement Carparking at Lot 7 & 8 Section 4 DP 2379, No. 41-43 Boyd Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA08/1024 Pt2

SUMMARY OF REPORT:

The proposed development is a multi-storey development comprising fifty (50) units, a commercial premises and common community space over two allotments within Boyd Street at Tweed Heads.

The subject site involves two (2) allotments, with the southern allotment zoned 3(b) General Business and the northern allotment zoned 2(b) Medium Density Residential.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 50 of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 1:1 Floor Space Ratio (FSR) development standard for land zoned 3(b) in Tweed Heads. The Local Environmental Plan (LEP) does not limit FSR in any other zone. Therefore the SEPP1 objection relates to the southern portion of the site only.

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:

- 1. State Environmental Planning Policy No. 1 objection to Clause 50 of Tweed Local Environmental Plan 2000 regarding the Floor Space Ratio (FSR) of 1:1 for land zoned 3(b) General Business with a site area of less than 2000m² height be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA08/1024 for a six (6) storey mixed use development comprising 50 units and 1 commercial premise with basement carparking at Lot 7 and 8 Section 4 DP 2379, Nos. 41-43 Boyd Street, Tweed Heads be approved subject to the following conditions:**

GENERAL

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

- Dwg DA01 - A (Rev H) – Ground Floor / Site Plan, dated 19 May 2010;
- Dwg DA02 - A (Rev B) – Units Typical Floors, dated June 2008;
- Dwg DA03 (Rev H) – Basement 1, dated 19 May 2010;
- Dwg DA04 (Rev C) – Basement 2, dated 15 April 2010;
- Dwg DA05 (Rev A) – Boyd St Elevation, dated June 2008;
- Dwg DA06 - A (Rev B) – North Side Elevation, dated June 2008;
- Dwg DA07 (Rev C) – South Side Elevation, dated 15 April 2010;
- Dwg DA08 (Rev A) – Rear Elevation, dated June 2008;
- Dwg DA09 - A (Rev B) – Section AA, dated June 2008;
- Dwg DA10 (Rev B) – Unit Types, dated June 2008;
- Dwg DA11 (Rev A) – Roof Plan, dated June 2008;
- Dwg DA14 - A (Rev B) – Car Ramp Cross Section, dated 19 May 2010;

prepared by Freespace Design, except where varied by the conditions of this consent.

[GEN0005]

2. Submission of a further Development Application(s) for the first use of the ground floor commercial premises, such to be approved by Council prior to their use or occupation.

[GEN0055]

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

[GEN0115]

4. 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]

5. The applicant shall arrange for a site inspection to be carried out with Council's Environmental Health Officer and key representatives involved in the dewatering activity including consultants and personnel responsible under any Dewatering Management Plan approved by Council's General Manager or his delegate. Such site inspection shall be arranged and carried out prior to the commencement of any offsite dewatering activity occurring.

[GEN0180]

6. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

7. A separate development application is to be submitted to Council for demolition of the existing structures.
[GENNS01]
8. The existing 1.2 metres wide concrete ribbon footpath shall be maintained along the sites frontage to Boyd Street.
[GENNS02]
9. The Basement 1 commercial parking and visitor parking spaces are to have unrestricted access to the general public.
10. An intercom system is to be installed at the main entrance of the residential component of the development.
[GENNS03]
11. The applicant shall consent to the installation of a 150mm diameter sewer vent pipe at the rear wall of the premises from below ground level to above the roofline to facilitate the venting of the adjoining sewer pump station at a level above the roofline of the proposed structure, including the acceptance of a positive covenant or easement to facilitate access for maintenance of the vent. Council will negotiate the design of the vent so as not to detract from the amenity of building and be responsible for all costs inclusive of legal, design and construction.
[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

12. The developer shall provide the following parking facilities including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.
 - A minimum of 50 car parking spaces designated to the residence of the development,
 - A minimum of 11 designated visitor car spaces,
 - A minimum of 9 car spaces designated to the Commercial component of the development,
 - One designated loading bay, as referenced on Drawing No. DA03 Revision C, dated 06/2008,
 - A minimum of 2 bunded car wash bays, being nominated parking spaces 20 and 21 on Drawing No. DA03 Revision C, dated 06/2008,
 - Storage for a minimum 2 bicycles per residential unit,
 - Parking for a minimum 4 bicycles for the Commercial component of the development,

Note – Council will accept nominated parking spaces No. 7, 8 and 11 as tandem spaces only, provided they are designated as staff parking only for the Commercial precinct of the development.

Full design detail of the proposed parking and manoeuvring areas shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

Access to the basement car park must be designed accordingly to provide sufficient clearance to allow appropriate vehicles to access the basement stormwater treatment device for servicing or the building proper must provide acceptable alternative access facilities.

The access to the basement car park must also be designed accordingly to provide sufficient clearance to allow all service vehicles access to the designated loading bay.

[PCC0065]

13. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee.

Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

14. Section 94 Contributions

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

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

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

These charges 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:

222.32 Trips @ \$656 per Trips \$145,842

(\$596 base rate + \$60 indexation)

S94 Plan No. 4

Sector1_4

(b) Open Space (Casual):

25.085 ET @ \$526 per ET \$13,195

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

(c) Open Space (Structured):	
25.085 ET @ \$602 per ET	\$15,101
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
(d) Shirewide Library Facilities:	
25.085 ET @ \$792 per ET	\$19,867
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
(e) Bus Shelters:	
25.085 ET @ \$60 per ET	\$1,505
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
(f) Eviron Cemetery:	
25.085 ET @ \$120 per ET	\$3,010
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
(g) Community Facilities (Tweed Coast – North)	
25.085 ET @ \$1305.6 per ET	\$32,751
(\$1305.6 base rate + \$0 indexation)	
S94 Plan No. 15	
(h) Extensions to Council Administration Offices & Technical Support Facilities	
25.2954 ET @ \$1759.9 per ET	\$44,517.37
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(i) Cycleways:	
25.085 ET @ \$447 per ET	\$11,213
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
(j) Regional Open Space (Casual)	
25.085 ET @ \$1031 per ET	\$25,863
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
(k) Regional Open Space (Structured):	
25.085 ET @ \$3619 per ET	\$90,783
(\$3619 base rate + \$0 indexation)	

S94 Plan No. 26

[PCC0215]

15. Section 94 Contributions

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

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

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]

16. 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:

Water DSP4: 16.18 ET @ \$11020 per ET \$178303.60

Sewer Banora: 25.52 ET @ \$5295 per ET \$135128.40

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

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.

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]

17. Any earthworks shall be graded at a minimum of 1% so that the site 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 runoff or ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

18. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

19. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 2.6m AHD in accordance with Tweed Shire Council Development Control Plan Part A3 - Development of Flood Liable Land. This immunity shall be provided at all accesses including external stairs to the basement car park. The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (onsite and adjacent) is protected against pump failure. Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 *“National Plumbing and Drainage – Part 3.2: Stormwater Drainage – Acceptable Solutions”*

[PCC0685]

20. 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: -

- (a) Provision of a unit development access in accordance with Section A2 – *“Site Access and Parking Code”* of Council’s consolidated Tweed Development Control Plan and Council’s *“Driveway Access to Property – Part 1 ”* Design Specification June 2004.

The access shall provide the required 2m x 2m “sight triangle” envelope.

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

[PCC0895]

21. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

22. 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) Specific Requirements to be detailed within the Construction certificate application include:
- (d) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.
- (e) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 – *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
- (f) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

23. 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]

24. The development will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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.

[PCC1185]

25. Prior to the issue of a Construction Certificate, applications shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any of the following works including (but not limited to):

- (a) water;
 - Disconnection of existing water meters and provision of a Bulk meter,
- (b) sewerage, including;
 - The car wash bays must be bunded and treated to remove pollutants prior to discharge in accordance with Council policy. If levels permit, discharge must be via the sewer network.
 - Decommissioning of the existing public sewer main within the site and construction of new sewer infrastructure, central to a 3m easement along the site northern property boundary,
 - Relocation must be made whilst maintaining service to all upstream properties
- (c) drainage works, including;
 - the connection of a private stormwater drain to a public stormwater drain,
 - the installation of stormwater quality control devices,
 - erosion and sediment control works.

The Legal Point of Discharge for piped stormwater for the development is via direct connection into the existing kerbside inlet pit along developments frontage to Boyd Street.

[PCC1195]

26. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

27. Prior to the issue of the construction certificate details of the proposed sewer diversion are to be submitted to and approved by Councils Water/Sewer Engineer.

[PCCNS01]

28. An assessment of the capacity of the downstream piped drainage network within Boyd Street will be required with the s68 Stormwater Application and, if found necessary, details of on-site detention of roof runoff will be required to demonstrate that total stormwater volumes (pre and post development) do not exceed the capacity of the downstream network.

[PCCSN02]

29. Privacy screens are required on the balconies of the north facing units. Details of the screening devices are to be submitted and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCCNS03]

30. Details of the design of the sewer vent pipe at the rear wall of the development are to be negotiated with Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCCNS04]

PRIOR TO COMMENCEMENT OF WORK

31. 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]

32. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

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

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

other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

35. Residential building work:

(a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

- * in the name and licence number of the principal contractor, and
- * the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

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

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

[PCW0235]

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

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

[PCW0245]

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

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

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

[PCW0255]

38. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:

- (a) The person must, at the person's own expense:
 - (i) preserve and protect the building / property from damage; and
 - (ii) if necessary, underpin and support the building in an approved manner.
- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

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

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

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

[PCW0985]

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

[PCW1065]

41. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility.

[PCW1105]

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

[PCW1075]

DURING CONSTRUCTION

43. 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]

44. The provision of 50 residential, 11 visitor, 1 loading bay and 9 commercial car parking spaces including parking for the disabled where applicable. Appropriate signage for all visitor, commercial and staff parking shall be installed and maintained. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

45. 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]

46. 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]

47. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the

satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

48. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.

[DUR0235]

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

[DUR0245]

50. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

[DUR0815]

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

[DUR0905]

57. Provision to be made for the designation of 2 car wash-down area/s. The area/s must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must be treated prior to discharge into the sewer system.

[DUR0975]

58. 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]

59. 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 an Occupation Certificate.

[DUR0995]

60. 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]

61. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited.

[DUR1015]

62. 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]

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

[DUR1045]

64. All works shall be carried out in accordance with the Acid Sulfate Soil Assessment for 41-43 Boyd Street, Tweed Heads prepared by Soil Surveys Engineering Pty Ltd dated June 2009 (Report: 208-8024).

[DUR1065]

65. A survey certificate signed by a registered surveyor is to be submitted to the Principal Certifying Authority at floor stage to certify that the habitable floor level of the building to be at a level of not less than RL 3.1m AHD.

[DUR1445]

66. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the

Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[DUR1715]

67. 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]

68. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

69. 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 any use or occupation of the building.

[DUR1875]

70. Where existing kerb, footpath or driveway laybacks are to be removed for new driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb, footpath or layback must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

71. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

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

[DUR1945]

73. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.

[DUR1965]

74. **Swimming Pools (Building)**

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

[DUR2075]

75. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

76. 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]

77. 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]

78. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.

[DUR2245]

79. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.

[DUR2315]

80. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

81. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

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

[DUR2485]

82. Plumbing

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

[DUR2495]

- 83. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.**

[DUR2505]

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

[DUR2515]

- 85. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.**

[DUR2525]

- 86. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.**

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

- 89. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.**

[DUR2595]

- 90. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter.**

[DUR2615]

91. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

92. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the sewer main.

[DUR2645]

93. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.

[DUR2675]

94. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

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

[DUR2705]

96. A sewer service is to be maintained to all upstream properties during any sewer relocation works.

[DURNS01]

97. Prior to acid sulfate soil material being removed from the subject site for treatment, written documentation from the owner(s) of all properties receiving such material shall be provided confirming that this activity is permitted at the receiving site.

[DURNS02]

98. The names and 24 hour contact phone numbers of the site manager, project manager and all other persons provided with responsibilities under the provisions of the Amended Dewatering Management Plan for 41-43 Boyd Street, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC 2009.079) shall be provided to Council's Environmental Health Officer prior to the commencement of dewatering operations.

99. Prior to the commencement of de-watering operations an examination of the quantity of pre-existing sediment within the stormwater drainage network that is intended to receive the de-watering discharge shall be undertaken by methods considered acceptable to Council's Stormwater Maintenance Engineer. Closed circuit television (CCTV) footage and a report of the findings of the examination shall be provided to Council's Stormwater Maintenance Engineer prior to the commencement of de-watering operations.

100. Prior to the commencement of de-watering operations the applicant or their nominated representative shall consult with Council's

Stormwater Maintenance Engineer in respect to the most appropriate method of connection of the de-watering system to Council's stormwater drainage system. The applicant or their nominated representative shall comply with any and all directions as may be provided by Council's Stormwater Maintenance Engineer.

101. All dewatering operations shall be carried out in accordance with the provisions of the Amended Dewatering Management Plan for 41-43 Boyd Street, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC 2009.079). A copy of the Plan shall be provided to the site manager, project manager and all other persons provided with responsibilities under the provisions of the Plan. In addition a copy of the Plan shall be kept onsite while dewatering operations are being carried out.
 102. Hourly inspections extending over a 24 hour period of the stormwater discharge network that is receiving dewatering discharge shall be undertaken at the responsibility of the project manager during rainfall events. If the combined stormwater and dewatering flows are exceeding the capacity of the stormwater network, dewatering must temporarily cease until the peak flows from the catchment have subsided.
 103. The frequency of the monitoring regime for the various parameters as listed within Section 12 of the Amended Dewatering Management Plan for 41-43 Boyd Street, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated March 2010 (Report: HMC 2009.079) shall be increased at the direction of Council's Environmental Health Officer.
 104. Upon completion of the dewatering operations, the applicant shall arrange for an inspection of any dewatering connection point to Council's stormwater system with Council's Stormwater Maintenance Engineer. The applicant shall comply with any directions issued by Council's Stormwater Maintenance Engineer in respect to the dewatering connection point.
- [DURNS03]
105. Swimming pool pumps, air conditioning units, heat pump water systems and any other mechanical plant and equipment shall be located and installed so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DURNS04]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

107. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to

the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

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

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

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

[POC0265]

109. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

110. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

111. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate.

[POC0855]

112. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

113. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

114. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

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

[POC1055]

116. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained by Council for all works required under Section 68 of the Local Government Act.

[POCNS01]

117. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of a minimum 3m wide easement for drainage of sewer, located over any reticulated public sewer within the subject property. This easement shall be created in favour of Council.

No permanent structures are permitted within this easement.

[POCSN02]

118. Prior to the issue of an Occupation Certificate, Section 88B (Conveyancing Act 1919) Covenant(s) shall be placed over the subject land to ensure that all measures in the "Flood Response Assessment Plan" (Planit Consulting, August 2008) shall be enforced in perpetuity, to ensure compliance with flood emergency response provisions of Council's Development Control Plan Section A3 - Development of Flood Liable Land and Council's Flood Risk Management Policy.

[POCSN03]

119. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of a positive covenant or easement to facilitate access for maintenance of the sewer vent pipe. This easement shall be created in favour of Council.

[POCSN04]

USE

120. 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]

121. 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]

122. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

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

[USE0875]

124. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).

- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

125. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

126. All externally mounted air conditioning units, heat pump water systems, swimming pool pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive or intrusive noise to any occupant of neighbouring or adjacent premises.

127. Swimming pool pumps, air conditioning units, heat pump water systems and any other mechanical plant and equipment shall not be operated should it be heard in a habitable room of a residence during restricted hours or at any other time should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USENS01]

128. The ground floor common community space / gym are to be for the use of the residential component (Floors 1 – 5 above) only and are not to be used for commercial purposes.

[USENS02]

GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912 FOR DEVELOPMENT APPLICATION NUMBER DA08/1024

NSW OFFICE OF WATER

- Before commencing any works or using any existing works for the purpose of groundwater de-watering an approval under Part 5 of the Water Act 1912 must be obtained from the NSW Office of Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- Before commencing any works or using existing works for groundwater monitoring purposes an approval is required under Part 5 of the Water Act 1912 must be obtained from the NSW Office of Water
- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the NSW Office of Water grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.

- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry or sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- If and when required by the NSW Office of Water, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained and tested as and when required by the NSW Office of Water to ensure its accuracy.
- Works for construction of bore must be completed with such period as specified by the NSW Office of Water.
- Within two months after the works are completed the NSW Office of Water must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.
- Officers of the NSW Office of Water or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be extracted from the works for any purpose other than dewatering for construction purposes
- The use of water shall be conditional on no tailwater drainage being discharged into or onto:
 - Any adjoining public or crown road
 - Any other person's land
 - Any crown land
 - Any river, creek or watercourse
 - Any groundwater aquifer
 - Any area of native vegetation
 - Any wetlands
- The work shall be managed in accordance with the constraints set out in the "Dewatering Management Plan" prepared by HMC Environmental Consulting Pty Ltd for Baycrown Pty Ltd C/- Planit Consulting Pty Ltd,

dated March 2010, Report No.2009.079 presented as Amended Dewatering Management Plan for the proposed development.

- **The work shall be managed in accordance with the constraints set out in the “Acid Sulphate Soils Assessment” prepared by Soil Surveys Engineering Pty Limited for Planit Consulting Pty Ltd dated June 2008 Report No.208-8024 presented as part of the Statement of Environmental Effects for the proposed development.**
- **All works must be constructed and maintained to properly control the water extracted to prevent wastage or any reduction in quality of the sub-surface water. The NSW Office of Water may direct that any necessary repairs or alterations be undertaken to maintain the works in good working order.**
- **The volume of groundwater extracted as authorised must not exceed 15 megalitres.**
- **The NSW Office of Water has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.**
- **The license shall lapse within three (3) months of the date of the issue of the license.**

REPORT:

Applicant: Baycrown Pty Ltd
Owner: Baycrown Pty Ltd
Location: Lots 7 & 8 Section 4 DP 2379, No. 41-43 Boyd Street, Tweed Heads
Zoning: 2(b) Medium Density Residential and 3(b) General Business
Cost: \$8,000,000

BACKGROUND:

The subject site is located over two allotments on the western side of Boyd Street at Tweed Heads. The site has a frontage to Boyd Street of approximately 40.2m on its eastern boundary, with a total site area of 2028.31m².

The site is currently occupied by a single storey fibro cement building on Lot 7, with Lot 8 containing a two (2) storey unit block. Consent for the demolition of these buildings will be obtained by way of separate approval. The existing vegetation on site is made up of domestic garden variety trees and shrubs, which are not considered to be of any ecological significance.

The surrounding properties are a mix of commercial and residential, with the property to the north being a three storey unit block. The western properties include a pumping station and storage facilities, with the southern adjacent property being a car park for the adjoining dental surgery. Across Boyd Street to the north-east is a medical centre and RSPCA animal hospital.

The site falls across two (2) zonings, with Lot 7 being zoned 2(b) Medium Density Residential and Lot 8 zoned 3(b) General Business. The properties to the north are zoned the same as Lot 7, with the western and southern adjoining properties the same as Lot 8. The exception is Lot 2 DP555141 (the pumping station) to the west, which is zoned 5(a) Special Uses.

PROPOSAL:

The proposed development involves the construction of a six (6) storey (plus two basement levels) multi dwelling residential development, including a ground level commercial premises and common community space. The residential component comprises fifty (50) one-bedroom units.

Vehicle access is from Boyd Street, ramping down to the first basement level. A total of 75 car spaces are proposed, with ten (10) residential spaces, nine (9) commercial spaces, thirteen (13) visitor spaces, loading bay and two (2) car wash bays on Basement Level 1. The second basement level comprises forty (40) residential spaces.

The Ground Level contains a commercial space of 420m², two (2) common community spaces for use by residents only, and a plaza/foyer area. Bathroom and kitchen facilities for the common community space are also proposed. Access to the ground floor is via a main entry ramp from the street frontage to the open plaza area, with two (2) sets of stairs and a lift for access to the upper residential levels. Adjacent to the driveway is a bulk refuse (temporary) storage area, for two (2) x 3m³ bulk bins. The bins are to be stored in Basement Level 1 when not being collected. The rear landscaped area of the property incorporates a pool for the residents.

Levels One through to Level Five contain ten (10) one-bedroom (with study) units each, resulting in fifty (50) units overall. Internal access to the units is via a central corridor, with

access to the lift and the two stairwells, each located on the eastern and western sides of the development.

As the southern allotment is zoned 3(b) General Business, Clause 50 of the Tweed Local Environmental Plan 2000 (which limits Floor Space Ratio) applies. The proposed development does not comply with the required 1:1 floor space ratio. As such, a SEPP1 Objection accompanies the proposal, which results in the application being forwarded to a full Council meeting for determination.

SITE DIAGRAM:



Locality Plan

Lots 7 & 8 Section 4 DP 2379;
No. 41-43 Boyd Street, Tweed Heads

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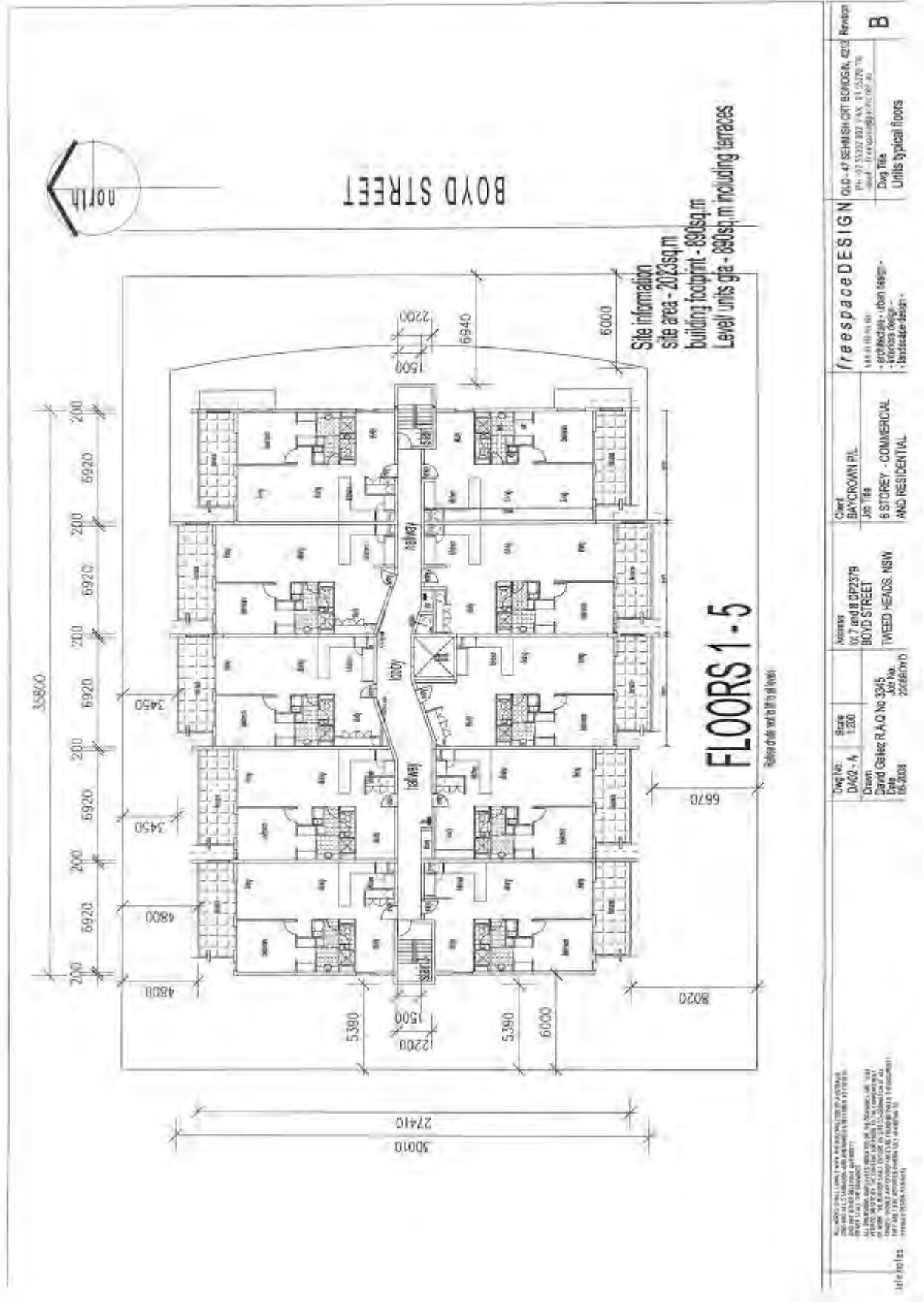
Chris and Catherine Owens
3 Tumbulgum Place
Murrumbidgee NSW 2484

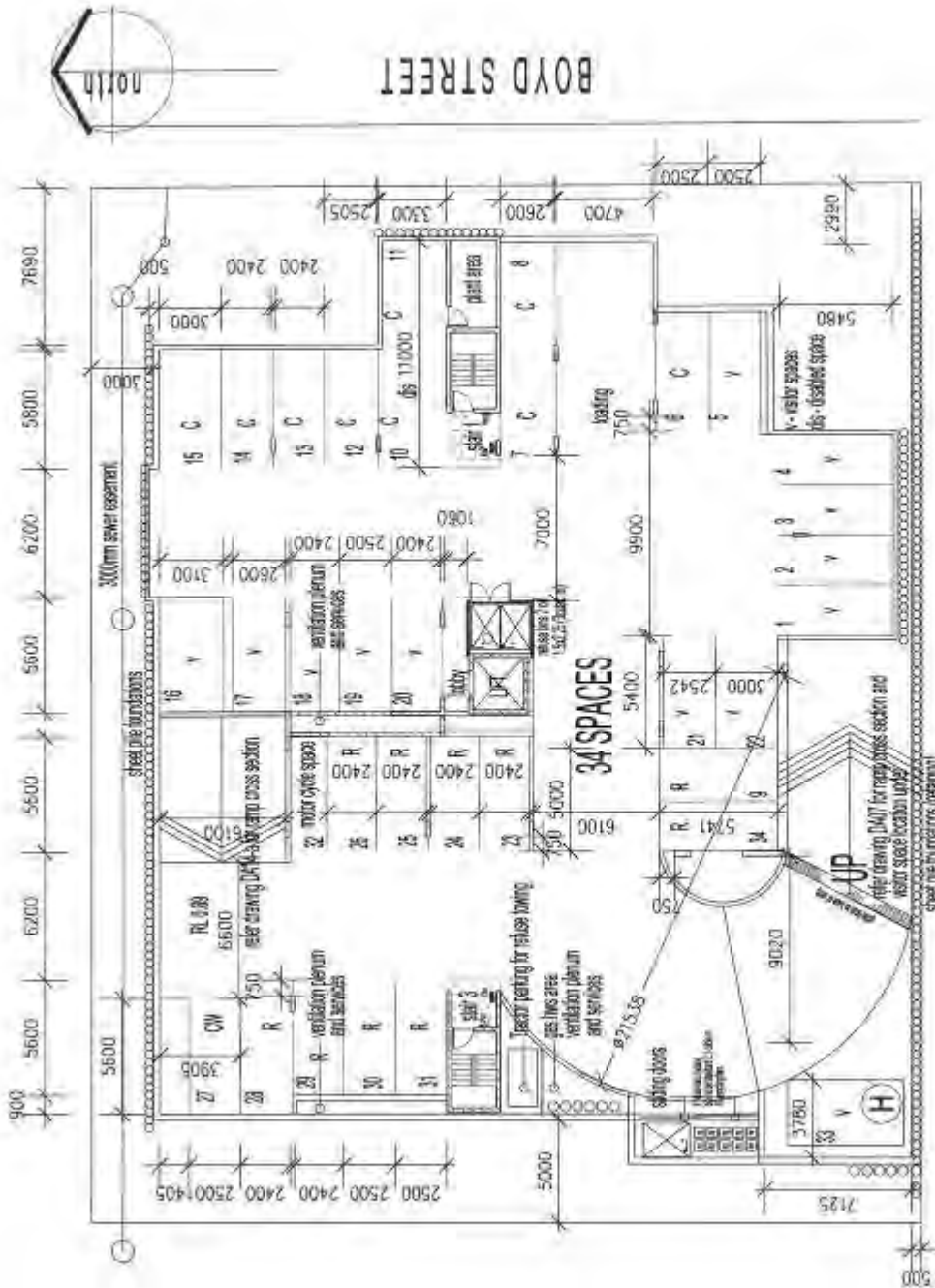
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June 2008/01/28 February 2011





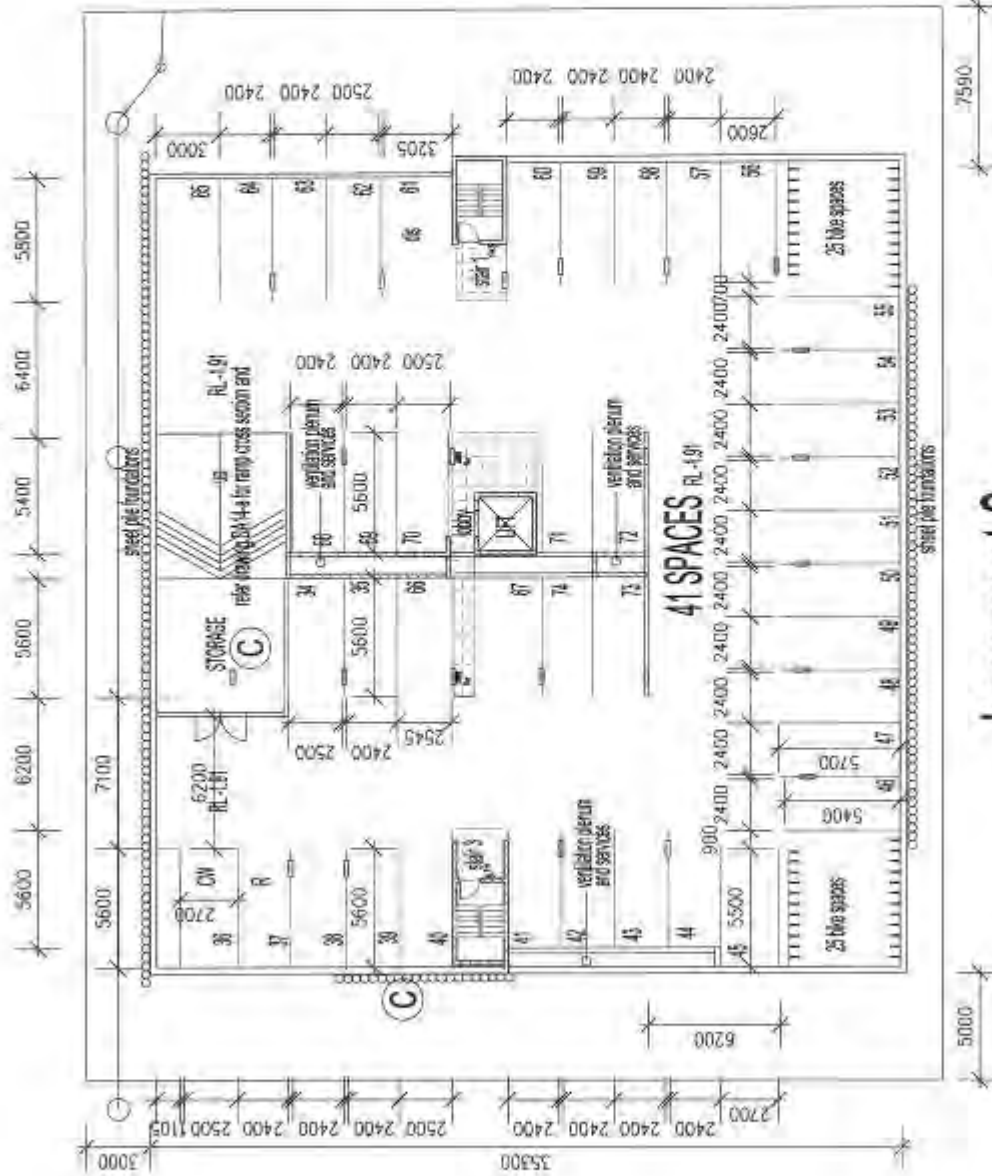
basement 1 RL 0.89 Area of basement 1333sq.m

revision 14 - 19-05-10 - parking change
 revision 13 - 15-04-10 - another RFI by council
 revision 12 - 19-03-09 - RFI release information (solid)
 revision 11 - 04-08-08 - release information

<p>111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000</p>	<p>Drawn Date</p>	<p>Scale 1:200</p>	<p>Address 6/7 and 8 DP1379 BOYD STREET TWEED HEADS NSW</p>	<p>Client BAYCROWN PL Job Title 6 STOREY - COMMERCIAL L&M DEVELOPMENT</p>	<p>Project RL 0.89 Area of basement 1333sq.m</p>	<p>Revision H</p>
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BOYD STREET

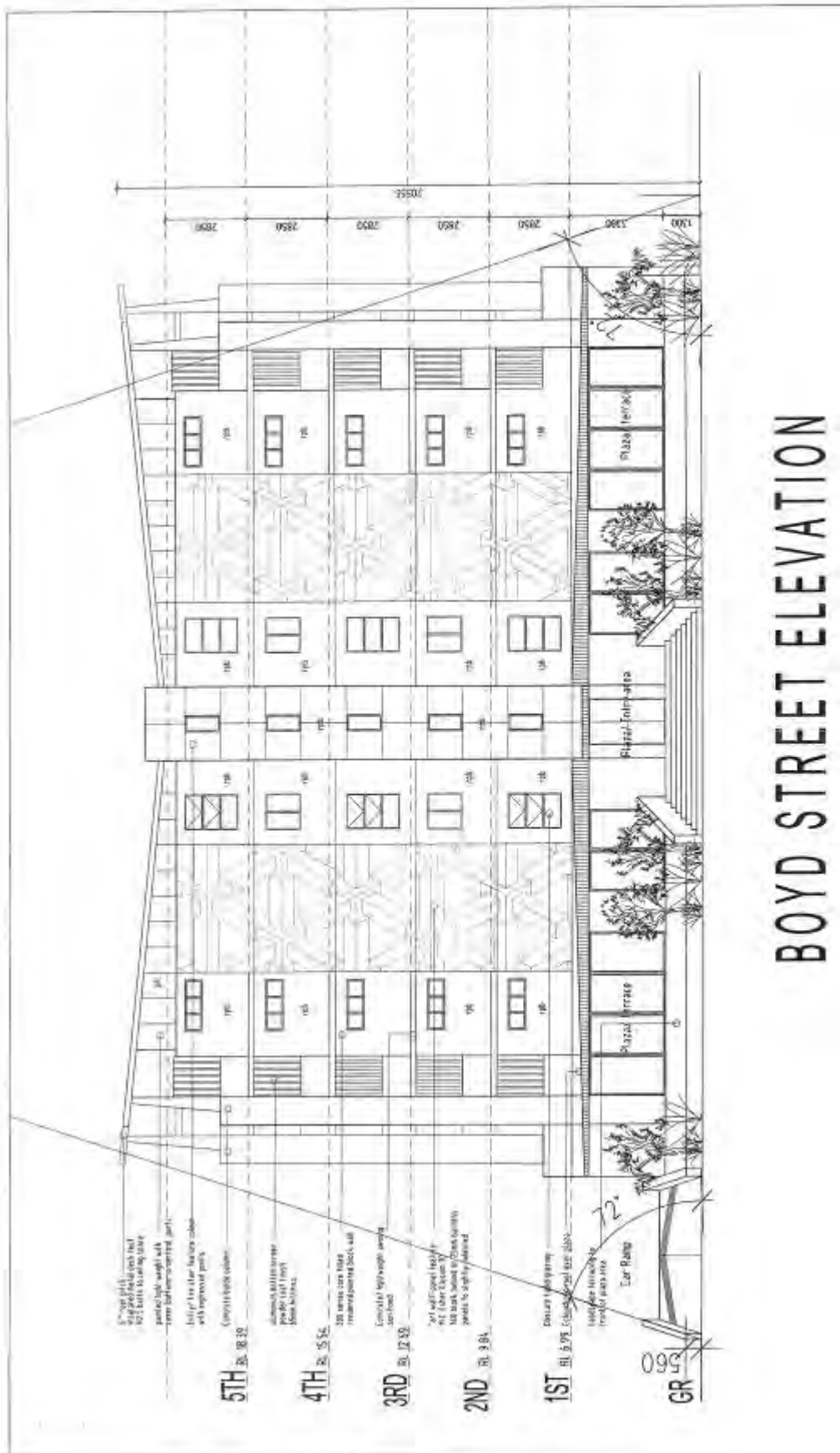


basement 2 RL - 1.91 Area of basement 1275sq.m

revision C-15-04-10 - another RFI by council
 revision B-19-06-09 - RFI 2 basement recessing with bike spaces

ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS
 ALL WALLS AND PARTITIONS TO BE CONCRETE
 ALL FLOORS AND CEILING TO BE CONCRETE
 ALL SERVICES AND FITTINGS TO BE INSTALLED IN ACCORDANCE WITH THE relevant Australian Standards
 THESE PLANS ARE TO BE USED FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT ONLY
 THESE PLANS ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT

Prop No. D104 Design David Galea R.A.O. No. 5349 (Ref No.)	Scale 1:200	Address Nos 7 and 8 DP2079 BOYD STREET TWEEDE HEADS, NSW	Client BAYCROWN P/L JAR Tole	Project 8 STOREY - COMMERCIAL	Design freespace DESIGN 1/155 LINDFIELD - architecture - urban design freespace.com.au	Date 01/03/10 Drawn JAR Tole Checked JAR Tole Title DWG TITLE	Revision C
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BOYD STREET ELEVATION

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	<p>DATE: 15 FEB 2011</p>						

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 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(b) Medium Density Residential and part zoned 3(b) General Business, the primary objectives of which are outlined below.

The proposed development is considered to be consistent with the primary objectives of both zones as it will be for medium density housing and provides a

component of commercial development, which is compatible with the surrounding residential areas.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed development 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 changing medium density residential nature of the local area.

Clause 11 - Zone objectives

The two allotments involved with this application have different zonings. That is, the northern Lot 7 is zoned 2(b) Medium Density Residential, and the southern Lot 8 is zoned 3(b) General Business.

The primary objective for land zoned 2(b) Medium Density Residential under the Tweed Local Environmental Plan 2000 is to:

- *Provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good design outcomes.*

The primary objectives for land zoned 3(b) General Business are:

- *To provide business centres in which the community's shopping, business, welfare and social needs can be met and to provide business locations within residential areas.*
- *To ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*

Although predominantly being multi dwelling housing, the proposed development incorporates a small component of commercial premises. As a result of commercial premises being prohibited in land zoned 2(b), the applicant has specifically located the commercial space on the southern allotment (Lot 8), which is zoned 3(b) and is therefore permissible with consent. The design of the ground floor common community space was revised to ensure that they would reflect the residential nature of the development on the 2(b) zoned component of the site.

The predominant land use (Multi Dwelling Housing) is permissible with consent in land zoned 2(b) Medium Density Residential, but relies on the provisions of Clause 51(B) when located in land zoned 3(b) General Business (see Clause 51B assessment below). Overall, the proposed development is permissible with consent and is considered to be consistent with both of the zone objectives of the site.

Clause 15 - Essential Services

Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services before issuing consent. Connections to Council's reticulated water and sewer services along Boyd Street are available. The proposal incorporates an alteration to the alignment of the existing sewer line located along the northern boundary. Applicable conditions have been applied in this regard.

Stormwater services are also available. However, the proponent has not investigated whether the existing piped drainage network in Boyd Street has

capacity for the additional runoff from the development site. Applicable conditions have been applied, requiring investigations of the downstream drainage network or stormwater detention be provided on site as required.

Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a six (6) storey height limit, with an objective to ensuring that *the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land*. The proposed development complies with Clause 16, being six (6) storeys in total.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP relates to social impact assessment, with the objective to *ensure proper consideration of development that may have a significant social or economic impact*. DCP A13 requires a social impact assessment for development incorporating more than 50 dwellings. As a result of the proposal incorporating only fifty (50) units, the requirements of DCP A13 are not triggered and Clause 17 does not apply to the proposed development.

Clause 34 - Flooding

Clause 34 of the TLEP refers to flooding. The subject site is flood liable, with a minimum floor level of RL 3.1m AHD being required. The proposal complies with minimum habitable floor levels of at least 0.5m above AHD Design Flood Levels, with the commercial component and ground level common community space located at RL 3.69m. The two storey basement is proposed below Design Flood Level, and the applicant has proposed a bund on the driveway at RL 3.69m. This issue is discussed in further detail later in this report.

Clause 35 - Acid Sulfate Soils

Clause 35 relates to Acid Sulfate Soil (ASS) management. Council's GIS indicates that the site is classified as Class 2 soils. The applicant has provided a preliminary ASS assessment report, which indicates that low levels of ASS may exist on site. The report notes that treatment of the ASS (upon removal from the ground) will be off-site. Council's Environmental Health Unit has undertaken an assessment the proposed development in this regard, with no objections. Applicable conditions of consent have been applied.

Clause 50 – Floor Space Ratios in Zones 3(a) and 3(b) at Tweed Heads

Clause 50 of the TLEP regards floor space ratios (FSR) in Tweed Heads. For sites having an area of less than 2000m², the maximum FSR permitted in the 3(b) – General Business zone is 1:1 (without bonuses). The proposal incorporates a total of 2371.16m² of gross floor area within the 3(b) portion of the site, which results in an FSR of 2.34:1.

As a result of the proposal being above the 1:1 FSR, a SEPP 1 Objection accompanies this development application. Details of the SEPP 1 objection are discussed later in this report.

Clause 51B – Multi Dwelling Housing in Zones 3(a) and 3(b)

Clause 51B of the TLEP refers to multi dwelling housing in zones 3(a) and 3(b). The objective of Clause 51B is to:

- *allow multi-dwelling housing on land zoned 3(a) or 3(b), but only if it meets certain criteria to ensure the development of the land does not undermine its commercial use and the objectives of those zones.*

Clause 51B requires multi-dwelling housing on land to which this clause applies to be attached to shops, commercial premises, or other non-residential development on the same site. The proposed development incorporates a ground level commercial premise, which satisfies all of the applicable provisions of Clause 51B. As such, the proposed multi dwelling housing development on levels one to five are permissible with consent within the area zoned 3(b) General Business.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

In accordance with Clause 32B of the NCREP, the proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and Coastline Management Manual. In particular, as the property is not situated on the coastline, there is no overshadowing of any beaches at any time.

The proposal does not incorporate any physical restriction of access to a foreshore area, or detrimental impacts upon the coastal character and amenity of the site, due to its location away from any beaches or open space waterways. Accordingly, the proposal complies with this clause of the NCREP.

Clause 43: Residential development

Clause 43 of the NCREP provides that the consent authority shall consider density, environmental constraints, and road widths.

The proposed density is considered to be a reasonable response to the existing and future land use character of the area, and will not result in the creation of any adverse physical impacts upon the locality. Further, the existing road widths are satisfactory for the proposal and a detailed sedimentation and erosion control plan will be applied in relation to the construction.

The proposal is considered to be consistent with the relevant provisions of Clause 43 of the NCREP 1988.

SEPP No. 1 - Development Standards

As discussed, a SEPP 1 objection accompanies the application. The objection is in respect of the planning standard identified within Clause 50 of the Tweed Local Environmental Plan 2000; specifically seeking variance to the maximum floor space ratio of 1:1 for sites less than 2000m² for land zoned 3(b) at Tweed Heads.

The development site incorporates two allotments, each having a site area of 1012m². The southern allotment is zoned 3(b) General Business and is subject to the provisions of Clause 50 of the LEP, relating to floor space ratios (FSR).

The LEP's development standard for limiting FSR only applies to 3(a) and 3(b) zoned land in Tweed Heads. Therefore the SEPP1 objection refers only to the southern portion of the development site.

The northern portion of the site is zoned 2(b) Medium Density Residential, which is governed by development controls within DCPB2 – Tweed Heads (DCPA1

does not apply as the proposal is greater than 3 storeys in height). Assessment against DCPB2 is discussed later in this report.

The proposal provides for 2371.16m² of Gross Floor Area (GFA) on the 3(b) zoned portion of the site, equating to an FSR of 2.34:1. In terms of GFA, the variation is for an additional 1359.16m² of floor area on the 3(b) portion of the allotment. When looking at the entire development over both allotments (i.e. the combined 3(b) and 3(a) land), the proposal incorporates a GFA of 4508.86m², which equates to an FSR of 2.22:1.

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 an assessment of the proposal against the three principles set by Chief Justice Preston for SEPP 1 Objections:

“The objective providing foundation for the FSR requirement within the 3(b) zoned areas of Tweed Heads states, inter alia:

(1) Objective

- *To control by floor space ratio the intensity of retail uses in Zone 3 (a) (the Sub-regional Business zone) and certain parts of Zone 3 (b) (the General Business zone), and encourage the consolidation of lots.*

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. Specifically the objective of Clause 50 seeks to limit the size of retail spaces and encourage lot consolidation.

As proposed the application includes no retail uses and consolidates two adjoining allotments. Imposing the standard is clearly not required in order for the mixed use commercial and residential development to achieve the objective and imposing the standard is clearly inappropriate in this instance.

The site is located across the 3(b) and 2(b) zones, a situation not specifically envisaged by Clause 50 and as a result a significant and unjustified development restriction results from its application. Applying the standard creates a situation where a consolidated development site of greater than 2000m² within the Tweed Heads CBD area is subject to a prohibitively low FSR requirement.

Imposing a development control which is aimed at limiting the scale of retail uses on 3(b) zoned lands, to a commercial and residential development with a combined zoning of 3(b) and 2(b), is a clear hindrance to meeting the objectives included within the EP&A Act 1979; specifically the proper and orderly development of the site and Councils own objective of consolidation.

Imposing Clause 50 on the development would effectively override a well established set of site specific development controls aimed at shaping the future character of the locality and achieving orderly development with the FSR control effectively acting as a defacto height, setback and other design control limit. In this regard, the proposals extent of compliance with all other

requirements of the TLEP 2000, specifically building height and Section B2 of the TDCP 2008 are noted.

The SEPP No. 1 Objection is considered to warrant support in that flexibility in planning controls is achieved and imposing compliance with the development standard is clearly a hindrance to the objects as listed in s 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979.

The proposed non compliance raises no matters of significance for State or Regional Planning and no public benefit results from maintaining the development standard in this particular case. The proposal is a unique situation non envisaged by Clause 50 and applying the standard creates a situation where a consolidated development site of greater than 2000m² within the CBD area is subject to a prohibitively low FSR requirement.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However in this instance, enforcing compliance with Clause 50 would effectively override a well established set of site specific development controls aimed at shaping the future character of the locality and achieving orderly development. In this regard the FSR requirement applicable under Clause 50 would effectively act as a restrictive defacto height and setback control limit.

In this regard, the proposals extent of compliance with all other requirements of the TLEP 2000, specifically building height and Section B2 of the TDCP 2008 are noted. The proposed non-compliance with Clause 50 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it relates to a specific development situation which does not readily occur in the locality."

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.

As noted by the applicant, the objective of Clause 50 is:

- **to control by floor space ratio the intensity of retail uses in Zone 3(a) (the Sub-regional Business zone) and certain parts of Zone 3(b) (the General Business zone), and encourage the consolidation of lots.**

The proposed development is considered to be consistent with the objectives of Clause 50 in that there is no retail component within the proposal and the two lots involved with the development will be consolidated.

The objection is considered to be well founded. As such, strict compliance with the maximum FSR of 1:1 for land zoned 3(b) 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.

Strict compliance with Clause 50 would radically reduce the density of the residential component of the proposed development in the 3(b) zone, which is not considered to be the intent of the clause. Rather, density is controlled by other provisions of the LEP (Clause 16 – height) and DCP (B2 – Tweed Heads).

In terms of GFA, the extent of the variation is for an additional 1359.16m² of GFA on the 3(b) portion of the allotment. To put this in perspective, the residential component on each level of the allotment zoned 3(b) is approx 350m². A reduction of 1359.16m² of GFA is effectively 4 floors of residential development in the 3(b) zone, which is a loss of affordable housing (20 units) having close proximity to the Tweed CBD. Strict compliance would result in an outcome which is clearly a hindrance to the objectives of Section 5(a)(i) and (ii) of the EP&A Act, with regard to the orderly and economic use and development of land. The fact that the draft City Centre LEP 2009 zones both allotments as Medium Density Residential land suggests that the proposed development is appropriate for the locality.

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 proposed non-compliance with Clause 50 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 noted above, strict compliance with the FSR of 1:1 would dramatically reduce the density of the proposal, which reduces the ability to provide affordable housing, particularly for university students attending the nearby Southern Cross University.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with Clause 50 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 quite unique and site specific. 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 50 of the Tweed LEP is considered unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support, particularly when the FSR provisions of the draft Tweed City Centre LEP 2009 (2.5:1) are taken into consideration.

SEPP No. 65 - Design Quality of Residential Flat Development

Clause 30 of the SEPP 65 requires the consent authority to consider each of the ten (10) design quality principles when determining a development application for a residential flat building.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design, thereby satisfying the requirements of SEPP 65.

SEPP No 71 – Coastal Protection

The proposed development is not located within 100m of a sensitive coastal region and is not of State significance; therefore Council is the consent authority.

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 is considered suitable, given its type, location and design and its relationship with the surrounding area.

SEPP – Affordable Rental Housing

The applicant has advised that the subject application was lodged prior to the introduction of the SEPP and as such is not applicable to the proposal. In addition the development is not proposed as “affordable rental housing” (although it is intended to function as student accommodation to a degree) and the development provisions applicable under the SEPP have not been applied to the proposal.

Part 3 of the SEPP relates to the retention of existing affordable housing. This component is limited to land within the Sydney region and land within the Local Government Area of Newcastle and Wollongong city therefore Part 3 is not applicable. The applicant has also noted that the existing structures on the site are aged and have varying degrees of dilapidation. The building located on Lot 7 is currently abandoned and has been for some time.

The Affordable Rental Housing SEPP is not considered to be applicable to the proposed development.

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

Draft Tweed City Centre Local Environment Plan 2009

The Draft Tweed City Centre Local Environment Plan 2009 zones both Lot 7 and Lot 8 as R3 – Medium Density Residential. The residential component of the proposed development is permissible under the Draft Tweed City Centre Local Environment Plan 2009. However, it is noted that the commercial premises component of the development is prohibited under the Draft LEP, unless it is utilised for a neighbourhood shop or the like.

Clause 4.3 of the TCCLEP is related to building height. The general objectives for this clause include establishing the maximum height of a building, ensuring the height relates to the lands capability to maintain an appropriate level of urban character, and to encourage greater population density. The maximum height for the subject site under the Draft LEP is 28m. The maximum height of the proposed development is 20.555m; therefore the proposal complies with the Draft LEP in terms of height provisions.

Clause 4.4 relates to floor space ratio, and states that the *maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map*. The FSR map indicates a maximum of 2.5:1 for the subject site. The proposed total FSR for the development is 2.22:1, which complies with the Draft LEP.

Clause 6.6 regards minimum street frontage of land for buildings in Zones R3, B2, B3 and B4 [local]. As the site is situated in zone R3 – Medium Density Residential, this clause applies. Development consent must not be granted unless the building has at least one (1) street frontage of 20m or more. Having a 40m street frontage, the proposed development exceeds this minimum requirement.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Required Car parking

Off-street car parking needs to be supplied in accordance with DCP A2. The following is an assessment of the proposed development against the requirements of the DCP.

Use	Parking Rate	Required Spaces
Multi Dwelling Housing	1 space per 1 bed unit plus 1 per 4 units (visitors)	50 units x 1 = 50 spaces + 50 units / 4 = 12.5 spaces Total required = 62.5 spaces (Rounded up to 63 spaces)
Commercial Premises	<u>Staff Parking</u> 1 space for every 40m ² GFA <u>Service Vehicle</u> 1 / 200m ² GFA (Min 1 HRV / SRV)	420m ² GFA / 40 = 10.5 Less 20% ESD = 10.5 x 0.8 = 8.4 spaces (Rounded up to 9 spaces) 420m ² GFA / 200 = 2.1 spaces (Council's Engineer recommends only 1 large bay)

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Resident and Visitor Parking

As noted in the table above, 63 spaces are required for residential and visitors. The final design (submitted in May 2010) incorporates a basement layout with fifty (50) residential spaces and thirteen (13) visitor spaces within the two levels.

DCP B2 requires car wash areas in the form of 1 wash bay per 10 units, (minimum 1 car wash bay). Under these provisions, the proposed development would require 5 car wash bays. This figure was deemed to be excessive and Council's Development Engineer has noted that two (2) car wash bays would be adequate. The revised basement plans identify a car wash bay in both levels, thereby satisfying Council's requirements in this regard.

Staff and Customer Parking

After several attempts, the car parking layout is now in a satisfactory configuration, with nine (9) spaces allocated to the commercial component of the development. Although some of the spaces are tandem spaces (i.e. stacked spaces, one car parked in front of the other), this is considered to be acceptable on the provision that those spaces (identified as spaces 7, 8 and 11 in Basement Level 1) are dedicated to staff. Space No. 10 has been identified as a disabled space due to its width. This is considered to be acceptable if space 11 is nominated as staff parking only (as noted above).

Delivery, Service Vehicle Parking

As noted in the table above, the DCP requires 2.1 spaces for service vehicles. The original design allocated two (2) on-street loading bays on Boyd Street. This was not considered to be acceptable by Council. A revised car parking layout proposed two SRV loading bays in Basement level 1. Heavy Rigid Vehicles (HRV's) will have to utilise the road reserve due to height and manoeuvrability restrictions within the basement, however it is considered unlikely that the small commercial component of the development will require deliveries from an HRV. Council's Development Engineer recommended the two smaller loading bays be replaced with just one (1) large loading bay area clear of any other car parks, with no on-street loading bays allowed. Revised plans have been submitted to comply with this requirement.

Bicycle Parking

The DCP requires two (2) per unit for residential development, which equates to 100 bicycle spaces and 1 bicycle space per 100m² GFA. In total, the DCP requires 104 bicycle spaces. The revised car parking layout incorporates two areas of areas of 25 bike spaces each and have noted that an additional bike hook will be provided in each of the residential car spaces. It is also noted that a bike stand with provisions for four (4) bikes is proposed at ground level adjacent to the front stairs / ramp at the front of the development. This results in 104 bike spaces, which meets the provisions of the DCP.

Access Provisions

Council's assessment of the proposed development identified several issues with the proposed car parking configuration. Compliance with ramp grades and head clearances was questioned, particularly where services were proposed. The applicant provided revised plans, which indicated that signage would be provided

to warn of lower clearances, as per AS2890.1 where the height of the basement is lower than 2300.

In terms of the lower height clearances (2.2m), the applicant was requested to confirm that the Gross Pollutant Trap (GPT) in the lower basement could still be accessed by an appropriate vehicle to be cleaned. A letter was provided from the waste contractor confirming that access would be attainable.

The wall at the driveway entrance was noted as being 2.0m high to the boundary, which did not comply with Council's requirement for walls at driveway entrances to be no higher than 600mm. Revised plans identified the boundary wall as being 2000mm max in height, tapering to 560mm high at driveway's entry point.

Waste Collection

Prior to the revised basement plans being submitted, the applicant was requested to clarify how the bulk bins were to be transported from Basement 1 to the collection point at the top of the driveway. If this were to be done by a tractor, parking space for the tractor needed to be incorporated in the revised carparking layout. Revised plans now incorporate a parking space for a tractor, if the need arises for one to be utilised for bringing the rubbish up from Basement 1 for collection.

Overall, the revised basement design is considered to satisfy the provisions of DCP A2, subject to conditions of consent.

A3-Development of Flood Liable Land

Council's Development Engineer has provided the following comments with regard to flooding:

"The Design Flood Level of the site is 2.6m. The proposal complies with minimum habitable floor level requirements of Design Flood Level + 0.5m with residential uses located at RL3.69m.

The proposal incorporates a basement below design flood level. In this regard, the proposed driveway ramp is transitioned to provide a 'bund' at the level above RL3.69m, which complies with the flood immunity requirements.

The site is identified as being located within the Probable Maximum Flood (PMF being Level of 4.3m AHD) area. As Boyd Street is located wholly within the PMF area, the proposal is required to demonstrate adequate flood refuge area. A Flood Response Assessment Plan has been provided.

The floor level of the proposed Commercial Tenancy has been designed to comply with the Design Flood Level + 0.5m. As such it complies with Council requirements.

To ensure the safety of all residents of the building a Flood Response Assessment Plan (Plan) has been developed. The plan outlines that as the site does not have access to an evacuation road (above the PMF), suitable refuge provisions on the upper levels will be provided. This has been accepted by Council Planning and Infrastructure Engineer on previous developments within the area.

The Applicant has also confirmed that as the development is not a "Sensitive Use", back-up power via generators is not mandatory and will not be provided in case the basement plant is flooded'.

The proposed development is considered to comply with the relevant provisions of DCP A3.

A4-Advertising Signs Code

The proposed development does not incorporate any details on the proposed use within the commercial premises component of the application. A first use application will be required, at which point signage will be assessed.

A11-Public Notification of Development Proposals

The proposed development was placed on public exhibition for a period of 30 days, during which time three (3) objections were received. The issues raised by the submissions are discussed later.

B2-Tweed Heads

The site falls across two (2) precincts under the site specific DCP for Tweed Heads, with Lot 7 being classified as being in the Western Precinct (high density residential), and Lot 8 contained in the Southern Precinct. The Southern Precinct *primarily caters for commercial development in the 3(b) General Business zones focussed on Wharf Street* while the Western Precinct facilitates *the provision of higher density housing catering for a broad cross section of society in close proximity to the available services and facilities of Tweed Heads.*

B2.4.3 Southern Precinct – Preferred Development

Within the Southern Precinct, development that is encouraged includes commercial premises and multi-dwelling housing above the non-residential ground floor development. Therefore, the proposal complies.

- *Height Restriction*

A maximum height restriction of three (3) storeys applies to all development on development sites less than 2000m². As the combined size of the two development sites is greater than 2000m², the proposed six (6) storey development complies with this requirement.

- *Floor Space Ratios*

The FSR provisions of the DCP are the same as that of Clause 50 of the Tweed LEP 2000. As such, the proposal does not comply with the DCP in terms of 1:1 FSR for the 3(b) zoned land. However, given that the SEPP1 Objection for Clause 50 is supported, a variation to DCP B2 is considered to be warranted in this instance.

B2.6.2 Western Precinct – Preferred Outcomes

The DCP notes that development in the high density residential precincts may be supported where the proposal is in accordance with building envelope requirements (B2.9), commercial façade guidelines (B2.10) and any relevant residential guidelines in B2.11. As noted in the assessment below, the proposed development is considered to generally comply with all relevant provisions of B2.9, B2.10 and B2.11. Therefore, the proposal is considered to satisfy the preferred outcomes for the Western Precinct.

B2.9 Building Envelopes

Clause B2.9.2 specifies the requirements for building envelopes within Business zones, however as the boundary of the site adjoins a Residential zone, Clause B2.9.3 takes precedence.

Clause B2.9.3 states that:

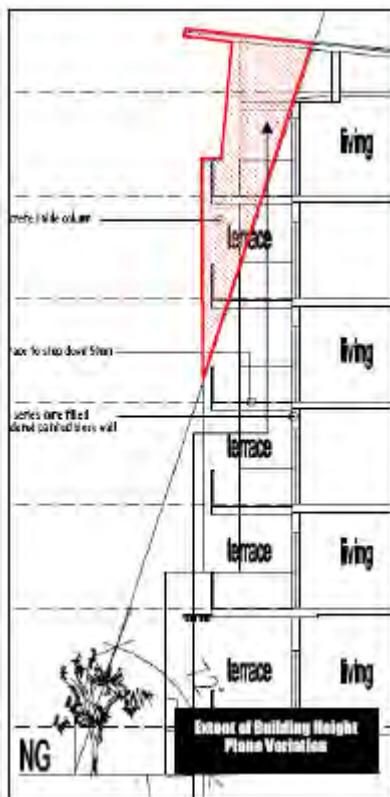
In the Residential zones and in Business and Special Use zones where the boundary adjoins a Residential zone, development must comply with the Building envelope for Residential zones. The envelope is established by projecting a line from the property boundary over the property, at an angle of 72 degrees. This ensures that a building is setback 1m from the property boundary for every 3m of building height.

The proposed development does not strictly meet the required building envelope on the northern side of the site (which is zoned 2(b) Medium Density Residential). A triangular shape of approximately 3.5m wide (at its maximum) by 10.5m height is outside the allowable building envelope on the northern side of the development, covering the top three (3) storeys (see figure below).

The SEE notes that the minor encroachment is limited to the upper levels terrace areas and roof structure, rather than actual living area. A large front setback to Boyd Street of 6.94m has been provided to reduce the bulk of the building to the street frontage in an effort to meet the objectives of this clause.

The applicant also notes that the areas of encroachment are not considered to result in an unreasonable degree of overshadowing to surrounding properties, with the majority of over shadowing accruing on the adjacent road reserves.

The applicant's justification is considered to be acceptable in this instance. As such, the proposed variation to the building envelope requirements is considered warranted.



B2.10 Commercial Façade

It should be noted that the proposed commercial space is located within the building, and does not directly address the street.

- *Façade Alignment*

The proposed commercial space on the ground floor of the development is set back from the street frontage of the site, and as the building is more than 8m in height, this complies.

- *Façade Modulation*

As there is not currently a development of this scale along this section of Boyd Street, the proposal provides diversity in the design of its façade, which is to be multi-coloured and also with an “art wall” panel feature.

- *Continuity of Façades*

Once again, as there is currently no development similar to this within the immediate vicinity of the site, continuity of façades is not possible; however this development will set the baseline for future similar developments in relation to continuity of façades.

- *Design Elements*

The street level of the development utilises full length windows leading into the plaza area, which is covered over by a Colourbond roof.

- *Office and Shop Front Design*

Access via stairs and ramps is available off the street level

- *Advertising Signs*

No advertising signs are proposed in the application.

B2.11 Residential Design

- *Building Mass*

The proposed development does not have any unbroken walls of length greater than 15m, and does vary the building mass through the use of materials, colours, textures, terraces and balconies, and also includes varied setbacks.

- *Energy Efficiency*

The development application is accompanied by a BASIX Certificate, and does comply with Council’s requirements for energy and water efficiency.

- *Ventilation*

Cross ventilation is possible throughout the proposed development, from the northern and southern sides. The apartments allow for air flow to occur from the external balconies and through the open doorways into the central corridor. When the doors are closed, operable louvres above each door are able to be opened so as to not impede air flow throughout the building.

- *Daylight Access*

Natural lighting is able to enter from the north and south of the building due to the open balcony plans. Sliding glass doors between the balcony and internal rooms allow daylight to enter for the majority of the day. During the winter months more sunlight will enter, due to the low position of the sun in the sky.

- *Wind Mitigation*

The proposed building (six (6) storeys high) is not considered likely to cause any significant downdraft to the street.

- *Overshadowing*

Shadow diagrams were submitted with the original application, for 9am June and December 22, 3pm June 22, and 12 noon June and December 22. From these diagrams no unreasonable overshadowing of neighbouring properties occurs, and mid-winter shadowing is not excessive, with the majority extending over the road reserve. It is also noted that the development to the south, which is partially affected by overshadowing is a commercial premises, rather than residential development.

- *Roof Lines*

The proposal includes a “dual skillion” style roof line, and effectively breaks up the view from elevated properties west of Recreation Street in the west. The design provides some variety in the roof line, rather than a tradition flat roof.

- *Privacy*

The development proposes private balconies for each individual unit, with access to these from the living and bedroom areas of each unit. However, upon site inspection, it was revealed that the balconies on the northern side may potentially impact on the privacy of the existing neighbouring properties development. As such, it is recommended that screening is provided on each balcony on the northern side of the development. An applicable condition will be generated in this regard.

- *Entrances*

All entrances to the building are proposed to be easily noticeable, with access to the lift from all levels. However, the DCP states that apartments should be arranged *in clusters to a maximum of eight around a common lobby, to optimise security*. This proposal has clusters of ten (10). The applicant has acknowledged this non-compliance, and has provided mirrors along the corridor walls to enable viewing along its full length. They point to the fact that the distance to the escape stairs is less than 16m. The proposed variation DCP B2 is considered to be acceptable.

- *Surveillance*

The proposal complies with the requirement of on-street surveillance from at least one room that is not a bathroom or bedroom, particularly from those units with frontage onto Boyd Street.

- *Concealment and Illumination*

Although it is not stated in the application the lighting fixtures to be used within the common areas, a condition has been applied requiring sufficient lighting be provided within these areas.

- *Unsupervised Access*

Access is limited to the units via the central corridor on each level, with the central lift and two stairwells providing access to this corridor.

- *Communications*

The application is silent as to whether an audio or video intercom system will be utilised at the entry or in the lobby for visitors to communicate with residents. A condition has been applied requiring the incorporation of an intercom system at the main entrance.

- *Materials*

The proposed materials assist with breaking down the building bulk on all sides, and will be used to effectively define the various units for a diverse look.

- *Colours*

Colours will also assist in effectively defining the various units, and creating a diverse look. Colours include “Resene Thistle”, “Resene Dutch White”, “Resene Guardsman Red”, “Resene Burgundy”, “Resene Coffee”, Resene Baltic Sea” and “Resene Bokara Grey”. The two (2) reddish colours assist with accentuating the development, with the white and thistle colour being the dominant colours used.

- *Access*

The development proposes access to on-site parking via a driveway ramp off Boyd Street, on the southern side of the site, leading down to the basement levels.

- *Parking*

Off-street parking is provided within two basement levels, as noted above. The proposed development is considered to satisfy the provisions of DCP A2 – Site Access and Parking Code.

- *Car Wash Areas*

Two (2) car wash bays are provided on (one on each basement level), which is deemed to be acceptable by Council’s Development Engineer.

- *Open Space and Balconies*

The DCP states that for dwellings under 85m² in floor area, a minimum of 20m² of landscaped open space must be provided per dwelling. Open space on the ground level should have a minimum dimension of 4m. Dwellings above the ground level and without direct access to the landscaped ground level shall provide private open space in the form of a balcony, with a minimum area of 8m² and a minimum dimension of 2m, with direct access from a main living room of the dwelling.

The proposal incorporates fifty (50) dwellings with an individual area of less than 85m², therefore a minimum of 20m² of landscaped open space must be provided per dwelling. This results in a minimum amount of open space of 1000m². The proposal provides a total of 1321.6m² of open space, inclusive of communal ground floor areas. The upper level units are required under the DCP to have a minimum area of 8m² and minimum dimensions of 2m. All proposed units contain private balcony areas measuring 2.4m by 6m, giving an area of 14.4m² accessed directly from the living and bedroom areas.

Therefore, 14.4m² x 50 units = 720m² of private open space. The remaining 601.6m² is located on the ground floor, and of this, 512m² is available as deep planting area. Therefore, the proposal complies with the DCP.

Overall, the proposed development is considered to comply with the relevant provisions of DCP B2.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by coastal policy. The proposed development is not considered to be in conflict with the policies and strategies contained within the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

There are two existing structures on the subject sites, with one being a two storey dwelling, the other a single storey. Associated carports are also present. The application for demolition is to be submitted at a later stage, therefore this does not apply at present. An applicable 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

Compatibility with Adjoining Land Uses

The area surrounding the development site is a mix of residential and general businesses (including an RSPCA Animal Hospital, and medical facilities). In terms of future development, the Draft Tweed City Centre Plan identifies the surrounding area as medium density residential, which is compatible with the proposal. Therefore, as the area is redeveloped and changes character, the proposed development is expected to be of similar character to the surrounding locality.

Potential amenity issues were identified between the proposal and the vent for the adjacent sewer pump station. Appropriate conditions have been applied in order to minimise any impact to the upper levels of the proposed development.

Overshadowing

The applicant has supplied shadow diagrams that indicate the level of overshadowing the proposed development would cast upon the adjoining properties. It is considered that the amount of overshadowing cast by the development is acceptable, as the shadows tend to only cover a commercial premises (rather than adjoining residential development), and the Boyd Street road reserve.

Privacy

The proposal incorporates private balconies on the northern and southern sides of the development. There is a potential issue with privacy on the northern side, looking onto the adjacent property. As such, an applicable condition has been applied, requiring screening devices to be utilised along the balconies on the northern side.

Dewatering

The applicant provided a Dewatering Management Plan (prepared by HMC Environmental Consulting Pty Ltd) which was not supported by Council's Environmental Health Unit. A revised Dewatering Management Plan was submitted, with Council's Environmental Health Unit noting that the revised report satisfies the requested changes. Appropriate conditions of consent have been applied.

(c) Suitability of the site for the development

The site is centrally located and within walking and cycling distance of the Tweed Heads and Coolangatta business districts, local bowls clubs, sporting fields, medical facilities and beaches of the area. The property is fully serviced by all necessary infrastructure (water, sewer, stormwater, electricity and telecommunications), and has easy access to the main roads to central Tweed Heads or South Tweed. The site and surrounding properties are zoned for general business and medium density residential. It is therefore considered that the site is suitable for the proposed development.

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

Three submissions were received during the public exhibition period, which ran from 1 October 2008 to 3 November 2008. The only issue raised in all three submissions was the lack of car parking along Boyd Street, and the concern that the proposed development would add to existing parking problems.

As noted above, since being on public exhibition, the proposed carparking configuration has been modified on several occasions. The final carparking design is now considered to be acceptable, with the proposal meeting the minimum carparking requirements and no on-street loading bays permitted.

Therefore, the carparking issues raised by the submissions are considered to be satisfied. As such, the objections do not warrant refusal of the proposed development.

Department of Water and Energy

The proposed development requires dewatering for the construction of the basement levels. As such, the application was referred to the Department as Integrated Development. The Department has issued General Terms of Approval, which have been incorporated into the recommended conditions of consent.

(e) Public interest

It is considered that the proposed six-storey dwelling does not compromise the public interest. As stated by the applicant, a portion of the development is aimed towards students, thereby being marketable to this demographic with the nearby Southern Cross University. The proposal is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality.

OPTIONS:

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

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, with an acceptable variation to Clause 50 of the Tweed LEP 2000. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

20 [PR-CM] Development Application DA05/0840.02 for an Amendment to Development Consent DA05/0840 for Grazing of Cattle and Associated Works at Lot 76, 272, 323, 326 DP 755701, Duranbah Road, Kings Forest

ORIGIN:

Development Assessment

FILE NO: DA05/0840 Pt3

SUMMARY OF REPORT:

Council has received a Section 96 application to modify an existing development consent for grazing of cattle in the Cudgen Paddock at Kings Forest (DA05/0840.02). This application was requested to be submitted to Council by Councillor Holdom.

The existing consent approved specific grazing areas. The proposed modification seeks to extend grazing beyond the approved areas. The proposed extension areas are within areas future golf course areas approved by the Department of Planning as part of the Kings Forest Concept Plan. It is noted that the applicant has also lodged a Project Application with the Department of Planning for stage 1 bulk earthworks and golf course over this area.

The original consent allowed for grazing of a maximum of 45 cattle. The proposed modification does not increase the number of cattle allowed to graze at the site.

The application was notified and one submission was received from Department of Environment Climate Change and Water (DECCW). DECCW are concerned that despite the Concept Plan approval, the proposed extension areas are pre-emptive of any stage 1 bulk earthworks and golf course approval.

The proposal is recommended for approval with conditions. A condition is recommended to ensure that any future extension of the grazing area does not occur beyond areas approved for earthworks in the Project Application and that grazing in these areas does not commence until such time as an approval is issued by the Department for the stage 1 Project Application.

The applicant also requested an extension of the development period from three years to five years. As grazing does not yet appear to have commenced, it is considered an extension of the development period is reasonable.

RECOMMENDATION:

That Development Application DA05/0840.02 for an amendment to Development Consent DA05/0840 for grazing of cattle and associated works at Lot 76, 272, 323, 326 DP 755701, Duranbah Road, Kings Forest be approved subject to amendment of the following conditions:

1. Delete Condition No. 2 and replace it with Condition No. 2A which reads as follows:

2A The Applicant shall provide for fencing as shown on the aerial photograph prepared by Aspect North and dated 5 May 2006 showing the location of the proposed paddock fences and fences around waterbodies, attached to this consent and Marked "A." In the event that Project Application 08_0194 is approved, the grazing area and fencing thereof may be extended to the boundaries of the grazing areas shown on the plan prepared by Land Partners titled "Proposed Amended Grazing Area" and dated 27 May 2010, only to the extent that extension areas are approved for earthworks in the Project Application 08_0194. The extended grazing areas must be fenced into east and west paddocks, generally in accordance with Aspect North plan dated 5 May 2006 marked "A".

2. Delete Condition No. 3.

3. Delete Condition No. 5 and replace it with Condition No. 5A which reads as follows:

5A The maximum number of cattle permitted to be grazed on the subject land is 45. In this regard the maximum number of cattle permitted in the eastern paddock is 30 and the maximum number of cattle permitted in the western paddock is 15.

4. Insert new Condition No. 6.1 which reads as follows:

6.1 The broadcasting of exotic pasture species shall not occur in any new grazing areas indicated in the Land Partners plan titled "Proposed Amended Grazing Area" and dated 27 May 2010"

5. Delete Condition No. 10 and replace it with Condition No. 10A which reads as follows:

10A The development can occur for a maximum of five years from the date of commencement.

REPORT:

Applicant: Project 28 Pty Ltd
Owner: Project 28 Pty Ltd
Location: Lot 76, 272, 323, 326 DP 755701 Duranbah Road, Kings Forest
Zoning: 2(c) Urban Expansion, 2(e) Residential Tourist, 6(b) Recreation and 7(a) Environmental Protection (Wetlands and Littoral Rainforests)
Cost: N/A

BACKGROUND:

DA05/0840 – Consent for Grazing of Cattle and Associated Works

On 15 June 2006, Development Consent DA05/0840 was issued for grazing of cattle and associated works at the abovementioned address. The application allowed for grazing of cattle in two paddocks. Up to 30 head of cattle are allowed to graze in the eastern paddock and up to 15 head of cattle are allowed to graze in the western paddock. The consent also allowed for fencing (comprised of star pickets and electric fencing) around the paddocks, drains and waterbodies (at least 5 metres from the edge of the drain or waterbody).

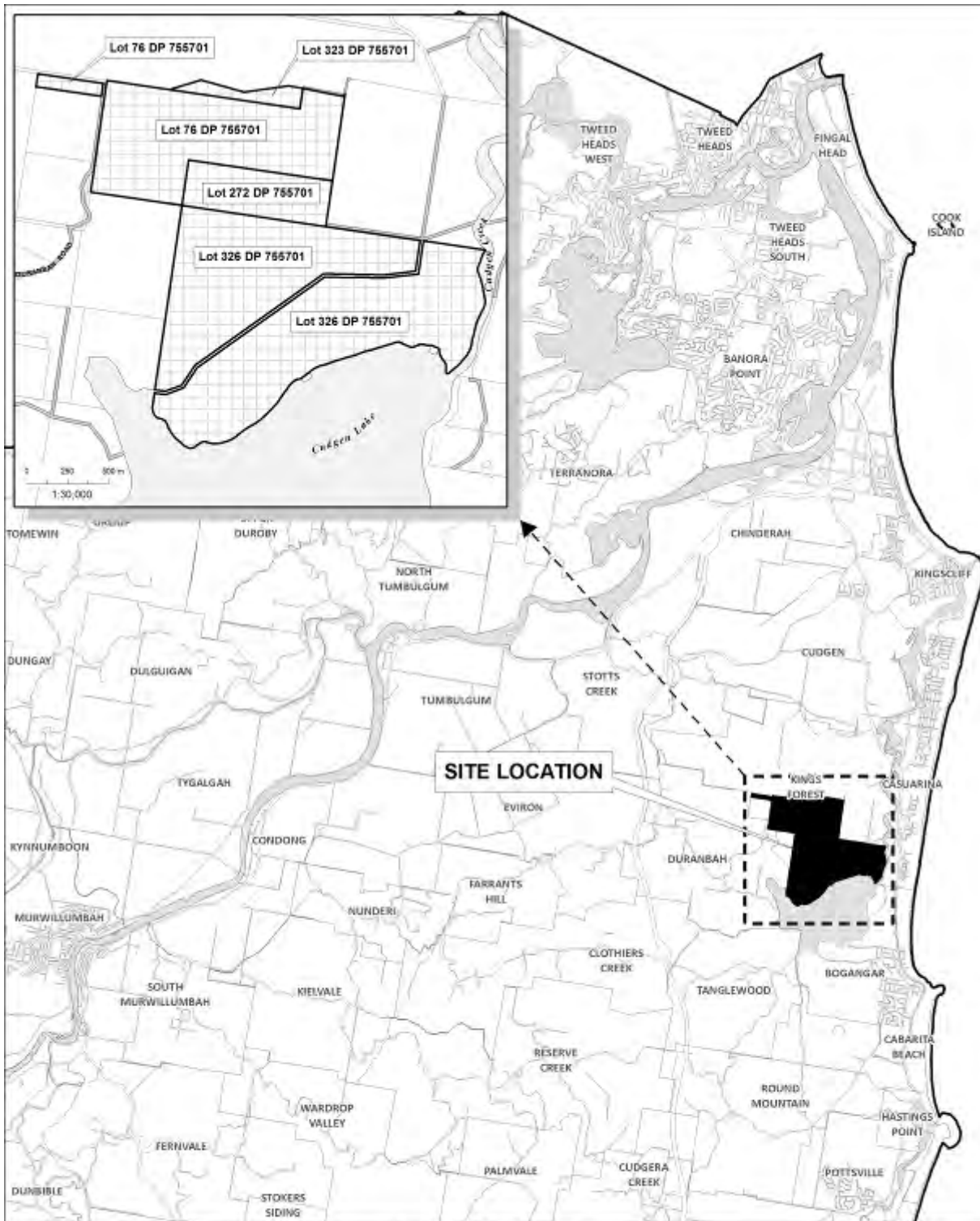
The consent provided for pasture improvement, provision of water troughs, pumped from the existing dam via polythene pipeline laid on the ground.

A section 96 amendment was subsequently approved modifying the permitted author of the required Vegetation Monitoring Programme as availability of the required specific author was an issue for the applicant.

Kings Forest Concept Plan

The Department of Planning has since approved the Kings Forest Concept Plan which includes a golf course over the area approved for grazing. A Project Application for Stage 1 bulk earthworks and reshaping of the golf course has been lodged with the Department of Planning. The Project Application has not yet been determined.

SITE DIAGRAM:



Locality Plan
 Lots 76, 272, 323 and 326 DP 755701;
 Duranbah Road, Kings Forest

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PROJECT APPLICATION CONTEXT



Attachment 2

PROPOSED MODIFICATION

The applicant is seeking to extend the existing grazing areas to reflect the area approved for golf course in the Concept Plan.

Figure 1 – Extract from lodged plan prepared by Landpartners indicating existing grazing area (green hatch) and approved golf course (Pink)

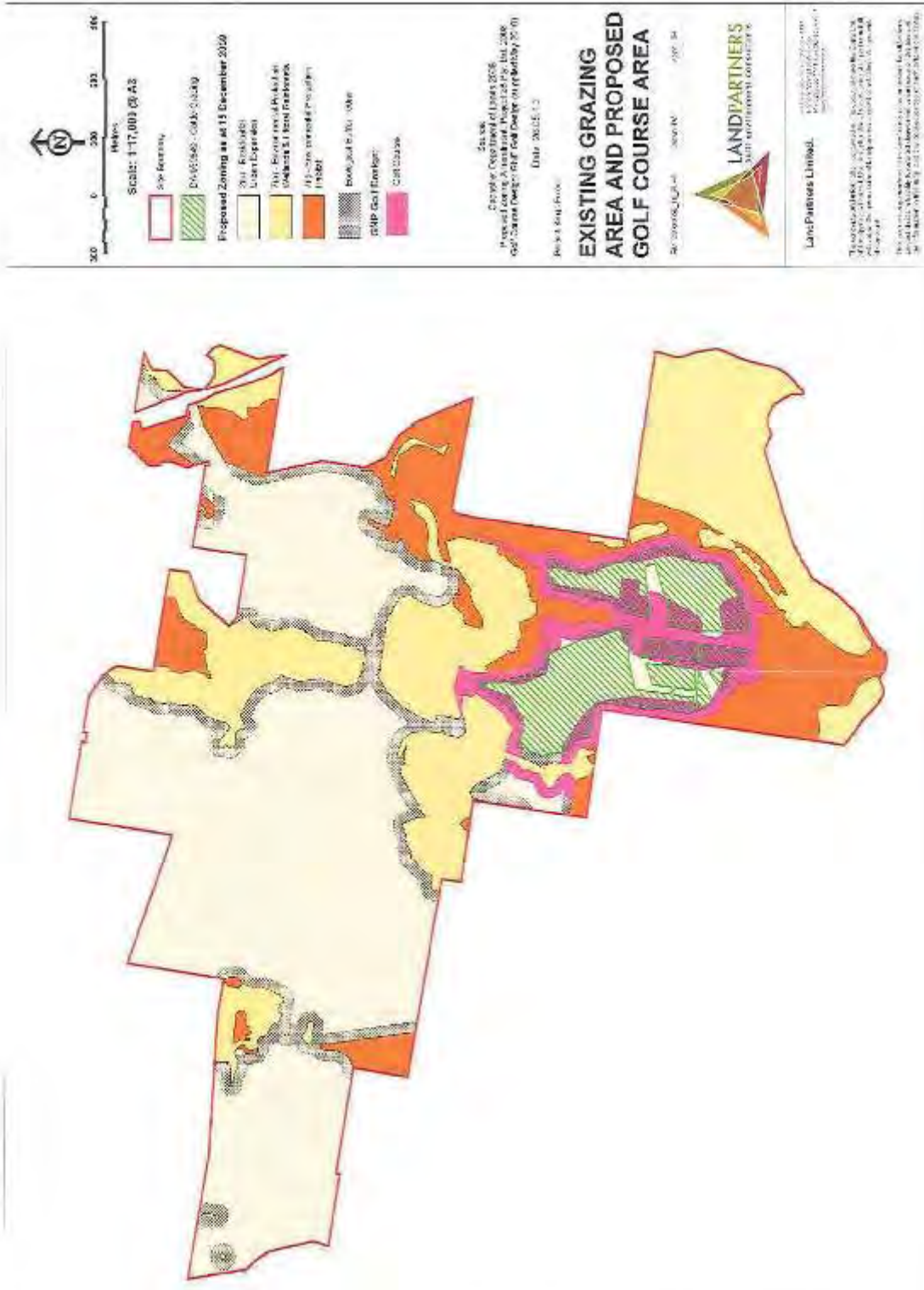
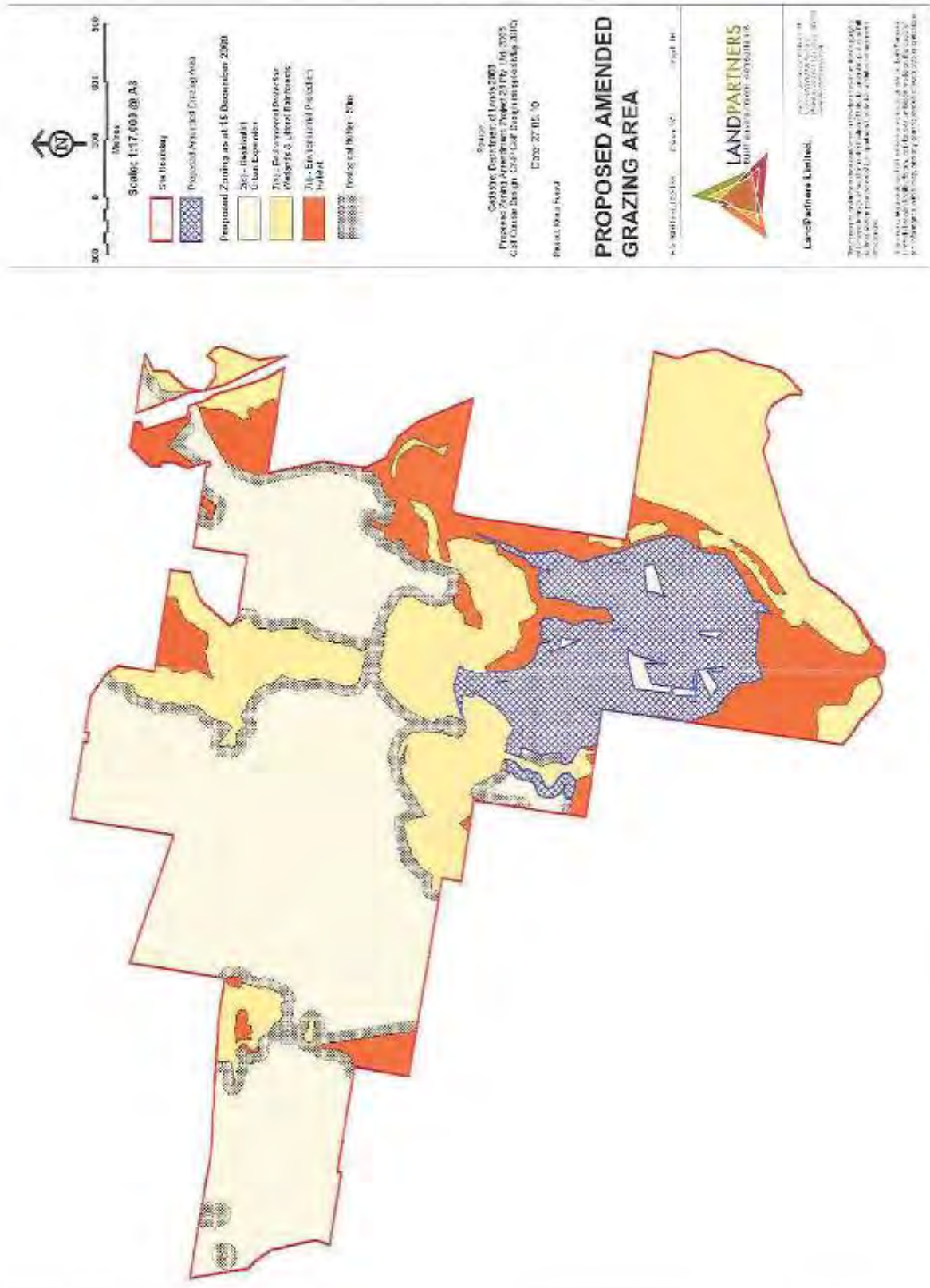


Figure 2 – Extract from submitted Landpartners plan indicating proposed extension to grazing area



The applicant has justified the proposed extension to grazing area as an interim use of the site which will ultimately be subject to future bulk earthworks to form the golf course and residential areas. The applicant also argues that the grazing area is not inconsistent with the approval of the Concept Plan.

In order to give effect to the modified grazing area, the applicant has proposed modifications to condition 2, 3 and 5 as follows:

Condition 2 which currently reads as:

The Applicant shall provide for fencing as shown on the aerial photograph prepared by Aspect North and dated 5 May 2006 showing the location of the proposed paddock fences and fences around waterbodies, attached to this consent and Marked "A."

Is proposed to be amended to the following:

The applicant shall provide fencing to the boundaries of the grazing areas as shown on the plan prepared by Land Partners titled "proposed Amended Grazing Area" and dated 27 May 2010. The area is to be divided in to an eastern and western paddock.

Condition 3 which currently reads:

The activities permitted by this consent are only permitted within the land zoned for urban development in the draft Local Environmental Plan (Amendment No. 20) for Kings Forest, as ultimately determined by the Minister for Planning. The buffer areas (50metres wide) are to remain intact ie. no cattle grazing permitted in the buffer areas pending further investigation as part of the DCP for urban development in Cudgen Paddock.

Is proposed to be deleted.

Condition 5 which currently reads:

The maximum number of cattle permitted to be grazed on the subject land is 45. In this regard the maximum number of cattle permitted in the eastern paddock is 30 and the maximum number of cattle permitted in the western paddock is 15, subject to such numbers being reduced proportionately to the extent, if any, that the areas of these paddocks (as indicated in the aerial photograph produced by Aspect North) are finally determined in the local Environment Plan as not suited for urban development.

Is proposed to be modified as follows:

The maximum number of cattle permitted to be grazed on the subject land is 45. In this regard the maximum number of cattle permitted in the eastern paddock is 30 and the maximum number of cattle permitted in the western paddock is 15.

The applicant also seeks to modify the condition 10 which limits the consent to 3 years. It is proposed to extend the life of the consent to five years as follows:

"The consent is valid for five years from the date of commencement of the development."

With regard to this proposed modification, a search of the files indicates that deferred commencement conditions were satisfied on 22 February 2007. Following that, condition 9 of the consent required vegetation survey prior to commencement of the consent (in particular slashing). Condition 9 was modified on 4 June 2007 allowing for an alternate author of the vegetation survey. The applicant has verbally indicated on-site that whilst slashing has occurred on the site, actual grazing has not.

Notwithstanding, the wording in the condition places a time limitation on the "consent", Council can only lawfully limit the extent of time the development itself can occur. Given that cattle have not yet grazed on the site, it is considered reasonable to extend the time period of the development for a further 3 years from the date of commencement.

CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Substantially the Same Development

The proposed modifications result in essentially the same development as originally approved with extensions of grazing limited to the general vicinity of existing approved paddocks.

The proposed amendments do not increase the intensity of cattle grazing and maintains the two paddocks, fencing and ancillary works. It is considered to be substantially the same development.

Considerations under Section 79C of the Environmental planning and Assessment Act 1979

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

Kings Forest has been excluded from the Draft LEP and the approved Concept Plan applied.

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

Tweed Development Control Plan

There are no controls within the Tweed DCP relevant to the grazing operations.

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

N/A

(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

The Tweed Coast Estuaries Management Plan applies to Cudgen Creek. The proposed extension to the grazing areas will not result in additional impact on the management strategies within this plan. Additional earthworks or clearing (other than slashing of exotic species) are not proposed as part of the modification. A condition is recommended to ensure that exotic pasture is not introduced into the extension areas.

(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

Kings Forest has been subject of extensive planning and study but is currently unimproved, other than access tracks and plantations established on-site in the past. The land itself has been approved for residential development including a town centre and golf course as well as wildlife corridors within the Concept Plan approval.

Land surrounding Kings Forest, to the north, west and southwest is currently zoned Rural and Agricultural Protection and characterised by farming and grazing land. Land to the east is zoned residential and characterised by coastal village development.

The existing and proposed extension to grazing areas is not out of character with surrounding rural uses and a satisfactory interim land use prior to establishment of the future residential community planned at Kings Forest.

Flora and Fauna

The applicant has confirmed that grazing within the extended paddock areas will involve pasture improvement, including mechanical slashing and broadcasting of pasture seed. Mechanical slashing will be over existing vegetation which comprises a mix of tea trees, pine trees saplings, exotic grasses and heath vegetation of varying quality. Conditions relevant to this were applied to the original application will remain applicable to the extension areas.

A site inspection was undertaken with Council's Ecologist and the applicant. The applicant confirmed that proposed extension areas to grazing was proposed within disturbed or previously cleared sites. Site inspection revealed that substantial pine-regrowth had occurred on the fringes of the pine forested areas.

On-site discussions with Council's Ecologist indicated that pasture improvement works should be limited to those areas which are currently cleared and that no intensification of cattle grazing should occur. Relevant conditions are proposed in this regard.

It is noted that the amelioration recommendations in section 6.2 of the Flora and Fauna Assessment report approved with the original consent will be applicable to the proposed extension areas (refer condition 6 below), along with additional requirements in condition 7 below.

Condition 6

The amelioration measures contained in section 6.2 of the Flora and Fauna Assessment Report are to be undertaken, namely:

- *Two rather than three grazing paddocks to be established - on the eastern and western halves of the site (refer Fig. 5).*
- *Reduced grazing to be undertaken in the western paddock. This area is known habitat for threatened frogs (southwest) and Grass Owls (northwest).*
- *A maximum of 45 cattle to be grazed on the site: 30 in the eastern paddock and 15 in the western paddock. This is based on effective grazing rates of 1 cow per 1 hectare on good pasture. Cudgen Paddock is considered marginal grazing land, therefore the ideal grazing rate has been halved. This figure is reduced in the western paddock to minimise impacts on threatened fauna.*
- *Fencing to be erected around the perimeter of the Paddock and between the eastern and western paddock areas. All drains and waterbodies are to be fenced. Internal and external (where applicable) fencing to be installed so as to prevent impacts on waterbodies during construction (ie. star pickets and electric fence) and allow movement of Koalas (ie. greater than 250mm clearance).*
- *The corridor proposed on existing constraints maps to be maintained down the centre of the Paddock (refer Fig. 5).*
- *Effective erosion controls to be employed during fencing operations, if required, to prevent sedimentation of drains.*
- *The fencelines are to be constructed at least 5m from drains or waterbodies.*
- *Watering points to be installed at regular intervals to discourage use of the drains by cattle. Water points should be located away from areas where frogs have been recorded.*
- *Water level in the dam, drains and wetlands should be monitored so as to determine the impacts of the use of water for cattle watering. If levels become low, water should be imported for cattle use.*
- *Pasture improvement to be limited to broadcast of pasture seed. No clearing or slashing of native vegetation.*

Condition 7

The measures contained in section 6.2 of the Flora and Fauna Assessment Report are amplified by the following:

- *The restriction on slashing of native vegetation applies to areas of predominantly native vegetation.*
- *The alignment of the perimeter fencing of the two paddocks may be slashed prior to the construction of such fencing to a width not exceeding 5m, provided that the width within areas of predominantly native vegetation shall not exceed 3m.*

Given existing condition 6 and 7 above remain relevant, and additional conditions are proposed to ensure broadcasting of exotic pasture is not undertaken, it is considered that the extension to grazing areas will not result in intensification of ecological impact.

Extension of Time

As above, the applicant also seeks to modify the condition 10 which limits the consent to 3 years. It is proposed to extend the life of the consent to five years as follows:

The consent is valid for five years from the date of commencement of the development.

With regard to this proposed modification, a search of the files indicates that deferred commencement conditions were satisfied on 22 February 2007. Following that, condition 9 of the consent required vegetation survey prior to commencement of the consent (in particular slashing). Condition 9 was modified on 4 June 2007 allowing for an alternate author of the vegetation survey. The applicant has indicated slashing has occurred on the site but actual grazing has not.

Notwithstanding, the wording in the condition places a time limitation on the "consent", Council can only lawfully limit the extent of time the development itself can occur. Given that cattle have not yet grazed on the site, it is considered reasonable to extend the time period of the development for a further five years from the date of commencement.

(c) Suitability of the site for the development

The proposed extension to the grazing area is compatible with the approved grazing land use.

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

The proposed modification was notified between 13 October 2010 and 27 October 2010. During this time period, one submission was received from the Department of Environment, Climate Change and Water (DECCW).

DECCW has objected to the proposal as it extends over areas identified as environmental buffers and threatened species habitat. DECCW is also concerned that the extension to grazing areas will pre-empt any Project Application approval for earthworks associated with the golf course and should be limited to areas which are subject to future disturbance. That is, detailed design of the golf course may limit areas in which the earthworks may occur, thereby minimise impact on the environmental buffer and threatened species habitat.

The applicant has reviewed the DECCW submission (correspondence from Darryl Anderson Consulting Pty Ltd, dated 21 December 2010) and made the following points in response:

- The modification to the grazing application is intended to provide a logical interim use of the parts of the site which are to be subject to future disturbance, due to bulk earthworks required to construct the golf course and residential development approved by the Minister in the Kings Forest Concept Plan.

- The Concept Plan includes ecological assessments, ecological management plans and related statements of commitments which relate to future development of the land.
- The proposed modification to the grazing area is consistent with the ecological assessments and disturbance required under the Concept Plan and Project Application.
- The area to be grazed is to be contained to the areas dominated by a farm track, tea tree (required to be removed under a pending court order), exotic grasses and pine tree wildlings.
- The areas of heath to be retained and naturally revegetated under the Concept Plan and Project Application are located outside the extended grazing area.
- The proposed grazing area includes 'revegetated (replanted) heath areas' indicated on approved plans accompanying the Concept Plan approval. These areas are to be replanted after the earthworks are completed and will therefore not be affected by the interim grazing use. The regeneration of these areas is enforceable under the Concept Plan approval.

In addition to the above points, the applicant has indicated they are prepared to accept an amended operational condition that delays the use of the proposed expanded grazing area until such time as the Project Application currently before the Minister is approved.

OPTIONS:

1. Approve the section 96 modification with suitable conditions.
2. Refuse the section 96 modification.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Council has received an application to modify an existing consent for cattle grazing at Kings Forest.

The modification relates to extension of the grazing areas around the perimeter of approved paddocks and extension of the development time period from three to five years.

The modification has been assessed and is considered to be substantially the same as the original approval and it is considered that no additional environmental impacts will arise from the modification, subject to recommended conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

21 [PR-CM] Development Application DA09/0006.01 for an Amendment to Development Consent DA09/0006 for a Four (4) Lot Industrial Subdivision, Construction of Part of Ozone Street and Associated Drainage at Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA09/0006 Pt3

SUMMARY OF REPORT:

Council at its meeting of 14 December 2010 resolved as follows:

“RESOLVED that:

- 1. This item be deferred to schedule a workshop during February between Council, the applicants, adjoining landholders directly affected and key community members representing Royal Pacific Caravan Park (1), Heritage Caravan Park Residents' Association (1), Chinderah Lakes Caravan Park (1), Chinderah Residents' Association (1) and the Roads and Traffic Authority.*
- 2. The applicant be encouraged to pursue alternative access options.”*

A Workshop was held on 3 February 2011 with Councillors and Senior Management to discuss the development application in more detail. There is no change to the officers' original recommendation resulting from the Workshop. A full copy of the original report to Council's meeting of 14 December 2010 is reproduced below.

DA09/0006 approved a 4 lot industrial subdivision, the construction of Ozone Street from Chinderah Bay Drive to the property frontage (approximately 630m) and associated drainage works.

This application seeks to modify this consent to change the approved access arrangement by way of construction of a new road through Lot 12 DP 830659. A concurrent development application (DA10/0552) has been submitted to Council for a subdivision to create a public road and an associated acoustic fence. The modification results in approximately 320m of road construction instead of 630m.

The reasoning behind the application (provided by the applicant) is that the new access arrangement under DA10/0552 provides for:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive); and

- An improved level of orderly and economic development.

The S96 application is being reported to Council at the request of the Director, Planning and Regulation, in response to the previous Council and community interest relating to the approved DA09/0006.

RECOMMENDATION:

That Development Application DA09/0006.01 for an amendment to DA09/0006 for a four (4) lot industrial subdivision, construction of part of Ozone Street and associated drainage at Lot 1 DP 102255, No. 16-18 Ozone Street Chinderah be approved subject to the conditions be amended as follows:

Schedule A Conditions

1. **Condition A (Habitat Restoration Plan) is to be DELETED and replaced with Condition AA which reads as follows:**

AA. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:

- a schedule and timing of works to be undertaken
- written agreement from the owner of the agreed site to planting and/or restoration works on the land
- a suitable protection mechanism on the land to ensure the trees are protected in perpetuity
- a legally binding commitment by the consent holder to funding and/or undertaking the proposed works
- a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.

2. **A NEW Condition AA.1 be ADDED which reads as follows:**

AA.1 A legally binding commitment by the consent holder to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the *Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117* prepared by Planit Consulting dated March 2010.

3. **Condition B be DELETED.**

4. **A NEW Condition C be ADDED which reads as follows:**

C. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified

acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.

4. A NEW Condition D be ADDED which reads as follows:
 - D. The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.

Schedule B Conditions

5. Condition No. 1 is to be DELETED and a NEW Condition 1A is to be added which reads as follows:
 - 1A. The development shall be completed in accordance with the Statement of Environmental Effects and plans as follows:

Lot Layout Plan (T.15.21/DWG 17/Issue A) prepared by Cozens Regan Williams Prove and dated 11/10 H

Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.

Cultural Heritage Assessment prepared by Everick Heritage Consultants and dated June 2010.
6. A NEW GEN Condition 1A.1 be ADDED which reads as follows:
 - 1A.1 All conditions of DA10/0552 must be satisfied prior to release of subdivision certificate.
7. Condition No. 4 is to be DELETED and a NEW Condition No. 4A is to be added which reads as follows:
 - 4A. The level of fill placed on the site shall not exceed RL 2.2m AHD.
8. Condition No. 7 is to be DELETED and a NEW Condition No. 7A is to be added as which reads follows:
 - 7A. 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.
9. Condition No. 9 is to be DELETED and a NEW Condition No. 9A is to be added which reads as follows:
 - 9A. 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.

Intersection Works

- The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

Road Works

- Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

Stormwater

- The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

Sewer

- All common rising mains shall be located in road reserve. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
- The pump stations are to be designed within a small compound that includes the control box and concrete slab.
- A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.

- The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.
10. Condition No. 16 is to be DELETED.
 11. Condition No. 19 is to be DELETED.
 12. Condition No. 20 is to be DELETED.
 13. Condition No. 27 is to be DELETED and a NEW Condition No. 27A is to be added which reads as follows:
 - 27A. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.
 14. Condition No. 29 is to be DELETED and a NEW Condition No. 29A is to be added which reads as follows:
 - 29A. Commencement of works in accordance with the approved Habitat Restoration Plans and legally binding agreement as detailed in Schedule A must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation within Ozone Street road reserve or the Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) within Chinderah Road road reserve.
 15. Condition No. 30 is to be DELETED and a NEW Condition No. 30A is to be added which reads as follows:
 - 30A. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.
 16. Condition No. 31 is to be DELETED and a NEW Condition No. 31A is to be added which reads as follows:
 - 31A. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.
 17. Condition No. 32 is to be DELETED and a NEW Condition No. 32A is to be ADDED which reads as follows:
 - 32A. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.
 18. Condition No. 33 is to be DELETED and a NEW Condition No. 33A is to be added which reads as follows:

33A. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.

19. Condition No. 46 is to be DELETED.

20. Condition No. 58 is to be DELETED and a NEW Condition No. 58A is to be added which reads as follows:

58A. All works associated with the access road and associated infrastructure are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

New Conditions

21. The following new GEN Condition No. 4.1 be ADDED which reads as follows:

4.1. Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.

22. NEW PSC Condition No. 85 is to be ADDED which reads as follows:

85. Prior to issue of the subdivision certificate the acoustic barrier approved by Schedule A of this consent shall be constructed to the satisfaction of Council's General Manager or delegate.

23. NEW PSC Condition No. 86 is to be ADDED which reads as follows:

86. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plans prior to issue of subdivision certificate.

24. NEW DUR Condition No. 62.1 is to be ADDED which reads as follows:

62.1 Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Wareemba Investments Pty Ltd
Location: Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah
Zoning: 4(a) Industrial
Cost: Nil

BACKGROUND:

On 22 October 2009 deferred commencement consent was granted to DA09/0006. DA09/0006 involved the subdivision of Lot 1 DP 102255 into four (4) allotments of similar size (5000m²), each with a direct frontage of 38.5m to a proposed new road pavement to be constructed along the existing Ozone Street road reserve.

The approved plans show approximately 630m of new road, from Chinderah Bay Drive along the length of the Ozone Street road reserve, terminating in a cul-de-sac at the frontage of the subject site.

The proposal also incorporated concrete lining of the drainage channel and filling of the subject site. The subject site is zoned 4(a) Industrial. No buildings or first use development was proposed on any allotment, with this to be subject to future consent.

Two deferred commencement conditions were applied, being:

- A. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 2 for 1 basis of the Swamp Oak Floodplain Forest impacted by the proposed development. The Habitat Restoration Plan must include:
 - a schedule and timing of works to be undertaken
 - a statement of commitment by the consent holder to funding the proposed works
 - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- B. An Aboriginal archaeological heritage assessment shall be prepared by a suitably qualified and experienced consultant to the satisfaction of Council's General Manager or his delegate to determine the impact of the proposed subdivision and road works. The assessment shall include consultation with the Tweed Byron Local Aboriginal Land Council and any other related stakeholders. The assessment shall also include any mitigation and management measures where required.

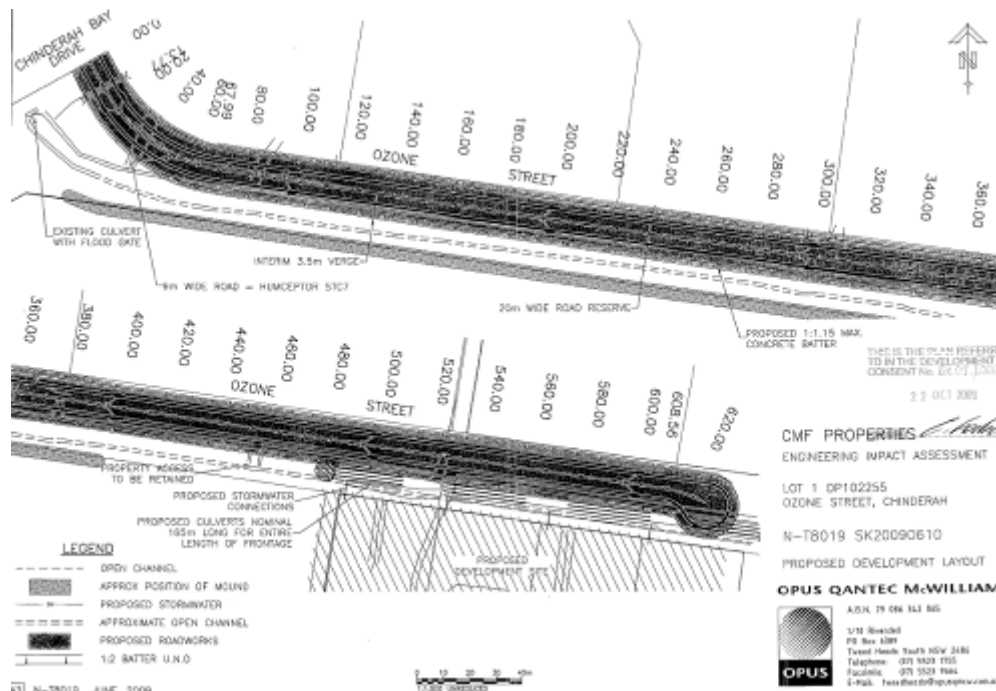
The applicant satisfied the deferred commencement conditions on 21 April 2010 and the consent has been fully operative from that date.

Proposal

The applicant seeks permission via a S96 application to modify the approved access arrangement, to provide vehicular access through nearby Lot 12 DP 830659 and a short section of the Ozone Street road reserve, rather than the full length of the reserve from

Chinderah Bay Drive (approximately 630m). Construction of the new road is proposed by DA10/0552, concurrently before Council.

Existing approved Access Arrangement (from Chinderah Bay Drive)



Proposed Access Arrangement (under DA10/0552, via Chinderah Road and Lot 12 DP830659)



The applicant has advised that the S96 application seeks to modify the following conditions to reflect access being obtained through Lot 12 DP 830659, instead of along the entire length of the Ozone Street road reserve:

- Deletion of Condition A 'Habitat Restoration Plan'. This condition will not be required as the modified proposal does not include the removal of any trees within the road reserve;

- Deletion of Condition B 'Aboriginal archaeological heritage assessment'. This condition has been satisfied as part of the amended development application'
- Modification of Condition No. 1 so as to reflect the proposed change of access to the four (4) lot industrial subdivision, as per the attached plans submitted with the S.96 application;
- Modification of Condition No. 9 (a) to reflect the road configuration as per amended plans, which would read 'Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 14m road reserve width;
- Deletion of Condition No. 29 as this condition will not be required as the modified proposal does not propose the removal of any trees within the road reserve;
- Modification of Condition No. 30 to include "where relevant" as follows: "A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained, where relevant, prior to commencement of the works"
- Modification of Condition No. 31 to include "where relevant" as follows: "A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be obtained, where relevant, prior to commencement of the works;
- Deletion of Condition No. 46 as this is deemed to be no longer relevant in relation to the amended proposal; and
- Modification of Condition No. 58 to include reference to second letter from HMC dated 11 October 2010.

PLANNING ASSESSMENT

The following comments are supplied with regard to the above requested amendments to conditions:

Schedule A - Deferred Commencement Conditions

The applicant has requested that Condition A – Habitat Restoration Plan and Condition B – Cultural heritage assessment be deleted.

No objection is raised to the deletion of the condition relating to the Cultural Heritage Assessment as this has been satisfied. It is noted that Condition A has been modified slightly to reflect the loss of two habitat trees. Deferred commencement Conditions C and D have also been added.

Schedule B

Condition 1 – Approved Plans

Condition 1 is required to be amended to reflect the revised access arrangement and presently reads:

1. *The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: SK20090604 (9m wide road) and SK20090610 (road layout) prepared by Opus Qantec McWilliam and dated June 2009, Figure 6.0 (9m wide road option 2) as amended in red, prepared by Opus Qantec McWilliam and dated November 2008, DWG 00926-01 (Proposed Subdivision Plan) prepared by Planit Consulting and dated October 2008, and the*

Habitat Restoration Plan approved under Schedule A of this consent, except where varied by the conditions of this consent.

Condition 1 will be DELETED a NEW Condition 1A added as follows:

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

Lot Layout Plan (T.15.21/DWG 17/Issue A) prepared by Cozens Regan Williams Prove and dated 11/10 H

Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.

Cultural Heritage Assessment prepared by Everick Heritage Consultants and dated June 2010.

Condition 4 – Approved fill levels

Whilst not requested by the applicant, modification to Condition 4 is required to reflect the revised levels as a result of the proposed road under DA10/0552. Condition 4 presently reads:

4. *The level of fill placed on the site shall not exceed RL 2.0m AHD.*

This condition will be DELETED and REPLACED with the following Condition 4A as follows:

4A. The level of fill placed on the site shall not exceed RL 2.2m AHD.

Condition 7 – Fill

Condition 7 requires amendment and currently reads:

7. *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.*

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

This condition will be DELETED and REPLACED with the following Condition 7A as follows:

7A. 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.

Condition 9 – Civil Works

The applicant has requested Condition 9 be amended to reflect the new road arrangement proposed by DA10/0552. Condition 9 currently reads:

9. *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 adopted Design and Construction specifications.*

URBAN ROAD

- (a) *Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.*

INTERSECTION

- (b) *Construction of an intersection layout for a basic left turn treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.*

This condition will be DELETED and REPLACED with the following Condition 9A as follows:

- 9A. 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.**

Intersection Works

- **The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.**
- **A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.**

Road Works

- **Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.**
- **Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.**

Stormwater

- **The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.**
- **The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.**

Sewer

- All common rising mains shall be located in road reserve. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
- The pump stations are to be designed within a small compound that includes the control box and concrete slab.
- A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
- The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.

Condition 16 – Engineering Plans

The matters prescribed by Condition 16 have been incorporated into Condition 9A above.

Condition 16 shall be DELETED.

Condition 19 – Transverse Drainage

The matters prescribed by Condition 19 have been incorporated into Condition 9A above.

Condition 19 shall be DELETED.

Condition 20 – Earth Bund

Works are no longer proposed in proximity to the existing earth bund located on the southern side of the Ozone Street road reserve. The condition is no longer required.

Condition 20 currently reads:

20. Roadworks in Ozone Street shall maintain the integrity of the earth bund along the southern boundary of the road reserve.

Condition 20 shall be DELETED.

Condition 27 – Acid Sulfate Soils

Existing Condition 27 requires amendment to reflect the revised ASS Management Plan and development description and currently reads as follows:

27. *Prior to the commencement of works on the access road and open drain an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009 is undertaken.*

Existing Condition 27 is to be DELETED and REPLACED with the following Condition 27A:

- 27A. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid**

Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

Condition 29 – Habitat Restoration Plan

Condition 29 currently reads:

29. *Commencement of works in accordance with the approved Habitat Restoration Plan must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation.*

The applicant proposed to delete this condition stating that removal of trees in the road reserve was no longer required. This is incorrect and the revised access arrangement still results in the removal of approximately 600m² of Endangered Ecological Community (EEC) Swamp Oak vegetation.

Council's Environmental Health Officer has reinforced the requirement for compensation for the loss of the EEC via the approved Habitat Restoration Plan.

As such, Condition 29 will remain.

Condition 30 be DELETED and a NEW Condition 30A be added as follows:

- 30A. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.**

Condition 31 be DELETED and a NEW Condition 31A be added as follows:

- 31.A A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.**

Condition 32 be DELETED and a NEW Condition 32A be ADDED as follows:

- 32A. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.**

Condition 33 be DELETED and NEW Condition 33A be added as follows:

- 33A. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.**

All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.

Condition 46 – Footpath

Condition 46 requires the provision of a concrete footpath along the length of Ozone Street. A revised footpath for the proposed new road alignment has been referenced within Condition 9A. Condition 46 is no longer required.

Condition 46 will be DELETED.

Condition 58 – Acid Sulfate Soils

Existing Condition 58 requires amendment to reflect the revised ASS Management Plan and currently reads as follows:

58. *All works associated with the access road and open drain are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009.*

Condition 58 will be DELETED and REPLACED with the following Condition 58A:

- 58A. All works associated with the access road and associated infrastructure are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.**

New Conditions

NEW GEN condition 4.1 be ADDED as follows:

- 4.1. Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.**

NEW PSC condition 85 be ADDED as follows:

- 85. Prior to issue of the subdivision certificate the acoustic barrier approved by Schedule A of this consent shall be constructed to the satisfaction of Council's General Manager or delegate.**

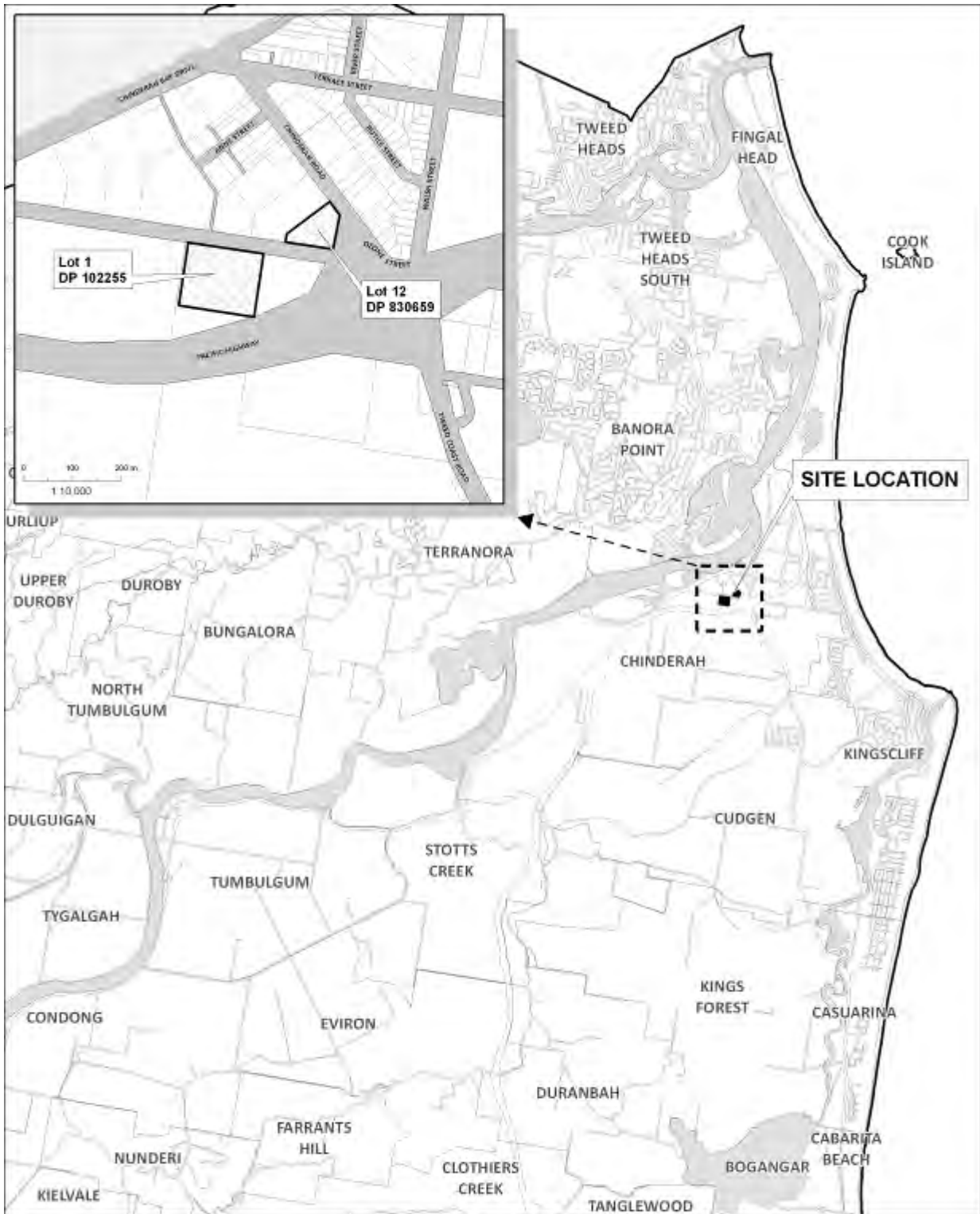
NEW PSC Condition 86 be ADDED as follows:

- 86. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plans prior to issue of subdivision certificate.**

NEW DUR Condition 62.1 shall be added as follows:

- 62.1 Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.**

SITE DIAGRAM:



Locality Plan

Lot 1 DP 102255, No.16-18 Ozone Street, Chinderah;
 Lot 12 DP 830659, Chinderah Road, Chinderah

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council and its representatives or contractors engaged to collect, update or otherwise, do not in any way, implicitly, constitute or warrant, in any way, the accuracy, reliability or suitability of any information, data or information, and its liability, including, without limitation, liability in respect of all damages, direct, indirect, special, or consequential, damage and loss which may be incurred as a result of data being delivered in any way and for any reason. This information is supplied for the personal and non-commercial use of the user and is provided on an "as is" basis. No liability for any loss or damage, including consequential loss or damage, shall be accepted or considered appropriate only.</p>	<p>Dating: 30 November, 2010 © Land and Property Management Authority (LPA) & Tweed Shire Council Boundaries shown should be considered approximate only.</p>		<p>Civil and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 218 Murwillumbah NSW 2484 T 02 9579 2400 0800 292 972 F 02 9579 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

The 4 lot industrial subdivision was the subject of detailed assessment under DA09/0006 with regard to the heads of consideration prescribed by S79C of the Environmental Planning and Assessment Act 1979.

The subject S96 application remains consistent with such matters as detailed below (only relevant matters have been addressed).

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

Tweed Local Environmental Plan 2000

The proposed development remains consistent with the Clause 44 of the Tweed Local Environmental Plan. It is noted that a revised Cultural Heritage Assessment was submitted for DA10/0552 which confirmed that the occurrence of aboriginal cultural or heritage items within the new road location was unlikely (as per Clause 44). The Department of Environment, Climate Change and Water reviewed the heritage assessment and recommended general terms of approval to form conditions of consent in the event that any cultural items were uncovered during construction works for the proposed new road. Such conditions have been applied to DA10/0552 with a new condition added to the S96 to the effect that:

Construction of the subdivision shall be undertaken in accordance with the recommendations of the Cultural Heritage Assessment, prepared by Everick Heritage Consultants and dated November 2009.

The deferred commencement consent condition (Schedule A) previously applied with regard to Clause 44 is proposed to be deleted as part of this S96 as it is no longer required.

State Environmental Planning Policy 71 – Coastal Protection

The proposed development remains consistent with SEPP 71. It is noted that compensation for the loss of approximately 600m² of the Endangered Ecological Community (EEC) vegetation will be enforced via the approved Habitat Restoration Plan for Lot 1 DP 285117, Elsie Street, Banora Point which formed part of the deferred commencement conditions for the original development application. An additional condition has also been applied by Council's Ecologist to the effect that provision of a legal agreement requiring compensatory restoration work to be undertaken (in accordance with the approved plan for the Elsie Street site under DA09/0006) and/or funded by the owner of the industrial subdivision lot for a five year period is required. This has been inserted as a new condition.

Conditions relating to implementation of the plan remain.

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

The draft TLEP 2010 maintains the industrial zoning of the subject site.

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

Development Control Plan Section A3 - Development of Flood Liable Land

The parent site is flood prone to a design level of RL 3.3m AHD. Ground levels on the site range from RL1.42m to RL1.82m. Approximately 0.5m of fill was approved to be imported onto the site under the parent application.

Condition 4 will be amended to reflect fill to 2.2m over the parent site (approximately 0.7m fill) instead of 2.0m as originally approved to ensure uniformity with the proposed road under DA10/0552.

The proposal remains consistent with DCP A3.

Development Control Plan Section A11 – Public Notification of Development Proposals

Amendments were made to the above policy as a result of DA09/0006 in order to notify permanent occupiers of caravan parks and manufactured home estates in the same way as landowners.

The S96 application was advertised for a period of fourteen (14) days from 2 October to 20 October 2010. During this period, nil submissions were received with respect to the S96. It is noted that numerous submissions were received for the concurrent DA10/0552 which have been addressed in detail in that report.

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

The proposal remains consistent with all matters prescribed by the Regulations.

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

Access, Transport and Traffic

Proposed access to the 4 lot subdivision is via a new road 320m in length constructed to an urban wider access standard. The proposed road will be accessed via Chinderah Drive, following the Ozone Street road reserve alignment and terminating in a cul-de-sac. Part of the proposed road is constructed over Lot 12 DP 830659 (the subject lot associated with this development application) and the Ozone Street reserve.

Development application DA09/0006 currently has an approved 9m wide road pavement within the Ozone Street reserve. The actual width of the Ozone Street road reserve is 30.18m. Industrial road standards generally require a 13m wide pavement. The rationale for the 9m wide pavement is that a reduced width requires less construction works to create a level platform for the road and associated drainage. A 9m wide pavement is considered adequate to service the 4 lot subdivision.

An existing drain is located on the southern side of the road reserve. A series of 3 x 1500 x 750 box culverts from Ozone Street to Lot 1 DP 102255 has been proposed over the open drainage channel. Two x 30m access points are provided to the 4 allotments, each individual access being 15m in width, being suitable for an industrial subdivision.

Council's road design specifications for a cul-de-sac specify that the maximum length is 120m. Due to site constraints and the distance required to access Lot 1 DP 102255, it is considered that the 320m length road is acceptable.

Appropriate amendments have been made to the consent to accommodate the above.

Swamp Oak EEC

The overall impact on the Swamp Oak is stated within the Flora and Fauna Assessment as removal of some 300m² of the community, although this has

recently been verbally updated by the consultant planner to 600m². Although this aspect requires a more accurate calculation (by GIS measure it may be over 1000m²), on balance there will be a lesser impact on the EEC than the previous proposal, which was estimated to require removal of some 4500m² of EEC.

The other important benefit from an ecological perspective is that impacts within the drainage channel itself (a tidal channel providing habitat for aquatic species) will be limited to two large culverts to enable the two drain crossing points to be established into the industrial lot, rather than halving the channel width and concrete lining the bed and one bank as was previously proposed/approved. Thus water quality within the channel and subsequently flowing to the adjacent Tweed River is at significantly lower risk from export of sediment and acidic runoff (arising from disturbance of potential acid sulfate soils) and in-stream habitat values, including mangroves, are unlikely to be lost.

Thus the formation of a smaller portion of the Ozone Street road reserve in a section further from the Tweed River with significantly reduced impacts on the channel alignment is seen as an ecological benefit. It does not however, obviate the need to compensate for loss of EEC. Verbal agreement to implement the approved compensatory project has been given by the consultant planner but caution is required because:

- consent in writing from the owner of the industrial lot to the financial implication arising from the compensatory project has not yet been received;
- it is not a straightforward matter to tie the off-site works to the consent amendment in a way which will ensure the compensatory works (which span a five year time frame) will be undertaken and maintained to form a suitable offset, particularly once permission to clear the existing EEC has been given, and
- the quantity of compensation has not yet been agreed.

Deferred commencement conditions have been applied to address the above matters.

Forest Red Gum and Pink Bloodwood

Whilst a reduced impact is seen along and adjacent the drainage channel in comparison to the previous access road alignment from Chinderah Bay Drive, additional impact occurs with the loss of two semi-mature trees from the road reserve area of Chinderah Road. The trees are a Forest Red Gum (*Eucalyptus tereticornis*) and a Pink Bloodwood (*Corymbia intermedia*) (Plate 1). These two species of tree are known to be two of four main species associated with another floodplain Endangered Ecological Community known as *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*. The NSW Scientific Committee determination for the community states:

Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion is the name given to the ecological community associated with clay-loams and sandy loams, on periodically inundated alluvial flats, drainage lines and river terraces associated with coastal floodplains.

The structure of the community may vary from tall open forests to woodlands, although partial clearing may have reduced the canopy to scattered trees. Typically these forests and woodlands form mosaics with other floodplain forest communities and treeless wetlands, and often they

fringe treeless floodplain lagoons or wetlands with semi-permanent standing water (e.g. Pressey 1989a).

Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion has a tall open tree layer of eucalypts, which may exceed 40 m in height, but can be considerably shorter in regrowth stands or under conditions of lower site quality. While the composition of the tree stratum varies considerably, the most widespread and abundant dominant trees include Eucalyptus tereticornis (forest red gum), E. siderophloia (grey ironbark), Corymbia intermedia (pink bloodwood) and, north of the Macleay floodplain, Lophostemon suaveolens (swamp turpentine).

Both trees provide known forage habitat for nectar-reliant species including the Grey-headed Flying Fox (a threatened species), Rainbow Lorikeets and Eastern Rosellas. Forest Red Gums are a favoured food tree for Koalas and Chinderah is an area known to support a Koala population, at least until recently. Thus the trees are significant despite their position and all efforts to retain them were requested during assessment. It appears that the access road is unlikely to meet minimum engineering standards in terms of distance from the roundabout if the trees are to be retained. In the absence of clear evidence of present reliance on the trees for roosting or as part of a home range by Koalas or other threatened species, it is unlikely that the loss of the two trees could successfully be argued as causing a significant impact on threatened species, populations or ecological communities whereby the development could be refused. However, the significance of the trees requires compensation at the least. A ratio of 10:1 (gained:lost) is considered appropriate due to the size and age of the trees and the known habitat value they provide, where planting and re-establishment of trees of such size will take time and care.

A suitable site for establishment of replacement trees is the residue lot created after the access road through Lot 12 DP 830659 is severed. The planning consultant has indicated reluctance to impose restriction on this site and no alternative site has been nominated. Whilst Council's preference is the residue lot because it is adjacent and of suitable soil type and elevation, a suitable alternative may be considered. The uncertainty over this aspect requires deferring commencement until this issue is satisfactorily agreed and a condition has been applied accordingly.

The following deferred commencement conditions have been applied to address all matters raised above. It is noted that such conditions apply also to DA10/0552. The previous deferred commencement condition relating to the Habitat Restoration Plan for the Swamp Oak EEC has been satisfied and has been replaced by the similar need for a plan for the loss of the Forest Red Gum and Pink Bloodwood.

1. *A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (Eucalyptus tereticornis) and Pink Bloodwood (Corymbia intermedia) impacted by the proposed development. The Habitat Restoration Plan must include:*
 - *a schedule and timing of works to be undertaken*
 - *written agreement from the owner of the agreed site to planting and/or restoration works on the land*

- *a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
 - *a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
 - *a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
2. *A legally binding commitment by the consent holder to funding and/or undertaking an sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.*

Traffic Noise

Traffic noise from the proposed access road under DA10/0552 has the potential to impact upon adjacent land zoned 2(a) Low Density Residential used for the purposes of residential living and a caravan park. The proposal is supported by a Noise Level Impact Assessment (NLIA) prepared by Craig Hill Acoustics and dated 6 July 2010. Council's Environmental Health Officer has reviewed this report and advised that it has been prepared in general accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999.

Several submissions have been received from property owners relating to the generation of traffic noise from the proposed access road. The NLIA indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the NLIA indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 are anticipated.

The existing caravan park is located immediately adjacent to the proposed access road. Modelling undertaken by the NLIA indicates that potential daytime (7:00am to 10:00pm) noise impacts will exceed the noise criteria detailed in the NSW EPA Environmental Criteria for Road Traffic Noise 1999. It is proposed to mitigate potential noise impacts below the relevant noise criteria by constructing a 2.5m acoustic barrier along the entire length of the access road.

Modelling undertaken in the NLIA also indicates that there will be significant noise impacts during night time periods (10:00pm – 7:00am) without a further increase in the height of the acoustic barrier to 4-6.5m. Council's planning officers have concerns with regard to the visual amenity of a 4-6m high fence and as such, night time traffic noise will be further addressed and controlled via conditions during the assessment of any development applications for future industrial land uses on the site.

Council's Environmental Health Officer has advised that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. As above, night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses.

With regard to the timing of the proposed acoustic wall, the following condition has been applied:

Prior to issue of the subdivision certificate the acoustic barrier referenced within Schedule A of DA10/0552 and detailed in the Noise Level Impact Assessment prepared by Craig Hill Acoustics (REV 3 - 25/11/10) shall be constructed to the satisfaction of Council's General Manager or delegate.

The proposed modified access arrangement is therefore considered to be acceptable with regard to traffic noise.

Acid Sulfate Soils (ASS)

Council's ASS Planning Map indicates that the site is class 3 land. The submitted plans indicate that excavations to approximately 2m below ground level are proposed for the construction of culverts and therefore ASS are anticipated to be encountered. The proposal is anticipated to have a lesser impact on ASS than the previously approved access road approved by DA09/0006. An amended Acid Sulfate Soil Management Plan has been prepared by HMC Environmental Consulting dated 26 November 2010. The management plan has been prepared in general accordance with the Acid Sulfate Soil Manual 1998 and is considered adequate. Amended conditions have been applied as follows:

Existing Condition 27 be replaced with the following Condition 27A:

27A. Prior to the commencement of works on the access road and associate infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

Existing Condition 58 be replaced with the following Condition 58A:

58A. All works associated with the access road and associated infrastructure is to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

(c) Suitability of the site for the development

The site is considered to remain suitable for the development.

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

No submissions were received during the exhibition period.

(e) Public interest

The proposed development remains largely as approved, with the proposed road reconfiguration being the only amendment. The proposed amended road design results in less clearing, less road construction and less loss of Endangered Ecological Community (EEC) vegetation along the road reserve. The applicant has indicated that rehabilitation of the Elsie Street site will still be undertaken in accordance with the approved Habitat Restoration Plan and that the two trees (Forest Red Gum and Pink Bloodwood) to be removed from the road reserve at the intersection of the proposed new road and Chinderah Road will be compensated for via a deferred commencement condition (applied to DA10/0552 and the subject S96) to negotiate a suitable site (ideally on the residual allotment). Based on such outcomes and the detailed assessment presented above, the proposal is considered to be in the public interest.

CONSIDERATIONS UNDER SECTION 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, is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Minimal Environmental Impact

The proposed modification has been reviewed by Council's Development Assessment Engineer, Environmental Health Officer and Ecologist. Comments received by each officer confirm that the revised access arrangement under DA10/0552 generally results in lesser environmental impacts than the previously approved DA09/0006. The modified access arrangement results in lesser impact on the Endangered Ecological Community and offsetting of the (reduced) EEC loss is still proposed to be compensated for via the approved Habitat Restoration Plan approved as part of the deferred commencement conditions for DA09/0006. A reduced amount of road construction (320m instead of 630m) is now proposed. As such, the footprint of the development can be seen to have decreased.

The proposal is therefore considered to have minimal environmental impact.

Substantially the Same Development

The proposed development remains a four lot industrial subdivision which requires construction of an access road within a dedicated road reserve (though part of the road is now proposed to be constructed through adjoining private property). Loss of EEC vegetation is still proposed though on a lesser scale, to be compensated for as per the approved Habitat Restoration Plan.

The proposal is therefore considered to be substantially the same development.

OPTIONS:

1. Approve the application in accordance with the recommended modified conditions, subject to the approval of DA10/0552.
2. Refuse the application for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the ability to appeal the decision in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed modified access arrangement is considered to be substantially the same development as that originally approved under DA09/0006 however with reduced environmental impacts. The application is considered to be worthy of approval, subject to satisfaction of the recommended deferred commencement conditions which will result in a net environmental gain in time, secure funding for Council's ongoing maintenance of the proposed acoustic fence and enable comprehensive assessment to be undertaken of the

proposed fence design. As such, the subject S96 application is considered to be worthy of approval as per the recommended modified conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council report relating to DA09/0006 (ECM 28176395)
-

22 [PR-CM] Development Application DA10/0552 for a Proposed Subdivision to Create a Public Road, Associated Acoustic Fencing and Residual Lot at Lot 12 DP 830659, Chinderah Road, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA10/0552 Pt3

SUMMARY OF REPORT:

Council at its meeting of 14 December 2010 resolved as follows:

“RESOLVED that:

- 1. This item be deferred to schedule a workshop during February between Council, the applicants, adjoining landholders directly affected and key community members representing Royal Pacific Caravan Park (1), Heritage Caravan Park Residents' Association (1), Chinderah Lakes Caravan Park (1), Chinderah Residents' Association (1) and the Roads and Traffic Authority.*
- 2. The applicant be encouraged to pursue alternative access options.”*

A Workshop was held on 3 February 2011 with Councillors and Senior Management to discuss the development application in more detail. There is no change to the officers' original recommendation resulting from the Workshop. A full copy of the original report to Council's meeting of 14 December 2010 is reproduced below.

Consent is sought for a subdivision to create a public road, road construction, associated acoustic fencing and a residual lot at Lot 12 DP 830659, Chinderah Road Chinderah.

The public road is proposed to facilitate access to an industrial zoned allotment (Lot 1 DP 102255) which was the subject of DA09/0006. DA09/0006 approved the subdivision of Lot 1 DP 102255 into four (4) lots of approximately 5000m² each, as well as the construction of Ozone Street from Chinderah Bay Drive to the frontage of the subject site (approximately 630m²).

The proposed road constitutes a two lane public road, 320m in length constructed to an urban wider access standard. The proposed road will be accessed via Chinderah Road and terminate in a cul-de-sac at the frontage of Lot 1 DP 102255. The proposed road **replaces** the road approved as part of DA09/0006. A concurrent S96 modification to DA09/0006 has been submitted to delete the previously approved road and is also before Council.

A 2.5m high acoustic fence is proposed along the boundary of Lot 12, the road reserve and adjoining Lot 109 DP 755701, the Royal Pacific Tourist retreat. Two (2) deferred commencement conditions have been applied with regard to the proposed fence as follows:

‘The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on

adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.

The developer shall submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets'.

The first condition is to ensure that the proposed fence can comply with the provisions of Council's DCP A3 with regard to permitting the free flow of flood water. The second condition relates to the dedication of the new road reserve and acoustic fence to Council. To date, no detail on asset ownership/maintenance has been supplied by the applicant.

The residual lot has an area of 3525m². No end use of this lot has been proposed though it is noted that the draft LEP reinforces the low density residential zoning the site currently exhibits.

Approximately 3000m² of fill material is to be exported to the site for allotment filling to achieve the required levels for road and drainage purposes. This equates to approximately 0.5m of fill across Lot 12 (to RL 2.2m AHD). Finished levels of the road range from 1.56m AHD (near proposed intersection with Chinderah Road) to 2.025m AHD along the northern side of the proposed road within the Ozone Street road reserve.

Approximately 600m² of the existing Endangered Ecological Community (EEC) along the drain requires removal and the road construction also requires the removal of two large habitat trees at the proposed intersection with Chinderah Road, being Forest Red Gum and Pink Bloodwood. The following deferred commencement conditions have also been applied with regard to ecological matters:

*'A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:*

- a schedule and timing of works to be undertaken*
- written agreement from the owner of the agreed site to planting and/or restoration works on the land*
- a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
- a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
- a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*

A legally binding commitment by the consent holder to funding and/or undertaking an sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010'.

Council's Environmental Health Officer, Traffic Engineer, Development Assessment Engineer and Ecologist have reviewed the application.

The application is being reported to Council at the request of the Director, Planning and Regulation in response to previous Council and community interest in the approved DA09/0006.

RECOMMENDATION:

That Development Application DA10/0552 for a proposed subdivision to create a public road, associated acoustic fencing and residual lot at Lot 12 DP 830659, Chinderah Road, Chinderah be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.**
- B. The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.**
- C. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:
 - a schedule and timing of works to be undertaken**
 - written agreement from the owner of the agreed site to planting and/or restoration works on the land**
 - a suitable protection mechanism on the land to ensure the trees are protected in perpetuity**
 - a legally binding commitment by the consent holder to funding and/or undertaking the proposed works****

- a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- D. A legally binding commitment by the developer to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the *Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117* prepared by Planit Consulting dated March 2010.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects, plans approved by Schedule A of this consent and plans as detailed in the table below, except where varied by the conditions of this consent.

Title	Drawn	Dated
Proposed Subdivision Plan DWG Ozonest_sub_01/Rev 1	Planit Consulting	11/2010
Proposed industrial subdivision civil works plan – preliminary (SK5/Issue A)	Cozens Regan Williams Prove	07/2010
Proposed industrial subdivision intersection detail (SK7/Issue A)	Cozens Regan Williams Prove	07/2010

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. The level of fill placed on the site shall not exceed RL2.2m AHD.
- [GENNS01]
5. Department of Environment, Climate Change and Water General Terms of Approval
- The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.
 - In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further

impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives and the archaeologist to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.

- An application for a Care and Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process and is to provide evidence of the support with any application for a care and control permit.
- If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.
- The applicant must continue to consult with and involve all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.
- The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. 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]

7. 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]

8. 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]

9. 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]

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

Intersection Works

- (a) The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- (b) A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

Road Works

- (c) Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- (d) Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

Stormwater

- (e) The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- (f) The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles.

Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

Sewer

- (g) All common rising mains shall be located in road reserve. The developer shall provide a connection for each lot to be serviced by pressure sewer within the lot to be served in accordance with Council's standard specifications and drawings. The location of connection of the rising main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.**
- (h) All lots within the development shall be provided with a connection to Council's Sewerage System.**

General

- (i) Any works associated with the Ozone Street road construction that encroach on private land require the written consent of the affected landholder(s). A copy of the consent(s) shall be submitted to the PCA prior to the works being undertaken.**

[PCC0875]

- 11. 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]

- 12. 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.

[PCC1105]

13. 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]

14. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan shall be compiled in collaboration with the owners of adjoining Lot 109 DP 755701 and submitted plan shall include landscaping along both sides of the acoustic fence (i.e.: within Lot 12 DP 830659 and adjoining Lot 109 DP 755701) for the entire length of the road reserve.

Prior to installation of such landscaping, written owners consent from the owners of Lot 109 DP 755701 shall be obtained.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

15. 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]

16. 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.

[PCW0375]

17. 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]

18. 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]

19. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision

of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

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

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

[PCW0985]

20. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

[PCWNS01]

21. Commencement of works in accordance with the approved Habitat Restoration Plans and legally binding agreement as detailed in Schedule A must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation within Ozone Street road reserve or the Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) within Chinderah Road road reserve.

[PCWNS02]

DURING CONSTRUCTION

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

[DUR0005]

23. 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]

24. 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]

- 25. 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]

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

[DUR0815]

- 27. 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]

- 28. 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]

- 29. 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]

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

[DUR1045]

- 31. 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]

32. 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]

33. 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]

34. 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]

35. 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]

36. 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]

37. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

38. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

39. 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]

40. 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]

41. 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]

42. All works associated with the access road and associated infrastructure is to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

43. Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

44. 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]

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

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Council's contributions sheet and Certificate of Compliance signed by an authorised officer of Council.

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

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

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]

46. 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]

47. 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]

48. 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]

49. 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]

50. 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]

51. 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) A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow."

- (c) A Positive Covenant for each allotment sewered by a pressure sewer system, enabling Tweed Shire Council with rights to construct, install and maintain the pressure sewerage infrastructure in accordance with the following terms:

TERMS OF PUBLIC POSITIVE COVENANT

1. *Pressure sewerage reticulation infrastructure is to be constructed within the land referred to herein and such infrastructure will comprise a pump station, valve pit, control panel and associated pipelines excluding gravity house connections and plumbing,*
2. *Such infrastructure is to be supplied by Tweed Shire Council at commencement of construction of a dwelling on the land referred to herein.*
3. *All costs in relation to the installation of the pressure sewer reticulation infrastructure within the land referred to herein will be borne by Tweed Shire Council.*
4. *The control panel for the pumping station is to be wired into the household switchboard by a registered electrician and all electricity to operate the control panel and pump station shall be supplied from the household switchboard. All costs in relation to the running of the pressure sewerage reticulation are to be borne by the registered proprietor.*
5. *The pressure sewer infrastructure will at all times remain the property of Tweed Shire Council to be inspected, serviced, repaired and maintained in good working order only by Tweed Shire Council*
6. *Tweed Shire Council shall have the right to enter upon the land referred to herein with or without equipment, at all reasonable times to inspect, construct, repair, service and maintain in good working order all pressure sewerage reticulation infrastructure in or upon the said land pursuant to "Power of Entry" provisions under sections 191 and 191A of the NSW Local Government Act, 1993. This right to enter is restricted to the land in which the pressure sewerage infrastructure is placed for the time being and includes any points of egress or ingress to or from the said land.*
7. *The registered proprietor of the land referred to herein shall not construct any type of development, including external buildings, swimming pools or permanent structures which may interfere with the sewerage reticulation infrastructure, or impede access to any part of the sewerage reticulation infrastructure for the purposes of repair, maintenance and service.*
8. *If at any time it becomes necessary to relocate any part of the sewerage reticulation infrastructure for the purposes of construction of external buildings, swimming pools or building extensions and/or modifications Tweed Shire Council will not object to the relocation of the existing sewer pump station or associated pipeline providing that the registered proprietor makes the necessary application to Tweed Shire Council as the consent authority to modify the existing sewerage reticulation*

infrastructure and upon the registered proprietor obtaining development consent to do so. The registered proprietor will bear all costs in relation to the application and the re-location which is to be carried out by Tweed Shire Council.

9. *The registered proprietor shall be responsible for notifying Tweed Shire Council when maintenance, repair, relocation or service is necessary on the sewerage reticulation infrastructure.*
10. *Should any part of the sewerage reticulation infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.*
11. *The registered proprietor shall indemnify Tweed Shire Council and any adjoining landowners against any damage and injury to their land, property or person arising from the failure of any component of the sewerage reticulation infrastructure due to the negligent use or misuse of the sewerage reticulation system by the registered proprietor or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor.*
12. *Tweed Shire Council shall indemnify the registered proprietor against all damage and injury to property and person (including any damage to the land referred to herein and any land adjacent to the land referred to herein) arising from the failure of any component of the sewerage reticulation infrastructure and its construction, inspection, repair, service and maintenance and or in entering upon and occupying the subject property for such purposes.*
13. *Any reference to Tweed Shire Council, excepting as consent authority, means its employees, agents, contractors, servants."*

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]

52. 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]

53. 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]

54. 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 - Sewerage Pump Station
- (e) 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]

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

[PSC0925]

56. 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]

- 57. 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]

- 58. 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]

59. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity 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]

- 60. For each lot serviced by a pressure sewer system, a capital contribution of \$14,800 shall be provided for the installation of each individual pressure sewer pump station prior to the issue of the subdivision certificate. Tweed Shire Council will then install the pump station at a suitable location within each lot at the building stage.**

[PSCNS01]

- 61. Primary weeding and/or planting and establishment must be completed in accordance within approved Habitat Restoration Plans prior to issue of subdivision certificate.**

[PSCNS02]

- 62. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.**

- 63. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.**
- 64. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water.**

REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Redback Enterprises Pty Ltd
Location: Lot 12 DP 830659, Chinderah Road Chinderah
Zoning: 2(a) Low Density Residential
Cost: \$350,000

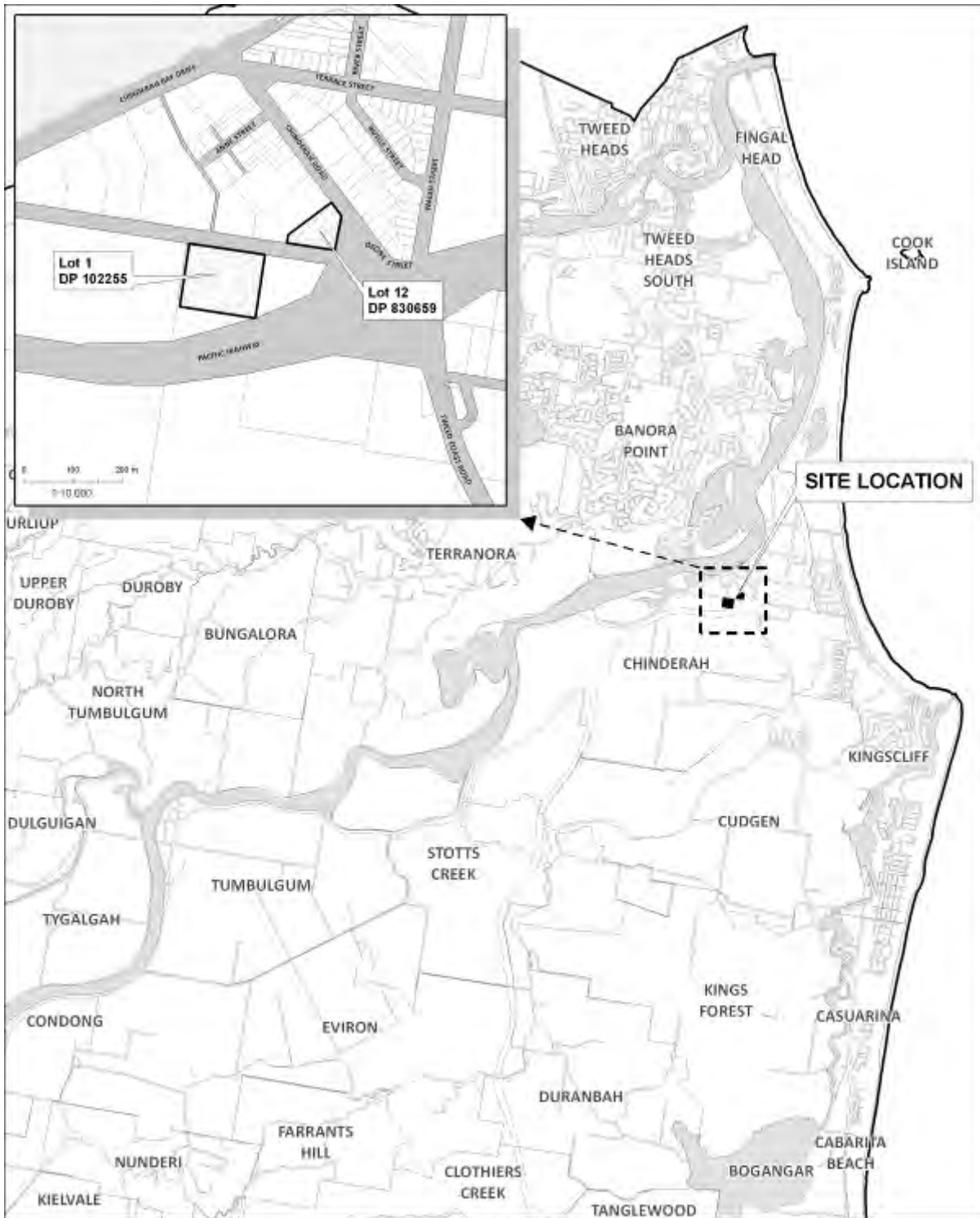
BACKGROUND:

This application relates to DA09/0006 which approved a 4 lot industrial subdivision, the construction of Ozone Street from Chinderah Bay Drive to the property frontage (approximately 630m²) and associated drainage works. A S96 application to modify this consent has been submitted to change the approved access (obtained via new road through Lot 12 DP 830659, involving construction of only a small component of Ozone Street) instead of along the previously approved length of Ozone Street.

The reasoning behind the application (provided by the applicant) is that DA10/0552 provides for:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

SITE DIAGRAM:



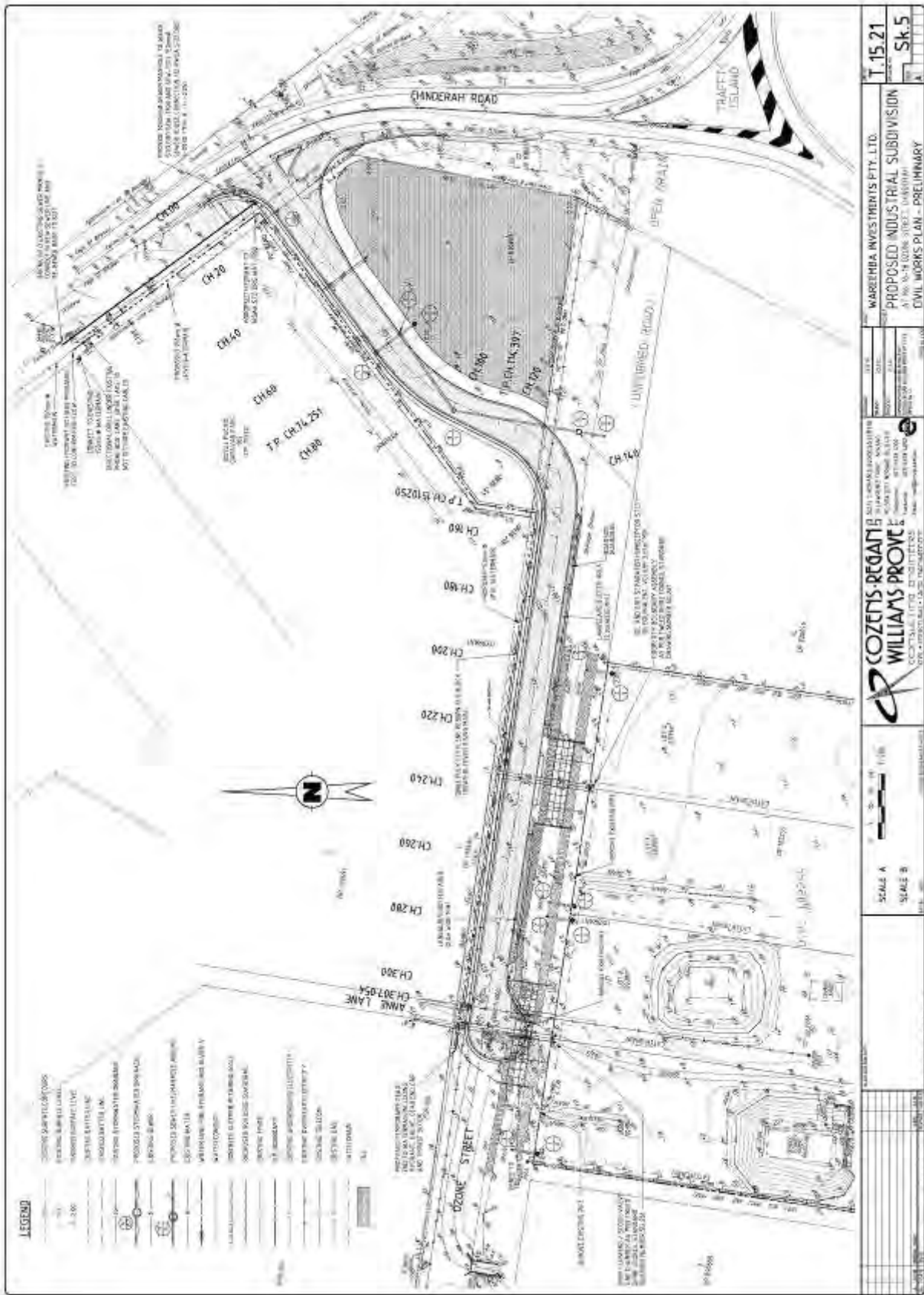
Locality Plan

Lot 1 DP 102255, No.16-18 Ozon Street, Chinderah;
 Lot 12 DP 830659, Chinderah Road, Chinderah

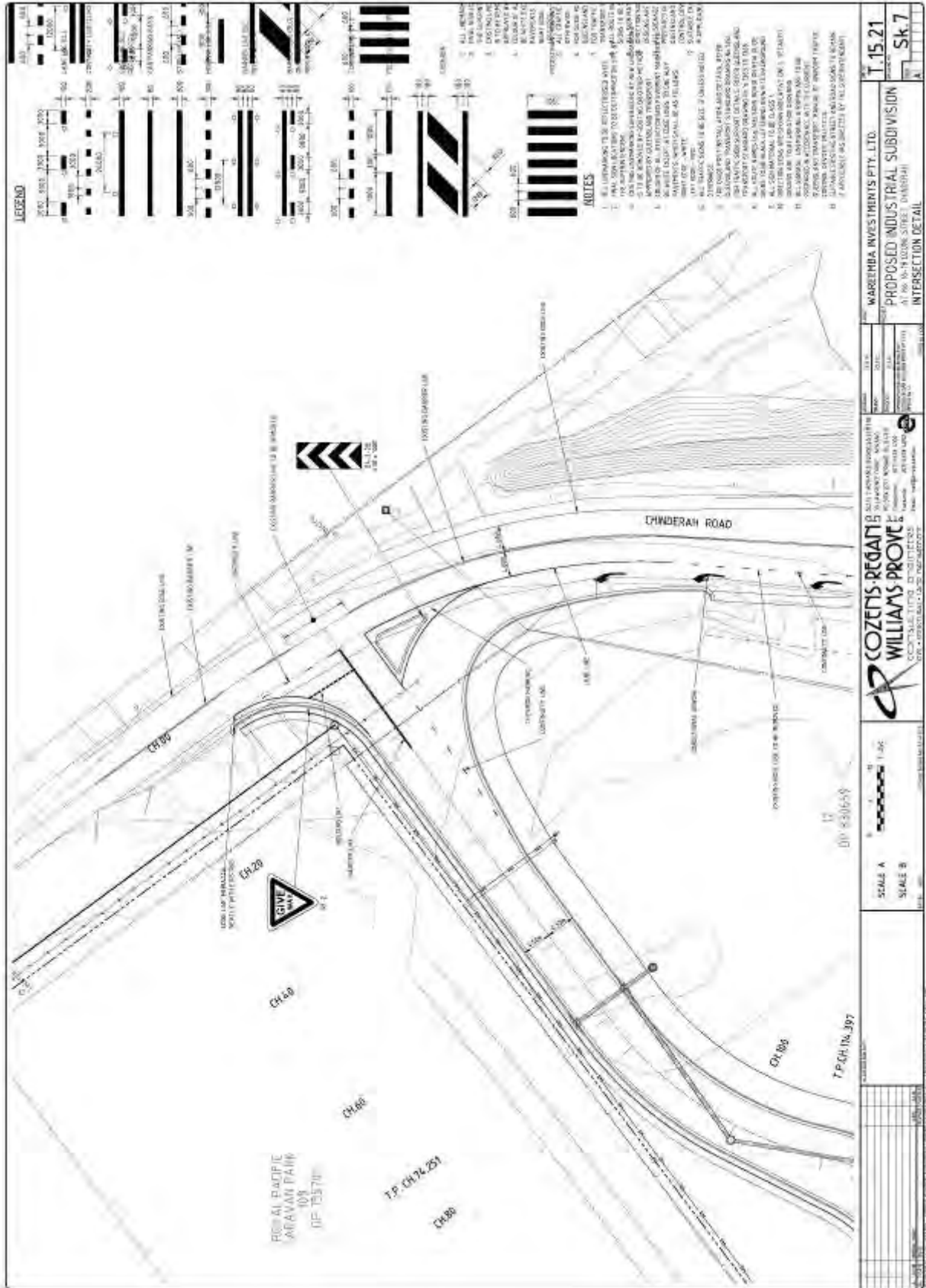
<p><small>Disclaimer: While every care has been taken to ensure the accuracy of this data, Tweed Shire Council does not accept any liability for any errors or omissions in this data. Council is not responsible for any loss or damage arising from the use of this data. Council is not responsible for any loss or damage arising from the use of this data. Council is not responsible for any loss or damage arising from the use of this data. Council is not responsible for any loss or damage arising from the use of this data.</small></p>	<p><small>Cadastral: 30 November 2010 © Land and Property Management Authority (LPMVA) © Tweed Shire Council. All rights reserved. Council is not responsible for any loss or damage arising from the use of this data.</small></p>	<p><small>0 100 200m 1:10,000 GDA Map Services: www.gda.gov.au Download: www.gda.gov.au Map of NSW: www.gda.gov.au</small></p>	<p><small>City and Cultural Centre 2 Tumbalong Place Murrumbidgee NSW 2486 PO Box 816 Murrumbidgee NSW 2404 T (02) 6610 2400 (1300 292 812) F (02) 6610 2425 W www.tweedshire.gov.au E planning@tweedshire.gov.au</small></p>
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DEVELOPMENT PLANS:





<p>COZENS REGAN'S SUITABLE APPROXIMATE 11 LAUREL STREET, WARRIMOO NSW 2580 TEL: (02) 6922 1000 WWW.COZENSREGANS.COM</p>		<p>WARRIMOO INVESTMENTS PTY. LTD. PROPOSED INDUSTRIAL SUBDIVISION AT 100-118 OZING STREET, WARRIMOO CIVIL WORKS PLAN - PRELIMINARY</p>
<p>DATE: 15/02/2011 DRAWN BY: [Name] CHECKED BY: [Name] PROJECT NO: [Number]</p>	<p>SCALE A: 1:100 SCALE B: 1:100</p>	<p>T. 15. 21 Sk. 5</p>



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is permissible in the zone and is not considered to significantly detract from the unique natural and developed character of the Tweed Shire as a whole. Detailed conditions have been applied to regulate impacts of the proposed development which are generally considered to be minor. The proposed development represents a relatively minor intensification of both Lot 12 DP 830659 and Lot 1 DP 102255 which is zoned 4(a) Industrial. Subject to the imposition of conditions, the proposed development is considered to have the potential to create positive economic development with negligible impacts on Tweed's environmental and residential amenity qualities.

The proposed development is considered to be consistent with Clause 4.

Clause 5 - Ecologically Sustainable Development

A detailed assessment has been undertaken of the application with respect to ecological and environmental health matters. Subject to conditions of consent, all matters are considered adequately addressed and the precautionary principle is considered to be satisfied. Subject to conditions to regulate impacts of the proposed development, construction of the road is not considered to impact significantly on intergenerational equity or the conservation of biological diversity. Detailed assessment has been undertaken on amenity and environmental considerations and the proposed development is considered to accord with Clause 5.

Clause 8 – Consent Considerations

The primary objective of the zone requires the provision and maintenance of a low density residential environment. The proposed road remains consistent with the primary objective in that it does not intensify use of the site above the existing low density context and does not prejudice the ability of existing Lot 12 DP 830659 to meet the zone objectives at a later date, were consent sought in the future for residential development.

The aims and objectives of the TLEP have been considered above. The proposal is considered to be consistent with the aims and objectives of the TLEP 2000.

Subject to conditions of consent, the proposed road construction is not considered to have unacceptable cumulative impacts. The characteristics of the site are unique in that the proposed development seeks a revised means of access to an approved industrial subdivision, separated from the main industrial area in Chinderah, in proximity to the Pacific Highway as well as a residential area. As such, approval of this application is unlikely to create a precedent for similar development and is not considered to generate significant impacts in terms of noise or amenity for nearby residents subject to conditions. It is noted that this will require further assessment when applications for the use of each of the 4 industrial allotments are submitted and these uses are known.

The applicant has submitted that construction of the road proposed by this application will result in:

- Significantly less civil work within the existing drain within the Ozone Street road reserve;
- Significantly less removal of native vegetation within the Ozone Street reserve;
- Significantly less road construction adjacent to residential interfaces (inclusive of the existing mobile homes adjacent to the approved link to Chinderah Bay Drive; and
- An improved level of orderly and economic development.

Council planning officers generally concur with the above and conclude that the proposed development is unlikely to have significant adverse cumulative impacts.

The proposed development is considered to be consistent with Clause 8.

Clause 11 – Zone Objectives

The subject site (Lot 12) is zoned 2(a) Low Density Residential. Subdivision and road construction are permissible in this zone. The application also covers a portion of the unzoned Ozone Street road reserve, addressed under Clause 13 below.

The objectives of the 2(a) zone are set out below:

Primary Objective:

To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.

Secondary Objectives:

To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

To allow for non residential development that is domestically based, or services the local needs of the community and does not detract from the primary objective of the zone.

The proposed development maintains the status quo in terms of residential development as no intensification of residential development is proposed. Subject to future assessment and consent, Lot 12 DP 830659 retains the ability to contain future residential development with access from the proposed new road. As such, the proposed development is considered to be consistent with the primary zone objective in that it maintains the existing low density residential environment.

The proposal is also consistent with the secondary objective in that the amenity of the 2(a) zone is not considered to be significantly affected by the proposed road (being non-residential development). This road will service future industrial development on Lot 1 DP 102255 which is permissible in the 4(a) zone.

Clause 13 – Development of Uncoloured Land on the Zone Map

This clause requires the development of uncoloured land to be compatible with surrounding development and zones.

The section of uncoloured land is a portion (approximately 147m) of the Ozone Street road reserve located between Lot 12 DP 830659 and Lot 1 DP 102255. The uncoloured land is bounded by both 2(a) Low Density Residential and 4(a) Industrial zoning. In this instance, development of the uncoloured land as a 'road' is considered to be consistent with the objectives of both adjoining zones as a low density residential character is maintained by the proposed road and a road is an appropriate component of an industrial development which is required to enable future industrial development on the site.

Clause 14 – Development Near Zone Boundaries

Lot 12 DP 830659 and Lot 1 DP 102255 are separated by approximately 30m of road reserve and as such this clause is not applicable. In any case, the proposed development is permissible within each zone.

Clause 15 - Essential Services

Council's piped water and sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards for the residual lot. It is noted that the proponent proposes to service the lot by a single property sewer pump station connected to the proposed sewer rising main from the pressure sewer system to be provided in the industrial subdivision (DA09/0006). A contribution of \$14, 800 is payable to Council for installation of the sewer pump station. In addition, the standard S64 sewer charge for 1 additional lot has been applied, to be paid prior to the issue of a subdivision certificate.

Electricity and telecommunication services are currently provided to the area via Country Energy and Telstra infrastructure. Conditions regarding the provision of all services have been applied.

Clause 16 - Height of Building

The proposed development does not require a consideration of building heights.

Clause 17 - Social Impact Assessment

The proposed development for a subdivision, road and acoustic fencing is not considered to create significant social impacts by way of employment generation or positive economic impacts. It is noted that a number of matters (including social concerns) were raised during the submission process. These matters are addressed further later in this report.

Clause 19 – Subdivision Generally

This clause permits the subdivision of 2(a) zoned land with consent.

Clause 22 – Development Near Designated Roads

Chinderah Road is a Council Designated Road and provides the sole means for vehicular access to Lot 12. As such, consideration of Clause 22 is required (it is noted that the subject site is also bound by the Pacific Highway, a proposed classified road). In this regard, a detailed traffic assessment has been undertaken by Council's Traffic Engineer and Development Assessment Engineer. This assessment concludes that the proposal is consistent with Clause 22 and that no road capacity, safety or operational performance implications are raised by the proposed road and its intersection with Chinderah Road.

Clause 23 – Control of Access

Clause 23 permits the opening of a road with an intersection to a designated road with development consent. This is what is sought by the subject application.

Clause 24 – Setbacks to Designated Roads

This clause does not apply as no buildings are proposed within the subject application. It is noted that this clause will require future consideration should residential development be proposed on the residual lot.

Clause 34 – Flooding

The subject site (inclusive of the Ozone Street road reserve) is affected by flooding, with a 1 in 100 year flood level of 3.2m AHD. The site (and road reserve) is also covered by the Probable Maximum Flood (PMF) as well as a 'Low' flood velocity.

The proposal has been reviewed by Council's Flooding Engineer and Development Assessment Engineer. Due to the nature of the development (i.e.: road and fence only), the proposal is not considered to increase the extent or nature of the existing flood hazard or increase the risk or severity of flooding of other land in the vicinity. It is noted however that DCP A3 (as discussed later in this report) requires fencing on land in Chinderah to be designed so as to permit the free flow of flood water or be collapsible under water/debris loads. Considerable negotiation has been undertaken with respect to this with the applicant and a deferred commencement condition has been applied to ensure the fence is designed appropriately.

The proposed development is not considered to impact adversely on emergency services as it is small scale in nature and does not propose any type of habitable development.

The provisions of DCP A3 (Version 1.3) with regard to site filling and drainage have been addressed with the following comments made by Council's Development Assessment Engineer:

"It is noted that levels on the site do not exceed the required maximum RL2.2m AHD. A condition of consent will be applied to the development similar to condition 4 of DA09/0006.01 which states; "The level of fill placed on the site shall not exceed RL2.2m AHD."

*The following condition of consent is included within the consent conditions;
A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow".*

Finished levels of the road range from 1.56m AHD (near proposed intersection with Chinderah Road) to 2.025m AHD along the northern side of the proposed road within the Ozone Street road reserve.

Such conditions ensure compliance with the site filling and drainage provisions of DCP A3. The flooding related matters prescribed by Clause 34 are therefore considered satisfied.

Clause 35 - Acid Sulfate Soils

Both Lot 12 and the Ozone Street road reserve contain class 3 acid sulfate soils. The proposal involves the installation of three (3) box culverts which will require minor excavation (approximately 0.5m below ground level). Detailed assessment has been undertaken by Council's Environmental Health Officer and conditions applied with respect to compliance with an acid sulfate soils management plan and inspections by Council's Environmental Health Officer prior to the commencement of works.

Clause 44 – Development of Land within Likely or Known Archaeological Sites

The applicant submitted an Aboriginal Cultural Heritage Assessment prepared by Everick Heritage Consultants, concluding that no items of indigenous cultural heritage or potential historic cultural significance were identified on the portion of Lot 12 encompassing the proposed road or the subject section of the Ozone Street road reserve (the report also considers Lot 1 DP 102255 – as required under DA09/0006).

This assessment was forwarded to the Department of Environment, Climate Change and Water (DECCW) for review of its adequacy. DECCW advised that the assessment has been undertaken in accordance with the Department's guidelines for aboriginal cultural heritage.

Advice was also supplied noting that no known aboriginal cultural heritage values will be impacted by the proposed road development. However, it was noted that there may be a likelihood of evidence of Aboriginal occupation being uncovered during construction works. Should this occur, DECCW have recommended six (6) conditions of consent as follows:

1. *The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.*
2. *In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives the archaeologist and to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.*
3. *An application for a Care & Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process, and is to provide evidence of the support with any application for a care and control agreement.*
4. *If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further*

impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.

5. *The applicant must continue to consult with, and involve, all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.*
6. *The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.*

These conditions have been applied.

The proposal is considered to be consistent with Clause 44 and Council is satisfied that the site does not contain any known items of Aboriginal or archaeological significance.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

Inclusive of compensatory habitat works to the satisfaction of Council (as per the approved Habitat Restoration Plan approved under DA09/0006), the proposal is considered to be consistent with Clause 15.

Clause 32B: Coastal Lands

The NSW Coastal Policy applies to the subject site and Council must therefore take into consideration the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

Broadly, the proposal does not contravene the provisions of the above documents, and will not impede public access to, or overshadow the foreshore.

The proposal is consistent with Clause 32B.

Clause 47: Principles for Commercial and Industrial Development

Whilst not specifically relevant to the subject application, Clause 47 (2) specifies that before granting consent for industrial development, Council must consider that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. This application is not for industrial development, however the proposed road is to serve the industrial subdivision approved under DA09/0006. Clause 47 was addressed in the assessment for DA09/0006 and subject to the access arrangement under the existing consent (DA09/0006) or the proposed road under DA10/0552, appropriate access to the transport system (i.e.: the Pacific Highway and local road network) will be provided.

The proposal is consistent with Clause 47.

Clause 81: Development adjacent to the ocean or a waterway

This clause specifies that Council must not consent to an application for development on land within 100m of the ocean or any substantial waterway unless satisfied the development does not limit access to available open space, does not detract from the amenity of the waterway and is consistent with any foreshore management plan applying to the area.

In this instance, the proposed road construction and subdivision does not limit access to open space (whilst it does propose to create a road in a road reserve area presently utilised by locals as open space). There is no foreshore management plan applying to the area and only minor clearing (which will be offset elsewhere) is necessary to facilitate road construction (including the installation of box culverts over the existing drain).

The proposal is consistent with Clause 81.

SEPP No. 14 - Coastal Wetlands

The existing drain along the Ozone Street road terminates into an area of the Tweed River identified under SEPP 14 (and also classified as a sensitive coastal location under SEPP 71).

Consideration of SEPP 14 only occurs if the subject site is covered by the policy, which in this case it is not. Subject to conditions to prevent sediment/runoff impacts into the Tweed River, the proposed development is considered to generally accord with SEPP 14.

SEPP No 71 – Coastal Protection

The subject site is covered by SEPP 71, although the site is not identified as a sensitive coastal location under the Policy.

A detailed SEPP 71 assessment was requested of the applicant, which concluded that the proposed development is consistent with the prescribed matters for consideration.

Specifically, the proposed development will not affect access to any coastal foreshore areas and is considered to be suitable for the subject locality due to the site's proximity to the Pacific Highway and other industrial development. The proposal is not considered to impact adversely on the coastal foreshore, will not create overshadowing and is not considered to detract from the scenic qualities of the New South Wales coast, being relatively minor in nature.

The applicant has indicated their intention to engage in compensatory works to offset the loss of part of the Endangered Ecological Community (EEC) via the approved Habitat Restoration Plan (approved under DA09/0006) as well as the loss of one Forest Red Gum and one Pink Bloodwood tree in the road reserve (a deferred commencement condition has been applied with regard to finding a suitable site for compensation for these two trees).

No wildlife corridors are mapped on the subject site or along the Ozone Street road reserve. The subject site is located outside of the coastal erosion zones under the NSW Coastal Policy and coastal processes will not impact on the proposed development. The proposal does not have the potential to create conflict between land based and water based activities.

With regard to Clause 8(l), the Cultural Heritage Assessment has noted that the site is not within proximity to any known archaeological sites. General Terms of

Approval supplied by the Department of Environment, Climate Change and Water have been applied in the unlikely event that cultural material is uncovered during the construction process, including the requirement to cease works if any item is disturbed and the need to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council.

In terms of cumulative impact, the development is not considered to pose a significant impact to the EEC community due to vegetation removal being compensated for via the approved Habitat Restoration Plan. It is noted that a deferred commencement condition has also been applied with regard to a suitable offset for the loss of two existing habitat trees within the road reserve at the proposed intersection of the new road with Chinderah Road. Conditions have been applied by Council's Ecologist in this regard.

Subject to conditions as detailed above, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

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

Draft Tweed Local Environmental Plan 2010

The draft Tweed Local Environmental Plan 2010 (DLEP) zones the subject site R2 – Low Density Residential (the equivalent zone). The DLEP also zones the Road Reserve as RE1 – Public Recreation.

A road is permitted without consent in the R2 zone and the RE2 zone. Subdivision remains permissible with consent in the R2 zone.

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

Tweed Development Control Plan

A2 - Site Access and Parking Code

At the subdivision stage, the provision of car parking is not required. The applicant will be required to demonstrate compliance with DCP A2 at the time of lodgement of an application for the future development of the residual allotment or each of the industrial allotments approved under DA09/0006.

A3-Development of Flood Liable Land

Council's records indicate the site (and road reserve) are flood liable, with a design flood level of 3.2m AHD, as well as being covered by the PMF.

DCP A3 specifies the following for fill for commercial and industrial development on flood liable land:

"For drainage purposes only, land will only be required to be filled to the approximate level of the centre line of the adjacent road (excluding the Pacific Highway) unless adequate alternative stormwater drainage is provided.

Lots with existing levels less than RL 2.2m AHD may be filled to a maximum height of RL 2.2m AHD."

The following deemed to comply solution may be implemented on each allotment as an alternative to providing flood modelling;

- i) On each allotment a maximum of 50% of the plan area of the lot may be occupied by structures, buildings, stockpiles and/or fill that exceeds RL2.2m AHD.*

- ii) *On each allotment, flow obstructions (defined as fill, structures, buildings, stockpiles and the like above RL 2.2m AHD) are to be located so that at least 50% of any cross section of the lot, transverse to the direction of flood flow, is clear of flow obstructions. This is to provide a local flood path on each allotment.*

Commercial and industrial development will be required to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.”

It is noted that levels on the site do not exceed the required maximum RL2.2m, with the existing ground level being approximately 1.3 – 1.5m AHD. The finished level of the site is 2.0m AHD and as such approximately 500mm to 700mm fill will be required.

A condition has been applied to the effect that:

The level of fill placed on the site shall not exceed RL2.2m AHD.

The following condition of consent has been applied with regard to the above (for future development):

A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow.

DCP A3 also specifies that in the Chinderah locality (which generally has a low flood velocity) all fencing must be of a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of debris or floodwater.

A deferred commencement condition has been applied with respect to the above as follows:

‘The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate’.

This has been applied to ensure compliance with DCP A3 and to enable comprehensive assessment of the proposed fence design to be undertaken by Council’s planning, engineering and environmental health staff.

Subject to satisfaction of the deferred commencement condition, compliance with DCP A3 is considered to be achieved.

A5-Subdivision Manual

This policy contains guidelines for subdivision development. Relevant to this application (which creates a residual lot of 3525m²), the policy specifies that subdivided land in the 2(a) Low Density Residential zone must meet the following criteria:

- Have a minimum lot size of 450m² (dwelling house)
- Have a minimum lot size of 900m² (dual occupancy)

- Have a minimum lot size of 1350m² (integrated housing)
- Be capable of containing a 10m x 15m building platform.

The proposal is consistent with the above criteria and it is noted that the subdivision to create the road does not preclude the residual lot from being used for future residential purposes (i.e.: the minimum lot sizes for different types of residential development are exceeded as shown above), subject to future traffic noise considerations.

In addition to the above, consideration is required of the physical and environmental constraints of the site, the degree of landforming, stormwater and drainage and buffers as follows:

Physical constraints

Lot 12 is relatively unconstrained in physical terms, being relatively flat and with vehicular access off Chinderah Road. The Ozone Street road reserve does not contain any waterways (besides the adjacent open drain), is not bushfire prone and the proposal does not necessitate significant changes to the natural landform other than site filling. The site is flood prone (3.2m AHD and covered by the PMF).

Environmental constraints

Lot 12 contains limited established vegetation, being mostly grassed. Two habitat trees (Forest Red Gum and Pink Bloodwood) are located within the existing road reserve at the proposed intersection and are required to be cleared. Ozone Street road reserve contains established native vegetation including an Endangered Ecological Community (EEC) along the drainage channel. The site is not bushfire prone. The site does exhibit class 3 ASS and appropriate conditions have been applied in this regard by Council's Environmental Health Officer with regard to road construction, including the installation of box culverts.

The applicant has acknowledged the presence of EEC vegetation on the site and appropriate compensation will be undertaken in line with the approved Habitat Restoration Plan under DA09/0006.

The proposal is considered to be consistent with the NSW Coastal Policy.

Significant Vegetation

As mentioned, the road reserve supports significant vegetation including an Endangered Ecological Community of Swamp Oak. The applicant has agreed to persevere with the implementation of the approved Habitat Restoration Plan under DA09/0006 as an offset for loss of approximately 600m² of the EEC.

Conditions have been applied in this regard, including a deferred commencement condition with regard to negotiation of a suitable site (or agreement as to compensatory planting on the residual lot) for compensation for the loss of the Forest Red Gum and the Pink Bloodwood.

Aboriginal Heritage or Cultural Items

A Cultural Heritage Assessment has been submitted which concludes that Lot 12 (and the Ozone Street road reserve) are unlikely to contain any items of known aboriginal or cultural heritage. Conditions have been applied (recommended by the Department of Environment, Climate Change and Water) in the event that any items are uncovered during construction works.

Landforming

The application proposes minor earthworks to fill the site to RL 2.2m AHD. The site at present is relatively flat with no structures. Apart from the removal of the existing vegetation within the road reserve and the two mature trees within the road reserve at the proposed intersection, the proposed filling works will not significantly alter the natural landform and is not considered to impact upon any nearby properties in this regard.

Issues relating to access, stormwater, drainage, waterways and flooding are detailed further elsewhere in this report.

The proposed development is considered to be generally consistent with DCP A5. Ongoing compliance with DCP A5 has been applied as a condition of consent.

A11-Public Notification of Development Proposals

Amendments were made to the above policy as a result of DA09/0006 in order to notify permanent occupiers of caravan parks and manufactured home estates in the same way as landowners. The proposed development was placed on public exhibition for a period of fourteen (14) days from 6 October 2010 to 20 October 2010.

During this period, 41 submissions were received, with two (2) late submissions, two (2) anonymous submissions and one (1) petition being received.

The matters raised in the submissions are addressed further in this report.

A13-Socio-Economic Impact Assessment

The proposal is not considered to create significant social or economic impacts.

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. However, the site is not located within the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes and the proposal will not overshadow any foreshore reserves or restrict public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

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

Context and Setting

The proposed development is consistent with the 'mixed use' character of Chinderah. No significant adverse impacts are envisaged for the locality.

Traffic Noise

If not properly managed, traffic noise from the proposed access road has the potential to impact upon adjacent land zoned 2(a) Low Density Residential used for the purposes of residential living and a caravan park. The proposal is supported by a Noise Level Impact Assessment (NLIA) prepared by Craig Hill Acoustics dated 6 July 2010. Council's Environmental Health Officer has advised that the report has been prepared in general accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999.

Potential noise impacts upon adjacent land uses have been summarised by Council's Environmental Health Officer as follows:

Chinderah Road Dwellings/Vacant Lots

Several submissions have been received from property owners relating to the generation of traffic noise from the proposed access road. The NLIA indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the NLIA indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.

Royal Pacific Tourist Retreat

The existing caravan park is located immediately adjacent to the proposed access road. Modelling undertaken by the NLIA indicates that potential daytime (7:00am to 10:00pm) noise impacts will exceed the noise criteria detailed in the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1). It is proposed to mitigate potential noise impacts below the relevant noise criteria by constructing a 2.5m acoustic barrier along the entire length of the access road (approximately 320m).

Modelling undertaken in the NLIA also indicates that there will be significant noise impacts during night time periods (10:00pm – 7:00am) without a further increase in the height of the acoustic barrier to 4-6.5m. Council's planning officers have raised concerns with the height of such a fence for amenity reasons. As such, night time traffic noise will be further addressed and controlled during the assessment of any development applications for future industrial land uses on the site.

It is considered that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. Night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses, which may include conditions restricting operating hours.

It is noted that the achievement of the daytime noise criteria is also dependent upon enforcement of a 50kph speed limit along the proposed new road, to be set by the RTA.

Traffic noise is therefore considered to be adequately addressed for the proposed road construction with further consideration with regard to night time noise impacts to occur during assessment of development applications for future development on the lots approved by DA09/0006.

Swamp Oak EEC

The overall impact on the Swamp Oak is stated within the Flora and Fauna Assessment as removal of some 300m² of the community, although this has recently been verbally updated by the consultant planner to 600m². Although this aspect requires a more accurate calculation (by GIS measure it may be over 1000m²), on balance there will be a lesser impact on the EEC than the previous proposal, which was estimated to require removal of some 4500m² of EEC.

The other important benefit from an ecological perspective is that impacts within the drainage channel itself (a tidal channel providing habitat for aquatic species) will be limited to two large culverts to enable the two drain crossing points to be established into the industrial lot, rather than halving the channel width and concrete lining the bed and one bank as was previously proposed. Thus water quality within the channel and subsequently flowing to the adjacent Tweed River is at significantly lower risk from export of sediment and acidic runoff (arising from disturbance of potential acid sulfate soils) and in-stream habitat values, including mangroves, are unlikely to be lost.

Thus the formation of a smaller proportion of the Ozone Street road reserve in a section further from the Tweed River with significantly reduced impacts on the channel alignment is seen as an ecological benefit. It does not however, obviate the need to compensate for loss of EEC. Verbal agreement to implement the approved compensatory project has been given by the consultant planner but caution is required because:

- consent in writing from the owner of the industrial lot to the financial implication arising from the compensatory project has not yet been received;
- it is not a straightforward matter to tie the off-site works to the consent amendment in a way which will ensure the compensatory works (which span a five year time frame) will be undertaken and maintained to form a suitable offset, particularly once permission to clear the existing EEC has been given, and
- the quantity of compensation has not yet been agreed.

The above matters have been addressed via the proposed deferred commencement conditions.

Forest Red Gum and Pink Bloodwood

Whilst a reduced impact is seen along and adjacent the drainage channel in comparison to the previous access road alignment from Chinderah Bay Drive, additional impact occurs with the loss of two semi-mature trees from the road reserve area of Chinderah Road. The trees are a Forest Red Gum (*Eucalyptus tereticornis*) and a Pink Bloodwood (*Corymbia intermedia*) (Plate 1). These two species of tree are known to be two of four main species associated with another floodplain Endangered Ecological Community known as *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*. The NSW Scientific Committee determination for the community states:

“Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion is the name given to the ecological community associated with clay-loams and sandy loams, on periodically inundated alluvial flats, drainage lines and river terraces associated with coastal floodplains.

The structure of the community may vary from tall open forests to woodlands, although partial clearing may have reduced the canopy to scattered trees. Typically these forests and woodlands form mosaics with other floodplain forest communities and treeless wetlands, and often they fringe treeless floodplain lagoons or wetlands with semi-permanent standing water (e.g. Pressey 1989a).

Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion has a tall open tree layer of eucalypts, which may exceed 40 m in height,

but can be considerably shorter in regrowth stands or under conditions of lower site quality. While the composition of the tree stratum varies considerably, the most widespread and abundant dominant trees include Eucalyptus tereticornis (forest red gum), E. siderophloia (grey ironbark), Corymbia intermedia (pink bloodwood) and, north of the Macleay floodplain, Lophostemon suaveolens (swamp turpentine)."

Both trees provide known forage habitat for nectar-reliant species including the Grey-headed Flying Fox (a threatened species), Rainbow Lorikeets and Eastern Rosellas. Forest Red Gums are a favoured food tree for Koalas and Chinderah is an area known to support a Koala population, at least until recently. Thus the trees are significant despite their position and all efforts to retain them were requested during assessment. It appears that the access road is unlikely to meet minimum engineering standards in terms of distance from the roundabout if the trees are to be retained. In the absence of clear evidence of present reliance on the trees for roosting or as part of a home range by Koalas or other threatened species, it is unlikely that the loss of the two trees could successfully be argued as causing a significant impact on threatened species, populations or ecological communities whereby the development could be refused. However, the significance of the trees requires compensation at the least. A ratio of 10:1 (gained:lost) is considered appropriate due to the size and age of the trees and the known habitat value they provide, where planting and reestablishment of trees of such size will take time and care.

A suitable site for establishment of replacement trees is the residue lot created after the access road through Lot 12 DP 830659 is severed. The planning consultant has indicated reluctance to impose restriction on this site and no alternative site has been nominated. Whilst Council's preference is the residue lot because it is adjacent and of suitable soil type and elevation, a suitable alternative may be considered. The uncertainty over this aspect requires deferring commencement until this issue is satisfactorily agreed and a condition has been applied accordingly.

The following deferred commencement conditions have been applied to address all matters raised above:

1. *A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (Eucalyptus tereticornis) and Pink Bloodwood (Corymbia intermedia) impacted by the proposed development. The Habitat Restoration Plan must include:*
 - *a schedule and timing of works to be undertaken*
 - *written agreement from the owner of the agreed site to planting and/or restoration works on the land*
 - *a suitable protection mechanism on the land to ensure the trees are protected in perpetuity*
 - *a legally binding commitment by the consent holder to funding and/or undertaking the proposed works*
 - *a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*

2. *A legally binding commitment by the consent holder to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117 prepared by Planit Consulting dated March 2010.*

Amenity

The scenic values of Chinderah are considered to stem from its proximity to the Tweed River and low density residential character. However, Chinderah is also located in close proximity to the Pacific Highway and contains some large scale commercial and industrial developments on both sides of the highway. With this in mind, the proposed development is not considered to detract from the scenic values of the area which relate more to the Tweed River (further north-west of the subject site) than to the location of the subject site.

With regard to amenity, Council planning officers commenced considerable negotiation with the applicant to reduce the height of the proposed acoustic fence to 2.5m. In addition, the applicant will be required to submit a detailed landscaping plan which demonstrates landscaping on both sides of the proposed fence (i.e.: including within the Royal Pacific Tourist Retreat), with appropriate owners consent.

Subject to the plan being satisfactory to Council, the landscaping is considered to appropriately ameliorate amenity impacts of the proposed fence.

Stormwater Drainage

Engineering plans prepared by Cozens Regan dated July 2010 show access provided to the industrial subdivision over the open channel via 3 x 1500 x 750 box culverts from Ozone Street. The system will be required to be designed to cater for an ARI storm event of 100 years. Detailed conditions of consent have been applied by Council's Flooding Engineer/Development Assessment Engineer to ensure an acceptable drainage design at construction certificate stage.

Asset Management

The applicant proposed to dedicate the road and acoustic fence to Council, however no details with regard to asset management/handover of the road/fence were supplied during the assessment process.

As future asset owner, the Director Engineering and Operations has indicated that the handover of the acoustic fence would not be accepted, as there is no current budget for maintaining such an asset.

To rectify this issue, the following deferred commencement condition has been recommended by Council's Infrastructure Engineer (in consultation with the Director Engineering and Operations) and applied:

The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.

Fence Design

The applicant neglected to properly consider the provisions of DCP A3 – Development of Flood Liable Land in the design of the proposed acoustic fence. Subsequent discussions with Council's Infrastructure Engineer have indicated that a further deferred commencement condition with regard to the proposed fence design is warranted to enable comprehensive assessment of the design (in light of meeting DCP A3 and acoustic requirements), but also to ensure that an appropriate funding proposal with regard to Council's management of the fence is obtained.

The following deferred commencement condition has been applied:

'The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.'

This has been applied.

It is noted that the acoustic fence was originally proposed to be 4.5-6m high (as a result of being designed to cater for 24 hour traffic movements). Negotiation with the applicant has enabled the fence height to be reduced to 2.5m, based on a speed limit of 50kph and further consideration of night time traffic noise at the time consent is sought for development on the industrial allotments (a 2.5m high fence meets the daytime noise criteria). This is considered to be much more appropriate in terms of visual amenity and submission of a detailed landscaping plan has been applied as a condition of consent.

Subject to satisfaction of the deferred commencement conditions the proposed development is considered to be appropriate with regard to flooding matters.

(c) Suitability of the site for the development

Flooding

The subject site is flood prone, is covered by the Probable Maximum Flood (PMF) and exhibits a low flood velocity.

The residual lot will be filled to no more than 2.2m AHD.

A detailed assessment of flooding impacts has been undertaken under DCP A3 above. Subject to the imposition of conditions (including the above deferred commencement conditions), the proposed development is considered to be acceptable with regard to flooding matters.

Access, Transport and Traffic

The entry point to the road is approximately 150m from the existing Chinderah interchange. This has been reviewed by Council's Traffic Engineer who has advised that such a distance is appropriate. Sight distance is approximately 132m to the east and 300m to the west. It is noted that the existing edgeline on the southern side of Chinderah Road is proposed to be removed and this section of the road widened to create a new turning lane to cater for B double movements. A traffic island is also proposed to be installed to separate this lane from the existing alignment of Chinderah Road.

A SIDRA analysis was prepared by a traffic consultant which demonstrates that Chinderah Road has significant spare capacity. The consultants report concluded that the proposed road and its intersection with Chinderah Road will not have any adverse road safety, capacity or operational performance implications. As such, the proposed road is not considered to have the potential to unreasonably impede through traffic movement on Chinderah Road.

Chinderah Road is approximately 8m wide, within a 30m wide road reserve (approximate). As such, the proposed road through Lot 12 is not considered to have the potential to jeopardise any future improvements or realignment of Chinderah Road as substantial width remains within the road reserve. It is noted that there is no other practicable method of access to the subject site other than from the designated road (or via the approved access arrangement under DA09/0006).

Acid Sulfate Soils (ASS)

Council's ASS Planning Map indicates that the site is class 3 land, which applies to works beyond 1 metre below the natural ground level. The submitted plans indicate that excavations to approximately 2m below ground level are proposed for the construction of culverts and therefore ASS are anticipated to be encountered. The proposal is however, anticipated to have a lesser impact on ASS than the previously approved access road (under DA09/0006) due to lesser interference with the existing drain.

An amended Acid Sulfate Soil Management Plan has been prepared by HMC Environmental Consulting dated 26th November 2010. The management plan has been prepared in general accordance with the Acid Sulfate Soil Manual 1998 and is considered adequate. Conditions with regard to compliance with this plan have been applied.

Water/Sewer

Council's reticulated potable water supply is available to the area. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

Council's piped sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards.

Council's Water & Sewer Engineer has advised that no objections are raised to the development and has provided the following comments:

"I have no objections to the proposed development however I note that the proposed 150 water main is shown as connecting to an existing 150 in Chinderah Road. Council's GIS shows that this is a 100 water main and that the nearest 150 is at the corner of Walsh Street and Chinderah Road.

It is noted that from the plans included in the SEE, the proponent proposes to connect water and sewer services to the residual lot. The original lot has been charged water access rate for some period but has not been charged a sewer access charge. Accordingly, a s64 Development Charge for Sewer of 1 ET should apply.

The standard clause relating to provision of water to the lot should be applied.

It is noted however that the proponent proposes to service the lot by a single property sewer pump station connected to the proposed SRM from the pressure sewer system to be provided in the industrial subdivision.

In this case, as the proposed lot is zoned residential, it is recommended that the usual clause for pressure sewer systems be applied to this lot rather than the method conditioned in the industrial subdivision.

Council requires a positive covenant to be placed on the affected lot that will permit Council access for the installation, maintenance and replacement of the pump station equipment, the provision of electricity by the householder, and the placement of the control box and alarm system on an exterior wall of the dwelling”.

In addition, Council's Water and Sewer Systems Engineer has advised that a capital contribution of \$14,800 shall be paid for the installation of the individual pressure sewer pump on Lot 12. The pump will then be constructed at the time of construction of the dwelling on that lot.

Detailed conditions with regard to the above, including the 1ET sewer charge have been applied. The sewer charge and the \$14800 capital contribution shall be required to be paid prior to issue of a subdivision certificate.

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

41 public submissions were received, with two (2) late submissions, two (2) anonymous submissions and one (1) petition with 36 signatures being received. The matters raised in these submissions are detailed below.

Comments were also received from the Department of Environment, Climate Change and Water (DECCW) and the New South Roads and Traffic Authority (RTA):

DECCW: Were referred a copy of the revised Cultural Heritage Assessment. DECCW advised that the assessment has been undertaken in accordance with the Department's guidelines for aboriginal cultural heritage. Advice was also supplied noting that no known aboriginal cultural heritage values will be impacted by the proposed road development. However, it was noted that there may be a likelihood of evidence of Aboriginal occupation being found within the project area. Should this occur, DECCW have recommended six (6) conditions of consent which have been applied.

RTA: Were referred a copy of the proposed development and reviewed the proposed development at the Development Traffic Advisory Group (DTAG) meeting. No objections were raised at the DTAG meeting, however the RTA's property section supplied a further submission, summarised as follows:

“The RTA owns adjacent land to Lot 1 DP 102255 (Lots 13 and 14 DP 830659). The location of these sites has been identified by the RTA and the NSW Department of Planning as being suitable for highway service centre usage. This was formalised by a S117 direction dated 29 November 2009, The site has inherent benefits for this proposed usage including strategic positioning on the Chinderah Road interchange and proximity to the existing BP highway service centre.

To make the site viable as a highway service centre, Lots 13 and 14 would require amalgamation with Lot 1. The RTA had held negotiations with the proprietor to this effect with no agreement reached.

The potential to establish a highway service centre on the site would be lost if the subject application is approved. Notwithstanding, the RTA intends to offer this land to the open market for long term lease as a highway service centre site early in the new year which will allow any other interested parties to express interest in this potential use.”

The above is not a matter for Council’s concern under the Act and has no real bearing on the subject development application (or the associated S96 modification). Approval of the subject application does not preclude the RTA from entering into negotiations with any party with regard to the future development of the site.

It is noted that no objection on traffic grounds was received from the RTA.

Public Submissions

The applicant was referred a copy of all public submissions for consideration. A copy of the applicant’s response is available on file.

Submission	Response
The development will create noise pollution	Council’s Environmental Health Officer has given detailed consideration to noise impacts and applied strict conditions to regulate impacts. It is noted that an acoustic wall is proposed to ameliorate noise impacts for residents of the adjoining caravan park. It is considered that the proposed mitigation measures are sufficient to adequately mitigate traffic noise impacts during day time periods (7:00am to 10:00pm) in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999. Night time traffic noise impacts will be addressed and controlled during the assessment of any development applications for future industrial land uses, which may include conditions restricting operating hours. With respect to dwellings on the northern side of Chinderah Road, the Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.
The development will create air pollution/fumes	The proposed development is to create a public road which is not considered to create any significant adverse levels of air pollution or fumes. Council is not the regulatory authority for such matters.
Increased traffic would reduce quality of life and amenity	The proposed development is relatively minor in that it facilitates access only to an approved industrial subdivision, the end uses of which are not known at this stage and would be subject to future assessment to regulate traffic and amenity impacts. With regard to the subject application, it is noted that an acoustic fence is proposed to mitigate traffic noise impacts on adjoining Lot 109 (Royal Pacific Tourist Retreat) and detailed conditions have been applied with regard to significant landscaping to screen the proposed acoustic fence from Chinderah Road. In addition, a condition has been recommended to the effect that landscaping at the developers cost be provided within Lot 109 to soften the impact of the proposed fence, if this is to the satisfaction of the park owners and residents.

Submission	Response
Tourists would bypass the area because of increased traffic	Council's Development Assessment Engineer has assessed the application and advised that the proposed traffic generation is within the capacity of the existing road. It is considered that Chinderah's amenity/tourism values are more centred on the riverfront environment along the north east running section of Chinderah Bay Drive (i.e.: past the Chinderah Hotel) than on development in the vicinity of the subject site. Tourism generation is not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.
The acoustic assessment makes no reference to existing residential houses across Chinderah Road	Further information was requested of the applicant to address this shortcoming. Council's Environmental Health Officer has advised that the Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.
Traffic noise will create sleep awakenings	<p>Council's Environmental Health Officer has completed detailed assessment of the development with respect to traffic noise. Subject to satisfaction of the deferred commencement conditions and subsequent installation of the acoustic barrier, road traffic noise is considered to be within acceptable criteria for residents of the Royal Pacific Tourist Retreat during the daytime. Houses on the northern side of Chinderah Road currently experience noise levels that exceed the relevant noise criteria from the Pacific Highway. Noise modelling undertaken proposed development indicates that the proposal will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.</p> <p>No end uses of any lots are known at this stage and as such, it is considered appropriate to give further consideration to night time traffic noise during the assessment of any development applications for future industrial land uses on the site. The possibility of sleep awakenings will be addressed further at this stage and conditions restricting operating hours are likely to be applied.</p>
The proposed acoustic fence will direct noise into an existing dwelling on Chinderah Road and headlights from exiting vehicles will shine in a master bedroom	<p>The Acoustic Report indicates that the existing dwellings along Chinderah Road are currently subjected to noise levels that exceed the relevant noise criteria from the Pacific Highway. Modelling undertaken in the report indicates that the proposal, inclusive of the proposed acoustic wall will not increase existing traffic noise by more than 2dBA and therefore minimal impacts in accordance with the NSW EPA Environmental Criteria for Road Traffic Noise 1999 (Table 1) are anticipated.</p> <p>Impacts from headlights and the like are considered more appropriately addressed once end uses of the industrial allotments are proposed as different business will have different operating hours. Conditions of consent with regard to limited operating hours can be applied at this stage.</p>
Alternatives to the acoustic barrier require windows to be	Such 'sound shell' treatment measures were recommended by the applicant's acoustic consultant for utilisation where the

Submission	Response
shut and the provision of alternative ventilation which will require electricity to run and be an ongoing cost to the resident	recommended 6m high acoustic wall was unable to be achieved. Further investigations into this wall have resulted in a reduction in height to 2.5m only and imposition of a 50kph speed limit. The 6m high wall and sound shell treatment are no longer required.
Approval of this DA will allow for future development of the adjoining land which will increase noise levels, traffic flow and accidents in this area	Consent is sought only for a subdivision to create a public road and the construction of an acoustic fence. The application has been considered on its merits and on the facts presented before Council. Future development of any land in the Chinderah locality would require separate development assessment and noise, traffic and safety impacts would be addressed at that time.
There is not adequate sight distance. The 'curved' road would lead to accidents and destruction of residents property	The submitted traffic report identifies that available sight distance to/from the east (roundabout) is approximately 132m and to/from the west (river) is approximately 300m. The report specifies that the design sight distances are 97m (50kph zone) and 123m (60kph zone). The design distances are exceeded for both speed zones (Chinderah Road has a 50kph speed limit and Chinderah Bay Drive has a 60kph limit). Council's Traffic Engineer and Development Assessment Engineer have reviewed this report and raised no objections to the proposed sight distances from the proposed new road.
Acoustic fences do not work	The proposed acoustic fence is supported by a report from an acoustic consultant and has been reviewed by Council's Environmental Health Officer who has raised no objections subject to conditions. Deferred commencement conditions have been applied to ensure the fence design is appropriate with regard to Council's flooding controls and to ensure funds are provided for the ongoing maintenance of the fence by Council.
Sealing of Ozone Street would stop the congestion of Chinderah Road	Sealing of Ozone Street (presumably from Chinderah Bay Drive to Lot 1 DP 102255) was approved via DA09/0006. The applicant is now seeking to change this via a S96 application to DA09/0006 and the subject DA. The submission is not clear how sealing Ozone Street would assist with traffic flows on Chinderah Road. No further consideration is required.
Lot 12 is zoned 2(a) Low Density Residential and should not be developed for non residential uses such as the proposed public road. Lot 12 should be used for residential purposes, consistent with surrounding properties.	A road is permissible in the 2(a) zone under the Tweed Local Environmental Plan 2000.
Noise barriers would have to be very high to have any effect (due to houses being high set to be out of the flood area) and this would be visually unappealing.	Detailed assessment of the proposed acoustic barrier has been undertaken and negotiations with the applicant has resulted in the fence height being reduced to 2.5m. Deferred commencement conditions have been applied with regard to further design considerations of the proposed fence and conditions have been applied with respect to landscaping to improve the visual amenity of the fence which is considered to be acceptable given the constraints of the site.

Submission	Response
The noise barrier would restrict flow of water and breezes	Deferred commencement conditions have been applied to ensure compliance with Council's DCP A3 with regard to the free flow of flood water. The proposed fence height has been reduced to 2.5m which is considered to have a negligible impact on the flow of breezes.
The access arrangement under DA09/0006 has the least impact on surrounding residents and businesses	The applicant has proposed a revised access arrangement, the impacts of which have been assessed by Council officers. Approval of the revised access arrangement is recommended by this report.
The proposed road is too close to the interchange and would create safety issues, especially with children crossing the road to and from home/the school bus	Traffic reports have demonstrated that the proposed road is an acceptable distance from the Chinderah interchange and that sufficient sight distance exists. There is presently no identified crossing for children to access a bus stop (presently informal) in front of the adjoining caravan park. Council's Development Assessment Engineer has advised that a crossing in this location would be extremely undesirable due to proximity to the existing interchange. Road safety matters (with regard to speed limits etc) are a matter for the NSW Police. It is noted that members of the community may seek advice from Council's Works Unit as to the installation of a formal pedestrian crossing though this is unlikely to be supported.
The purpose for which Lot 12 was approved was a childcare centre, the level of traffic created by the childcare centre would be light traffic only.	The childcare centre consent (DA06/0282) is due to lapse on 25 January 2012. The subject development application does not propose any use of the industrial allotments, however detailed traffic assessment has concluded that the proposed road is suitable for industrial traffic.
The traffic volume data used in the application was from 2004 and is thus out of date	Traffic modelling has indicated that significant spare capacity is available along Chinderah Road. The reference to 2004 in the traffic report refers to traffic data obtained from Council, which was not used as the sole data source for traffic assessment. The traffic assessment concludes that the proposed new road and its intersection with Chinderah Road will be compliant with the relevant road design criteria and will not have any adverse road safety, capacity or operational performance implications.
Property resale value would be affected	Property values are not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.
Traffic drawings do not show the relationship of turning trucks to the existing properties on the north side of Chinderah Road	Turning templates submitted as part of the Traffic Assessment show demonstrate that right hand truck movements from the proposed intersection are contained wholly within the existing road reserve. In addition, the traffic report has demonstrated that the proposed intersection will not affect the surrounding traffic network.
The recommended 'sound shell' treatment is unacceptable	The sound shell treatment was recommended originally where the 6m fence height could not be achieved along the boundary between Lot 12 and Lot 109. Further investigations have now been undertaken into the proposed fence with the sound shell treatment no longer being required or proposed.
Tree removal would harm wildlife	Compensation for vegetation loss has been enforced via conditions of consent and Council's Ecologist is satisfied with this outcome.
Land use conflict between industrial and residential	The Tweed Local Environmental Plan 2000 prescribes mixed zoning in the Chinderah locality. Detailed assessment of the

Submission	Response
uses. Mixing residential with industrial is a poor mix	application has been undertaken in light of the potential for land use conflict and conditions of consent have been applied to ameliorate traffic noise and amenity impacts.
There are hidden plans to build 24 units on the balance of Lot 12	The applicant has confirmed that the reference to 24 units within the application documentation was an oversight and that no development of any sort is proposed on the residual allotment at this stage. Any development on this site would be subject to future merit assessment.
The proposed road is for future access to a BP service station	Any proposal for a BP service station would be subject to detailed assessment procedures. No such application has been submitted to Council.
Trucks slowing down will have to use engine brakes	Enforcing speed limits is a responsibility of the NSW Police and is not within Council's jurisdiction. If trucks are obeying the speed limit when exiting the interchange it is not anticipated that the use of engine brakes will be necessary.
The existing road is unsafe and experiences high incidences of traffic accidents. Increasing traffic on this road will only make this worse.	The traffic report has concluded that there is spare capacity along Chinderah Road to accommodate additional traffic. Traffic safety issues such as speeding cars and illegal traffic manoeuvres are a matter of Police concern and are outside Council's jurisdiction. Council is of the opinion that adequate sight distance exists in this location.
Chinderah has an existing industrial area east of the highway, industry does not need to also be located on the west	The zoning permits industrial development on Lot 1 DP 102255.
Lot 1 DP 102255 (the industrial subdivision site) could and should be rezoned residential	The draft Tweed Local Environmental Plan 2010 was recently on public exhibition. Concerned residents had the ability to raise zoning related concerns during the exhibition period. The existing draft document 'rolls over' the current industrial zoning of Lot 1. The proposed development is presently permissible under both the existing LEP 2000 and the draft LEP 2010.
Local Chinderah residents were not notified	As per amendments to Council's DCP A11 – Public Exhibition of Development Proposals, advertising and notification was undertaken which included residents of every nearby caravan park and properties with direct frontage to the proposed development site.
Direct highway access in the far southwest corner of the subdivision (Lot 1 DP 102255) could be utilised as an alternative entry/exit without using Ozone Street or the interchange/Chinderah Road. This would have zero impact on the community as a whole	Such an arrangement has not been proposed by the applicant.

Submission	Response
The developer did not appropriately consult adjoining landowners. This is a denial of natural justice by the omission of due process	The applicant contends that appropriate consultation was undertaken with owners of Lot 12 DP 830659, Council and the owners of Lot 1 DP 102255 (the industrial subdivision site). Council is bound to assess all properly made applications under the Environmental Planning and Assessment Regulations 2000. The submitted application is consistent with Schedule 1 Part 1 of the Regulation and is thus considered to be properly made. A comprehensive assessment of all elements of the application has been undertaken.
The merits of the application cannot be judged on the information supplied by the developer and his consultants alone.	Council planning officers have undertaken a detailed and objective assessment of all relevant issues and determined that the application is worthy of approval.
Through local knowledge Council is aware of the safety hazards of the interchange and therefore should apply the precautionary principles	The precautionary principle has been assessed under Clause 5 of the Tweed Local Environmental Plan 2000 (as above) and is considered to be satisfied.
The acoustic wall will be targeted and vandalised	The following deferred commencement condition has been applied to ensure funds are available for the ongoing maintenance of the acoustic fence by Council: <i>The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.</i>
Loss of quality of life for residents living in caravans due to being imprisoned and completely enclosed by a concrete barrier	The proposed acoustic wall has been significantly reduced in height from 4.5m-6m to 2.5m. Homes of residents of the caravan park in proximity to the proposed fence/road are setback approximately 11m from the boundary to Lot 12, however are located adjacent to the rear boundary (along the road reserve). The existing dwelling on Lot 109 is setback approximately 7m from the side boundary, separated by a garage. Conditions have been applied requiring landscaping to be provided on either side of the proposed fence – i.e.: within the caravan park also to reduce visual impacts of the proposed fence (provided this is to the satisfaction of the property owner).
Driveways will be unable to be safely accessed	No changes are made to the configuration of access to any driveways in proximity to the proposed new road.
The new road won't allow enough room for a 4WD vehicle and caravan in tow to stop safely.	There are no minimum standards with respect to property access for caravan parks. No change is made to the existing property access arrangements for the adjoining caravan park.
The development will look like a prison and has a major potential to close the Royal Pacific Tourist Retreat Chinderah is the gateway to the northern rivers region, it	Considerable negotiation was undertaken with the applicant with regard to improving the visual amenity of the proposed acoustic fence. The negotiated outcome is a 2.5m high fence with landscaping and is considered to be a reasonable compromise given the site's constraints and the level of community opposition to the development on visual amenity grounds. Though not ideal, the proposed development is

Submission	Response
should be a statement of the beauty visitors can expect along the north coast	considered to be reasonable from a visual amenity perspective given the constraints of the subject area. Deferred commencement conditions require a detailed plan of the fence to be submitted to Council for approval. Consideration of financial matters is not a matter for Council's consideration under Section 79C of the Environmental Planning and Assessment Act 1979.
The DA should be rejected because the development is not required and the application shows contempt towards Council and adjoining owners.	Council is bound to assess all properly made applications under the Environmental Planning and Assessment Act 1979.
The ability to turn left and right when exiting 8-10 Chinderah Road will be curtailed	Inspection of the plans indicates that no change will be made to the existing alignment of Chinderah Road at the frontage of number 8-10.
Existing noise from the BP is unbearable, similar truck noise within the confines of Chinderah village cannot be tolerated	Detailed assessment of the proposed road in terms of noise impacts has been undertaken by Council's Environmental Health Officer with conditions applied including a 50kph speed limit along the proposed new road. Further assessment can be undertaken for any proposed development on the industrial lots should development applications be received in the future.
Many residents of the Royal Pacific Tourist Retreat have major health problems which will be worsened by the drift of diesel exhaust fumes and pollution from industrial traffic	The proposed development is to create a public road which is not considered to create any significant adverse levels of air pollution or fumes. Council is not the regulatory authority for such matters. Further assessment in this regard can be undertaken when consent is sought for the development of the industrial lots.
The Ozone Street drain provides the only means of drainage to a portion (around 20ha) of Gales land in Kingscliff. Council should ensure that any works around the drain do not limit its drainage function.	No changes aside from the installation of culverts are proposed to the existing drain with impacts on the drain for the revised access proposal being significantly less than that approved by DA09/0006. Culverts will maintain the existing drainage function.

None of the above matters are considered to represent reasons for refusal of the development application. Conditions of consent (including deferred commencement conditions) have been applied with respect to matters raised above where required.

(e) Public interest

A detailed assessment has been undertaken based on all matters raised above which concludes that the proposed development generally results in a lesser environmental impact than the access arrangement approved by DA09/0006. Deferred commencement conditions with regard to the proposed fence have been applied to ensure an appropriate design and to obtain funding for Council's future management of the asset. Detailed conditions have been applied to regulate the development and subject to the recommended conditions, the proposed development is considered to be in the public interest.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the ability to appeal the decision in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

A comprehensive assessment has been undertaken of the merits of the application by Council's planning, engineering, ecological and environmental health staff and was also reviewed by the NSW RTA and NSW Police at the Development Traffic Advisory Group. The application is considered to be worthy of approval, subject to satisfaction of the recommended deferred commencement conditions which will result in a net environmental gain in time, secure funding for Council's ongoing maintenance of the proposed acoustic fence and enable comprehensive assessment to be undertaken of the proposed fence design.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council report relating to DA09/0006 (ECM 28176395)
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REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

23 [CNR-CM] Sewerage Strategy for Future West Pottsville Area

ORIGIN:

Water

SUMMARY OF REPORT:

At its meeting of 16 February 2010 Council resolved to proceed with negotiations for the preparation of a Memorandum of Understanding for a Landholder/proponent funded sewerage and reuse strategy to facilitate the development of the Urban Land Release Strategy Areas 5, 6 and 7, and Employment Land Release Area 7.

Council has now received an offer to be part of and contribute to the development of a Private Sewerage Strategy for the future West Pottsville Area. There are advantages to Council in being involved which include the redirecting of existing sewered areas to the proposed scheme removing the need to further augment the Hastings Point Wastewater Treatment Plant above 18,000 Equivalent Persons. There are some significant longer term benefits to Council's conveyancing system, including less odour generation and the associated asset degradation resulting in ongoing cost savings.

The proposed scheme intends to maximise effluent reuse for the new development area including a third pipe system for non-potable residential reuse. Additionally sewage redirected from the existing adjacent development can be treated and reused. This approach is in line with Government and community directions and Council's Integrated Water Cycle Management strategy.

The contribution to the development of this initial strategy is \$50,000 exclusive of GST.

There is a risk that this contribution could ultimately not deliver an outcome as critical parties involved may opt out at future stages. Council itself will also have to consider its position at each stage of the proposed scheme potentially putting at risk any previous investment.

As the scheme progresses beyond the preliminary phase Council will need to gain specific advice on legislative procurement requirements to ensure compliance.

Council would normally develop sewerage strategies for land identified for rezoning. However Council's resources are allocated to the development of land already rezoned.

To progress any further consideration of this area for rezoning a sewerage strategy is required. If Council intends to give consideration to rezoning of this area in the short to medium term then it is recommended that this offer be accepted.

RECOMMENDATION:

That Council:

- 1. Provides in principle support to entering an agreement to contributing \$55,000 GST inclusive to have SIREX Water Utilities develop a private Sewerage and Water Strategy for the West Pottsville area based on stand alone private water and wastewater utility scheme under the Water Industry Competition Act 2006 (WIC Act) and Independent Pricing and Regulatory Tribunal (IPART) Licensing regime.**
- 2. Undertakes a probity review to determine the appropriateness and legal impacts of the proposed agreement.**

REPORT:

At its meeting of Tuesday, 16 February 2010 Council resolved:

That notwithstanding Council's adopted Urban Release Strategy, Council proceeds with negotiations for the preparation of a Memorandum of Understanding (MOU) which would involve:

- Landholder/proponent funded sewerage and reuse strategy to facilitate the development of Urban Land Release Strategy Areas 5, 6 and 7, and Employment Land Release Area 7;
- Memorandum of Understanding (MOU) covering terms of reference, risk allocation, timings and scope for the strategy stages and to obtain agreements for the proposal to fund the various stages of the strategy; and
- Preparation of a report to Council with MOU and funding agreements for Council approval before proceeding with engaging consultants for the preparation of the strategy.

To progress this matter a meeting with Developers and Landholder was held on 9 June 2010.

At this meeting Council Officers advised of the difficulties and risks in gaining an approved Sewerage Strategy, which generally related to effluent disposal, community acceptance, approvals, time and cost issues.

The consensus reach at this meeting was that Developers would explore further, the private option of providing wastewater services before coming back to Council to consider a strategy study and associated MOU. This effectively placed Council's resolution on hold.

Additionally the Developers advised that they had previously been in discussions with representatives from a private water utilities company, SIREX, and requested a further meeting with Council Officers be scheduled.

This follow up meeting was held with Developers, SIREX and Council Officers on 15 July 2010.

Heritage Pacific advised they have engaged SIREX (a private water utility company) to investigate the provision of water and wastewater infrastructure and services for the West Pottsville area development and specifically for the industrial land site.

SIREX propose to provide these facilities and services under an IPART Licence approved under the Water Industry Competition ACT 2006 (WIC Act), (This Act became fully operational with regulations in August 2008).

Their approach to developing a sewerage scheme includes the following advantages:

- The production of a non-potable residential reuse standard effluent maximising the opportunity for reuse.
- The Treatment process offered is robust in respect to achieving the effluent standard proposed, ie. Membrane Bio-Reactor (MBR), Ultra-Filtration (UF), Reverse Osmosis (RO), Ultra-Violet disinfection (UV) and Chlorination.
- A pressure sewer system has the potential to achieve low infiltration and inflow volumes, minimising wet weather impacts.
- The system incorporates sophisticated technology to maximise flow balancing within the collection and transfer system, reducing peak flows and hence the size of pipes, pumps and the Wastewater Treatment Plant (WWTP).
- Incorporates 3rd pipe residential effluent reuse system, and reuse for other non-potable demands.

The outcomes of this meeting for the Pottsville Development Areas 5, 6, 7 and employment land Area 7 were:

- Council requires an overall strategy for the area to be developed.
- Council would consider a strategy based on a private water utility provider licensed under IPART producing effluent of a non-potable residential reuse standard incorporating a 3rd pipe system and maximising reuse.
- Council would consider a private stand alone system to service part of employment lands Area 7 if licensed under IPART producing effluent of non-potable residential reuse standard incorporating a 3rd pipe system and maximising reuse. However the design of this system should allow for later incorporation into an overall strategy.
- Council also indicated that it would consider the opportunity to redirect part of the existing Hastings Point catchment to this scheme to avoid the need to further augment the existing WWTP.

A workshop held 12 October 2010 provided Councillors with an update in relation to these discussions.

A meeting also held 12 October 2010 arranged by Heritage Pacific, SIREX provided a presentation to some of the landowners with Council's Manager Water in attendance. SIREX presented a draft proposal to the group for the preparation of Sewerage and Water Strategy for the West Pottsville area which is reproduced below. The meeting canvassed the land owners for a commitment to funding the initial Strategy Study.

Annexure A



Proposed: West Pottsville Sewerage and Water Strategy
Plan

Project Appreciation and Background

Heritage Pacific has commissioned Sirex Water Utilities (Sirex) to develop a sewerage strategy plan. This will incorporate a standalone private wastewater utility for their proposed first stage of the Pottsville industrial development known as Pottsville East Industrial land. Sirex noted that the Pottsville area is (including the Heritage Pacific industrial site) within the Tweed Shire Council, and this area is currently undergoing significant planning and development for urban release. Sirex, after discussion with Tweed Shire Council and several of the major urban development stakeholders in West Pottsville area, agreed to investigate the option of providing a sewerage & water cycle strategy plan to service this area by a private utility.

The Business-as-Usual provision of sewerage and water supply infrastructure for this urban expansion has major financial, environmental and sustainability limitations. Thus, Sirex which is a private company established in 2005 specialising in the provision of water, wastewater and recycled water infrastructure services is submitting this proposal to investigate the option for the scheme stakeholders.

Sirex has operational residential subdivision projects, located at; Deep Creek Marina at Moama, NSW; Forest Resort at Creswick Victoria; Fyansford near Geelong VIC; and ERA residential at Redlands QLD; currently in use.

Sirex also has an approved licence from the VIC EPA to build and operate a water cycle scheme for the Fyansford 2000-lot residential subdivision with Class A+ recycled water for unrestricted non-potable water reuse and emergency discharges to the Moorabool River.

The proposed scheme's land owners are shown in the table below

Area	Growth Area	Net (Assume 80% developable)	Yield	Assumed ET rate	Total ET
Tweed Shire Council					770
Kings Land	27ha (as per Tuelrs 2009) (25ha HP & 2 ha others)	22ha	Assume 13 lots per ha	1ET per allotment	286
Pottsville Development Corp Land (Cowan)	74ha (as per RC figures)	49ha	10ha at 13p/ha 39ha at 9 p/ha	130 351	481
Dunloe (Petersen)	175ha (as per TUELRS 2009)	140ha	Assume 13 lots per ha	1,820	1,820
Springfield RTA	15ha (as per TUELRS 2009)	Assume 80% dev. 12ha	30EP per ha 360EP	2.8EP =1ET	129
Tagget Residential	6.5ha (as per RC figures)	4.8ha	Assume 13 lots per ha	63	63
Pottsville Employment	99ha (as per TUELRS 2009)				
Hardy Land	74 ha	Assume 80% developable 59.2ha	30EP ha = 1776	2.8EP=1ET 634 ET	634
Others	Inc: 18ha (Kudgerie Av & scattered residential lots)	Assume 80% Developable 14.4ha	30EP per ha 432	2.8EP=1ET 154 ET	154
Jackson's (a component of Pottsville Employment lands above)	7ha (as per TUELRS 2009)	Assume 80% developable 5.6ha	30EP per ha 168	2.8EP=1ET 60ET	60
Pottsville Industrial	14.75ha (as per TSC resolution 17 th August 2010)	Assume 80% developable 11.66ha	30EP per ha 350 EP	2.8EP=1ET 125 ET	125
Total					4,522 ET

Annexure A

Currently, Tweed Shire Council provides the existing urban areas in the Pottsville area with water and sewerage services from their Water Treatment Plant at Bray Park and their Sewerage Treatment Plant (STP) at Hastings Point.

The Hastings Point STP has effluent disposal issues and cannot fully service the proposed urban expansion areas. Additionally some of these expansion areas would require extensive (and expensive) pressurised sewerage to transfer wastewater to the Hastings Point STP, which would be located some 10 km away from the STP. Alternatively, the private utility option provides an integrated standalone water and wastewater solution that is individually tailored for the proposed urban expansion considering the existing infrastructure.

The Sirex, private utility option would have the following benefits:

- Certainty in timing and service delivery of sewerage, wastewater treatment, recycled water and potable water infrastructure for the urban expansion areas.
- Sustainability benefits including optimum water conservation (55% reduction in potable water use compared to a standard residential house) and minimal environmental impact through integrated water cycle management including safe use of Class A+ recycled water for all non-potable water urban demands.
- Innovative technology using state-of-the-art membrane and control systems leading to smaller footprint, higher quality recycled water and minimal impact on surrounding environment.
- More cost effective compared to business-as-usual options with capital cost spread over time or as required.
- Coordination with Tweed Shire Council in formulating the strategy plan that it meets all the future planning, environmental and health issues.

Scope of services

Based on our understanding of the proposed scheme's requirements, we propose the following scope of services:

- a Meet with the relevant stakeholders of the proposed scheme to discuss their planning and water cycle services issues at the commencement of the assignment to clarify the objectives of the project, scope and deliverables.
- b Review relevant available data and background information such as those related to existing sewerage infrastructure, current sewerage planning for the proposed precinct plans, catchment plans and contours, rainfall data, environmental studies, water quality and quantity of available water resources.
- c Develop a water balance model for the scheme. This would include estimation of wastewater generation, potable and recycled water demands for the various land uses within the urban expansion area.
- d Develop alternative water cycle strategies for the proposed scheme. This would include investigating options to find the most cost-effective strategy

Annexure A

to manage sewerage and meet the potable and non-potable water demands for the scheme considering its constraints and opportunities. A standalone option will be investigated, which assumes that the scheme will be completely independent of the Springfield sewerage network. The main elements of this option will be preliminarily ascertained such as; staging; treatment plant footprint; storages; recycled water provision; interface with potable water supply; and preliminary cost budgets. This would involve master plan modelling for wastewater transfer and potable water supply options to service the proposed urban expansion areas.

- e Screen the scheme options and evaluate the shortlisted options based on financial, risk, regulatory and environmental considerations.
- f Scope regulatory issues and requirements, and outline a probable performance and implementation model for the selected scheme.
- g Ascertain implementation requirements including timing for approvals, design, construction and implementation.
- h Consult with the land owners in the selected scheme.
- i Document all findings in a report that would include the preferred water cycle strategy for the scheme including cost estimates, implementation strategy, timing, staging, preliminary layout, regulatory implications and environmental sustainability. This report would be the basis for a Sirex commercial proposal if the scheme land owners decided to progress this option further.
- j The costs for the West Pottsville Sewerage Strategy Plan would be proportioned over the interested land owners on an ET basis.

The costs based on all stakeholders accepting, would be proportioned as follows;- *(all amounts exclude GST)*

✓ (a) Tweed Shire Council	770 ET	\$ 36,960
× (b) Kings Land	286 ET	\$ 13,728
✓ (c) Pottsville Development Corp	481 ET	\$ 23,088
× (d) Dunloe (Petersen)	1,820ET	\$ 87,360
× (e) Springfield RTA	129ET	\$ 6,192
✓ (f) Tagget	63ET	\$ 3,024
✓ (g) Pottsville Employment	634ET	\$ 30,432
× (h) Pottsville Employment others	154ET	\$ 7,392
× (i) Pottsville Employment Jackson	60ET	\$ 2,880
✓ (j) Pottsville Industrial Stage-1	125ET	\$ 6,000
Total	4,522ET	\$217,056

Annexure A

Commercial Terms:

- 25% upon signing the Agreement and first payment made by the 15th November 2010;
- 50% on issue of draft report to be paid within 14 days of date of tax invoice date;
- 25% on Tweed Shire Council acceptance of the strategy plan to be paid within 14 days of tax invoice date;

Subsequent to this meeting Council received correspondence confirming which Landholders are currently prepared to contribute to the strategy study and are listed in the table below.

Owner	ET Potential
Kings Land	286
Pottsville Development Corp Land	481
Springfield RTA	128
Tagget Residential	63
Jackson's (a component of Pottsville Employment Lands)	60
Pottsville Industrial	125
Total	1144
Possible Tweed Shire Council component – Redirection of either Black Rocks and parts of Pottsville Waters or parts of Seabreeze Estate	770
Combined Total	1914

The revised cost of the strategy for this smaller loading is \$160,000 excluding GST.

Council now has an opportunity to investigate the redirection of up to 770 Equivalent Tenements from the Hastings Point Sewerage Catchment to this proposed private utility scheme.

At a workshop for Councillors held 27 October 2009 it was highlighted that there were capacity limitations in providing for growth outside the existing catchment without further augmentation. There are some real constraints to achieving further augmentation of this Wastewater Treatment Plant (WWTP) which include:

- The Dune Ex-Filtration System's ongoing capacity is unlikely to be greater than 18,000 Equivalent Persons (EP), noting it has already been doubled in size and further approvals are unlikely.
- A full range of government approvals will be required for augmentation of the plant in excess of 18,000 EP including requirements for more effluent reuse, noting existing developed areas provide limited opportunities for viable and cost effective reuse and the new development is located on the fringe of the catchment far from the WWTP.
- A Creek / Estuary discharge is unlikely to gain community or Government Agency support.
- A deep ocean release would be costly and may also be unlikely to gain community or Government Agency support.

The potential benefits to Council if the proposed private scheme was developed include:

- Avoiding Augmentation of the Hastings Point WWTP above 18000EP.
- Reduced Septicity in the existing conveyancing system to Hasting Point WWTP. Reducing odour, odour control costs and asset degradation due to sulphuric acid generation.
- Potential for a significant quantity of wastewater generated from existing residential development to be redirected and reused.

- The production of a non-potable residential reuse standard effluent maximising the opportunity for reuse.
- Incorporates 3rd pipe residential effluent reuse system, and reuse for other non-potable demands in the new developments.
- The Treatment process offered is robust in respect to achieving the effluent standard proposed, ie. Membrane Bio-Reactor (MBR), Ultra-Filtration (UF), Reverse Osmosis (RO), Ultra-Violet disinfection (UV) and Chlorination. There by significantly reducing the impact on receiving waters for the portion that may have to be discharged.
- A pressure sewer system has the potential to achieve low infiltration and inflow volumes, reducing the amount of sewage requiring collection, treatment and reused.
- The system incorporates sophisticated technology to maximise flow balancing within the collection and transfer system, reducing peak flows and hence the size of pipes, pumps and the Wastewater Treatment Plant (WWTP).
- Potentially a cost effective option to provide the additional future treatment capacity Council requires in this area.

For the Strategy study to proceed, it is proposed that all parties financially contribute on an ET proportional basis. If Council wishes to take advantage of this opportunity the contribution calculation would be 770 ET / 1914 ET x \$160,000 equating to \$64,368 excluding GST. The developers however have offered to limit Council's contribution to \$50,000 excluding GST.

There are risks involved with proceeding with such an offer, as the scheme at any stage may not proceed due to developers deciding not to progress, SIREX discontinuing their involvement, approvals not being gained and for many other reasons.

The next steps in the process beyond the Strategy include SIREX gaining IPART approval to construct and operate such a scheme which would be a prerequisite for consideration of any future rezoning applications.

Council would have to consider carefully its involvement at each step along the process, noting its previous investments in developing the scheme to each subsequent stage could be at risk.

Investment in such a scheme beyond the preliminary stages will be complicated by compliance with the Local Government Act's Procurement requirements and Regulations. Specific Ministerial approvals are likely to be required to justify a value for money outcome.

Historically Council would develop and therefore fund sewer strategies for land proposed to be rezoned. In this case it is considered to be out of sequence development and Council's resources are allocated to the development of existing zoned land. This circumstance has required developers to take the initiative and demonstrate how this area can be effectively sewered before any rezoning application could be considered.

Therefore in reference to all of the above issues and if Council intends to progress consideration of this area for future rezoning in the short to medium term, then it is recommended that this offer be accepted for the following reasons:

- The rezoning considerations can't progress without a sewerage strategy
- The Strategy is based on the premise of maximising effluent reuse and incorporates technology that allows this.
- Such a Strategy is considered to be the only realistic option of achieving government and Community acceptance.
- It allows Council the opportunity to investigate a potentially significant water reuse scheme likely to have very good water cycle management outcome.
- The proposed shared cost arrangement is considered to be cost effective for this type of engagement and minimises the individual parties' contributions to overhead costs.
- Council is not committed beyond the Strategy development.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Progression of this proposal beyond this strategy stage will require legal advice in respect compliance with procurement requirements and will require an escalating financial commitment at each stage. The implications of each future stage will require reassessment.

Adoption of the service delivery model using a private water utility would relieve Council of the responsibilities associated with development of a sewerage treatment plant in anticipation of development. The licensed network operator would be responsible for compliance with environmental and other considerations and the licensed retailer would be responsible for collection of charges and paying the network operator for its facilities. This proposal however includes an agreement for Council to provide the retail services to the licensed retailer.

POLICY IMPLICATIONS:

Proceeding with this strategy is contrary to Council's adopted position on the Urban Land Release Strategy.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

24 [CNR-CM] Integrated Water Cycle Management (IWCM) Strategy - Status Report

ORIGIN:

Water

SUMMARY OF REPORT:

This report provides a summary of the progress on the implementation of the IWCM Strategy and its 18 actions, last updated in January 2009.

The report also provides a quick reference table of **21 updated IWCM Strategy actions**.

RECOMMENDATION:

That:

- 1. Council notes the progress of the implementation of the Integrated Water Cycle Management Strategy.**
- 2. The 2011 Integrated Water Cycle Management Strategy Action Plan contained within the report be adopted.**
- 3. Council Officers bring forward a further report detailing the progress of the implementation of the Integrated Water Cycle Management Strategy actions in 12 months.**

REPORT:

Background

Integrated Water Cycle Management (IWCM) is the integrated management of the water supply, sewerage and stormwater services within a whole of catchment strategic framework and provides a long term focus on their integrated delivery.

Council engaged consultants Hunter Water Australia to prepare a Context Study & Strategy Report in order to define the catchment, water resource and urban issues faced by Council and to outline a broad strategy for the future. In December 2006 Council adopted the Integrated Water Cycle Management Context Study and Strategy Report incorporating 26 IWCM Strategy actions. On 27 January 2009 Council adopted an updated list of 18 IWCM Strategy actions identified to ensure that the objectives and updated priorities of the IWCM are being met.

This report to Council provides a summary of the status of the 18 IWCM Strategy actions, as presented to Council in January 2009. The actions are arranged under the headings of:

- Urban Town Water
- Urban Wastewater
- Urban Stormwater
- Urban Design
- Catchment Management

The table at the end of this report provides an updated list of 21 IWCM actions to be focussed on as priorities. A new heading of 'Overarching Strategies and Plans' has been added and some of the 18 actions have been split, to better present the actions, making them easier to follow and to track.

Progress on Implementation

Urban Town Water

Action 1 – Demand Management Strategy

The action set by Council in January 2009 has been completed. It required a Demand Management Strategy to be undertaken.

Stage 1 of the Demand Management Strategy and its recommendations which address demand management in both greenfield (new) and brownfield (existing) residential areas was adopted by Council on 17 February 2009.

Stage 2 of the Demand Management Strategy which addresses demand management in commercial and industrial areas and a summary report of both stages were adopted by Council on 19 October 2010.

In December 2010 Tweed Shire Council employed a Demand Management Program Leader whose main responsibility will be to implement the recommendations of the overall Demand Management Strategy.

An implementation plan for the Demand Management Strategy will be developed and brought forward to Council for adoption early in 2011.

Action 2 – Drought Management Strategy

The action set by Council in January 2009 has been completed. It required a Drought Management Strategy to be undertaken.

The Drought Management Strategy and its recommendations prepared by MWH were adopted by Council on 17 November 2009.

A water quality study of Clarrie Hall Dam was commenced in late 2010 by Hunter Water Australia, to investigate the nature and occurrence of and the most effective way in which to address stratification in the dam. Additional destratification capacity proposed will provide more capability in managing the existing water supply system generally and particularly during drought conditions.

The 'Drought' Business Continuity Plan prepared in December 2010 documents emergency response actions. These are triggered when Clarrie Hall Dam reaches the 25% level and a review of the performance and adequacy of water restrictions (Level 7) and emergency supply arrangements indicates they will not suffice for continuing drought conditions.

Council's drought management policy, water restriction triggers and targeted savings are to be reviewed within the next 12 months.

Alternative drought emergency water supply will be considered based on the outcome of the water supply augmentation project as it progresses.

An implementation plan for the Drought Management Strategy will be developed and brought forward to Council for adoption in the next 12 months.

Action 3 – Develop Risk Based Water Quality Management Plan

The action set by Council in January 2009 has been substantially completed through the development of Council's Drinking Water Quality Policy.

Council adopted the Drinking Water Quality Policy (Version 1.0) in December 2010. The policy formalises Council's position on and commitment to drinking water quality and its management, as recommended in the Australian Drinking Water Guidelines (ADWG).

Water Futures Pty Ltd carried out an assessment of Council's compliance with the ADWG, including a gap analysis. There are 12 elements in the ADWG covering a range of issues dealing with water quality, hazard identification and risk assessment, operational procedures, monitoring, management of incidents and emergencies, training, community awareness, research and development, documentation and reporting, evaluation and continual improvement.

Subsequently Council engaged Water Futures to address some of the high priority elements identified by the gap analysis. The project is about 50% complete. The most critical elements are practically complete and the remaining elements will be completed by Water Futures, Hunter Water Australia and Tweed Shire Council by end of June 2011.

Once the project is completed, the result will be fully compliant with the ADWG. Compliance with the Guidelines is a prerequisite for future funding opportunities administered by the NSW Office of Water (NOW) under the NSW Country Towns Water Supply and Sewerage Program. It is also a requirement of the NOW Best-Practice Guidelines.

Action 4 – Develop and Implement Leakage Reduction Plan

Work has been undertaken on the action set by Council in January 2009.

The Water Supply Network model has been used to identify low and high pressure zones. This was primarily done with a view to managing water pressure but the results will provide information for future pressure reduction activities.

Drop tests have been carried out on four reservoirs – Walmsley's in Tweed Heads West, Razor Back in Tweed Heads, Hartigan Hill in Murwillumbah and Burringbar. The NSW Water Directorate provided financial and hands on assistance with the drop tests. Leakage issues were identified in the Razor Back system and Aqua Environmental were subsequently engaged to carry out leak detection work across Tweed Heads and Cudgen. Two minor leaks were also found and repaired in the Burringbar zone.

Council was successful in obtaining funding assistance from the NSW Water Directorate for the leak detection work as well as the installation of permanent flow metering on the outlets of pump stations at Razor Back and East Banora.

Further funding opportunities through the Water Directorate are being investigated, to carry out a drop test on the reservoir at Kingscliff and install permanent flow metering at a number of major pump stations.

Historically, Council had already installed a number (approx. 28) pressure reduction valves throughout the water supply system. These valves were installed to address high pressure problems at the time but can now be used to manage demand as well.

A detailed leakage reduction plan is due to be developed as part of the Demand Management Strategy implementation in mid 2011.

Action 5 – Quality Management Plan

Work has been undertaken on the action set by Council in January 2009.

The DWE Best-Practice of Water Supply and Sewerage Guidelines (Aug 2007) encourage local water utilities such as Council to prepare and implement a Quality Management Plan (QMP). The aim of the QMP is to improve and provide consistent performance of Council's water supply and wastewater services, resulting in improved customer and stakeholder satisfaction.

The DWE Guidelines set out the key principles to be considered in the QMP namely: customer focus; leadership; involvement of people; process approach; system approach to management; continuous improvement; factual approach to decision making; and mutually beneficial supplier relationships.

While Council has not developed an overarching QMP at this stage, it has prepared and implemented a number of plans and strategies that address many of the elements that would be included in the QMP. Council's Community Strategic Plan, adopted in late 2010, represents leadership in many areas of Council's planning and operations. The Water Unit's Water Supply and Wastewater Activity Management Plans and Business Continuity Plan also address many of the QMP elements.

In particular, the Water and Wastewater Activity Management Plans are documented strategies based on corporate knowledge aimed at enabling continuing delivery of services and to ensure that stakeholder satisfaction is maintained.

The plans are the subject of ongoing monitoring, review and updating to incorporate changes to policies and procedures to improve the quality of asset management planning and accuracy of the financial projections. This process uses improved knowledge of customer expectations and enhanced asset management systems and data to optimise decision-making, review outputs, develop strategies and extend the planning horizon. Quality assurance audits of asset information are undertaken to ensure the integrity and cost effectiveness of data collected.

Peer reviews and internal audits are undertaken to assess the effectiveness with which the plans meet corporate objectives. Also, periodic internal audits are undertaken to assess the adequacy of water activity processes, systems and data, and external audits undertaken to measure performance against 'best practice'.

The status of Quality Management for particular Water Unit activities is shown in the following table.

Water Unit Activity	Status of Quality Management
Water and Wastewater Activity Management Plans	<ul style="list-style-type: none"> Prepared in 2007 and to be updated by July 2011
Asset Management	<ul style="list-style-type: none"> Monitoring of service levels via customer work request system Obtained from planned and reactive maintenance Proactive CCTV condition evaluation program for sewers
Maintenance Management	<ul style="list-style-type: none"> Strategy and implementation via MEX (computerised maintenance management system)
Operations Management	<ul style="list-style-type: none"> Manuals document procedures and information
Pipeline Renewals	<ul style="list-style-type: none"> Planning based on risk using 'AssetPlan'
Non Pipeline Renewals	<ul style="list-style-type: none"> Planning based on risk using ASSETIC is proposed
Valuations	<ul style="list-style-type: none"> Methodology documented and recently updated in July 2010
Levels of Service	<ul style="list-style-type: none"> Statements documented and currently under review Reflects community desires through public consultation (service level review)
Risk Management	<ul style="list-style-type: none"> Risk analysis and controls documented and annually reviewed in accordance with Council's Risk Management Processes Documented Business Continuity planning for priority risks
Knowledge Management System (KMS)	<ul style="list-style-type: none"> Documented Water Unit knowledge system, including library, plan register and operations and maintenance manuals
Policies Development	<ul style="list-style-type: none"> Draft documented policies currently being reviewed and finalised
Performance Reporting	<ul style="list-style-type: none"> Corporate, NWI & Government compliance reporting undertaken and comprehensive data management systems to be developed

Action 6 – Environmental Management Plan

The development and implementation of an Environmental Management Plan is also encouraged under the DWE Best-Practice Management of Water Supply and Sewerage Guidelines.

Council is following a new direction for environmental management due to Council's restructure and state government integrated planning and reporting requirements (i.e. Community Strategic Plan). There is a raft of management plans and strategies relating to environmental management of the catchments, including estuary management plans, a vegetation management strategy, a local action plan for greenhouse gas reduction, State of the Environment reporting and Standard Operating Procedures for works carried out by Council field staff. Any significant works will have Project Management Plans (PMP) and large projects also have specific Environmental Management Plans (EMP).

An overarching Environmental Management Plan is likely to be developed in future, pending resource allocation, to establish the overall context of these other plans and strategies.

Action 7 – Determine Preferred Option for the Augmentation of the Water Supply

The action set by Council in January 2009 has been completed. A Water Supply Augmentation Options study was undertaken to determine the best way to augment the water supply to meet the Shire's needs until the end of the planning period in 2036.

The first stage of the study was adopted by Council at its meeting of 20 October 2009. It identified nine options for analysis and ranked these options using multi criteria analysis (MCA) which include economic, social, environmental and governance considerations. It proposed a short-list of 3 options and a contingency option for further investigation.

In the second stage of the Options study (Fine Screen Report), these short-listed options were assessed in more detail to determine a preferred option. This stage was based on more detailed information and studies of the short-listed options, together with a comprehensive community consultation process to further inform the MCA. Additional detailed information has been sourced through:

- Additional consultants' reports focusing on environmental, cultural heritage, planning, and costing issues.
- Consultation with stakeholder groups including potentially affected landholders, the Aboriginal community, government agencies and community groups.
- Consultation with residents and the Tweed community through a comprehensive sixth month process, including facilitation of an independent Community Working Group.
- Improving ways for the community to provide feedback and submissions through a designated email address and Freecall 1800 number.

The Fine Screen Augmentation Options Report was considered by Council in October 2010. Council's preferred option was to construct a new dam on Byrrill Creek.

Action 8 – Procure Upgraded WTP at Tyalgum

Work is underway on the action set by Council in January 2009.

Works have commenced to build a new water treatment plant (WTP) at Tyalgum including augmenting components of the existing WTP. Council has chosen to construct a membrane filtration plant.

Council will seek Section 60 approval from the NSW Office of Water once the Design and Construct Tender for the treatment process has been finalised. A letter has been submitted to NOW seeking Stage 2 approval for concurrence and seeking retrospective funding under the NSW Country Towns Water Supply and Sewerage Program.

Building works have been completed to lock up stage and tenders for the membrane treatment process have closed. It is anticipated that construction and commissioning will be completed by the end of 2011. A specific report to the Council meeting in January 2011 provided detail on the contract status.

Action 9 – *Investigate and Determine Requirement for Upgrading the WTP at Uki*

Work is on hold until the Australian Drinking Water Guideline gap analysis is complete. The risks at Uki WTP will be assessed in light of the gap analysis report being carried out by Water Futures. This assessment will determine whether any action (management controls or upgrade) is warranted and whether external resources might be required. This will also determine the timeframe required for any remedial works or actions. A project manager will be allocated once the gap analysis is complete.

Action 10 – *Implement Asset Management Plans – Water Supply*

Work is underway on the action set by Council in January 2009.

The Water Unit's Water Supply and Wastewater Activity Management Plans provide detailed support in these areas to the Corporate Asset Management Plan. These are to be updated in 2011.

An Asset Engineer and Officer were appointed in 2010 which has increased the unit's ability to progress asset management and improvements.

The **Assetic** program is being implemented across Tweed Shire Council for valuation and financial asset management. Water Unit assets are in the process of being added to the Assetic program. The pipeline renewal program has been updated using the AssetPlan decision support system, with data currently being converted to be able to work in Assetic for renewal modelling.

It is envisaged that this process will be completed by the end of 2011. The asset management plans are required to dovetail with Council's Community Strategic Plan which was adopted by Council in December 2010.

Additionally, maintenance management, customer request, GIS, telemetry and SCADA, water quality and other data systems are being progressively developed to provide the matrix of inputs for asset management requirements. A risk-based maintenance strategy, risk-based pipeline renewal manual and an asset management manual have been developed for the Water Unit. Their implementation is being progressed through the development of various systems.

Finally, a risk-based approach under Council's Enterprise Risk Management Strategy is being progressively incorporated in the Water Unit's numerous asset management systems and processes.

Urban Wastewater

Action 11 – Optimise the Present Sewerage Infrastructure

Work is underway on the action set by Council in January 2009.

Council has undertaken flow gauging and monitoring in the catchments of East Banora Point, Tweed Heads Central, South-west Murwillumbah, South-west Tweed Heads and Bilambil Heights. The data is being analysed and modelled to determine any program of works required to abate overflows and optimise these catchments.

Council has prepared a Sewer Overflow Abatement Strategy. The Strategy identifies actions to be taken and those actions have been placed in the capital works and operational programs. The capital items have been included in future budgets, pending adoption, for implementation with the majority of items being completed by 2013.

Action 12 – Determine Options for the Augmentation of the Sewerage Infrastructure

Ongoing work is addressing the action set by Council in January 2009.

The Banora Point WWTP is being upgraded to increase its capacity from 50,000 EP to 75,000 EP with improved effluent quality. Construction commenced in September 2010 and it is anticipated that the upgraded plant will be operational by mid 2012.

While the Tweed Heads WWTP is currently decommissioned, Council has obtained approval to redevelop the plant to 10,000 EP, with equivalent effluent quality to the upgraded Banora Point WWTP, if and when required.

A new WWTP and associated reticulation conveyancing system are to be constructed to service the villages of Burringbar and Mooball. The construction of the WWTP and sewerage system is being managed by separate contracts with tenders for both closing on 22 December 2010. Works are expected to commence in March 2011, with completion and commissioning expected in late 2012.

Council resolved in November 2011 to support, in principle, a proposed stand alone private water and wastewater utility scheme for urban land release Area 9 in Mooball. It is proposed that Council would enter into an agreement with the utility service provider under an IPART licence to provide retail services. One of Council's conditions is that the developer/private utility company remains open to considering the future option of servicing urban land release Area 8 in Burringbar as well.

A Development Control Plan is being prepared for Area 'E' at Terranora. It is envisaged that the DCP will be ready for public exhibition in March/April 2011 with Council endorsement expected by August 2011. The development of Area E is likely to cater for about 4,000 additional people.

Infrastructure strategies have also been developed to concept stage for future developments at Cobaki Lakes and The Rise at Bilambil Heights. It is estimated that these developments,

including Area E, would cater for up to 18,000 additional people. To cater for these new developments, further augmentation of the Banora Point WWTP would be required. Options for effluent disposal from the Banora Point WWTP would subsequently come under increased scrutiny, to consider options to relocate the effluent outfall and/or provide a higher level of treatment, to part and/or all dry weather flows, to maximise recycled water (effluent reuse) opportunities from the augmented plant.

An infrastructure strategy to concept stage has also been developed for future development at Kings Forest. It is envisaged that this new development would require the augmentation of the Kingscliff WWTP to cater for the estimated 11,500 additional people to be serviced by this new development.

A separate report is being put forward to Council relating to the augmentation of sewerage infrastructure to cater for development in South West Pottsville and the Hastings Point catchment.

Action 13– *Effluent Reuse Opportunities*

Work has been undertaken on the action set by Council in January 2009.

Options for effluent reuse were considered in the Demand Management Strategy. The DMS recommends that for West Kingscliff, recycled water be made available to future industrial land use areas where demand is identified. The DMS also recommends that Council continues to encourage effluent reuse schemes and other integrated water solutions that are sustainable in the long term proposed by developers of greenfield sites.

Council has already developed the following effluent reuse (recycled water) opportunities:

- Chinderah golf course – recycling up to 110ML/a from Kingscliff WWTP; operating since 2009
- Condong co-generation facility – recycling up to 584ML/a from Murwillumbah WWTP; operating since 2007
- Coolangatta Tweed Head golf club – recycling up to 250ML/a from Banora Pt WWTP; operating since 1987
- Tumbulgum turf irrigation – currently not in use; some minor use on taro crop since 1999; presently investigating future use on new turf farm
- Tyalgum pasture irrigation – recycling up to 19ML/a from Tyalgum WWTP; operating since 1987
- Uki Eucalyptus tree plantation – recycling up to 15ML/a from Uki WWTP; operating since 2004

Several other recycled water opportunities have been identified and are at various stages of investigation and design, including:

- Arkinstall Park and Memorial Gardens, Tweed Heads – recycling up to 230ML/a from Banora Pt WWTP; concept design completed 2008; design for Memorial Gardens due to start 2011
- Barry Sheppard Oval and Round Mountain pony club – recycling up to 200ML/a from Hastings Pt WWTP; currently under consideration
- Burringbar/Mooball recycled water scheme – recycling up to 20ML/a; can be pursued once the new WWTP is operating

- Chinderah Ti tree plantation – recycling up to 950ML/a from Kingscliff WWTP; under consideration
- Kingscliff recycled water scheme – recycling up to 180ML/a from Kingscliff WWTP; concept design completed 2005; to be revisited once future development in West Kingscliff becomes clearer
- Les Burger Field (rugby club), Bogangar – recycling up to 55kL/d from Hastings Pt WWTP; scheduled for construction Jan 2011
- Tweed Heads South industrial area – under preliminary consideration; will depend on Banora Pt WWTP upgrade and customer effluent quality requirements
- West Kingscliff residential area – to be investigated for future development
- West Kingscliff industrial estate – identified in the Demand Management Strategy as an option to be investigated prior to future development

In respect to new development, Council is willing to receive and assess submissions from developers who propose reuse.

Action 14 – Implement Asset Management Plans – Waste Water

See Item 10.

Urban Stormwater

Action 15 – Implement Targeted Retrofit Program for Retention/Treatment Hotspots

Ongoing work is addressing the action set by Council in January 2009.

The Tweed Urban Stormwater Quality Management Plan prepared in April 2000 identified a number of priority projects for improving stormwater quality. Some of these works have been completed (e.g. Jack Evans Boat Harbour at Tweed Heads and small gross pollutant traps in urban areas), while others remain unfunded.

Council has engaged Australian Wetlands to review the Urban Stormwater Quality Management Plan and to update it to reflect the philosophies of Water Sensitive Urban Design. This review is expected to be completed by mid 2011. The revised plan will provide a methodology for assessing the adequacy of existing stormwater quality improvement devices. It is envisaged that the list of stormwater quality ‘hotspots’ will subsequently be reprioritised and funded accordingly.

Council’s Planning and Infrastructure Unit is updating D7, the development design specification for new development relating to stormwater quality. For this review, WSUD practices from SE Queensland are to be adopted where applicable.

Urban Design

Action 16 – Ongoing Implementation of WSUD and ESD Principles

Ongoing work is addressing the action set by Council in January 2009.

There are issues to be considered such as how developments are planned, education of the community and strengthening planning requirements. This consideration is being undertaken by Council staff and the results will be incorporated into the updated LEP and

future revisions of subdivision and stormwater design specifications such as D7 mentioned above.

As part of the Demand Management Strategy options for dual reticulation and decentralised sewerage were assessed. It was found that in general dual reticulation and decentralised sewerage provided no advantage or additional advantage over the proposed implementation of BASIX, with 5,000 kL water tanks and reduced infiltration gravity sewers (RIGS).

Notwithstanding opportunities may arise for sewer mining in greenfield areas. Such opportunities will be dependent on the style of the development proposed and the willingness of the developer. Where opportunities are identified by the developer, Council will assess the proposals put forward.

Action 17 – Continue Liaison with Proponents of Developments to Promote WSUD and ESD

The Demand Management Strategy identified and analysed options for alternatives to rainwater tanks such as dual reticulation and stormwater harvesting. It recommended the use of rainwater tanks and did not recommend solutions such as dual reticulation, sewer mining and stormwater harvesting in existing areas.

Notwithstanding opportunities for sewer mining, recycling of water and other integrated water solutions that are sustainable in the long term may arise in greenfield areas. These would be assessed on a case by case basis.

Council Planning, Engineering and Water Unit staff continue to work collaboratively in assessing new developments with a view to promoting sustainable water cycle management options. Notwithstanding, Council has limited power to enforce WSUD and ESD principles in new developments approved under Part 3A of the EP&A Act.

Catchment Management

Action 18 – Complete a Drinking Water Catchment Management Plan

Work has begun on the action set by Council in January 2009.

The risk assessment process being carried out for the water quality management plan (Action 3) will broadly identify some of the hazards impacting on the drinking water catchment. A more detailed catchment management plan will be commenced, pending adequate resources, once Action 3 has been completed.

The Tweed River Committee provides direction on initiatives for items such as stream bank protection, planning controls, education and revegetation. The mandatory Water and Sewer Dividend Payment funds catchment and water quality improvement initiatives.

Council's On-Site Sewage Management Strategy has been implemented over the last 10 years and is currently being revised to bring it up to date. Notwithstanding an enhanced catchment risk assessment which includes the catchments of all water supplies is required to integrate the On-Site Sewage management Strategy into the Catchment Management Strategy.

Ongoing IWCM Strategic Actions

The 2011 updated IWCM Strategy Action Plan follows in the quick reference table below:

Item	Action	Activity	Status
Overarching Strategies and Plans			
1	Develop Quality Management Plan	Prepare overarching Plan linking existing subordinate plans and processes.	QMP elements addressed in Community Strategic Plan, Business Continuity Plan, Activity Management Plans. QMP to follow pending resources.
2	Develop Environmental Management Plan	Prepare overarching Plan linking existing subordinate plans and processes.	EMP elements addressed in Community Strategic Plan, Estuary Management Plans, Vegetation Management Strategy, SOE reporting. EMP to follow pending resources.
3	Implement Asset Management Plans	Update Activity Management Plans. Implement Assetic program. Update pipeline renewal program. Develop systems and implement plans.	Under way – plans to be completed by end of 2011. Implementation to follow.
4	Implement WSUD and ESD Principles	Review subdivision and stormwater design specifications on an ongoing basis. Update LEPs.	D7 to be reviewed by mid 2011. Ongoing submissions for LEP updates. Ongoing consideration of greenfield opportunities on a case by case basis.
5	Liaise with proponents of developments to promote WSUD and ESD	Continue to liaise with developers. Identify and consider opportunities as they arise.	Ongoing consideration of greenfield opportunities on a case by case basis.
6	Implement Water Education and Training	Implement the education and training programs associated with each of the individual IWCM Strategy actions	Council provides ongoing education and promotion for various IWCM Strategy Actions to schools, interest groups and the community.
Urban Water			
7	Adopt Demand Management Implementation Plan	Develop Implementation Plan.	Stages 1 & 2 of DMS complete & adopted by Council. Draft implementation plan due for Council consideration early 2011.
8	Adopt Drought Management Implementation Plan	Review strategy, water restriction levels and targeted savings. Conduct water quality study of CHD. Review emergency measures.	Strategy adopted by Council Nov 2009. Review by Nov 2011. Implementation plan due for Council consideration late 2011. Water quality study by mid 2011.
9	Develop Risk Based Water Quality Management Plan	Review remaining elements identified in ADWG gap analysis. Ensure compliance with ADWG.	Drinking Water Quality Policy adopted Dec 2010. Gap analysis complete. High priority elements have been addressed – 50% completed as at Jan 2011. To be completed by mid 2011.

Item	Action	Activity	Status
10	Develop and Implement Leakage Reduction Program	Seek further funding through NSW Water Directorate. Carry out modelling and analysis. Develop leakage reduction plan.	To be carried out as part of Demand Management Strategy implementation plan. Some zones have been completed. Leakage reduction plan due mid 2011 as part of DMS.
11	Determine Preferred Option for the Augmentation of the Water Supply	Review preferred option.	Preferred option to build new dam on Byrill Creek adopted Oct 2010. Review in light of Water Sharing Plan pending.
12	Procure upgraded WTP at Tyalgum	Complete building works. Seek Section 60 approval once treatment process is finalised. Construction and commissioning.	Building works completed to lock up stage. Process construction and commissioning due to be completed end of 2011.
13	Investigate and determine requirement for upgrading the WTP at Uki	Assess needs in light of Australian Drinking Water Quality Guidelines gap analysis. Determine requirement for upgrade. If required, design and procure upgrade.	On hold pending completion of action 3.
Urban Wastewater			
14	Optimise Existing Sewerage Infrastructure	Create system model. Undertake gauging and monitor flows to calibrate model. Monitor wet weather performance of WWTPs. Complete Sewer Overflow Abatement Strategy.	Flow gauging completed at East Banora Point, Tweed Heads Central, South-west Murwillumbah, South-west Tweed Heads and Bilambil Heights. Actions from Sewer Overflow Abatement Strategy to be completed by 2013.
15	Determine Options for Augmentation of the Sewerage Infrastructure	Determine long range demand forecasts. Undertake Options Studies. Determine recommended options.	Banora Point WWTP being upgraded by mid 2012. Burringbar & Mooball sewerage system by late 2012. DCP being prepared for Area E – by Aug 2011. Infrastructure strategies under way for Cobaki Lakes, Kings Forest & The Rise at Bilambil Heights.
16	Maximise Water Recycling (Effluent Reuse) Opportunities	Assess proposals for reuse when presented. Continue to identify opportunities for investigation.	Ongoing. Several schemes operating. A number of others (9) at various stages of investigation and design. Demand Management Strategy implementation plan to look at other opportunities in detail.
Urban Stormwater			
17	Review Urban Stormwater Quality Management Plan	Review Plan.	Plan review to be completed by mid 2011.
18	Update Development Design Specification D7 – Stormwater Quality	Update D7.	D7 to be updated by mid 2011.
19	Identify Targeted Retrofit	Prepare targeted program for	Prepare Hotspot Plan once

Item	Action	Activity	Status
	Program for Retention/Treatment Hotspots	stormwater retention/treatment hotspots.	USQMP completed. Implement plan pending resources.
Catchment Management			
20	Review On-site Sewage Management Strategy	Review strategy.	Strategy to be updated by mid 2011.
21	Develop Drinking Water Catchment Management Plan	Review risk identification in three water supply catchments. Identify hot spots and determine strategies to minimise risk. Draft Catchment Management Strategy.	Risk Assessment to be carried out by mid 2011. Drinking Water Catchment Management Plan to follow pending resources.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The 2011 Revised IWCM Action Plan relates to Council's core business as a Local Water and Wastewater Utility. This program of work requires significant resource and financial commitments to complete.

POLICY IMPLICATIONS:

Further policy development is required across the full range of the Water and Wastewater functions of Council.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

25 [CNR-CM] Clarrie Hall Dam Spillway Upgrade - Engagement of Design Consultants

ORIGIN:

Water

SUMMARY OF REPORT:

This report outlines the proposal for EC2010-208 Clarrie Hall Dam Spillway Upgrade - Detailed Design and provides recommendation for its acceptance.

Recommendations are based on assessment of the proposal relative to the original tender assessment process for EC2006-129 Clarrie Hall Dam Spillway Upgrade - Concept Design and EIA and are detailed in **CONFIDENTIAL ATTACHMENT A**. Based on an assessment of price and non-price considerations, it is recommended that Council accepts the proposal from NSW Water Solutions for EC2010-208 Clarrie Hall Dam Spillway Upgrade - Detailed Design.

Under Section 55 of the Local Government Act there is no requirement for Council to invite tenders when entering into a contract with the Crown. However, to maintain consistency with the engagement under Portion 1 (which was approved by Council) and to promote transparency Council approval is being sought for the engagement.

RECOMMENDATION:

That:

- 1. Council accepts the proposal from NSW Water Solutions for EC2010-208 Clarrie Hall Dam Spillway Upgrade - Detailed Design for the lump sum fee of \$134,552 (including GST).**
- 2. The General Manager be given delegated authority to approve variations up to \$70,000 (including GST) above the total price to allow for works associated with the Early Tenderer Involvement (ETI) process, Tendering and Construction phases of the project.**
- 3. ATTACHMENT A is CONFIDENTIAL in accordance with Section 10A(2)(c) or Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:**
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council conducting (or proposes to conduct) business**
 - (d) commercial information of a confidential nature that would, if disclosed:**

- (i) prejudice the commercial position of the person who supplied it, or**
- (ii) confer a commercial advantage on a competitor of the council, or**
- (iii) reveal a trade secret**

REPORT:

Council resolved, at its meeting of 16 November 2010, to progress work to upgrade the spillway on the existing Clarrie Hall Dam (CHD) to meet the requirements of the NSW Dam Safety Committee (DSC). The timing of these works is independent of the need to augment the Tweed's water supplies.

In order to determine the exact nature of those works, Council will require the services of a specialist design consultancy to carry out the following works:

1. Concept Design and Environmental Impact Assessment (EIA)
2. Detail Design and Tender Documentation

Background

The Clarrie Hall Dam (CHD) was constructed in the early 1980s according to design standards applicable at the time. The NSW Dam Safety Committee (DSC), responsible for ensuring the ongoing safety of all registered dams in NSW, has requested Council upgrade the CHD to accommodate more recent design standards, and in particular the requirement for it to safely pass a Probable Maximum Flood (PMF).

In October 2006 three consultants (GHD, NSW Water Solutions, and SMEC) submitted tenders to Council Tender Document (Contract No. EC2006-129) in two separable portions based on a scope of works for:

- evaluation of options and preparation of Concept Design Report for the upgrade of the Clarrie Hall Dam spillway to pass the 1 in 100,000 AEP flood
- preparation of an EIA for the work
- detail design and preparation of tender documentation for the preferred option.

The separable portions were:

1. Concept Design and EIA
2. Detail Design and Tender Documentation.

Separable Portion 1

The contract was subsequently awarded to NSW Water Solutions for Portion 1 only. The approved fee amount was \$119,222 ex GST for Portion 1 based on a program duration of 34 weeks. Work commenced in December 2006 but was suspended in March 2007 pending the outcomes of the Water Supply Augmentation Options. The DSC had agreed to allow Council to incorporate the required spillway upgrade together with works to augment the dam's size if CHD was to be raised for water supply augmentation purposes by 2018.

Prior to suspension of Portion 1, NSW Water Solutions produced two reports *Clarrie Hall Dam Spillway Upgrade Development and Evaluation of Options Report (No. DC07014)* in March 2007 and the *Preliminary Environmental and Planning Overview (PEPO)* issued in June 2007. NSW Water Solutions were paid for these deliverables according to the original engagement. Changes to the Probable Maximum Flood (PMF) and legislative requirements since then, mean much of this work will need to be reviewed and undertaken again - refer to CONFIDENTIAL ATTACHMENT A for details of paid amounts.

Following Council's decision to select Byrrill Creek as the site of a new dam to augment the shire's water supply, NSW Water Solutions has been instructed to complete Portion 1 including the additional works to determine the PMF.

Separable Portion 2

An estimate for Portion 2 was provided in 2006 which included computer modelling of the proposed spillway, detail design, contract drawings and technical specifications. Program duration was 16 weeks. This portion of the fee was not approved (subject to completion of Portion 1).

NSW Water Solutions has been asked to revise its 2006 estimate for Portion 2 to accommodate scope changes due to the revised PMF and increases in unit rates since 2006. This is the preferred procedure for several reasons:

- Council would incur considerable extra cost to retender for this work
- NSW Water Solutions won the engagement under open tendering conditions, and the engagement was suspended for Council's benefit
- NSW Water Solutions have a thorough understanding of the original brief and the new requirements of this variation
- Utilising NSW Water Solutions will enable efficiencies:
 - i) they are proposing to use the same key personnel as outlined in the engagement originally
 - ii) they have completed some of the key preliminary work under the original engagement
- Notwithstanding under Section 55 of the Local Government Act there is no requirement for Council resolution to invite tenders when entering into a contract with the Crown.

It is proposed to provide for this work under a new engagement for Portion 2, to incorporate the following changes to the original scope of works:

- Better knowledge of Clarrie Hall Dam based on subsequent DSC and Water Supply Augmentation Project studies [clarifies scope]
- Inclusion for workshops [scope change] – refer Table 1.2, Column (3), CHAIR/HAZOP, Constructability
- Changes in fees since 2006 [price increases]

It is suggested that the new engagement utilise NSW Public Work's latest standard Conditions of Agreement to replace those under the original 2006 engagement.

It is likely that the Consultant will be required to provide technical advice and incorporate design modifications during an Early Tenderer Involvement (ETI) process, and during the tendering and construction phases. The exact scope will depend on questions and proposals raised by tenderers and the contractor, and on site conditions. It is proposed that these additional works would be charged based on the unit rates contained in NSW Water Solutions' proposal and actual disbursements.

Capabilities

- NSW Water Solutions has indicated they have a thorough understanding of both the original brief and the new requirements of this variation.
- They have confirmed the availability of key experienced personnel based on the team proposed in their original 2006 tender.
- They have confirmed resource availability to ensure timely completion of the new engagement deliverables.
- It is considered that NSW Water Solutions can complete the full scope of the revised brief at the proposed price.

Cost Evaluation

NSW Water Solutions' original tender price was lower than the other two companies who tendered in 2006. Given that NSW Water Solutions' price was accepted by Council at that time, their revised price for this variation was benchmarked against their original tender price.

A cost evaluation was carried out by removing items that were not part of the original tender (ie variations to the original scope as outlined on page 2) in order to allow comparison. This amount was then indexed for inflation over the four years from October 2006 to November 2010. The results of this analysis show that in real dollars the 2010 proposal is at a lower cost than the original proposal and is therefore considered good value - refer to CONFIDENTIAL ATTACHMENT A.

RECOMMENDATION:

Council approval is being sought for the engagement of Portion 2. It is recommended that Council accept the proposal from NSW Water Solutions for the lump sum fee of \$134,552 (including GST) for Portion 2 based on the assessment carried out in CONFIDENTIAL ATTACHMENT A, and for the following reasons:

- Council would incur considerable extra cost to retender for this work
- NSW Water Solutions won the engagement under open tendering conditions and were cheaper than the next closest price
- NSW Water Solutions have a thorough understanding of the original brief and the new requirements
- Utilising NSW Water Solutions will enable efficiencies:
 - i) they are proposing to use the same key personnel as outlined in the engagement originally
 - ii) they have completed some of the key work under the original engagement
- Excellent overall experience and performance in similar types of works, and were the designers and project managers who constructed the original CHD.
- Prepared to reduce Council costs as much as possible through use of telephone and email advice wherever possible
- Pricing is competitive
- Under Section 55 of the Local Government Act there is no requirement for Council resolution to invite tenders when entering into a contract with the Crown.

Furthermore it is recommended that Council accept Portion 2 with provision to increase the amount of the order by up to 50% to allow for works associated with the Early Tenderer Involvement (ETI) process, Tendering and Construction phases of the project as described in CONFIDENTIAL ATTACHMENT A.

Under Section 55 of the Local Government Act there is no requirement for Council to invite tenders when entering into a contract with the Crown. However, to maintain consistency with the engagement under Portion 1 (which was approved by Council) and to promote transparency Council approval is being sought for the engagement.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. **Confidential Attachment** - EC2010-208 Detailed Design Assessment of Proposal from NSW Water Solutions for Design Consultancy Services (ECM 27647449)
-

26 [CNR-CM] Quarterly Variation Report for Contract EC2009-068 - Banora Point Wastewater Treatment Plant 18ML Upgrade construction: October 2010 to January 2011

ORIGIN:

Water

FILE NO: GC12/2-2006157

SUMMARY OF REPORT:

At the Council Meeting of 20 July 2010, a tender was accepted from Tenix Australia Pty Ltd for the construction of the 18ML Banora Point Wastewater Treatment Plant. The project will upgrade the wastewater treatment plant from 15ML/day to 18ML/day. The accepted lump sum tender price was \$28,074,144.20 inclusive of GST. This amount did not include payment of Rise and Fall which is payable under the Contract.

Contract works commenced in September 2010 and are predicted to be finished by March 2012.

The Council decision delegated authority to the General Manager to approve variations totalling up to 10% of the contract sum, (ie. \$2,807,414.42 inclusive of GST). The total value of approved variations to the end of January 2011 is **-\$73,912.14** inclusive of GST. The negative number has resulted from deductions from the contract provisional sums, which exceeds additional work variations to date. The total value of approved variations is well within the current limit of delegated authority of 10% of the original contract sum.

In addition to the variations detailed in this report, there are variations that are currently being reviewed by Council's project management team. Details of these potential variations are provided in CONFIDENTIAL ATTACHMENT A.

RECOMMENDATION:

That:

- 1. The total value of variations to date of **-\$73,912.14** inclusive of GST, for Contract EC2009-068 Construction of the Banora Point Wastewater Treatment Plant, be endorsed: -**
 - a) Variation No. 1 – Deletion of the provisional sum for asbestos removal. **(-\$16,500.00 GST Incl.)****
 - b) Variation No. 2 – Asbestos investigation report **(\$568.70 GST Incl.)****
 - c) Variation No. 3 – Deletion of the provisional sum for the sheet pile wall at the balance tank. **(-\$327,800.00 GST Incl.)****

- d) Variation No. 4 – Sheet pile geotechnical investigation report (\$10,106.25 GST Incl.)
- e) Variation No. 5 – Installation of groundwater monitoring bores behind proposed sheet pile wall at balance tank. (\$8,624.00 GST Incl.)
- f) Variation No. 6 – Installation of sheet pile wall at balance tank. (\$119,625.00 GST Incl.)
- g) Variation No. 7 – Checking for fauna in trees to be cleared (\$10,455.93 GST Incl.)
- h) Variation No. 8 – Sorting and disposal of debris from clarifier excavation. (\$11,864.74 GST Incl.)
- i) Variation No. 11 – September Rise and Fall (\$1,051.52 GST Incl.)
- j) Variation No. 15 – Remove and replace unsuitable material on Road 04. (\$28,231.29 GST Incl.)
- k) Variation No. 121 – Remove and replace unsuitable material on Road 01. (\$80,058.43 GST Incl.)

2. ATTACHMENT A be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:

At the Council Meeting of 20 July 2010, a tender was accepted from Tenix Australia Pty Ltd for the construction of the 18ML Banora Point Wastewater Treatment Plant. The project will upgrade the wastewater treatment plant from 15ML/day to 18ML/day. The accepted lump sum tender price was \$28,074,144.20 inclusive of GST.

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Rise and Fall is a cost adjustment which allows for fluctuations in labour and material costs during the construction period. Rise and Fall is payable under the contract and is administered as a variation to the lump sum tender price.

The major variations to date have been a consequence of either:

- Works related to the sheet pile wall at the balance tank
- Unexpected site conditions,
- Environmental conservation and management , and
- Omissions, ambiguities or discrepancies in design and documentation.

Details of the variations approved during the period October to January 2011 are provided below for the information of Council, as follows:

Variation No.	Description	Amount (Incl GST)	Status
1	The contract had a provisional sum allowance for the investigation and removal of asbestos, if required, from the buildings to be demolished under the contract. This provisional sum is deducted from the contract sum at the beginning of the works, with the actual costs of the works added to the contract sum. Variation 1 was for the deduction of the provisional sum.	-\$16,500.00	Approved
2	This variation was for testing for the presence of asbestos in the buildings proposed to be demolished. There was no asbestos found in any of the buildings. Thus no asbestos was required to be removed during the demolition. The only other cost against this item would be if buried asbestos pipe is found and is required to be removed and disposed of in accordance with legislation.	\$568.70	Approved

Variation No.	Description	Amount (Incl GST)	Status
3	The contract had a provisional sum allowance for the provision of a sheet pile wall at the balance tank to ensure the stability of the excavation. This provisional sum is deducted from the contract sum at the beginning of the works, with the actual costs of the works added to the contract sum. Variation 3 was for the deduction of the provisional sum.	-\$327,800.00	Approved
4	This variation was for the cost of geotechnical investigations for the sheet pile wall and its implications on the works. Other works against the provisional sum to date are covered under Variations 5 and 6.	\$10,106.25	Approved
5	This variation was for the cost of groundwater monitoring bores recommended in the investigation carried out under Variation No 4. These bores enabled the contractor to monitor changes in the groundwater level as dewatering of the balance tank excavation took place.	\$8,624.00	Approved
6	This variation was for the cost of the supply and installation of the sheet pile wall to protect the embankment adjacent to the balance tank excavation.	\$119,427.00	Approved
7	This variation was to use a boom truck to check the hollows of trees earmarked for felling during the clearing of the balance tank site. Two sugar gliders and a possum and its babies were rescued and relocated to a new habitat.	\$10,455.93	Approved
8	When excavation for the clarifier was taking place, a significant amount of concrete and pipe debris was discovered under the surface. An old sheet pile wall that was installed in the mid nineties to protect the excavations for the two clarifiers was also discovered and removed. As this was unknown site conditions, it was a variation under the contract. The material was sorted and sent to recyclers.	\$11,864.74	Approved
11	The contract included quarterly Rise and Fall adjustments due to its duration. This variation is for the September rise and fall payment.	\$1,051.52	Approved
15	The contract documents allowed for material excavated on site to be available for fill under roads and structures. Following a site visit by the geotechnical designer, it was ascertained that this material was not suitable for general fill under the road pavements. Thus material had to be imported. Additionally, the design subgrade for the road contained material to commence road construction on. Thus additional material had to be supplied and placed. This occurred on Roads 01 and 04. This variation relates to Road 04.	\$28,231.29	Approved

Variation No.	Description	Amount (Incl GST)	Status
16	The contract documents allowed for material excavated on site to be available for fill under roads and structures. Following a site visit by the geotechnical designer, it was ascertained that this material was not suitable for general fill under the road pavements. Thus material had to be imported. Additionally, the design subgrade for the road contained material to commence road construction on. Thus additional material had to be supplied and placed. This occurred on Roads 01 and 04. This variation relates to Road 01.	\$80,058.43	Approved
	Total	(\$73,912.14)	

The approved variations have been or will be incorporated into the works.

The original project budget contingency is \$2,807,414.42 (GST Incl.).

Thus the current project budget contingency is \$2,881,326.56 (GST Incl.).

In addition to the variations detailed in this report, there are variations that are currently being reviewed by Council's project management team. Details of these potential variations are provided in CONFIDENTIAL ATTACHMENT A.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The subject variations are within the contract budget and the total project budget.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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- Confidential Attachment** - Notice of Potential Variations: [CNR-CM] Quarterly Variation Report for Contract EC2009-068 - Banora Point Wastewater Treatment Plant 18ML Upgrade construction: October 2010 to January 2011 18ML Upgrade Construction: October 2010 to January 2011 (ECM 28176394)

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27 [CNR-CM] Coastal Zone Management Plan for Cobaki and Terranora Broadwater

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

This report submits the Coastal Zone Management Plan for Terranora and Cobaki Broadwaters to Council for adoption. This plan sets out the ecological condition of these waterways, and recommendations specific actions that must be undertaken to conserve and enhance ecological, social and economic values. The report also recommends that the plan be submitted to the Minister for Climate Change and Environment for gazettal under the NSW Coastal Management Act 1979.

RECOMMENDATION:

That Council:

- 1. Adopts the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.**
- 2. Submits the Coastal Zone Management Plan for Cobaki and Terranora Broadwater to the NSW Minister for Climate Change and Environment, for gazettal under the NSW Coastal Management Act 1979.**

REPORT:

Over the past three years Council's Natural Resource Management Unit - Waterways Program and the Tweed River Committee have worked on a series of investigations documenting the ecological health of the Cobaki and Terranora Broadwaters. This work culminated in the release of the Ecosystem Health Monitoring Program Report Card for these waterways in 2009.

As well as assessing the health of the waterways, a management plan which considered issues affecting the long term future of the condition of the lakes was compiled.

This document, the Coastal Zone Management Plan for Cobaki and Terranora Broadwater, includes a large number of recommendations for management of both rural and urban areas in the catchments and tributaries of these waterways.

Council has been presented with the findings and recommendations of the management plan at a workshop, and the document was exhibited publicly for three months from 22 October 2009 to 29 January 2010 following a recommendation from the Tweed River Committee minutes of 12 August 2009, passed at the Council meeting of 15 September 2009.

Submissions on the plan have been received and reviewed, and where appropriate, incorporated into the plan. A summary of submissions on the plan is included in the table 1 below.

Submitter	Submission Comments	Comment
Tweed Landcare Inc.	<p>Tweed Landcare gives our full endorsement to the Cobaki and Terranora Broadwater Catchment and Estuary management Plan.</p> <p>We understand that the Broadwaters and their catchments are interrelated ecological systems of high conservation value and cultural, social and economic significance. We are committed to working with Council to ensure the future ecological sustainability of these valuable natural systems.</p> <p>As a member of the Tweed River Committee Tweed Landcare asks you to recommend the Management Plan to Tweed Shire Council on our behalf.</p>	Noted.
Tweed Heads Environment Group Inc.	1. Is the Council's consultant EIS statement (EIS for Banora Point Waste Water Treatment Plant, GHD 2005) correct, that the existing load of TN for	Both are correct, within the limitations of water quality modelling. The exercise gives an indication of relative

Submitter	Submission Comments	Comment
Tweed Heads Environment Group Inc.	<p>the Terranora Inlet Catchment is 88.1 tonnes/year, or is AW correct (Cobaki and Terranora Broadwater Coastal Zone Management Plan 2010) that the existing load of TN for the Terranora Inlet Catchment is just 32.584/34.161 tonnes per year accurate?</p>	<p>contributions from various areas of the catchment, not absolute values. The catchment pollutant export model has been run using 2 different rainfall records. GHD used 1990, a wet year with 2050 mm rainfall, and AW 2007-2008 data, to correspond with the EHMP report card data. The more rain, the greater the load of pollutants discharged from the catchment. In dry times, the nutrient input to our estuaries is dominated by WWTP discharge, however overall, nutrient export to our estuaries is dominated by catchment runoff.</p>
	<p>2. With the population to increase to 114335 in 2031 the discharge of effluent from Banora Point STP will add 143 kg N/day, which is 1001kg N/week (1 Tonne N/week) or about the nitrogen from 6 bags of ammonium sulphate fertiliser per week. That quantity is twice as much as now.</p> <p>If GHD's calculation of TN for the upgrade of Tweed Shire Council's Banora point WWTP is wrong for the Terranora Inlet Catchment then sewage nitrogen is likely to be a major contributing factor now adversely impacting on the 'poor' water quality of both Broadwaters</p>	<p>GHD's calculation of total N is not wrong.</p> <p>As noted above, in dry times, the nutrient input to our estuaries is dominated by WWTP discharges. The greater the rainfall to the catchment, the lower the relative contribution of the WWTP as a nutrient source.</p> <p>In addition, 3 studies have found that the major driver of water quality in the Terranora system is catchment runoff.</p>
	<p>3. The UQ Report 'Tweed River Estuary Ecosystem Health Monitoring Program (2000-2001) Final Report July 2003' shows that substantial quantities of sewage nitrogen are present in the leaves of the mangroves and in the phytoplankton. The Cobaki and Terranora Broadwater EHMP (IWC 2009) report gives no indication as to whether sewage nitrogen is increasing in the mangroves or phytoplankton.</p> <p>Increasing blooms of Trichodesmium and saltwater algae in the Terranora</p>	<p>This comment does not directly relate to the Cobaki Terranora Coastal Zone management Plan. However, it is stated in the Cobaki and Terranora Broadwater EHMP (IWC 2009), that; <i>"Comparisons between the 2001 and 2008 monitoring events potentially show an increase in $\delta^{15}N$ concentrations adjacent to the WWTP discharge point. A higher frequency of sampling</i></p>

Submitter	Submission Comments	Comment
Tweed Heads Environment Group Inc.	<p>Inlet System are increasing and are a matter of community concern. Since 2003 both Birds Bay 'Akoya' pearl oyster farm and long-time major Tweed oyster farmer 'Frank Kirkham' have closed down because of poor water quality in the Terranora Broadwater.</p>	<p><i>is needed to determine if this is an accurate and representative result or if differences are attributed to natural variations or seasonal differences between sampling years."</i></p>
	<p>4. In agreement with the report on the failing performance of the Western Drainage Scheme.</p>	<p>This is being investigated further.</p>
	<p>5. The Plan fails to report the poor urban drainage and sewage overflow in the Bilambil Heights Peninsula Drive/Broadwater Esplanade stormwater catchment area.</p> <p>Poor urban stormwater drainage from Bilambil Heights causing damage to the Terranora Broadwater environment. This area of Bilambil fronting the Terranora Broadwater was not included in the AW/ABER CEMP.</p> <p>Our submission to the Independent Inquiry into North Coast Rivers (Healthy Rivers Commission) of 10 May 2002 advised of 'Re-Sedimentary pollution from Tweed Shire Council street storm-water drainage from Bilambil heights into Charles Bay'.</p> <p>There have been minor improvements but serious pollution into Terranora Broadwater continues during wet weather events. In 1996 the EPA recommended that Council review the adequacy of the sediment and erosion control works in the Broadwater Esplanade area and consider the preparation of an integrated stormwater management plan for the urban areas of the Broadwater catchment.</p> <p>The effective management of the integrated stormwater management plan for the urban areas of the Bilambil Broadwater catchment is included in the Cobaki and Terranora Broadwater</p>	<p>A recently completed study has identified that additional improvements to sewer operations are required in this area and these area programmed for 2011/12.</p> <p>Over a number of years TSC has carried out improvements to the Bilambil Heights sewerage system to minimise sewer overflows in wet weather events. The provision of over flow storage at the Broadwater Esp. pump station, surface bunding at the Peninsular Dr. pump station and upgrading of rising main to Seagulls Estate. Additionally, works are in progress to provide back up generators at Peninsular Dr. and Fern St. pump stations, complete 2011.</p> <p>No changes are required to the Coastal Zone Management Plan in relation to these Water Unit activities.</p>

Submitter	Submission Comments	Comment
<p>Tweed Heads Environment Group Inc.</p>	<p>Management Plan 2009. That sewage overflows from the sewage tank located in upper Broadwater Esplanade that continues to overflow into a drain leading to Charles Bay area and sewage affected Bilambil Creek be remedied. In this regard, Council should carry out a drainage audit checking whether stormwater enters into the upper Broadwater Esplanade's sewage main.</p>	
	<p>6. Cobaki Lakes residential development: During heavy rain events vast quantities of nutrients have been deposited in the Lower Tweed River Estuary via the Cobaki Creek and Cobaki Broadwater. TS Councillors are aware of this sedimentary pollution of Cobaki Broadwater as they have been shown satellite images of large sedimentary plumes entering Cobaki Broadwater following heavy rainfall events. Conclusion: 6a. Considering Council's past poor performance in managing stormwater treatment at the Cobaki Lake residential development it is appropriate for all to heed The IWC report card 2009 'red alert' message for the waterways and catchment of Cobaki Broadwaters "A concerted effort from Government and the community is required to prevent these waterways from becoming terminally ill".</p>	<p>This issue is being followed up with Council and developers. No changes required to plan.</p>
	<p>7. The one page AW/ABER document on cultural heritage provides insufficient detail on how our community can protect Aboriginal Cultural Heritage values. There is no reference of contact with the Tweed's Aboriginal community about this plan. There are several documents that provide a lot more information since the (Fox 2006) Management Plan. TSC should consult with the Tweed Aboriginal community about plans to protect areas important to Aboriginal cultural heritage and increase community awareness of Aboriginal</p>	<p>Aboriginal Cultural Heritage management Plan for this area is to be reviewed and updated.</p>

Submitter	Submission Comments	Comment
Tweed Heads Environment Group Inc.	history as Australia's first people in this area.	
	<p>8. TSC should acknowledge the future impact of 52 tonnes of sewage Nitrogen before it commences rebuilding the West Tweed sewerage treatment plant which will add more nitrogen. TSC should now act on the community's past recommendations:</p> <ul style="list-style-type: none"> - to stop dumping reclaimed water into the 'sick' Terranora Inlet - identify more sustainable solutions for reclaimed water management - failing the reuse of reclaimed water, discharge reclaimed water to the ocean until the reuse strategy has been implemented by TSC. 	<p>Comment noted. This comment does not directly relate to the Cobaki Terranora Coastal Zone Management Plan.</p> <p>To upgrade the Tweed Heads West WWTP beyond the existing 10, 000 EP approval will require a full EIS and community consultation process.</p>
	<p>9. Conclusion: THEG supports the objectives of the Cobaki and Terranora CEMP subject to other recommendations made in our submission.</p>	Noted.
Bilambil Progress Association	<p>10. Sporting field club houses, school, retirement village and many homes share the Bilambil Creek or Duroby Creek as a boundary to their properties. To the best of our knowledge all of these clubs/dwellings operate by septic tank.</p> <p>We believe that further development in Bilambil should only be considered if sewerage is provided to the Village by any intending developer or Council. This will give the opportunity for the clubs/school/retirement village and dwellings to take advantage of the availability of sewer. This should have a positive affect on effluent being leached into Bilambil Creek.</p>	Noted.
	<p>11. Any future development in Bilambil must have adequate stormwater filtering to ensure that water entering Bilambil Creek is free of nutrients and other substances which can be harmful to the water quality.</p> <p>We have made a previous submission to Council in regard to the proposed Bilambil Development of 52 lots advising that we had serious concerns</p>	Noted. DCP and urban stormwater quality management plan being reviewed, as per recommendations of this plan.

Submitter	Submission Comments	Comment
	<p>that the stormwater treatment was not sufficient. We believe that Council should revisit the DCP including more stringent requirements for stormwater to be treated before being discharged into creeks.</p>	
	<p>12. Where there is a commercial venture e.g. nursery or small crops or where extensive watering is carried out, there should be some constraints for the run off water. Perhaps ponding of this excess water together with filtration before entering any waterway could improve water quality. A recycling system would even be more beneficial to the grower and the waterways.</p>	Noted.
	<p>13. It is imperative that any waste/rubbish in close proximity of the creek should be removed. On a recent boat ride up the Bilambil Creek all sorts of items were noted on the banks or partially submerged. Lounge chairs, car parts and the odd sign which had been removed etc. make for a very sorry outlook. We would recommend that Council assist with the removal of such rubbish after consultation with the owner. Perhaps Clean up Australia Day would be an appropriate opportunity to embark on this campaign.</p>	All landowners in this vicinity have been offered assistance to rehabilitate creek banks.
	<p>14. It would appear some properties adjoining Bilambil Creek have had concrete boat ramps built. It is our understanding that one chain from high water level is Crown Land and as such is accessible by the public but not to be misused by land holders. If Council has jurisdiction over this area they should contact owners to discuss the issue and have the concrete ramps removed.</p>	A review of approvals may be undertaken to ascertain legality of structures.
	<p>15. After consultation between Council and landholders some areas are now being replanted. This is a very positive step forward in the restoration of Bilambil Creek. All landholders must be encouraged to participate in this</p>	Noted.

Submitter	Submission Comments	Comment
	<p>program providing adequate accessibility is allowed to them for recreational purposes.</p> <p>It is understood that this (<i>fencing</i>) is very difficult in the upper reaches of Bilambil and Duroby Creeks as when flooding occurs the fences are washed away. Some farmers already use electric fences for this very purpose as they are able to be removed in times of flood. Perhaps Council could assess the feasibility of electric fencing and recommend such practices as another way of improving water quality.</p>	
	<p>16. No speed limit signs visible in Bilambil Creek. A small boat with an outboard motor was sighted towing a water skier down the creek. Apparently this is not an uncommon occurrence and together with the lack of signs should be brought to the attention of the Waterways Officer responsible for the area.</p> <p>When a license is issued by Waterways perhaps Council could have a flyer available showing a map of the broadwater and estuaries and advising of no ski areas and speed limits. Additionally, a flyer could be sent out with rate notices on the same theme.</p> <p>Signage at boat ramps depicting the broadwaters and estuaries and indicating speed limits allowable in these areas would be advantageous particularly to interstate users of the waterways. These signs could also include fish size and bag limit which is important in maintaining fish stocks.</p>	<p>NSW Maritime are aware of issues pertaining to vessel speed limits in the broadwaters.</p>
	<p>17. ...we were horrified at the commercial fishing which was allowed in this estuary. We had a few rods and over the 5 days caught 3 legal fish yet a commercial operator was able to net the creek and took everything into the boat that was in that net. This also applies to crabbers who set traps along the banks of the creek and were seen to take all in the traps legal or not.</p> <p>This type of commercial fishing can no longer be tolerated in the estuaries. It</p>	<p>Discussions with Industry and Investment (NSW Fisheries) indicate that a fishing exclusion zone would be highly unlikely in this area.</p>

Submitter	Submission Comments	Comment
	<p>has to stop if you want to improve fish stocks.</p> <p>Landholders and the community as a whole working together to improve the water quality of the creek in order to create a breeding ground for fish will be sorely disappointed to see this type of fishing continue.</p> <p>We recommend that all commercial fishing licences be immediately revoked in estuaries and that the Department of Fisheries allocate funds to buy back commercial fishing licences. We have discussed this issue with Fisheries and will be making a recommendation to them based on the condition of Bilambil Creek and other estuaries in our area.</p>	
	<p>18. Climate Change: From recent reports we understand that Bilambil Creek will rise approximately a metre if there is a warming of 2 degrees. On this basis we would recommend to Council that any future proposed development of the area exclude the valley floor and areas adjoining the Bilambil Creek.</p>	<p>Noted.</p>
	<p>19. Council need to look at the housing bounded by the Broadwater and the quality of stormwater entering our waterways from residential roads. Kennedy Drive is a particularly bad area for water run off as are other built up areas.</p>	<p>Noted.</p>
	<p>20. Developers also need to be monitored to ensure that they are working to Council standards and if these standards are not sufficient then they need to be revisited to ensure a better outcome for the environment.</p>	<p>Noted.</p>
<p>Martin Dobney 25.02.10</p>	<p>22. Recommends that the comment from The Bilambil Progress Association submission stating 'that all commercial fishing licences be immediately revoked in estuaries and that the Department of Fisheries allocate funds to buy back commercial fishing licences' apply to the whole of the Tweed River.</p>	<p>Noted.</p>
<p>Lance Tarvey</p>	<p>23. Section 4.3 refers to fauna I</p>	<p>Noted and plan updated.</p>

Submitter	Submission Comments	Comment
16.02.10	<p>assume across the whole catchment. Avifauna description only refers to shorebirds and waders and makes no mention of significant avifauna outside of this group. A number of other species are significant both from the estuary environment (eg Osprey, Mangrove Honeyeater) plus a host of species across the broader catchment. Seems a big oversight to me.</p> <p>24. Pouched frog has been recorded by me in Duroby Nature Reserve (rather than Duroby Creek), is not really a creek dweller (in fact its tadpole stage is independent of free water).</p> <p>25. Green Turtle is probably of a single record from me, a dead one at the Anchorage, not really something that you would expect to find in the broadwaters.</p> <p>26. Maybe of interest is the presence of the freshwater Broadshell Turtle (<i>Macrochelodina expansa</i>) which I have good records of for Banora Point and on Gold Coast airport. Not a listed threatened species but unusual occurrence in this area may warrant listing as a threatened population.</p>	
Tweed Cane Growers Association Robert Quirk 24.02.10	27. I have read through the attached summery of the plan and support its going to Tweed Shire Council as a recommendation from the Tweed River Committee.	Noted.
DECCW Richard Hagley 07.04.10	28. Section 11.11 Climate Change In regards to inundation potential from climate change impacts, it should be acknowledged that TSC is in the process of preparing a Floodplain Risk Management Plan for the Tweed Valley. A draft plan is scheduled for late 2010- early 2011 and it is founded on the Tweed Valley Flood Study (BMT WBM, 2009) and a study update that incorporates climate change scenarios based on DECC guidelines and the draft Sea Level Rise Policy Statement parameters.	Noted and plan updated.
	29. Section 11.11.3 Sea Level Rise Reference should be made to the	

Submitter	Submission Comments	Comment
	recent NSW Sea Level Rise Policy Statement (Oct. 2009) and the recommended NSW planning benchmarks of 40cm by 2050 and 90cm by 2100 above 1990 mean sea level.	
	30. Plan Objectives and Management Strategies Given the prominence of the climate change issue these days it maybe warranted that climate change is incorporated into the plan objectives.	
	31. While the climate change issue is linked to Strategy 7.9 at Table 0.1, this strategy may need expanding to include: Land and habitat vulnerability assessments; Development of climate change adaptation strategies; and Incorporation of climate change impact actions into planning instruments, development controls and environmental assessments.	

Preparation of the plan has been guided by the Tweed River Committee, and relevant government agencies have been given opportunity to review the plan.

Major findings of the Coastal Zone Management Plan for Cobaki and Terranora Broadwater include the following:

- That the broadwaters are extremely significant and sensitive environments, supporting high biodiversity, social and economic values.
- That water quality in freshwater tributaries and the broadwaters is degraded due to inputs of sediment and nutrients, and that future urban development proposed in the western areas of both broadwaters presents a key challenge to maintaining good ecological health in the future.
- That rehabilitation of riparian zones in rural tributaries is an important activity to protect and improve waterway health.
- That management of urban stormwater in existing and proposed residential areas is a key activity to protect and improve water way health.

At its meeting in April 2010, the Tweed River Committee recommended that Council adopt the management plan, and that it be recommended to the Minister for Environment to be gazetted, as per the recommendation of this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

28 [CNR-CM] Tweed Coast Koala Habitat Study

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

Council resolved on 19 January 2010 to prepare a draft Comprehensive Koala Plan of Management (CKPoM) for the Tweed Coast. The Tweed Coast Koala Habitat Study, which forms the first stage of the CKPoM, has now been completed. The Tweed Coast Koala Habitat Study found that koalas have declined dramatically over the last decade on the Tweed Coast. Subject to a number of minor amendments, Council's Koala Advisory Group endorsed the Study at its meeting on 30 November 2010.

RECOMMENDATION:

That Council:

- 1. Makes the Tweed Coast Koala Habitat Study available, and communicates its findings, to the public.**
- 2. Supports interim protection of koala habitat on the Tweed Coast as recommended in the Tweed Coast Koala Habitat Study and detailed in a separate report to Council.**
- 3. Proceeds with the preparation of Stage 2 of the Comprehensive Koala Plan of Management.**

REPORT:

At its meeting on 19 January 2010 Council resolved to commence the preparation of a draft Comprehensive Koala Plan of Management (CKPoM) for the Tweed Coast. The first stage of this process involved the preparation of the Tweed Coast Koala Habitat Study (TCKHS) which has now been completed by Biolink Ecological Consultants with assistance from the Tweed Coast Koala Advisory Group (TCKAG). The TCKHS provides the scientific background necessary to develop the CKPoM, specifically:

1. Survey and analysis of current (and past) koala distribution, population size and dynamics;
2. Analysis of preferred koala food trees;
3. Mapping of vegetation considered to be koala habitat;
4. Mapping and assessment of key threats to koalas and their habitat;
5. Investigation of regional and local habitat corridors;
6. Assessment of areas suitable for habitat restoration and revegetation; and
7. Assessment of local population viability.

As reported at the Council meeting of 20 April 2010, funding for the TCKHS was primarily sourced from a grant provided by the Department of Environment, Climate Change and Water.

The Tweed Coast Koala Habitat Study found that koalas have declined dramatically over the last decade on the Tweed Coast and concludes as follows:

Conclusions of Tweed Coast Koala Habitat Study

Despite a history of land clearing and associated habitat fragmentation, the Tweed Coast Study Area (TCSA) still supports some relatively large areas of Eucalyptus dominated forest and/or woodland which contain Preferred Koala Food Trees. The obvious question that arises is whether (or not) koalas have a secure future within the TCSA, to which our qualified response would likely be negative, without determined management. We reiterate that the greater proportion of the TCSA's koala population is now largely restricted to three isolated sub-populations between Bogangar and Pottsville, none of which have a guaranteed future. Outside of these areas small, isolated population outliers that are entirely reliant upon recruitment from the aforementioned sub-populations, survive in an increasingly fragmented habitat matrix that is compartmentalised by road barriers and fragmentation, each with differing levels of threat that range from development pressure at the urban/bushland interface, road strike, ongoing habitat loss and increases in fire frequency and intensity. The cumulative impacts of fire over recent years have now resulted in a reduction in koala numbers and associated occupancy rate that is precarious, especially so given that the population is likely already below the minimum viable population size of approximately 170 individuals (Phillips, unpub. data). Additionally, the incidental mortality rate attributable mostly to motor vehicle strike and rarely reported dog attacks is likely to be already exceeding that which is sustainable at the population level. In short, there are no grounds for complacency and it will only be by effectively managing and recovering the remaining source populations that the whole will be preserved.

Koala conservation should ideally be based not only on scientifically sound assessments in the first instance, but also the application of solid landscape ecology/conservation biology

theory. In this context two issues arise. Firstly, there is the matter of area and exactly how much land is required to sustain a free-ranging population in perpetuity. From a koala conservation perspective, an optimal occupancy rate is that which sees not all available habitat occupied, but in which there is allowance for population expansion (into currently unoccupied areas) and population contraction in response to stochastic events). Indeed, as evidenced by situations in places such as French Is. (Vic) and Kangaroo Is. (SA), a population existing at high occupancy levels encounters stressors related to limited resource availability, a situation considered to be far from ideal. Results from our studies elsewhere (eg. Gold Coast, Qld (Phillips et al. 2007); Byron Bay, NSW (Hopkins & Phillips 2010); Port Macquarie, NSW (Phillips and Forsman 2005)) of demographically stable, reproducing koala populations consistently return occupancy rates approximating 50% of the available habitat (Phillips et al. submitted). Conversely, for populations considered endangered such as those in Hawks Nest – Tea Gardens and the south-east forests, occupancy rates have been reported at as low as 16% and 8% respectively (Biolink 2005; Allen and Phillips 2008). While for many this variation in occupancy rate is a novel concept in terms of landscape-scale koala management, it makes ecological sense and thus underpins the need for conservation planning to both recognise and make allowance for koala metapopulation contraction and expansion over time in response to ongoing recruitment and/or attrition events.

Based on koala density data detailed in Part 3, we have determined that a minimum area of approximately 2,428ha of reasonably well-connected, high-quality koala habitat is required in order to sustain a minimum viable population of ~170 koalas while also allowing for a minimum occupancy rate of approximately 50% of available habitat. This is not to say that such land must necessarily be “locked up” and forested, only that it be managed sympathetically through appropriate planning. It should be noted that the above minimum area is more than half of the total area of potential koala habitat remaining in the Tweed Coast, and that the cumulative area of well-connected vegetated patches (of all habitat categories) in the central portion of the TCSA currently amount to less than 2,300ha. These habitat areas currently exist in a matrix of differing land tenures, including Nature Reserve, Council reserves, rural lands and areas already identified for development. Thus a range of differing approaches to the management of koala habitat will likely be required, specifics of which must be examined in detail during the preparation of a CKPoM. Given the above, a population at an occupancy rate of ~14% is clearly in a less-than optimal position to withstand the pressures of stochastic events, ongoing habitat loss and anthropogenic mortality rates. Indeed, PVA carried out by Phillips et al. 2007 has determined that as little as a 2 – 3% increase in the naturally-occurring mortality rate (as a function of total population size) due to incidental factors such as road mortality, dog attack or the stressors associated with disturbance generally, is sufficient to precipitate decline. Given what is already known about the incidence of road strike in places such as Clothiers Creek Road, and that the current population size is much reduced because of recent fire events, we reiterate that the TCSA’s koala population is now in very serious trouble.

The preceding prognosis reinforces not just the need to remove and/or minimise known and potential threatening processes from those areas known to be currently occupied, but also to effectively buffer such areas from further adverse impact, facilitate recovery and accommodate the need for population expansion, as well as ensuring that effective habitat linkages are in place to facilitate ongoing recruitment processes. The isolated nature of the remaining population cells may also require more active management on a short- or medium-term basis in order to ensure their ongoing viability as threats are managed. Clearly, existing land management and planning processes are inadequate for the conservation of koalas on the Tweed Coast and these deficiencies require urgent

addressing. It would be a great tragedy should this population succumb to localised extinction. Hence the need for an appropriately informed and framed management response, the key purpose of which must be the identification of opportunities and/or actions to facilitate survival of the population in perpetuity.

Recommendations of the Tweed Coast Koala Habitat Study

The Study makes a number of recommendations (reproduced below) most of which are designed to inform the preparation of the Comprehensive Koala Plan of Management which is expected to be completed within the next six months.

It will be important that management actions for the Tweed Coast koalas be prioritised so as to maximise the conservation benefit. By example, we see little value in increasing the amount of habitat within the TCSA if those animals potentially able to occupy it simply become road mortalities or victims of wildfire. Thus a focus on reducing the potential for incidental mortalities through motor vehicle strike becomes an overriding, and perhaps the most urgent management need for koalas within the TCSA. With this in mind, the following recommendations are provided in order to facilitate further discussion and provide focus for the key issues to be tackled by the Koala Advisory Group as it moves towards integration of the outcomes of this study into an informed CKPoM for the TCSA.

1. The management framework

- *We advocate identification and designation of one or more (Tweed Coast) Koala Management Areas (KMAs) for the purposes of any future CKPoM, the intent to focus and direct management actions appropriately.*
- *Current patterns of koala distribution and the effective partitioning of the TCSA by the barrier to dispersal presented by the Tweed River provide the basis for the designation of two separate Koala Management Areas within the current extent of occurrence, while there may be grounds for designation of a third KMA in the south of the TCSA.*

Northern KMA

- *There is a need to determine what actions (if any) can be enacted north of the Tweed River to avoid what otherwise appears to be an inexorable trajectory towards localised extinction within a timeframe of 5 – 10 years.*

Central KMA

- *There is a need to consider the localised extinction of koalas south of the Tweed River to be a foreseeable event within the next 2 – 3 decades, sooner if those factors currently impacting upon the population such as fire and unsustainable levels of incidental mortality are not addressed.*
- *A central KMA should encompass those lands containing currently identified source populations, their associated large habitat blocks, areas of high-quality potential koala habitat and key linkage areas.*
- *Management actions within the central KMA are to have the highest importance with a focus on maintenance and recovery.*

- *Conservation effort within the central KMA must be focused on a sufficiently large area of land so as to enable to the maximum extent possible a free ranging koala population – the number of animals comprising which must exceed the minimum viable population size – to survive in perpetuity.*

Southern KMA

- *A lack of activity recorded during field assessments suggests the absence of a major source population in the southern portion of the TCSA. Large areas of potential koala habitat exist however to the south in the Byron Shire. The KAG should discuss the merit of designation of a southern KMA in this area; at this stage the intent of which would be information gathering in order to identify necessary management actions.*

2. Nomination as an Endangered population

Independently of the above, we consider that the recent decline in distribution and abundance of koalas on the Tweed Coast in addition to the disjunct nature of their contemporary distribution predisposes the population to a high risk of future extinction in the absence of adequate protection and management. Thus we suggest that the status of the Tweed Coast koala population justifies its nomination as an Endangered Population under the TSC Act and would likely meet the criteria for listing.

3. Mitigation of threatening processes

- *There is a need to implement interim protection measures in the intervening period, prior to preparation and adoption of a CKPoM, in order to address the ongoing sequential loss of koala habitat on the Tweed Coast. The preparation of a Tree Preservation Order (TPO) to facilitate the protection of high-quality koala habitat and/or individual preferred koala food trees should be considered by the KAG and Council as a matter of priority.*
- *We consider there to be an urgent need for development of a coordinated strategic management response to fire on the Tweed Coast, requiring a cooperative approach by the National Parks and Wildlife Service, Council and the Rural Fire Service. The intent of this approach is immediate suppression, rather than control, of fire in the event of any future fire events occurring in the vicinity of the remaining source population(s), and to exclude fire from currently occupied areas for a minimum of 6 – 8 years (ie. at least one koala generation).*
- *There is an urgent need for development of measures to effectively minimise the potential for incidental road-strike at black spots identified herein on major east-west arterial roads between Bogangar and Wooyung, with particular emphasis on the Clothiers Creek and Round Mountain Road areas.*
- *There is a need for evaluation of existing underpass options along the Pacific Highway that offer greatest potential for safe passage of koalas so as to achieving meaningful east-west connectivity, with particular emphasis on the Sleepy Hollow area where ameliorative measures are also required.*

4. Planning considerations

- *In the development of the CKPoM's planning provisions, there is a need to not only recognise currently occupied areas as core koala habitat and implement management*

accordingly, but also for areas of adjoining high quality (Primary/Secondary A) koala habitat as well as identified linkage areas to be afforded the highest importance and an equal level of protection.

- There will be a need for adoption of a standard Development Control Plan to ensure that all future developments in the vicinity of the remaining areas of koala habitat and/or any resulting KMA consistently result in implementation of 'best-practice' koala-friendly planning measures.*
- In accord with the above we consider that there should also be provision for progressive amendment (where such provisions exist) of any currently approved KPoMs so as to ensure consistency with any adopted DCP and/or CKPoM standard.*
- There is a need to support strategic bushland regeneration for areas of koala habitat with a view to infilling existing gaps in canopy cover so as to reduce the extent of habitat fragmentation and invasion by weeds that inhibit natural regeneration.*
- In locations such as the Pottsville Wetlands and elsewhere within areas of koala habitat the matter of habitat buffers around existing vegetated areas requires consideration, as does habitat augmentation so as to enact a long term net increase in koala habitat. Development of offset strategies as well as incentives to encourage landholder participation in these processes will be required during preparation of the CKPoM.*
- There is a need to develop "minimum data set" assessment standards to ensure that a high standard of habitat assessment by ecological consultants is maintained and that it is this level of assessment that informs development and future planning on the Tweed Coast.*
- There is a need to develop long-term monitoring programs to form part of the CKPoM in order to enable the tracking of the success or otherwise of the above recommendations and the plan and their influence on the status of the Tweed Coast koala population.*

Futures Directions

As noted previously, the Tweed Coast Koala Habitat Study is focussed primarily on informing the preparation of the Comprehensive Koala Plan of Management which is expected to be completed within the next six months. The CKPoM will be overseen by the Tweed Coast Koala Advisory Group.

In accordance with the adopted Terms of Reference for the Tweed Coast Koala Advisory Group the role of the group is to:

- Provide overall guidance and direction to the project, ensuring that it remains on track and that outcomes are achieved.
- Ensure the project meets the requirements of SEPP 44 and positively contributes to other Natural Resource Management Strategies and Plans such as Northern Rivers Catchment Action Plan and the NSW Koala Recovery Plan.
- Provide input and advice in relation to all aspects of the project.
- Reflect and consider community opinion within the context of the aim of the project and legislative constraints.
- Recommend the public exhibition of the draft CKPoM to Council

- Assist Council officers in the review of public submissions arising from exhibition of the draft KPOM
- Provide recommendation to Council on the adoption the Final CKPoM.

Funding for the preparation of the CKPoM is anticipated to total \$60,000. As reported previously (20 April 2010), this will be sourced from the Council's Biodiversity Program (\$30,000) and an additional \$30,000 provided in the 2010/2011 Budget.

Although the CKPoM is expected to take at least six months to complete there are a number of actions that can be implemented in the meantime. For example, the Tweed Coast Koala Advisory Group has resolved to recommend to Council that additional interim protection of koala habitat on the Tweed coast be implemented, as recommended in the Study, immediately (see separate report). The Koala Advisory Group will also work towards implementing (with Council support) other recommendations where appropriate (e.g. management of threatening processes such as road mortality and fire).

It should also be noted that Council has recently been advised that it has been successful in two \$100,000 NSW Environmental Trust grant applications aimed (at least in part) at improving koala habitat and reducing threats on the Tweed coast.

The first, "Koala Connections" will implement critical on-ground and educational actions arising from the Tweed Coast Koala Habitat Study and the Comprehensive Koala Plan of Management. Specific actions will include:

- (1) restoration of existing Koala habitat;
- (2) connecting fragmented habitats through revegetation on private and public land;
- (3) installation of strategic fencing to restrict stock and prevent Koala road strikes and;
- (4) connecting landholders, community groups and individuals through publication of a brochure, educational media releases, training workshops and community tree planting working bees. Together, these actions will help to provide a secure future for Koalas on the Tweed coast and foster a sense of stewardship with landholders and the broader community.

The second, "Protection and Restoration of the Pottsville Wetlands" will protect and restore 288ha of forested freshwater wetland west of Pottsville Waters and Black Rocks residential estates. The area comprises large areas of SEPP 14 Coastal Wetland, three Endangered Ecological Communities (EEC), important habitat for threatened Glossy Black Cockatoo, Koala, Wallum Froglet, Osprey, Common Planigale, Common Blossom Bat, Grey-headed Flying Fox and other fauna and provides an important coastal habitat corridor. The project will identify threats and establish management actions including controlling weeds to encourage natural regeneration, revegetating areas of threatened species habitat and EEC, removing rubbish, preventing access to sensitive areas and community education.

Further details of these projects will be reported to Council when the Grant Agreements are received.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

29 [CNR-CM] Proposed Biodiversity Grants

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

On 27 January 2009 Council unanimously approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire.

To date 75 applications have been submitted for the Biodiversity Grant Program, 71 private properties, two community groups and two research projects.

Site visits have been made to 62 private properties, 60 of which meet the Grant's criteria and 57 have been approved.

The purpose of this report is to seek Council's approval to fund the three private landowners, as listed in the report, in accordance with the provisions of the Biodiversity Grant Program.

RECOMMENDATION:

That Council approves the expenditure under its Biodiversity Grant Program to assist the private landowners to undertake the projects listed in the table contained within the report.

REPORT:

On 27 January 2009 Council approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire. This initiative represents an important component of Council's Biodiversity Program.

The Biodiversity Grant Program supports projects that contribute to the following ecological priorities within Tweed Shire:

- Rehabilitation of degraded habitats
- Restoration of previously cleared areas
- Threatened species recovery
- Management of threatening processes
- Monitoring and research

Applications under the program can be made throughout the year and are assessed using the following criteria:

- Ecological benefits (eg. ecological status, multiple ecological priorities, contribution to State and regional biodiversity targets etc);
- Value for money (including in kind contributions, external funding);
- Technical capability and applicant track record;
- Site security (preference will be given secure sites eg. conservation covenants, Environmental Protection zones etc);
- Ongoing maintenance requirements;
- Spread of projects across ecological priorities and the Shire (including projects funded from other sources).

To date 75 applications have been submitted for the Biodiversity Grant Program, 71 private properties, two community groups and two research projects.

Site visits have been made to 62 private properties, 60 of which meet the Grant's criteria and 57 have been approved. The purpose of this report is to seek Council's approval to fund the three private landowners visited since the December 2010 Council meeting under the Biodiversity Grant Program to assist them as per the table below.

The proposed grants involve the provision of services by professional bushland regenerators to assist landholders to more effectively manage environmental weeds protect native vegetation and improve wildlife habitat.

Surname	Address	Total cost est. (\$)	Assessment
Tate	Stokers Siding	4760.00	Strong landholder commitment to maintain works in mod. to high biodiversity value flora and fauna area with good vegetation connectivity. Registered Wildlife Refuge with NPWS due to wetland value.
Wales	Bilambil	4080.00	Landholder committed to maintain works in mod. to high biodiversity value flora and fauna riparian area
Fitzgerald	Numinbah	5440.00	Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with known threatened species and with good vegetation connectivity.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding for this project is to be sourced from the existing Biodiversity Program budget.

POLICY IMPLICATIONS:

This program is consistent with the adopted Tweed Vegetation Management Strategy 2004 and the Council resolution of 27 January 2009 which established the Biodiversity Grant Program.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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30 [CNR-CM] Appointment to NSW Coastal Panel

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

The NSW Government, under the recently amended *Coastal Protection Act 1979 No 13* has set up the NSW Coastal Panel. The Panel's role under the Act is to provide expert advice to the Minister on coastal management issues, including reviewing coastal management plans.

Frank Sartor MP, Minister for Climate Change and the Environment, has offered a position on the panel to Jane Lofthouse, Council's Coordinator Natural Resource Management following a nomination from the Local Government and Shires Association of NSW.

RECOMMENDATION:

That Council endorses the appointment of Jane Lofthouse, Coordinator Natural Resource Management, to the NSW Coastal Panel.

REPORT:

The NSW Government, under the recently amended *Coastal Protection Act 1979 No 13*, has set up the NSW Coastal Panel. The constitution and functions of the Coastal Panel are reproduced below.

Frank Sartor MP, Minister for Climate Change and the Environment, has offered a position on the panel to Jane Lofthouse, Council's Coordinator Natural Resource Management following a nomination from the Local Government and Shires Association of NSW.

The appointed panel consists of:

- Bob Debus (Chair)
- Professor Bruce Thom (LGSA nominated)
- Professor Andy Short (LGSA nominated)
- Jane Lofthouse (LGSA nominated)
- Derek Rutherford (Deputy Chair, DECCW)
- Craig Abbs (LPMA)
- Yolanda Stone (DoP)

Extract from the *Coastal Protection Act 1979 No 13*:

Part 2A NSW Coastal Panel

12 Constitution of NSW Coastal Panel

- (1) There is to be a NSW Coastal Panel.
- (2) The Coastal Panel is to consist of 7 members appointed by the Minister of whom:
 - (a) one is to be a person nominated by the Director-General, and
 - (b) one is to be a person nominated by the Director-General of the Department of Planning, and
 - (c) three are to be nominated by the Local Government and Shires Associations of New South Wales, and
 - (d) one is to be a person nominated by the Chief Executive of the Land and Property Management Authority, and
 - (e) one is to be appointed by the Minister with the concurrence of the Local Government and Shires Associations of New South Wales.
- (3) The person appointed under subsection (2) (e) is to be the Chairperson of the Coastal Panel. The person appointed under subsection (2) (a) is to be the Deputy Chairperson of the Coastal Panel.
- (4) A person appointed under subsection (2) (a)–(d) must have qualifications and experience relevant to coastal planning, coastal engineering, coastal geomorphology, coastal environmental management or estuary management.
- (5) The Coastal Panel is a NSW Government agency.

- (6) In appointing a member, the Minister is to have regard to the need to have a range of expertise represented among the Coastal Panel's members.
- (7) For the avoidance of doubt, the Coastal Panel is a public authority for the purposes of the [Environmental Planning and Assessment Act 1979](#).
- (8) Schedule 2 contains provisions relating to the constitution and procedure of the Coastal Panel.

13 Functions of Coastal Panel

- (1) The Coastal Panel has the following functions:
 - (a) to provide advice to the Minister on any matter referred to the Coastal Panel by the Minister relating to the coastal zone or otherwise in connection with the operation of this Act,
 - (b) to provide advice to local councils in relation to such other matters as the Minister determines and notifies to the Coastal Panel,
 - (c) such functions conferred or imposed on it by or under the [Environmental Planning and Assessment Act 1979](#) relating to the granting of development consent,
 - (d) any other function conferred or imposed on it by or under this Act, the [Environmental Planning and Assessment Act 1979](#) or any other Act.
- (2) In exercising its functions, the Coastal Panel is to have regard to the objects of this Act.
- (3) The Coastal Panel may delegate the exercise of any function of the Coastal Panel under this or any other Act (other than this power of delegation) to:
 - (a) any member of staff of the Department, or
 - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (4) Despite subsection (3), the Coastal Panel may only delegate a function conferred or imposed on it by or under the [Environmental Planning and Assessment Act 1979](#) relating to the granting of development consent with the concurrence of the Minister and the Minister administering that Act.

Following is a copy of the letter received from Mr Sartor:

Hon Frank Sartor AO MP

Minister for Climate Change and the Environment
Minister Assisting the Minister for Health (Cancer)



DOC11/4658

Ms Jane Lofthouse
Coordinator - Natural Resource Management
Tweed Shire Council
PO Box 816
Murwillimbah NSW 2484

Dear Ms Lofthouse

I am pleased to formally offer you a position as Panel member on the newly formed NSW Coastal Panel under the provisions of the *Coastal Protection Act 1979*. Finally, I would like to take the opportunity to congratulate you on your proposed appointment to the NSW Coastal Panel and look forward to your acceptance.

The NSW Coastal Panel was established under the *Coastal Protection Act 1979* through amendments to the Act passed by Parliament in October 2010. The Panel's role under the Act is to provide expert advice to the Minister, including reviewing coastal zone management plans prepared by councils. The Panel can also provide expert advice to councils on significant coastal management issues. Under the Infrastructure SEPP, the Panel is the consent authority for development applications for coastal protection works, such as seawalls, where the relevant council does not have a coastal zone management plan in place.

The position of Panel member is provided with a remuneration package of \$15,000 per year, inclusive of superannuation. Travel and out-of-pocket expenses are reimbursed in accordance with the current determination of the Department of Premier and Cabinet. Some of these payments may be taxable.

Further details and necessary forms for your appointment will be forwarded to you by the Department of Environment, Climate Change and Water (DECCW) shortly.

Should you have any questions or require additional information, please contact Mr Mike Sharpin, the Manager, Urban and Coastal Water Strategy at DECCW on (02) 9995 6068.

Finally, I would like to take the opportunity to congratulate you on your proposed appointment to the NSW Coastal Panel and look forward to your acceptance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Frank Sartor', written over a white background.

Frank Sartor MP

2 FEB 2011

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Full details and resource implications of the appointment are yet to be determined. The General Manager will implement a strategy to manage the financial and resource implications of the appointment.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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31 [CNR-CM] Draft Tweed Development Control Plan Section B25 - Coastal Hazards

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

Council determined, as part of the implementation of the *Tweed Shire Coastline Management Plan* (adopted June 2005), to prepare a Development Control Plan to address development within erosion hazard zones as delineated by the Tweed Coastline Hazard Definition Study (2001).

The purpose of this report is to seek Council's endorsement to place the Draft Tweed Development Control Plan Section B25 - Coastal Hazards on public exhibition for the extended period of 60 days. Following consideration of submissions from that exhibition period, and any necessary amendments, both the DCP and the Tweed Coastline Hazard Definition Study (2001), as amended will be submitted to Council for adoption.

It is considered that an extended exhibition period is reasonable in this instance to enable workshops with interested parties to be conducted and detailed consideration to be made of the proposed DCP by affected landholders and other stakeholders.

RECOMMENDATION:

That:

- 1. Council publicly exhibits the Draft Tweed Development Control Plan Section B25 - Coastal Hazards in accordance with the Environmental Planning and Assessment Act 1979.**
- 2. The public exhibition of the Draft Tweed Development Control Plan Section B25 - Coastal Hazards be for a period of 60 days minimum.**

REPORT:

Council determined, as part of the implementation of the *Tweed Shire Coastline Management Plan* (adopted June 2005), to prepare a Development Control Plan to address development within erosion hazard zones as delineated by the Tweed Coastline Hazard Definition Study (2001).

A review of the hazard lines to update these for NSW Government benchmarks for Sea Level Rise (SLR) was completed in August 2010 by the University of New South Wales Water Research Laboratory (WRL) and updated hazard lines finalised for adoption by Council. Council considered a report on the adoption of the updated Coastal Hazard Lines at the meeting of 21 September 2010 and resolved the following:

RESOLVED that this item be deferred until such time the *Tweed Development Control Plan - Tweed Coastline Hazard DCP* has been adopted and exhibited by the end of March 2011.

The purpose of this report is to seek Council's endorsement to place the Draft Tweed Development Control Plan Section B25 - Coastal Hazards on public exhibition for the extended period of 60 days. Following consideration of submissions from that exhibition period, and any necessary amendments, both the DCP and the Tweed Coastline Hazard Definition Study (2001), as amended will be submitted to Council for adoption.

GHD (Ballina Office) was appointed as Council's consultant for preparing the DCP and the Draft DCP is attached to this report.

The DCP is particularly important as it provides the development controls and guidelines for the development and risk management of land susceptible to coastal erosion. Without a clear set of new provisions the implementation of the updated hazard lines will be difficult to manage and will provide little certainty for landowners and asset managers on the long-term use and risk associated of affected land.

The Draft Tweed Development Control Plan Section B25 - Coastal Hazards and the attendant Coastal Risk Management Report Guidelines are appended for consideration of Council for exhibition for a period of 60 days. It is considered that an extended exhibition period is reasonable in this instance to enable workshops with interested parties to be conducted and detailed consideration to be made of the proposed DCP by affected landholders and other stakeholders.

A copy of the Coastal Risk Management Report Guidelines is reproduced below:

Coastal Hazards Development Control Plan
Coastal Risk Management Report Guidelines



Coastal Risk Management Report Guidelines.

A Coastal Risk Management Report is to be submitted for all development on land that is seaward of the 2100 Hazard Line. This report is to be prepared by suitably qualified coastal engineering and structural engineering consultants and must consider and address the following:

1. Coastal Hazard Zones
2. Constraints due to the impact of coastline changes on the land, including an assessment of the degree of inundation, hazard level, impacts of waterborne debris and overtopping waves, buoyancy effects, evacuation and other emergency issues during the design storm event (100 ARI event).
3. Compliance with the Controls.
4. Recommendations for the structural design and construction of the total development, including foundation design, protection measures and the structural status of any existing structures to be retained (where existing structures to be retained include coastline protection structures, these must be certified as being structurally adequate during the design storm event).
5. Recommendations on the monitoring and maintenance of all coastal protection and hazard mitigation measures proposed for the total development (including any existing structures to be retained) for the life of the development (taken to be 100 years unless specified otherwise and justified).
6. Recommendations on all measures and precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development (including any existing structures to be retained) to address the impacts on the site for the design storm event (100 ARI event) for the life of the development (taken to be 100 years unless specified otherwise and justified). These precautions shall include but are not limited to the following:
 - a. Types of materials to be used, up to 2100 Hazard Line, to ensure the structural integrity of the buildings during inundation from increased water levels, impact from water borne debris, wave overtopping, and storm generated extreme winds.
 - b. Waterproofing methods, including but not limited to electrical equipment, wiring, fuel lines or any other service pipes and connections.
 - c. Warning signs/depth indicators for areas that may be inundated, such as open carparking areas.
 - d. An evacuation strategy to minimise harm; a point of assembly within a place of low risk; and a suitable method of transporting people to a place of low risk away from the effects of coastline hazards.
7. Specify architectural/engineering plans on which the assessment is based.
8. Specify date/s of inspection.
9. Specify professional qualifications and experience of the authors

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal implications may ensue from any future development affected by coastal erosion where assessment of the adequacy of the structural engineering suitability of the development relative to the predicted impact of coastal erosion has not been taken into account. The financial implication of any successful litigation would be significant.

POLICY IMPLICATIONS:

Council needs to develop and implement a policy and Development Control Plan to address the management of coastal erosion risks to private and public property in accordance with NSW Government Policy and Guidelines.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Tweed Development Control Plan Section B25 - Coastal Hazards and Coastal Hazards Development Control Plan: Coastal Risk Management Report Guidelines (ECM 28130570)
-

32 [CNR-CM] Request for "In Kind" Support/Waive Fee

ORIGIN:

Community & Cultural Services

SUMMARY OF REPORT:

Council has received requests from various organisations asking that Council provides in-kind support/waives the fees for room hire. Details of the requests are reproduced in the body of this report.

In accordance with Section 356 of the Local Government Act 1993 - Donations, Council resolved on 6 October 2004 that:-

".... in future, all donations made by Council, whether in cash or in kind, be made by way of a resolution of Council."

RECOMMENDATION:

That Council:-

- 1. With reference to the request from Twin Towns and District Garden Club Inc, declines the request for the monthly rate to be maintained at \$70 per meeting for hire of the Tweed Heads Civic Centre and applies the Community rate of \$72 per meeting, and that Council's support is recognised with the following acknowledgement "This programme has been supported by Tweed Shire Council".**
- 2. With reference to the request from Twin Towns and District Garden, provides the Tweed Heads Civic Centre Auditorium for the rate of \$138 with the Friday set-up free of charge for the Annual Flower Show on 9 and 10 September 2011, and that Council's support is recognised with the following acknowledgement "This programme has been supported by Tweed Shire Council".**
- 3. With reference to the request from Tweed Australian South Sea Islander Community Inc, provides the South Sea Islander Room at the Tweed Heads Civic Centre free of charge for monthly meetings between February and December 2011, and that Council's support is recognised with the following acknowledgement "this program has been supported by Tweed Shire Council".**

REPORT:

Council has received requests from various organisations asking that Council provides in-kind support/waives the fees for room hire. Details of the requests are reproduced as follows:-

Organisation Name	Request	Est \$ Amount of Waiver	Recommendation	Meet Guidelines?
Twin Towns and District Garden Club Inc	Request fee be reduced to \$70 per meeting for hire of Tweed Heads Civic Centre for monthly meetings from January to November 2011 (excluding September).	\$0	That the request be declined and that the Community rate of \$72 be applied.	Yes for Community rate.
Twin Towns and District Garden Club Inc	Request fee be reduced for hire of Tweed Heads Civic Centre for the Annual Flower Show on 9 and 10 September 2011.	\$138	That the fee for the Annual Flower Show be charged at the rate of \$138 which includes free set up.	Yes. The Applicant does not charge a stallholders fee for the Flower Show.
Tweed Australian South Sea Islander Community Inc	Request waiver of fees for hire of South Sea Islander Room at Tweed Heads Civic Centre for monthly meetings between February and December 2011.	\$792	That the fee of \$792 be waived.	Yes

A copy of each of the requests is reproduced below.

TWIN TOWNS & DISTRICT GARDEN CLUB Inc.,
P.O. Box 863,
Tweed Heads, 2485,
15/12/2010.

CIVIC CENTRE - TWEED HDS - HIRE

TWEED SHIRE COUNCIL	
FILE No:	DONATIONS
DOC. No:	
REC'D:	17 DEC 2010
ASSIGNED TO:	MCLEAN, A
WORD COPY <input type="checkbox"/>	IMAGE <input checked="" type="checkbox"/>

The General Manager,
Tweed Shire Council,
PO Box 816,
Murwillumbah,
NSW 2484.

Dear Sir,

We wish to confirm our booking for The Civic Centre Auditorium, Tweed Heads, 7:30am till noon on the second Monday of each month from January to November inclusive, for our monthly meetings, with the exception of September as the meeting is cancelled due to our Annual Flower Show, which we have tentatively booked with David Martain to be held on 10th September, 2011. We would require use of the hall please on Friday the 9th September to set up exhibits.

It would be much appreciated if the rental could be maintained at \$70 per meeting for monthly meetings (except September), and \$118 for The Flower Show on 10th September, with the set up on Friday 9th September, free of charge.

We acknowledge Tweed Shire Council's support at every possible opportunity, indeed it's always in our monthly Newsletter to members.

Again, we thank you for your continued support.

Yours faithfully,



Rhonda Pettigrew
Secretary
Ph:0755244274

tweed

south sea

islander

assoc.



SOUTH SEA ISLANDER MATTERS
CIVIC CENTRE - T. HDS - HIRE

TWEED SHIRE COUNCIL
APPECIATION
REC'D 17 DEC 2010
ASSIGNED TO: McLEAN, A
BOARD COPY <input type="checkbox"/> IMAGE <input checked="" type="checkbox"/>

14th December, 2010.

The General Manager,
Tweed Shire Council,
P.O. Box 816,
MURWILLUMBAH. NSW. 2484.

Dear Sir,

Re: Use of the South Sea Islander Room, Tweed Civic Centre, Tweed Heads.

On behalf of our members I would like to thank the Tweed Shire Council for your continued support of our Association. I would like to confirm the dates that the abovementioned room have been booked for our regular monthly meetings in 2011.

February 5 th	March 5 th	April 2 nd	May 7 th
June 4 th	July 2 nd	August 6 th	September 3 rd
October 1 st	November 12 th	December 3 rd	

I would like to take this opportunity, on behalf of the committee of the Tweed Southsea Islander Association, to wish everyone at the Council, and their families a very safe and happy Christmas and a prosperous New Year.

Yours faithfully,

Fiona Mount
Secretary
Tweed Australian South Sea Islander Community.

Tweed Australian South Sea Islander Community Inc.

ARBN 070-714-733

P.O. Box 1220, Kingscliff. NSW. 2487. Mobile: 0401 736 898.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should requests be approved for the waiving of fees for room hire, the income for the meeting room will be impacted by the amount of the fee reduction.

Should requests for "in kind" support be approved, this will impact on the costing of Council's involvement in the activity.

POLICY IMPLICATIONS:

In considering this request, reference should be made to:-

Festivals Policy.

Donations Policy.

Guidelines for Fee Reduction, Auditoriums, Meeting Rooms and Halls.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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33 [CNR-CM] Fees & Charges: Council Buildings - Revised Policy "Community Buildings - Civic Buildings - Civic and Cultural Centres Policy"

ORIGIN:

Community & Cultural Services

SUMMARY OF REPORT:

Council adopted a policy on 7 September 2005 for the determination of hiring fees for community organisations for the use of Council Auditoria, Halls and Centres. This current policy is structured to reflect five criteria:

1. No Fee (where the public charges no entry fee)
2. 50% reduction
3. No Fee ("start up" assistance)
4. Ticket Deals
5. Rehearsals

There are difficulties encountered in the interpretation and application of the policy and it is proposed in this report that there be only three categories:

1. Standard (as determined by Council in Annual Fees and Charges)
2. Community (50% and/or as determined by Council in the Annual Fees and Charges)
3. No Fee.

There are two other policies namely "Civic Buildings - Civic and Cultural Centre" and "Community Buildings" which have become superfluous and require deletion.

RECOMMENDATION:

1. **That the draft Facility Hire and Use Policy and the associated Schedule of Fees and Charges be exhibited for 28 days.**
2. **That Council consult with the affected parties with a view to implementing the Policy from 1 July 2011.**
3. **That Council deletes the following Policies:**
 - (a) **"Civic Buildings - Civic and Cultural Centre"; and**
 - (b) **"Community Buildings".**

REPORT:

Current Status

Council adopted a policy on 7 September 2005 which recommended the current determination of hiring fees for community organisations for the use of Council Auditoria, Halls and Centres. This current policy is structured to reflect five criteria:

1. No Fee (where the public charges no entry fee)
2. 50% reduction
3. No Fee ("start up" assistance)
4. Ticket Deals
5. Rehearsals

Recommendations on the waiver of fees are currently made by the Manager Community and Cultural Services. The recommendations are considered by Council and Applicants are then informed in writing of the decision. A quarterly report is presented by the Corporate Compliance Officer informing Council of the cumulative effect of the waivers on the budget or cost to Council. An annual report on the donations is also produced.

There are difficulties encountered in the interpretation and application of the policy in that:

- the process is not transparent
- it relies upon the knowledge of all the applicants by the Manager Community and Cultural Services
- the five criteria are also open to misinterpretation especially in the determination of which circumstances an organisation is given a waiver of 100% or a 50% reduction

Financial Implications

The waiver of fees diminishes the quantum of income required to maintain the facilities. The Table below illustrates the deficit of which these facilities are operated and supports the need for a more consistent approach to waiving of fees.

2009 – 2010 Budget Estimates (Income: Expenditure)

Facility	Expenditure	Income	Difference
Tweed Heads Auditorium	\$3,656	\$32,137	\$28,481
Murwillumbah Auditorium	\$51,960	\$14,997	(\$36,963)
Banora Point Community Centre	\$70,000	\$13,926	(\$56,074)
South Tweed Heads Hall	\$23,800	\$22,496	(\$1,304)
Kingscliff Amenities Hall	\$17,000	\$5,785	(\$11,215)
Total	\$166,416	\$89,341	(\$77,075)

The table below indicates the quantum of grants and fee waivers that have been disbursed from the 2004-2005 to the 2008-2009 financial years.

Financial Grants and Waivers

2004-2005	\$14,790
2005-2006	Not available
2006-2007	\$16,812
2007-2008	\$20,767
2008-2009	\$26,473

Proposed Methodology

All organisations, regardless of purpose or origin need to contribute in some way to the maintenance of the Shire's Auditoria, Halls and Community Centres. It is not an unreasonable request to expect such contributions as it is proposed to maintain the differential fees from commercial organisations and private users as opposed to not for profit or community organisations.

It is proposed that there be three (3) levels of fees for the use of the Shire's community infrastructure: Standard Use, Community Use and No Fee.

Commercial/private users would not be eligible for reductions on the relevant fee charged (Standard). Community organisations could apply to Council for a part waiver of fees. Full waivers (No Fee) are retained for organisations that have been fully supported by Council over many years and which provide significant community outcomes. The organisations are listed below:

- Blind Citizens Australia - Tweed Valley Branch
- Twin Towns Friends Association
- Tweed Australian South Sea Islander Community
- Christmas Lunch Celebration
- Hospital Auxiliaries

Implications of Revised Policy

The following table details the usage of the Tweed Heads and Murwillumbah Auditoria and compares current fee charges to proposed. As can be seen in the Organisation Receiving Waiver/Reduction of Fees in 2008-2009, there are a number of full waivers. It is these groups which will be substantially affected.

Organisations receiving waiver/reduction in fees: 2008-2009

Organisation	2008/09 waiver	Proposed Waiver Under New Policy
Christmas Day Lunch Committee	100%	100%
Kids Alive Do The Five	100%	50%
Tweed Valley Jazz Club	100%	50%
Tweed Valley Banana Festival	100%	50%
United Hospital Auxiliaries of NSW Inc (Tweed Heads Branch)	100%	100%
NSW Department of Education & Training, Far North Coast Network	100%	0%
Murwillumbah Churches of Christ on behalf of Ministers Fraternal	100%	50%
Twin Towns Friends Association Inc	100%	100%
Blind & Vision Impaired Support Group (Far North Coast)	100%	100%
Tweed Heads Hospital	100%	0%
Tweed Australian South Sea Islander Community Inc	100%	100%
Northern Rivers Symphony Orchestra	100%	50%
Clean Up Australia Day (Chantal Bradshaw)	100%	50%
SU Kingscliff Beach Mission	100%	50%
Back Pain Relief Association	100%	50%

Organisation	2008/09 waiver	Proposed Waiver Under New Policy
Tweed Gold Coast Family History & Heritage Association Inc	50%	50%
Quota International of Tweed Heads/ Coolangatta Inc	50%	50%
Murwillumbah Evening Branch of Country Women's Association of NSW	50%	50%
United Hospital Auxiliaries of NSW Inc (Tweed Heads Branch)	50%	100%
Twin Towns & District Garden Club	50%	50%
Banora Point & District Residents Association Inc	50%	50%
Tweed Shire Women's Service Inc	50%	50%
Murwillumbah Relay for Life, The Cancer Council NSW	50%	50%
Kafe Fiesta	50%	50%
Kingscliff Community Playgroup (Chantal Bradshaw)	50%	50%
Tweed Valley Banana Festival	50%	50%

Murwillumbah Theatre Company, Tweed Heads Theatre Company and Northern Rivers Symphony Orchestra

The Shire is home to a number of major semi-professional and community cultural organisations. It is of importance that Council supports these organisations with financial consideration. It is proposed to charge 50% of the hourly rehearsal fee and 50% of the hire of the hall. This will significantly assist these organisations which provide major cultural outcomes.

Government Agencies and Instrumentalities

The auditoria from time to time are used by State and Federal instrumentalities. It is proposed that such organisations be charged the standard rate. Exceptions to this would be where there is collaboration, partnership or a joint project between the Council and the Agency.

Community Buildings Policy

This policy was adopted at Council Meeting held 15 December 2004 at Minute No 866.

The policy deals with the use of Kingscliff Amenities Hall, murals on public amenities, Murwillumbah Small Meeting Room, other facilities and fee concessions.

The policy is redundant and needs to be deleted for the following reasons:

- Kingscliff Amenities Hall (included in the schedule of fees and charges);
- Murals on Public Amenities (included in the Public Art Policy) ;
- Murwillumbah Small Meeting Room (building no longer exists);
- Other Facilities (included in the schedule of Fees and Charges) and
- Fee Concessions (subject to this report).

Civic Buildings-Civic and Cultural Centre Policy

This policy is redundant as it deals with the use of the Murwillumbah and Tweed Heads Auditoria and the waiving of fees

Facility Hire and Use Policy

The following policy will assist in determining between who are eligible to access the 50% reduction in the fees and charges. The policy refers to the following facilities: Kingscliff Amenities Hall, South Tweed Hall, Banora Point Community Centre, Tweed Heads Civic Centre Auditorium and Murwillumbah Civic Centre Auditorium.

Policy Manual
Facility Hire and Use Policy



Objective

To provide a structure for the hire and use of community facilities.

Statement

The overall objective of facilities is to provide spaces and places for a variety of functions, events and activities for the community. In order to ensure that conditions related to the hire and use of facilities and reserves throughout the Shire are applied consistently, this policy outlines:

- Relevant definitions
- Fees and charges applicable to facilities
- Policy exemptions

Definitions

Facilities

Facilities are defined as multipurpose community and recreation buildings supplied by the Council and available for hire by the general community - Kingscliff Amenities Hall, Banora Point Community Centre, South Tweed Hall, Tweed Heads Auditorium and Murwillumbah Auditorium.

Casual Hire

Casual hirers are those users of the Council's facilities and/or reserves that hire for a one-off specific event or intermittent and/or irregular meetings during any given year to a maximum of 10 sessions per calendar year.

Annual Hire

Annual hirers are those users that hire the Council's facilities on an ongoing basis, which results in more than 10 sessions per calendar year.

Standard User Group

A Standard User Group is one, which is a registered business and results in private pecuniary gain (ie. Income generation and profit).

Those user groups deemed to be of a commercial/standard nature would be charged the standard fee for all use of the Council's facilities.

Community User Group

A Community User Group is defined as a non-profit organisation and shall include stated not-for-profit community groups, religious groups, charitable institutions, service clubs and emergency service organisations and groups that have a focus on community needs with a social benefit. Those groups deemed to be of a community nature would be charged the community fee for all use of the Council's facilities.

Policy Manual
Facility Hire and Use Policy



1. Fees and Charges

Fees and charges applicable to all facilities defined in this policy will be in accordance with the Schedule of Fees and Charges adopted by Council annually as part of the budget and as amended from time to time. The Schedule of Fees and Charges will be increased on an annual basis based on the previous year's rates increase.

2. Subsidised Use

In line with the Council's current practice, subsidised use of facilities defined in this policy are available to the following groups being three (3) tiers of fees: 100%, 50% and No Fee. The standard fee being 100% and the community rate being 50% of the standard fee. Under some circumstances there is a No Fee rate for identified not-for-profit community organisations.

3. Policy Exemptions

The following groups are exempt from fees and charges:

- Blind Citizens Australia (Tweed Valley Branch)
- Twin Towns Friends Association
- Tweed Australian South Sea Islander Community (Tweed South Sea Islander Room)
- Christmas Lunch Celebrations
- Hospital Auxiliaries

The above organisations have long-standing associations with Council.

General Implications and Usage Information

The following table reflects the usage for the Murwillumbah and Tweed Heads Auditoria.

It can be seen that the Auditoriums are used by diverse groups. It can also be noted that the usage of the Tweed Heads Auditorium is greater than Murwillumbah. There are limited rehearsals at Murwillumbah (215) as opposed to that at Tweed (341). This is the impetus for the redevelopment at the Tweed Heads Auditorium.

Murwillumbah and Tweed Heads Auditoria Usage Assessment

page 1

Concurrent with the technical and production audit of both auditoria, an analysis has also been undertaken to ascertain the status of the usage of both auditoria from 2004 – 2006 and to identify the main user groups for each centre.

Murwillumbah Civic Centre

Year	Meetings	Forum	Performance	Performance Audience #	Rehearsal	Other
2004	20	3	29	2,820	56	56
2005	23	2	56	4,510	100	21
2006	15	3	43	3,652	59	26
	58	8	128	10,982	215	103

Main User Groups 2004-2006:

Meetings	Forum	Performance	Rehearsal	Other
TSC Staff/Events Councillors Landowners Group Fed Election Pre Poll Tidy Towns CWA North Coast Engineers Stacks Law Firm Seaside City Landowners NR Reg Devt Board Dep. Fisheries & Ag. Area Assistance Local Gov Super Farmers Group Murbah Ministerial Fraternal United Spiritual Church Tweed Richmond Organic Prod. Assoc. Crime Prevention Group Barnby Street Public Meeting Tweed Byron Ballina Community Transport	TSC NR Writers Festival Forum Science Art Forum Youth Forum	Murwillumbah Theatre Co Sathya Sai School Murwillumbah Festival Perf. Arts Margaret Peate Dance School Mur'bah Christian College Mur'bah East School Nic Canny Theatre Ku Promotions Mt. St. Patrick Sch Margaret Faulkner Mur'bah Hospital Review Rock Dance Science Art Festival Strictly Singing Spirit Entertainment Wollumbin High Sch Encore Productions Phil Taylor Movie Babies Proms	Mur'bah Theatre Co Margaret Faulkner Dance School Banana Festival Margaret Peate Dance School Mt. St Patrick School Mur'bah East Primary Sch Rotary Mur'bah Christian College Fingal Primary School Tweed Valley Jazz Club Wollumbin High School Nic Canny Theatre Murwillumbah Hospital Review Murwillumbah High School Murwillumbah Primary School	TSC Seventh Day Adventist Murwillumbah TAFE Murwillumbah Services Soccer Club NR Bottle Collector Fair Public Schools Award Anzac Day Ceremony Rotary Wollumbin High School Formal Mt. St Patrick School CWA Craft Show Council Elections Banana Festival Ball Luffley Fashion Parade Tweed Valley College Church of Spirit Murwillumbah Ministers Fraternal

Murwillumbah and Tweed Heads Auditoria Usage Assessment

Tweed Heads Civic Centre

Year	Meetings	Forum	Performance	Performance Audience #	Rehearsal	Other
2004	55	3	17	3,400	103	35
2005	56	3	9	1,860	101	28
2006	87	3	27	4,910	137	27
	198	9	53	10,170	341	90

Main User Groups 2004 – 2006:

Meetings	Forum	Performance	Rehearsal	Other
TSC Twin Towns Garden Club Tweed Heads Community Health Dep. Fair Trading Twin Towns Ladies Aux Rotary NR Regional Development Board Jehovah's Witness Tweed Heads Hospital Aux Area E Landowners Dep. Housing Cooloon Day Care Centre Reconnect Aust View Clubs Aust. Dep. Education Marine Authority Centrelink Tweed Byron Land Council Tweed Coolangatta Safety Committee Tweed Heads Hospital Southern Cross University Rotary International Park & Village Services Drug Action Team Legal Aid Christian City Church	TSC Local Govt Week Schools Debate TACTIC	Wintersun Kerry Blair School of Dance Wollumbin Ozone Cherie Goosie Dance Sch St. Andrew's Lutheran College Fame Theatre Co Tweed Heads Hospital Review Tweed Theatre Co Young Stars Concert Neptune Productions Danina Hogan Dance Fingal Public School Kids Promotions Playschool Nic Canny Theatre Co.	Tweed Theatre Co Northern Rivers Sym. Orch. TH Early Childhood Intervention St. Andrew's Lutheran College Judy Mason's Melodears Wyrd Band NR Collectors Fair Simon Kochell Dance TH Hospital Review Cherie Goosie Dance School Fingal Primary School Tweed Heads Primary School Combined Churches Chris Fraser Ballet Factory Rotary Erin O'Flatherty Dance School Wintersun	TSC Tweed Heads Early Intervention Council Electrons Lakeside Christian College Disco Lindisfarne Anglican School NR Collectors Fair NAIDOC Week Red Cross QLD Cancer Fund Quota Twin Towns Garden Club Tweed Heads Hospital On Track Community Programs Restoration Church Gold Coast Orchid Show Ba'hai Church TH Primary School Kingscliff Christian Church Tweed Heads Hospital Combined Churches Xmas Dinner St. John's Ambulance Friends of the ABC Rotary Antiques Tweed Valley Community Church Ladybird Promotions Fingal Primary School Seventh Day Adv. Church

Proposed Fees and Charges 2011/12

The proposed new Fees and Charges reflects the policy in that there is a differential in the maintenance of the community groups of 50% of the standard rate. As there is a range of organisations that are affected by this change it is proposed that there be consultations with the affected organisations with a view to implementing the policy from 1 July 2011.

2010/2011 Fees and Charges

Proposed New Fees and Charges Levied

Community & Natural Resources

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
100	Hall Hire - Banora Point Community Centre	Fee Details	A2444			
		Large Meeting Room (100 persons)				
		Community User Hire				
		Hourly		16.00	17.00	25.00
		Half Day		49.00	50.00	44.50
		Full Day		86.00	89.00	91.00
		Commercial/Private Hire (Standard)				
		Hourly		49.00	50.00	50.00
		Half Day		86.00	89.00	89.00
		Full Day		177.00	182.00	182.00
		Small Meeting Room (20-30 persons)				
		Community User Hire				
		Hourly		10.00	10.00	14.00
		Half Day		42.00	43.00	43.00
		Full Day		64.00	66.00	66.00
		Commercial/Private Hire (Standard)				
		Hourly		27.00	28.00	28.00

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		Half Day		59.00	61.00	86.00
		Full Day		91.00	94.00	132.00
		Interview Rooms				
		Commercial/Private Hire (Standard)				
		Flat Hourly Rate		22.00	23.00	23.00
		Community User Hire				
		Flat Hourly Rate		10.00	10.00	12.50
		Full Centre (not including Interview Rooms)				
		Conference Use				
		Community User Hire		172.00	177.00	177.00
		Commercial Hire (Standard)		343.00	353.00	354.00
		Board: Refundable Fee				
101	Hall Hire - HACC Murwillumbah and South Tweed Heads	Hall	A2400/A2420	350.00	350.00	350.00
		Hourly Community User groups		10.00	10.00	12.00
		Hourly Other groups (Standard)		23.00	24.00	24.00
		Half Day Community User groups		29.00	30.00	30.50
		Half Day Other		59.00	61.00	61.00

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		(Standard) groups				
		Full Day Community User groups		46.00	47.00	47.00
		Full Day Other (Standard) groups		71.00	73.00	94.00
		Office				
		Community User groups				
		Hourly		8.00	8.00	8.00
		Half Day		21.00	22.50	22.50
		Full Day		37.00	38.00	38.00
		Private Functions/ Commercial Ventures (Standard)				
		Hourly		15.00	15.00	16.00
		Half Day		44.00	45.00	45.00
		Full Day		73.00	75.00	76.00
102	Hall Hire - Kingscliff Amenities Hall	Meetings: Community User	A2218			
		Per Half Day (4 hours)		49.00	50.00	50.00
		Per Evening		52.00	54.00	54.00
		One Full Day		86.00	89.00	91.00
		Keep fit, dance or similar classes—per hour		16.00	17.00	
		Concerts, plays, local		119.00	123.00	123.00

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		dances and other functions				
		Rehearsal charges - per hour by arrangement		27.00	28.00	14.00
		Meetings - Commercial/Private (Standard)				
		Per Half Day (4 hours)		86.00	89.00	100.00
		Per Evening		86.00	89.00	108.00
		One Full Day		177.00	182.00	182.00
		Keep fit, dance or similar classes per hour		25.00	26.00	26.00
		Function: Balls, weddings, banquets and parties		209.00	215.00	246.00
		Charges after midnight - per half hour		32.00	33.00	33.00
		Elections:		435.00	448.00	448.00
		Rehearsal Charges - per hour by arrangement (minimum 3 hours)		27.00	28.00	28.00
		General				
		Cleaning fees per		14.00	14.00	14.00

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		hour are charged where it is considered necessary. These are refundable depending on the state of the hall on vacation by the hirer. Hall furniture must be left as found or a fee will be charged.				
103	Hall Hire - Murwillumbah and Tweed Heads Civic and Cultural Centres	Bond (Refundable) Auditorium (Murwillumbah and Tweed Heads)	A2235	350.00	350.00	350.00
		Foyer		263.00	271.00	271.00
		Private Function: Social, dance, wedding, party, dinner		360.00	370.00	370.00
		Community User Function		180.00	185.00	185.00
		Local art, craft, plant and stamp displays		134.00	138.00	138.00
		Local productions		221.00	227.00	227.00
		Professional productions		431.00	444.00	454.00

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		Meetings: Private (Standard) (Full Day)		210.00	216.00	216.00
		Meetings: Community User (Full Day)		105.00	108.00	108.00
		Private Meetings per half day (Standard)		136.00	140.00	144.00
		Community User Meetings per half day		70.00	72.00	72.00
		Schools (presentations)		190.00	196.00	227.00
		Schools (formals, socials) plus bond		273.00	281.00	370.00
		Elections		530.00	545.00	545.00
		Music Festival		155.00	160.00	227.00
		Blue Light Disco- Plus Band		187.00	192.00	
		Commercial Display (Standard)		430.00	443.00	443.00
		Community User Display		115.00	118.00	221.50
		Keep fit, dance or similar classes				
		First hour		41.00	42.00	42.00
		Each subsequent hour		27.00	28.00	28.00
		Murwillumbah Civic	A2235.1780			

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		Centre Cutlery and Crockery Hire				
		Light refreshment crockery - per person		1.00	1.00	1.00
		Cutlery and crockery for side, entrée, main, dessert - per person		1.00	1.00	1.00
		Glassware only - per person		1.00	1.00	1.00
		Cutlery, crockery and glassware - per person		2.20	2.20	2.20
		Meeting Room				
		Tweed Heads Centre With kitchen		70.00	72.00	72.00
		Notes:		82.00	84.00	84.00
		In all daytime functions the premises must be vacated by 5:30pm				
		Overtime rates for evening functions per half hour after midnight		38.00	39.00	39.00
		Debutante practice by arrangement (per hour)		27.00	28.00	28.00

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		Stage production rehearsals by arrangement per hour		27.00	28.00	28.00
		Seating capacity Murwillumbah is 600 seated or 250/300 cabaret style				
		Tweed Heads is 500 seated or 300 cabaret style				
		Where considered appropriate a bond of \$350.00 to be lodged against possible damage		350.00	350.00	350.00
		Setting up rate first 15 minutes free - then rate per hour		17.00	18.00	18.00
		Foyer of Murwillumbah and Tweed Heads Civic & Cultural Centres				
		Where posters are displayed in the foyer of the Murwillumbah and Tweed Heads Civic Centre, the				

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		following charge is to apply:				
		Posters A4 size per month or part thereof (first month)		17.00	18.00	18.00
		Per month thereafter				
		Posters A3 size per month or part thereof (first month)		13.00	13.00	13.00
		Per month thereafter		18.00	19.00	19.00
		Per month thereafter				
		Posters A2 size per month or part thereof (first month)		17.00	18.00	18.00
		Per month thereafter		27.00	28.00	28.00
		Per month thereafter				
		All other posters per month or part thereof (first month)		19.00	20.00	20.00
		Per month thereafter		36.00	37.00	37.00
		Per month thereafter				
		Bond		25.00	26.00	26.00
		Hall	A2220	350.00	350.00	350.00
104	Hall Hire - South Tweed Community Hall	Community User groups				
		Hourly		16.00	17.00	25.00
		Half Day		49.00	50.00	50.00
		Full Day		86.00	89.00	91.00
		Private Functions/				

Item	Activity/Function	Title of Fee/ Charge	Ledger No.	Fee or Charge Levied 2009/2010 (\$)	Fee or Charge Levied 2010/2011 (\$)	Proposed New Fee or Charge Levied 2011/2012 (\$)
		Commercial Ventures (Standard)				
		Hourly		49.00	50.00	50.00
		Half Day		96.00	89.00	100.00
		Full Day		177.00	182.00	182.00
		Bond		350.00	360.00	360.00

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

It is proposed that there will be a minor increase in income.

POLICY IMPLICATIONS:

If the recommendation is adopted the Policies "Community Buildings" and "Civic Buildings - Civic and Cultural Centre" will need to be deleted.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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34 [CNR-CM] Amwil Park Community Facility – Lease to Murwillumbah Boxing Club

ORIGIN:

Director Community and Natural Resources

SUMMARY OF REPORT:

The Murwillumbah Boxing Club has been operating from Amwil Park for approximately eight years, the last two years under a lease with Council for a peppercorn rent in acknowledgement of the philosophy of the Boxing Club and its support for disadvantaged young people, and in recognition that it is a not for profit organisation.

RECOMMENDATION:

That:

- 1. Council approves entering into a lease with the Murwillumbah Boxing Club for the premises located at Amwil Park, 9a Amwil Avenue, Murwillumbah, for a term of four years at a lease fee of \$1.00 per annum including maintenance responsibilities.**
- 2. All documents be executed under the Common Seal of Council.**

REPORT:

The Murwillumbah Boxing Club has been operating from Amwil Park for approximately eight years, the last two years under a lease with Council for a peppercorn rent in acknowledgement of the philosophy of the Boxing Club and its support for disadvantaged young people, and in recognition that it is a not for profit organisation.

The lease has expired and the Club has requested a further lease to continue its service to the community. The Club has maintained the premises and Council incurs no costs for the provision of this facility for the Club.

Council holds records of the Club's membership of the Far North Coast Amateur Boxing Association and their insurance coverage by OAMPS Insurance Brokers.

It is recommended that Council approves entering into a lease with the Murwillumbah Boxing Club for a term of four years at a peppercorn rent to enable the Club to continue its activities at the Amwil Park Community Facility.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

As per the report.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

35 [CNR-CM] Proposed Motorcycle Dirt Track

ORIGIN:

Waste

SUMMARY OF REPORT:

On 16 November 2010 Council resolved to defer a report on a Share Farming Proposal at partial Lot 602 DP 1001049 pending a further report being brought forward. The report was to look at an alternative use for the partial lot, being a motorcycle dirt track. The current land use of the partial lot is agricultural production (cane growing). Interest has been received from Tweed Valley Motorcycle Club in developing and operating a motorbike dirt track in Tweed Shire.

Council Officers have completed preliminary investigations into the constraints for a motorcycle dirt track to be constructed on this site. In summary the key constraints for this site to host a motorcycle dirt track are:

- The current use of the site is agricultural production (cane growing).
- Inconsistencies with planning instruments, namely, the permissibility of the development on the sites land zones and potential difficulties with adequately addressing the Clause 8 (2) considerations of the Tweed LEP 2000.
- Protecting the visual amenity, particularly for near-by residences along Eviron Ridge and motorists using the Pacific Highway.
- Providing safe access to the site.
- Mitigating potential noise disturbance on residents in the locality.
- Mitigating potential dust disturbance to surrounding residents.

RECOMMENDATION:

That:

- 1. Council Officers commence discussions with the NSW Canegrowers Association on the proposal to host a motorcycle dirt track on current cane growing land, being partial lot 602 DP1001049**
- 2. Subject to positive discussions with the NSW Canegrowers Association, Council Officers commence discussions with Tweed Valley Motorcycle Club in relation to funding further investigations and a development application.**

REPORT:

On 16 November 2010 Council resolved to defer a report on a Share Farming Proposal on Council land holdings, partial Lot 602 DP 1001049, pending a further report being brought forward. The report was to look at an alternative use for the partial lot, being a motorcycle dirt track.

The allotment is owned by the Council's Waste Fund and currently hosts the Quirks Quarry operation and a vegetation buffer on the southern portion, and agricultural production (cane growing) on the northern portion. The northern portion has been subject to a share farming arrangement for some ten years.



Figure 1: Site locality



Figure 2: Aerial overview of the site showing proposal footprint

Interest has been received from Tweed Valley Motorcycle Club in developing and operating a motorbike dirt track in Tweed Shire.

Council Officers have completed preliminary investigations into the constraints for a motorcycle dirt track to be constructed on this site. A Preliminary Environmental Constraints Assessment follows this report. Formal discussions with the NSW Canegrowers Association have not been undertaken as part of the constraints assessment. In summary the key constraints for this site to host a motorcycle dirt track are:

- The current use of the site is agricultural production (cane growing).
- Inconsistencies with planning instruments, namely, the permissibility of the development on the sites land zones and potential difficulties with adequately addressing the Clause 8 (2) considerations of the Tweed LEP 2000.
- Protecting the visual amenity, particularly for near-by residences along Eviron Ridge and motorists using the Pacific Highway. Screening the development from highway motorists is also required to minimise the risk of the development distracting motorists.
- Providing safe access to the site. The proposed Eviron Road option may not be suitable due to the steep grade of the existing road and the presence of quarry and landfill heavy vehicles in the area.
- Mitigating potential noise disturbance on residents in the locality. It may be difficult to shield residents along Eviron Ridge from the noise given the topographic relief.
- Mitigating potential dust disturbance to surrounding residents. The proposal needs to demonstrate it has adequate dust suppression and barriers to mitigate dust issues.

It is considered, at a minimum, that robust investigations into relevant planning instruments, traffic, noise, dust, and water demand, would be required to prepare a Statement of Environmental Effects to accompany a development application for this site.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Resource and financial implications associated with any escalation and assessment of the proposal

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Proposed Motorcycle Dirt Track – Preliminary Environmental Constraints Assessment (ECM 28079549)
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36 [CNR-CM] Garage Sale Trail

ORIGIN:

Waste

SUMMARY OF REPORT:

Councils Australia wide have been invited to participate in the national launch of the Garage Sale Trail on April 10 2011. The Garage Sale Trail concept is one of coordinated garage sales at willing residential premises throughout the participating Council areas. The aim is to reduce waste to landfill and promote recycling by providing an alternative to disposing of unwanted items. The organiser of the Garage Sale Trail is seeking a \$10,000 cash investment from participating Council's in addition to undefined resources (eg. promotion and consumables). In return, participating Council's will be entitled to creative artwork and some communication/media. Similar projects have been run by Planet Ark (Big Aussie Swap) and North East Waste Forum (Second Hand Saturday).

RECOMMENDATION:

That Council:

- 1. Declines the offer to participate in the Garage Sale Trail**
- 2. Investigates alternative programs such as Big Aussie Swap and Second Hand Saturday.**

REPORT:

Councils Australia wide have been invited to participate in the national launch of the Garage Sale Trail on April 10 2011. Garage Sale Trail was conceived by 'Republic of Everyone', an online group with interests in sustainable business. Organisers are seeking 30 Council's to participate in the national launch. The Garage Sale Trail concept is one of coordinated garage sales at willing residential premises throughout the participating Council areas. The aim is to reduce waste to landfill and promote recycling by providing an alternative to disposing of unwanted items. The debut Garage Sale Trail occurred at Bondi NSW in May 2010, with 126 registered garage sales occurring on the day.

The Garage Sale Trail is being funded by a Council participation fee of \$10,000 cash. Participating Council's would also be responsible for additional resources such as promotion and consumables. Payment of the participation fee provides access to a set of entitlements such as creative artwork, localised media releases, and some project management.

A similar program has been successfully developed and implemented locally in the region. The North East Waste Forum (NEWF) has run Second Hand Saturday three times in the region, with the last event occurring in 2007. In 2007 450 households registered for Second Hand Saturday. NEWF covered consumable costs for member Council's participating in the event, and gained sponsorship to cover advertising costs. In addition NEWF provided sponsorship arrangement and management, management of the production and distribution of all promotional and advertising materials, coordination of the advertising and promotion of the event (6 week advertising and promotional schedule), all media, radio interviews and editorial, website coordination of all info, registration and evaluation, Council information and support, contact point for householders and sending out the information kit to householders, and evaluation survey and collation of survey for a report.

Alternatively, Planet Ark encourages Council's to participate in a 'Big Aussie Swap' program which coincides with National Recycling Week each year. The concept is for residents to bring unwanted goods to a central location, exchange the goods for tokens, and the tokens are then swapped for items brought by other residents. There is no cost to participating Council's, and Planet Ark provide ready to use artwork and media templates, in addition to a national media campaign.

The documentation from Garage Sale Trail is reproduced for Council's information:



COUNCIL PARTICIPATION INFORMATION.

BACKGROUND

The Garage Sale Trail is a mission to help promote recycling and sustainability, to bring people together & to have a little fun! It's an inherently simple initiative that is being facilitated by four key forces – sustainability, technology, community & collaboration.

COUNCIL PARTICIPATION CRITERIA

The Garage Sale Trail is a multi-faceted national project that is delivered on a local Council level. We believe in the power of partnerships and as such are seeking to work with a maximum of 30 savvy forward thinking Councils Australia-wide (10 within NSW) that are committed to;

- Promoting recycling and sustainability within their communities
- Reducing waste through education and provision of practical solutions
- Uniting communities through events & communications that create a sense of civic pride
- Providing opportunities that stimulate their local economy
- Giving community groups working on sustainability at a grass roots level to fundraise for their activities
- Participating in projects that provide a channel to communicate with disparate community groups
- Celebrating their municipalities and having a little fun!

COUNCIL INVESTMENT

Participating Councils provide a contribution comprised of cash investment and contra resources. See below.

COUNCIL INVESTMENT	
CASH	\$10K cash investment

Council's make a representative (Mayor or Councillor) available for media & publicity purposes. For example, to open the Garage Sale Trail, etc

COUNCIL BENEFITS

The Garage Sale Trail is a unique sustainability platform that delivers positive environmental, community & local economic outcomes in a way that is fun & social. The resulting partnership benefits include;

- Increased awareness about living sustainably
- Offsetting waste via recycling
- Enhanced 'sense of place' and connectedness at a community level through encouraging people to get to know their neighbours
- Ability to communicate with disparate community groups that wouldn't otherwise be aware of Council sustainability initiatives
- A way to stimulate the local economy
- Gives community groups the opportunity to raise funds and awareness of their projects, like for example community gardening, recycling, food coops etc.
- A localised creative communications campaign that's fully integrated across traditional and social media and supported nationally



- An opportunity to be part of something BIG and to have a little fun
- A resulting sense of community pride

COUNCIL ENTITLEMENTS: WHAT YOU GET

The Garage Sale Trail provides participating Councils with the following entitlements;

COUNCIL ENTITLEMENTS: WHAT YOU GET	
Creative Assets	Poster art Flyer art Localized Garage Sale Trail map art Stickers Flags art Banner art
Participant Packs	T-shirt art Trucker hat art Balloons Artist series poster art
Project Management	Brand & activation tool kit including logo usage guidelines, Garage Sale Trail liaison contact, judging templates, web platform usage instructions, etc
Legal	Participant waiver
Communications Assets	Provision of localized media release x3 Access to; - Print advertisements - Radio spots - TVC's - Online banners - Ambient campaign materials - Social media assets – for use on your Facebook, Twitter, blogs etc.
Media	Inclusion within localised media activity Rights to communicate Council's involvement & support Awareness benefits from national campaign
Celebrity Advocacy	Access where possible to ambassadors & steering committee members for local launches
IP Rights	Rights to utilise Garage Sale Trail logo & trademark
Digital Platform	Integration within localised web platform including; - Registration application - Localised participant database - Regular local newsletter - Donations application for participant donations
Content Production	Access to pre-event webisode's Inclusion in national documentary Access to post event documentary Access to post event photo's Access to post event zine
Reporting	Access to real time localized web reporting Post event report – local and national



Launch Event	Provision of framework for hosting a successful Garage Sale Trail event to announce official local launch or announce winners from judging
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* Note that Councils are responsible for printing marketing collateral and producing materials.

PROJECTED OUTCOMES

Participating Councils can expect to receive the following projected sustainability outcomes based on the Garage Sale Trail pilot results achieved in Bondi during May-2010 (refer case study video at www.garagesaletrail.com.au);

- **Economic Outcomes:** A forecast \$75k in local pocket money to be generated per Council. We can assume a 'flow on effect' through which a proportion of this 'pocket money' is spent locally.
- **Environmental Outcomes:** Approx 15 shipping containers of waste to be offset per Council. From a cost saving perspective this represents an approximate waste removal saving of \$7,560 per Council.
- **Community Outcomes:** At this stage we do not have data or insights relating to the social / community benefits connected to the Garage Sale Trail. We do however know that the pilot event successfully united the local community & further facilitated an authentic sense of civic pride.
- **Fundraising:** The online registration process will provide Garage Sale hosts the opportunity to a) donate 10% of profits from their sale to a Garage Sale Trail charity partner, b) Identify and donate proceeds to a local charity/community group and/or c) Nominate a local group for whom they would like to fundraise.

Assumptions

1. An average of 100 garage sales per participating Council (given 6-month promotional lead time)
2. The average amount of pocket money made per Garage Sale Trail participant is \$750
2. A 20-ft shipping container weighs approx 4-tonne when full of recycled goods.
3. The Council cost of waste removal is approx \$126 per tonne.

* Thus 15 shipping containers represent an offset of approx 60-tonnes of waste per Council.

** The cost saving associated with offsetting 60-shipping containers of waste per Council is \$7,560

*** Please note that these projections are not definitive but rather a guide to what should be realized

NOT-FOR-PROFIT PARTNERS

Garage Sale Trail is establishing partnerships with a maximum of three not-for-profit partners to help create national awareness by promoting the project through their internal & external communications channels. To date two national partnerships have been formalized, one with Oxfam and the second with Keep Australia Beautiful. The third proposed partnership will be with either of St Vincent de Paul or the Salvation Army.

The Garage Sale Trail is facilitating a financial contribution to these organizations through post event participant donations. The model is such that registration is free to punters (includes a free participant pack, inclusion of localized media & promo, etc) but we ask that participants donate 10% of their pocket money generated to one of the affiliated not-for-profit organizations. We believe this 'honesty box' style approach will deliver significant financial outcomes in year-1 as well as being highly scalable as the property grows into the future within Australia & abroad.

We also exploring the idea of integrating an online option for Garage Sale Trail participants to nominate their own local community project / charity group to which they would like to direct their donation. The vision behind this 'localised' donation approach is to help facilitate the creation of locally sustainable community development initiatives.



CONTACT:

For further info please contact:

Garage Sale Trail
Darryl Nichols
Executive Director

darryl@garagesaletrail.com.au
0422-665-088
02-9213-3491

Level 3, 2-12 Foveaux St,
Surry Hills, NSW, 2010

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

\$10,000 plus promotion and resources should Council participate in Garage Sale Trail.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

37 [EO-CM] Kingscliff Foreshore Masterplan

ORIGIN:

Design

SUMMARY OF REPORT:

In July 2007, Council adopted the Kingscliff Foreshore Master Plan. The master plan is a document that establishes a vision for future foreshore upgrade works.

Major features of the master plan are the shrinking of the Kingscliff Beach Holiday Park enabling the creation of a Central Park in Kingscliff to the north of the Cudgen Headland Surf Life Saving Club. The creation of the park relies on providing sand nourishment to Kingscliff Beach, so that the new Central Park and upgraded Kingscliff Beach Holiday Park are protected from beach erosion. Recently a source of sand for beach nourishment has been identified as Area 5 in the Tweed River, downstream of the Barneys Point bridge.

With a source of nourishment sand now identified Council Officers have been able to develop a concept plan for the Central Park. Due to intensive interest in the progress of this plan it is considered the appropriate time to provide the community with an update.

RECOMMENDATION:

That Council endorses the concept layout for the Kingscliff Central Park for the purpose of public exhibition.

REPORT:

In June 2000 Tweed Shire Council (TSC) engaged Consultants to develop the Tweed Coastline Hazard Definition Study. This Study identified and defined the coastline hazards and underlying coastal processes affecting the Tweed Shire coastline. The study mapped the landward extent of the hazard zones for the immediate, 50 year and 100 year planning timeframes. For Kingscliff, significant assets including the Cudgen Headland Surf Life Saving Club, the Kingscliff Beach Holiday Park and Kingscliff Community Hall were all identified as being at risk. This Study was adopted by Council at the Meeting of 19 September 2001.

At the Council Meeting of 4 September 2002, Council resolved to prepare the Tweed Coastline Management Study and Management Plan.

In July 2005, Tweed Shire Council (TSC) adopted the Tweed Shire Coastline Management Plan prepared by Umwelt Environmental Consultants. The Coastline Management Plan outlines a series of recommendations for each of the coastal villages in the Tweed Shire.

The Kingscliff Foreshore Protection Environmental Impact Study was commissioned in April 2006. The preferred strategy at the time, for the protection of public assets along Kingscliff foreshore and as adopted in the Tweed Shire Coastline Management Plan, was that of a flexible rock seawall extending from the existing seawall at the Kingscliff Bowls Club to the Cudgen Headland Surf Lifesaving Club combined with initial and ongoing sand nourishment.

Following a reassessment by the Consultants of available beach profile data and evaluation of the hazard reduction that would ensue from initial and ongoing sand nourishment, the preferred strategy was amended in December 2006 to involve:

- An underground vertical piled seawall of about 80 metres protecting the Cudgen Headland SLSC only;
- Replacement of the proposed rock seawall with initial and ongoing sand nourishment of Kingscliff beach between the Cudgen Headland SLSC and the existing seawall at the Kingscliff Beach Club;
- A linear beach reserve about 15 metres wide within the boundary of the current Kingscliff Holiday Park to act as a buffer to any redevelopment of the site;
- Management of stormwater to include detention, reuse, infiltration and controlled overflows to limit impact of stormwater flows on the beach.
- Ongoing monitoring to review the impacts of predicted long-term recession and climate change to determine if any change in strategy is required.

Also in 2006, Council commenced the process of developing the Kingscliff Foreshore Masterplan. The village of Kingscliff was chosen as the first area for a Foreshore Masterplan to be undertaken due to the increasing level of property development, the requirement from the Coastline Management Plan for the provision of terminal beach protection, the proposed upgrading of the Kingscliff Beach Holiday Park and subsequent creation of a new central foreshore park beside the Community Hall. The master plan establishes a vision for future upgrade works along the Kingscliff foreshore, which allows staged implementation as funds become available. Throughout the development of the Master Plan extensive community consultation was undertaken to define the Master Plan recommendations. The Kingscliff Foreshore Master Plan was adopted by Council in July 2007.

RECENT EROSION

The southern section of Kingscliff Beach, from the north training wall of Cudgen Creek to Cudgen Headland SLSC, has been actively eroding since late 2009.

Up to 60 metres of vegetated dune has been lost along a length of foreshore approximately 500 metres long. This is similar to the width of dune vegetation lost in the May 2009 storm along most of the Tweed Coast, particularly the northern ends of beaches. The main difference for Kingscliff is that the erosion has been due to an overall lowering of the beach profile over time and not a discrete storm event. The foreshore erosion is being caused by an offshore sand deficit whereby the beach is trying to level itself out by pulling sand from the dunal system. The foreshore erosion will continue until there is enough sand moving into the offshore deficit area.

The Tweed Shire Coastline Hazard Study identified the area that is currently affected by erosion as being within the immediate erosion hazard zone. Current monitoring has shown that the area adjacent to the north training wall of Cudgen Creek for approximately 200 metres has been relatively stable for around three (3) months, indicating that the beach may have levelled itself in this region.

Further north towards the Cudgen Headland SLSC and the Kingscliff Beach Holiday Park, however, the beach profile is relatively steep and erosion is continuing. In an attempt to improve the protection of the Cudgen Headland SLSC provided by the underground pile wall, Council has recently had contractors construct two sections of temporary sea walls using geofabric containers filled with sand. The option to construct in this manner was largely influenced by the immediate need for protection of the area, as well as, having protection that provided satisfactory access for beach users. On the southern side of the SLSC a 30 metre section of geofabric sea wall has been provided in an attempt to ensure that the pile wall is not outflanked by the adjacent unprotected erosion scarp. This will need to be monitored during the coming months and augmented if required. On the north side of the SLSC the geofabric sea wall provides protection to seven (7) cabins in the Kingscliff Beach Holiday Park.

Council recently made a successful application to the NSW Government for assistance under the *Natural Disaster Relief Program* for restoration of car parking and beach access at Faulks Park. These works began at the end of January and are scheduled to be completed in April and include dredging of Cudgen Creek, construction of 200 metres of rock sea wall, which will be covered by the dredged material, construction of approximately 70 car parking spaces, replanting of dunal areas and construction of beach accesses.

IMPLEMENTATION OF THE MASTER PLAN

The Kingscliff Foreshore Master Plan was adopted by Council in July 2007 and since that time Council Officers have implemented sections of the master plan including:

- Construction of an underground pile wall in front of the Cudgen Headland SLSC.
- Upgrade of Jack Bayliss Park at North Kingscliff.

Current Process

Currently Council is planning to implement a number of further projects identified in the Masterplan, which are contained in the precinct between the Cudgen Headland Surf Life Saving Club and the Kingscliff Beach (Bowling) Club.

Implementation of the Master Plan in this area is a three (3) step process:

Step 1 - Beach nourishment.

Step 2 - Redevelopment and reduction in the extent of the Kingscliff Beach Holiday Park.

Step 3 - Creation of Kingscliff Central Park in the area vacated by the Kingscliff Beach Holiday Park.

Step 1- Beach Nourishment

All of the projects listed above rely on the provision of sand nourishment to Kingscliff Beach to stabilise the coastal edge. Sand nourishment will restore the eroded Kingscliff Beach to its pre 2009 condition and provide protection to assets currently within the erosion hazard zone, namely the Kingscliff Beach Holiday Park and Kingscliff Community Hall as well as also providing protection for the proposed Kingscliff Central Park.

The initial nourishment volume was estimated in 2007 to be in the order of 250,000 cubic metres with ongoing periodic (5-10 years) nourishment equivalent to 5000 cubic metres per year. The beach nourishment program would aim to create a dune with a crest level of 5m AHD and to widen the existing beach by approximately 15 metres. This effectively moves the location of the immediate coastal hazard line (erosion risk) seaward. Ongoing nourishment and dune management would maintain the hazard line at a constant location into the future.

In the past Cudgen Creek has been suggested as a possible source of the beach nourishment sand. Unfortunately there is insufficient sand volume (approx 10,000 cubic metres) to satisfy the initial nourishment requirements (250,000 cubic metres). However, Cudgen Creek may represent a possible supply of ongoing and/or 'emergency' nourishment, subject to the impacts on coastal processes being addressed.

After long term negotiation with the NSW Department of Lands and Property Management Authority (LPMA) it has become apparent that the only viable sand source for the beach nourishment is Area 5 in the Tweed River (downstream of Barneys Point Bridge). Currently there is no existing extraction approval for this sand, however an investigation licence has been recently obtained over the area by Tweed Shire Council. This licence allows Council

to undertake all preliminary investigations prior to committing to a full extractive licence with required approvals.

It is understood that the amount of material potentially available from Area 5 is more than required for the Kingscliff nourishment works. The material could be pumped directly to Kingscliff, in which case some processing equipment would need to be temporarily established near the beach. Additionally, it may be possible to enhance navigational channels within the lower Tweed River estuary with a well-designed extractive dredging program.



Step 2 - Redevelopment of Kingscliff Beach Holiday Park

Approximately 10 years ago Council conducted community meetings to determine the future of the Kingscliff Beach Holiday Park. Three options were presented:

1. Complete removal of the Holiday Park
2. Upgrade the Holiday Park within its current footprint
3. Upgrade the Holiday Park with a reduced footprint

Numerous consultation meetings involving the Kingscliff Ratepayers and Progress Association, the then Kingscliff Business Corporation and the community were held. As a result of these discussions Option 3 was selected as the preferred option for the redevelopment of the Holiday Park. This option provided for the creation of a Central Park in Kingscliff in the reduced footprint of the Holiday Park, between the Cudgen Headland Surf Life Saving Club and the southern side of the Grand Pacific Hotel.

The selection of the preferred option coincided with the identification of the immediate, 50 and 100 year hazard lines in the Coastline Hazard Definition Study. That study identified that 60% of the current Holiday Park footprint would be lost in an immediate erosion event. As a result, plans for the redevelopment of the Holiday Park had to be put on hold until the Coastline Management Plan was completed in 2005.

As noted in Step 1, beach nourishment was adopted as the preferred management strategy in the Coastline Management Plan for moving the immediate hazard line seaward and providing protection to assets located westward of the line.

With the eastern boundary of the Holiday Park set 15 metres west of the revised immediate hazard line to allow a buffer, a source of sand for the beach nourishment identified and in accordance with preferred Option 3 concept layouts for the upgraded Kingscliff Beach Holiday Park have been developed. A Development Consent based on these plans is being sought by Darryl Anderson on behalf of Tweed Coast Holiday Parks. The concept layout provides the Holiday Park with new amenities blocks and improved facilities and the reduced size enables the creation of Kingscliff Central Park.

As a source of beach nourishment sand has now been identified work has now commenced on development of a concept plan for the Kingscliff Central Park.

Central Park/Cenotaph

The reduction in the footprint of the Kingscliff Beach Holiday Park will allow for the creation of a large community space in the centre of the Kingscliff CBD. This area will feature:

- Open grass areas for casual playing of ballgames, performances, festivals etc.
- Picnic shelters and BBQ's.
- A promenade with shade canopy.
- Anzac memorial space with the cenotaph being the central focus of this area, framed by a set of low sculptured walls to increase the parade area and hold future plaques.
- Promenade connecting Marine Parade to the beach.
- Play equipment.
- Youth space – half basketball court.

Furniture

Park furniture will be selected from the new coastal furniture range. This range has recently been used for park upgrades at Jack Bayliss Park North Kingscliff, Cabarita Streetscaping, Ambrose Brown Park upgrade Pottsville and Old Boat Harbour Upgrade at Fingal.

Boardwalk

A 3.5 metre boardwalk will run the length of the beach protection area from north of the Kingscliff Beach Club to south of the Cudgen Headland Surf Life Saving Club. The boardwalk will be accessible by wheelchair and bicycle and will provide accesses to the beach.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Implementation of the elements of the plan will be subject to detailed design, planning approval and would be carried out as finance becomes available.

If granted an Extractive Licence for sand dredging in the Tweed River, proponents would normally be required to pay royalties to the Crown for the extracted material. Council at its December 2010 meeting sought an assurance that “for the purpose of sand extraction from the Tweed River for use as sand nourishment on Kingscliff Beach in accordance with the Council-adopted and Minister-endorsed Coastal Zone Management Plan, that sand royalties will not be required to be paid to the Government of the day.”

Council further requested “a commitment from the Government of the day to provide significant financial assistance toward the estimated \$6M cost of the sand nourishment program to protect valued community assets on Kingscliff foreshore in accordance with the Tweed Shire Coastline Management Plan.”

No response to these requests has yet been given.

POLICY IMPLICATIONS:

The Kingscliff Central Park concept plan is in accordance with the adopted Kingscliff Foreshore Master Plan.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Kingscliff Foreshore Masterplan - Concept Plan PD08015/C (ECM 28373831).
 2. Kingscliff Foreshore Masterplan - NE Perspective PD08015/2A (ECM 28374871).
 3. Kingscliff Foreshore Masterplan - SE Perspective PD 08015/3A (ECM 28374890).
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38 [EO-CM] Streetlight Maintenance and Energy Efficient Lighting Upgrade

ORIGIN:

Planning & Infrastructure

SUMMARY OF REPORT:

Country Energy has proposed to upgrade all of the non-energy efficient street lighting in the Tweed Shire to energy efficient lamps.

The upfront cost for this proposal to Council is \$248,484 with an estimated payback on energy and maintenance savings of \$273,913 per annum.

There are also reductions in greenhouse gas emissions of 1014 tonnes per annum.

Country Energy is to be congratulated for this initiative. The proposal will enable Council to make significant longer term cost savings after the payback period of less than one year and enable Council to make a significant and ongoing contribution to reducing greenhouse gas emissions.

RECOMMENDATION:

That Council:

- 1. Accepts Country Energy's offer to upgrade existing street lighting lamps for energy efficiency.**
- 2. Approves expenditure from the Haulage Fees Reserve funds of \$248,484 to Country Energy with the expected cost savings from the street lighting upgrade being reimbursed to the Fund in the following 11 months.**

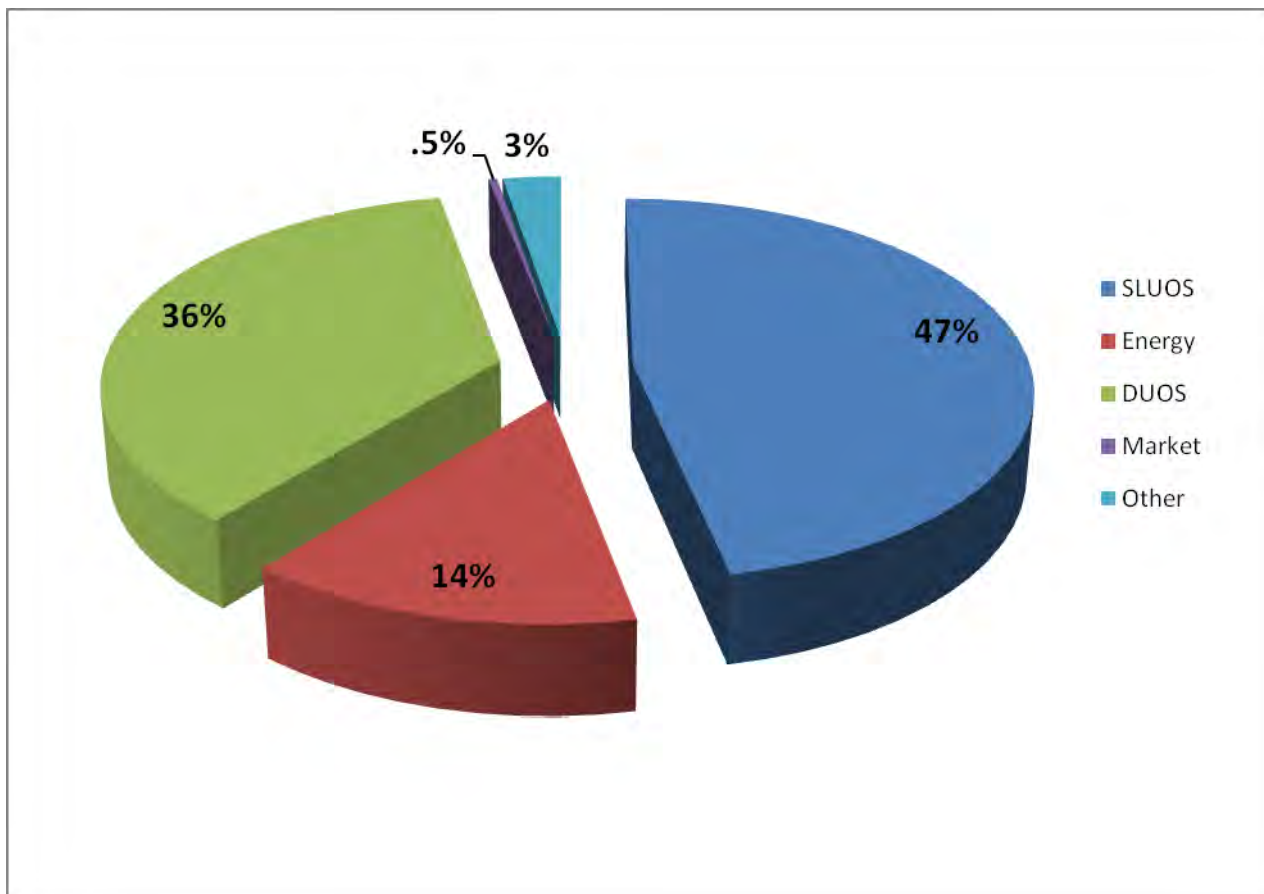
REPORT:

Council is responsible for 5,671 streetlights throughout the Shire. Maintenance and energy charges for the 2010/2011 financial year if current arrangements are maintained is estimated to be around \$770,000.

Costs associated with maintaining the street lighting network are summarised as:

- Streetlight Use of System charges (SLUOS). Maintenance charges under tariff arrangements per individual light - Payable to Country Energy (current supplier Energy Australia)
- Energy charges
- Use of System Charges, Network Use of System (NUOS) and Distribution Use of System (DUOS) - Payable with energy account but passed on to Country Energy
- Market and other charges levied by State Government - Payable with energy account but passed on to NSW Government Greenhouse Abatement and Energy Savings Scheme.

Figure 1 Break down of street lighting costs



Energy supplied to the street lighting network is unmetered and is based on wattage of the lantern fitted. DUOS and SLUOS charges are also based on the wattage (input) of the fitted lamp.

Country Energy has committed to bulk replacement of lamps in the Tweed early in the 2011 calendar year. This is proposed to be carried out every three years and involves the replacement of like for like lamps with the aim of maintaining a consistent level of lighting to the road reserve taking into account degradation of light output over time. Most recently Council has specified energy efficient lighting for new subdivisions, for example Seaside City; however the majority of the Tweed's current street lighting in older subdivisions are not considered energy efficient in terms of the available new technologies.

Country Energy has approached Council (DW26094390, 25309090) to upgrade the existing less energy efficient remaining lamps and associated luminaires (housings) during its bulk replacement programme to the most efficient available.

This involves replacing the existing 80w Mercury Vapour lights which are the bulk of the Shire's residential type lighting, 3,381 devices and 60% of all lamps, to new 42w Compact Fluorescent lamps and replacing the existing higher wattage Mercury Vapour lights, 400w and 250w, used on major roads to more efficient High Pressure Sodium lamps. These new lamps closely align with the lumen output of the lamps they are replacing.

Country Energy is to be congratulated for this initiative. The proposal will enable Council to make significant longer term cost savings after the payback period of less than one year and enable Council to make a significant and ongoing contribution to reducing greenhouse gas emissions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The cost to Council of converting the existing streetlights to the efficient alternatives as proposed by Country Energy is \$248,484 and requires an upfront payment.

Country Energy estimates that under the energy efficient lighting upgrade offer greenhouse gas emissions will be reduced by 1014 tonnes per annum, energy savings will be realised of \$79,705 per annum, NUOS and DUOS charges will be reduced by \$143,567 per annum and SLUOS charges will be reduced by \$51,524 per annum. Under the proposal for a \$248,484 upfront payment total savings per annum will be \$273,913.

It is considered that the Haulage Fees Reserve funds could be utilised for payment of the upfront charges to Country Energy with the loan being repaid to the Fund through savings in the street lighting programme in the following 11 months.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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39 [EO-CM] Floodplain Management Authorities of NSW, Chairperson for 2011

ORIGIN:

Director Engineering and Operations

SUMMARY OF REPORT:

The Floodplain Management Authorities of NSW (FMA) represents 90 member Councils, who work closely with the Department of Conservation, Climate Change and Water; State Emergency Services; the Bureau of Meteorology; and private consultants to develop and exchange knowledge on floodplain management technical matters and policy development.

Mr Ian Dinham, Tweed Shire Council's Flooding and Stormwater Engineer, will take over as Chairperson of the FMA at the Annual Conference to be held in Tamworth 22-25 February 2011.

The recent floods in Queensland, NSW, Victoria and Tasmania have highlighted the need for consistent policies which save lives and reduce the cost of flood damage.

As Chairperson, Mr Dinham will be seeking to expand the FMA from its NSW beginnings to be a national body to promote best practice in floodplain management throughout Australia and encourage all states to achieve safe occupation of residential areas through consistent investigation and planning for flood liable land.

The first National Conference of the FMA will be held in Tweed Shire in 2013.

Sound practices for floodplain management are critical for the safe development of the Tweed, particularly with the prospect of climate change increasing the frequency and levels of floods. It is particularly pleasing that a Council staff member has been appointed to such an important position.

RECOMMENDATION:

That Council endorses Ian Dinham's appointment as Chairperson of the Floodplain Management Authorities of NSW (FMA).

REPORT:

Floodplain Management Authorities of NSW

The Floodplain Management Authorities of NSW (FMA) was established following the devastating North Coast floods of 1954 and Hunter Valley floods of 1955. The FMA began in May 1961 when the Hunter Valley Conservation Trust, the Macleay River County Council, the Clarence River County Council and the Richmond River County Council held the inaugural flood mitigation conference in the Maitland Town Hall.

There are currently 90 member Councils, who work closely with the Department of Conservation, Climate Change and Water; State Emergency Services; the Bureau of Meteorology, and consultancies to exchange knowledge and develop policy for managing floodplains, flood prediction and modelling, floodplain development (landuse and town planning), flood mitigation, emergency responses and the risks associated with flooding. The NSW Department of Planning has also become a more active participant in recent years. Tweed Shire Council is one of the early members of the FMA having joined the association at the second conference in 1962 and also hosting the 5th Annual Conference at Murwillumbah in 1965.

"Along with member council's, trusts and catchment authorities and several departments of state and federal governments, the organisation has played a significant role in the management of one of the most costly and dangerous natural hazards the people of New South Wales have to face. The efforts of these bodies have helped to build community resilience against flood threat. Much physical damage to property and infrastructure has been averted, and rates of death and injury during times of flooding have been greatly reduced." Chas Keys 2008.

Tweed Shire Council has recently been confirmed by the FMA executive as host for the 2013 National FMA Conference which continues the strong role this Council plays in the FMA and floodplain management generally.

Current Chairperson of the FMA

The current Chairperson of the FMA, Cr Allan Ezzy, is retiring at the forthcoming Annual Conference at Tamworth from 22 to 25 February 2011.

Cr Ezzy is a former Mayor of Holroyd Council in Sydney and has held the position of FMA Chairperson for the past 12 years. During his tenure Allan Ezzy has seen the FMA expand its technical and policy capabilities and establish strong technical links with similar organisations in the USA, Europe, United Kingdom and New Zealand. He has been heavily involved in consultation with the NSW Department of Conservation, Climate Change and Water in the development of the NSW Floodplain Development Manuals.

New Chairperson of the FMA

The new Chairperson of the FMA will be Tweed Shire Council, Flooding and Stormwater Engineer Mr Ian Dinham who has been with this Council since July 2007. He is also an elected Councillor with Clarence Valley Council.

Ian's career spans 4 decades and he has been both a Director and General Manager in NSW local government. For the past 8 years he has also been the Executive Member - Technical of the FMA. Ian is currently managing several projects for Tweed Shire Council including the development of a Tweed Valley Floodplain Risk Management Plan and the Tweed Shire Coastal Creeks Flood plain Risk Management Plan together with a program of flood damage restoration after the declared natural disaster events of 2008, 2009 and 2010. He is presently Chairperson of the Clarence Valley Council Floodplain Management Committee and Civil and Corporate Committee.

Ian has presented various papers to conference forums over the past 20 years and last year, was the Keynote speaker for the 2010 Annual Conference of the Illinois Association of Floodplain and Stormwater Managers Association in Chicago USA.

One of Ian's major roles with the FMA has been to develop and manage the floodplain management education program and he has established a university course and series of one day workshops over the past four years. He also lectures in this course at the University of Technology in Sydney each year. The floodplain management education program is a means of creating a greater awareness of floodplain management strategies amongst planning professionals, engineers, elected Councillors and the community at large.

As Chairperson, he will be seeking to establish the FMA as a national body to promote best practice in floodplain management throughout Australia and encourage all states to achieve safe occupation of residential areas through consistent investigation and planning for flood liable land.

The recent floods in Queensland, NSW, Victoria and Tasmania have highlighted the need for consistent policies which save lives and reduce the cost of flood damage. The FMA has a wealth of knowledge amongst its member authorities and more than ever it will seek to share its knowledge and recommendations with all levels of government for the benefit of the communities it serves.

Mr Dinham will officially take office as Chairperson at the upcoming FMA Conference in Tamworth on 24 February 2011.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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40 [EO-CM] Kirkwood Road Project Progress Report

ORIGIN:

Design

SUMMARY OF REPORT:

At the Council meeting on 20 July 2010, Council resolved to continue work completing the concept design, environmental assessment and preparation of the planning application for the Kirkwood Road Project elements south of Terranora Creek estimated to cost \$32.4M (August 2010) and seek Roads and Traffic Authority of NSW agreement to construction of a temporary south bound off ramp at Kirkwood Road.

The RTA have agreed to the temporary south bound off ramp at Kirkwood Road and have further agreed to fund their share (\$4-5M) of the Eastern Works portion of the project with a total estimated cost \$10.9M in August 2010.

The current revised estimate for the Eastern Works is now \$13.439M and is discussed in detail in this report.

Council at its meeting on 17 August 2010 also committed to funding its share of the project (\$6.8M August 2010) and agreed to participate with the RTA, at a time they nominate, in a joint public announcement of the project.

A press release was issued on 22 October 2010 announcing the Eastern Works portion of the Project

The Western Works portion of the project, which includes the highway overpass and connection to Fraser Drive and northbound off ramp, (estimated cost \$21.5M, remains unfunded at this time).

The following report provides an update on key project components and their status and project risks. It also provides a revised estimate of cost as a result of design evolution to respond to issues as they are identified.

RECOMMENDATION:

That Council receives and notes the progress report on Kirkwood Road, Tweed Heads.

REPORT:

Background

At the Council meeting on 20 July 2010, Council resolved to continue work completing the concept design, environmental assessment and preparation of the planning application for the Kirkwood Road Project elements south of Terranora Creek estimated to cost \$32.4M (August 2010) and seek Roads and Traffic Authority of NSW agreement to construction of a temporary south bound off ramp at Kirkwood Road.

The RTA have agreed to the temporary south bound off ramp at Kirkwood Road and have further agreed to fund their share (\$4-5M) of the Eastern Works portion of the project with a total estimated cost \$10.9M in August 2010.

The current revised estimate for the Eastern Works is now \$13.439M and is discussed in detail in this report.

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The following report provides an update on key project components and their status and project risks. It also provides a revised estimate of cost as a result of design evolution to respond to issues as they are identified.

Kirkwood Road Project – Concept Design Development

With adoption of the 2006 Lower Tweed and Pacific Highway Traffic Master Plan, the Kirkwood Road project was scheduled for completion in the 2015 - 20 period. Design development was complicated by the Master Plan as the Kirkwood Road highway overbridge and on/off ramps now had to be compatible with the future highway being widened to 6 lanes. This meant that the alignment of the widened 6 lane highway (including the widened highway bridge crossings over Terranora Creek) needed to be determined first so that the Kirkwood Road elements and Terranora Creek service roads could be located to avoid conflict with the widened highway footprint.

Preliminary design development for the new concept was commenced in 2009 and Local Government Engineering Services(LEGS) were engaged for the initial consultancy which included:

- Concept alignment design of the widened 6 lane highway (including
- Terranora Creek Bridges) from North of Machinery Drive to Kennedy Drive
- Obtain RTA sign off on footprint of 6 lane highway
- Following fixing of highway alignment, determine footprint to be allocated for service roads and bridges and Kirkwood Road Overbridge

- Revised concept designs for Kirkwood Road including highway overbridge
- Concept designs for Eastern Service Road
- Concept designs for northbound off ramp to Kirkwood Rd and southbound on ramp from Kirkwood Road
- Concept designs for Terranora Creek Eastern Service Road Bridge and Kirkwood Road Overpass Bridge
- Schedule of quantities

The RTA has now agreed to the widened highway alignment designed by LEGS and the footprint allocation for Kirkwood Road overbridge and the service roads.

The original LEGS consultancy described above has been completed, and the Concept Design finalised and submitted by LEGS to the RTA and Council late last year.

Storm water detail design for the eastern works is nearing completion and is expected to be finalised by late January 2011.

Temporary South Bound Off Ramp

The RTA has approved the temporary southbound off ramp at Kirkwood Road based on a traffic report Council commissioned from Parsons Brinkerhoff that indicated the temporary southbound off ramp would operate until 2019 without significant impact on highway safety or capacity. This implies that around 2019, Council and the RTA would need to jointly fund and build the service road/bridge connection from Kirkwood Road to Kennedy Drive and decommission the temporary southbound off ramp at Kirkwood Road. This would be consistent with the 2006 *Lower Tweed and Pacific Highway Traffic Master Plan* jointly developed and approved by Council and the RTA.

Scope of Approved Works

The RTA has agreed to fund a portion of the cost to design and construct part of the project known as the Eastern Works being the section east of the highway and connecting with the existing built part of Kirkwood at the Falcon Way roundabout. The previous estimated costs (August 2010) and apportionments between RTA and Council for this part of the project are:

Part		Eastern Works with Temporary South Bound Off Ramp (\$M) (AUGUST 2010)		
		Project	RTA	TSC
1.1.1	Kirkwood Rd. Falcon Way to Eastern roundabout	3,297,140	0	3,297,140
1.1.2	Kirkwood Rd. Eastern roundabout.	1,410,196	705,098	705,098
1.1.3	Southbound on ramp. Eastern roundabout to highway	2,408,815	1,204,407	1,204,407
1.1.4	Part Eastern service road. Temporary southbound off ramp to Eastern roundabout	3,151,674	1,575,837	1,575,837
1.1.5	Temporary Southbound off ramp	641,281	641,281	0
Total		10,909,106	4,126,623	6,782,483

The Eastern Works do not include the highway overpass, connection to Fraser Drive and north bound off ramp. These are included in the "Western Works" which would cost a further \$21.5M (August 2010 figures).

Detailed Design of the Eastern Works has commenced and Planning Approval for the Eastern Works is being sought.

The following Diagram shows the Eastern and Western Works of the Kirkwood Road Project



Part V Planning Application

Council's Design Unit has prepared the Part V Development application. Several sub consultancies were utilised to identify and address specialist areas such as Noise, Flora, fauna and Cultural heritage. The Part V application and Review of Environmental Factors (REF) was lodged on the 24th December 2010. (Application Number PTV10/0032).

The formal advertising period of the application has commenced and will conclude on the 21 February 2011.

Letters of notification have been issued to properties directly adjacent to the planned project inviting submissions. The application is also viewable on Council's DA Tracking web site.

Detailed Project Design (Eastern Works)

LEGS were requested to provide a quotation for the detailed design of the Eastern Works portion of the Project. The quotation has been reviewed by the RTA and Council staff and been accepted. The detailed design of the project will be commencing as soon as the Stormwater design is completed. The full detailed design does not include pavement and soft soil design costs and these will be dealt with via separate consulting contract with quotations received for the works. These additional design services will be determined and a suitable consultancy will be awarded in the near future. Other design packages not included are Retaining wall structures, noise wall design and landscaping. These will be managed during the construction contract, with these scopes of works being a design and construct component of the contract. The Landscaping design at this stage is thought to be managed in-house via the Recreation Services team.

Community Consultation Process

Initial community consultation has been completed prior to the lodgement of the planning Application to enable affected stakeholders to become familiar with the Project prior to being formally notified through the application assessment process. Several community groups and residents have been met with through a series of meetings at which they were informed of Council's objectives and the processes involved in undertaking the Kirkwood Road upgrade.

Groups addressed were:

- Billabong Caravan Park
- Palms Village Park
- Invocare Crematorium/Lawn Cemetery
- Country Energy Depot
- Lindisfarne Primary School
- South Tweed Chamber of Commerce
- Aboriginal Advisory Committee
- Tweed River Committee
- Banora Point and District Residents Association
- McKenzie Aged Care Group
- Residents adjacent to Kirkwood Road.

Issues that were identified at the meetings:

- Billabong Caravan Park advised that present overland flow path that flows through the Billabong is not acceptable and is required to be diverted.
- The noise impact associated with the proposed development
- The impact on Cultural Heritage Scar trees

- The increased traffic volumes associated with the development and the issues of fumes, noise, dust.
- The possible value of properties reducing due to their proximity to the development.
- The closure of the access proposed of Sunshine Ave for pedestrians
- Site line issues from Falcon Way exiting onto Kirkwood Road
- Crossing of school children at the Falcon Way roundabout
- Tweed River Committee raised two issues and these issues were raised at the previous last Tuesdays 18th January Council meeting. Minutes are attached to this report.

Future Consultation

The Consultation Plan prepared identifies a second round of meetings to be held in February to discuss possible changes to the preliminary design and outcomes of the applications advertising period. It is planned for these meetings to take place in February and early March 2011.

Geotechnical Investigations

Initial Geotechnical works has been completed by Snowy Mountains Engineering Corporation (SMEC) and the final Factual Report based on the existing data and new data has been submitted to Council and the RTA. SMEC are having resource issues due to floods and rendering assistance to the South Queensland flood disaster. Subsequently the final Interpretive Report is still to be issued. A draft report has been received and is being reviewed prior to its finalisation. It is expected to be completed later this month.

The report does identify areas of poor ground conditions that will require pre-treatment to ensure stability of the fill embankments which will add cost to the Project.

Existing Service Investigations

Several public utility services have been located within the project area in ,and around Sunshine Ave and East of the Eastern Interchange. The present design impacts on an Effluent Main and Sewer Rising Mains. Other services affected include Country Energy's underground services that head east along Kirkwood Road and a high pressure gas main. Other minor services impacted include Cemetery water, Telstra and Council's Sewer Pump Station power supply. There is presently \$62,000 available for service relocations located in the estimate + 15% contingency.

Estimate for Project

The estimate for the project has been evolving for 8 months with scopes of works varying as alternative design solutions are developed and considered.

The initial estimated value of the Full Project was \$32.449 million in August 2010 This was made up with \$10.909 million for the Eastern Works and \$21.540 for the Western Works based on the existing initial concept estimate.

Further financial impacts are expected on the Western side alignment with difficulties on skew angles with the bridge and the uncertainty of the use of rock anchors on the cut face west of the Western Interchange.

Eastern Works Revised Estimate

Summary of Revised Estimate

The August 2010 estimate for the parts of the Eastern Works are shown in the following table:

Part	Eastern Works with Temporary South Bound Off Ramp (\$M) (AUGUST 2010)			
		Project	RTA	TSC
1.1.1	Kirkwood Rd. Falcon Way to Eastern roundabout	3,297,140	0	3,297,140
1.1.2	Kirkwood Rd. Eastern roundabout.	1,410,196	705,098	705,098
1.1.3	Southbound on ramp. Eastern roundabout to highway	2,408,815	1,204,407	1,204,407
1.1.4	Part Eastern service road. Temporary southbound off ramp to Eastern roundabout	3,151,674	1,575,837	1,575,837
1.1.5	Temporary Southbound off ramp	641,281	641,281	0
Total		10,909,106	4,126,623	6,782,483

Since then changes to the project scope to minimise construction environmental impacts has resulted in the concept design revisions and increased the original estimate of \$10.909M. The variances and reasons for the changes are listed in the following table along with their financial impact.

Item	Variance	Explanation for Rise or Fall
1	\$328,000	Additional External design costs \$84,000 Internal design cost increase \$70,000, Geotechnical investigation, \$84,000 increase, \$18000 allowed originally, further additional works required to identify soft soil profiles and integrity of fill placed along existing highway. Contract administration increase by \$120,000, TSC survey -\$30,000 saving.
2	\$48,000	Additional costs associated with the property acquisition costs.
3	\$101,000	Additional cost for the demolition of existing structures including Type F barrier, existing Sound walls and various other structures.
4	\$140,727	Cost of Part V application preparation \$70 k and \$70 k for Geotechnical Access Tracks.
5	\$576,000	Volume of Reinforced earth fill has increased due to the increase sound wall height along the Billabong caravan park boundary on this boundary line \$0.6 mil, Disposal of surplus material \$0.072 mil increase. Saving of reduced earthworks cut to fill of -\$0.096 mil
6	-\$97,724	Pavement depth reduced on Kirkwood Road from 550 mm in total thickness to 300 mm in thickness due to good CBR results on Subgrade.
7	-\$73,561	Delete tack coat and reduced establishments by 1
8	\$787,500	Outcomes of the noise assessment report also costs of sound wall increase along Kirkwood Road west of Minjungbal Drive to existing properties.

Item	Variance	Explanation for Rise or Fall
9	\$390,000	Increase height of Reinforced Earth wall on Caravan Park Boundary.
Total variances	\$2,199,942	Overall increase in price on sections 1.1.1, 1.1.2, 1.1.3, 1.1.4 & 1.1.5
Total Variances + 15% Cont	\$2,529,933	15% contingency allowed on project pricing Revised total of Project Value \$13,439,039
		Note this does not include costs associated with soft soil treatments, Estimates could be in the order of \$1mil to \$2 mil depending on area, depth and type of treatment required.

In summary the Eastern Works Estimate is now \$13.439M, an increase of \$2.529M above the August 2010 initial estimate and it is likely further increases will occur as a result of issues such as geotechnical stability.

Project Risks

There are still a number of risks relating to the project which include:

1. Uncertainty regarding obtaining planning consent
2. Planning/Environmental/Heritage issues, in particular compensatory land acquisition/identification and costs associated with restoration
3. The need for acquisition of land on the Western Works portion required to source fill material for the Eastern Works. This is being negotiated with the owner but may have cost implications
4. Geotechnical costs associated with soft soil problems. Estimated cost increase could be in the order of \$1M to \$2M depending on area, depth and type of treatment required.
5. Current cost estimates are based on concept plans, financial uncertainty will be clarified when tenders are received

Conclusion

The Project is currently running 2 months behind schedule due a number of circumstances that could not be avoided such as statutory timeframes on cultural heritage matters, site access for investigations due to the wet conditions in October, November and December and delays from specialist consultant reports.

As stated above the Part V Planning Application has been lodged and is on exhibition until 21 February 2011. Extensive public consultation has also taken place.

The detailed cost estimate for the eastern Works portion has increased by \$2.53m to \$13.439M and potential exists for further increases due to poor soil conditions and other risks identified above.

The final cost estimate will only be known when tenders for construction have been received.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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41 [EO-CM] Lease to Tweed Valley Respite Service Inc - Cabarita Beach Sports Centre - Les Burger Fields, Bogangar

ORIGIN:

Director Engineering and Operations

SUMMARY OF REPORT:

Council has negotiated a short term lease with Tweed Valley Respite Services Inc (TVRS) for the use of the office space and hall with associated kitchen and toilet facilities at the Cabarita Beach Sports Centre (Sports Centre) for a period of six months to commence in early March, 2011.

The lease at the Sports Centre is required during refurbishment of the Kingscliff TVRS facility.

The Sports Centre has been undergoing a staged rearrangement to allow separation of the sport, hall and office functions to allow improved community access and the generation of income for facility maintenance.

Existing arrangements for the use of the hall by community groups shall continue, and TVRS shall utilise the hall outside of these arrangements.

A weekly rental of \$566 has been negotiated and it is recommended that Council approve entering into the lease and to execute all necessary documentation under the Common Seal of Council.

RECOMMENDATION:

That:

- 1. Council approves entering into a lease with Tweed Valley Respite Services Inc for a term of six months for the use of 2 offices and the hall at the Cabarita Beach Sports Centre at Tweed Coast Road, Bogangar, for a weekly rental of \$566, being part Lot 398 in DP 726500; and**
- 2. All documentation be executed under the Common Seal of Council.**

REPORT:

As per Summary of Report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

42 [EO-CM] Application to Close Council Public Roads - Kings Forest

ORIGIN:

Design

FILE NO: GR3/12/6 Pt 4

SUMMARY OF REPORT:

At its meeting held on 20 October 2009 Council considered a report relating to an application to close multiple Crown public roads relating to the Kings Forest development.

One of the public roads sought to be closed and objected to by Council in that report, forms a small part of an alternate access to a parcel of Council land, being a former night soil site off Depot Road as well being within a regional wildlife corridor.

Council resolved at point 3 of its resolution dated 20 October 2009 to express its concerns about the application for the road closure based on Council's Policy on Road Closure and Purchase where the road contains a wildlife corridor.

The Land and Property Management Authority was advised of Council's resolution and it was established that the public road providing part of the access to the night soil site was a Council road, and was not approved for road closure by the LPMA as it is a Council road.

In October 2010 the developer of the Kings Forest development advised Council that the Kings Forest Concept Plan was approved by the NSW Minister for Planning on 19 August 2010.

The developer lodged an application seeking Council approval for closure of the Council public road reserve referred to above jointly with a road which joins that road and extends the alternate access to the night soil site. Please see diagram 1 in the body of the Report.

The NSW Planning approval for the Concept Plan includes a condition requiring the establishment of a habitat and connectivity corridor and thus addresses the concerns raised by Council in its report of 20 October 2009.

It is recommended that Council approve the application to close both roads in the northern section of the Kings Forest development area.

RECOMMENDATION:

That:

- 1. Council approves the closure of Council public road running in north-south direction within Lot 1 DP 129737 and forming part of the western boundary of Lot 38B in DP 13727;**

2. Council approves the closure of Council public road running in a south westerly direction within Lot 1 DP 129737 and within Lot 1 DP 781633; and
3. All documentation be executed under the Common Seal of Council.

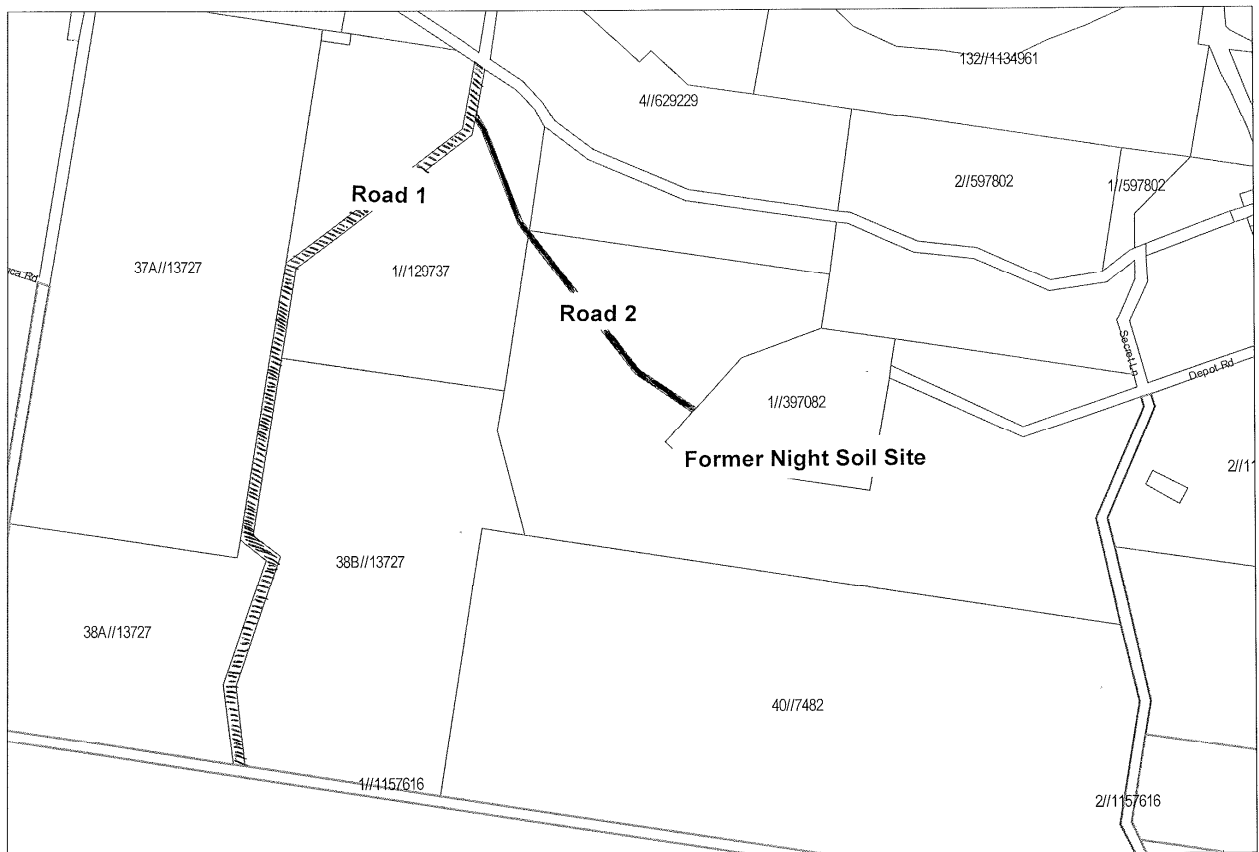
REPORT:

At its meeting held on 20 October 2009 Council considered a report relating to an application to close multiple Crown public roads as part of the Kings Forest development.

One of the public roads sought to be closed and objected to by Council in that report is in fact a Council public road and provides a minor section of an alternate access to a parcel of Council land to the south east, Lot 1 in DP 397082, a former night soil site off Depot Road. Another concern raised in the report, is that the road, coming south of Melaleuca Road is within a sub- regional wildlife corridor.

The plan below shows the locations of the roads subject of this application, as well as the site for the former night soil site. Road 1 was the subject of 20 October 2009 report and Road 2 has been joined with Road 1 in a new application:

Diagram 1



The road reserves are within the proposed Kings Forest development and the concept plan for the development was approved by the Department of Planning on 19 August 2010.

Road 1

Road 1 was dedicated in a plan of subdivision in 1926, but is shown on the Parish map for Cudgen as an unformed Crown public road. This was the road that was assessed as a Crown public road in the report considered by Council on 20 October 2009. An excerpt from that report is included below:

The road reserve running from north to south through Lot 1 in DP 129737 and along the western boundary of Lot 38B DP 13727 provides an alternate access to Tweed Shire Council Land, Lot 1 in DP 397082. A regional wildlife corridor runs from the northern section of this road reserve to approximately 40m south of the boundary of Lot 1 in DP 129737 and within Lot 38B DP 13727 as shown on figure 2c below. Council's Road Closure Policy notes roads not eligible for closure item 3 as including,

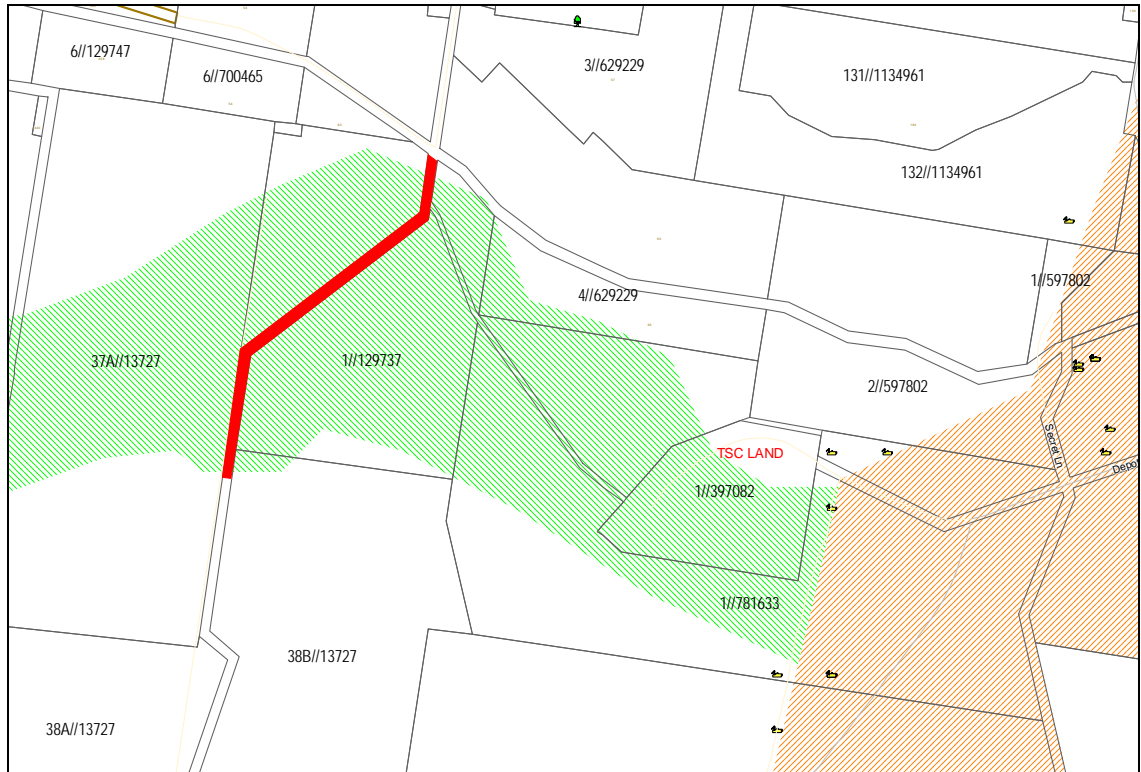
“road reserves containing wildlife corridors and significant flora.....”

The Department of Lands would need to ensure that the property owner gaining access over these roads is adequately catered for in the approved Kings Forest Concept Plan. Furthermore, such Plan must address the wildlife corridor impacts and provide for management and continuation of the corridor.

In regard to access to Council land, the issue raised above can be ameliorated by the Department of Lands ensuring that the approved Kings Forest Concept Plan provides access to Lot 1 DP 397082 from the main trunk collector road and business/community facilities areas currently proposed.

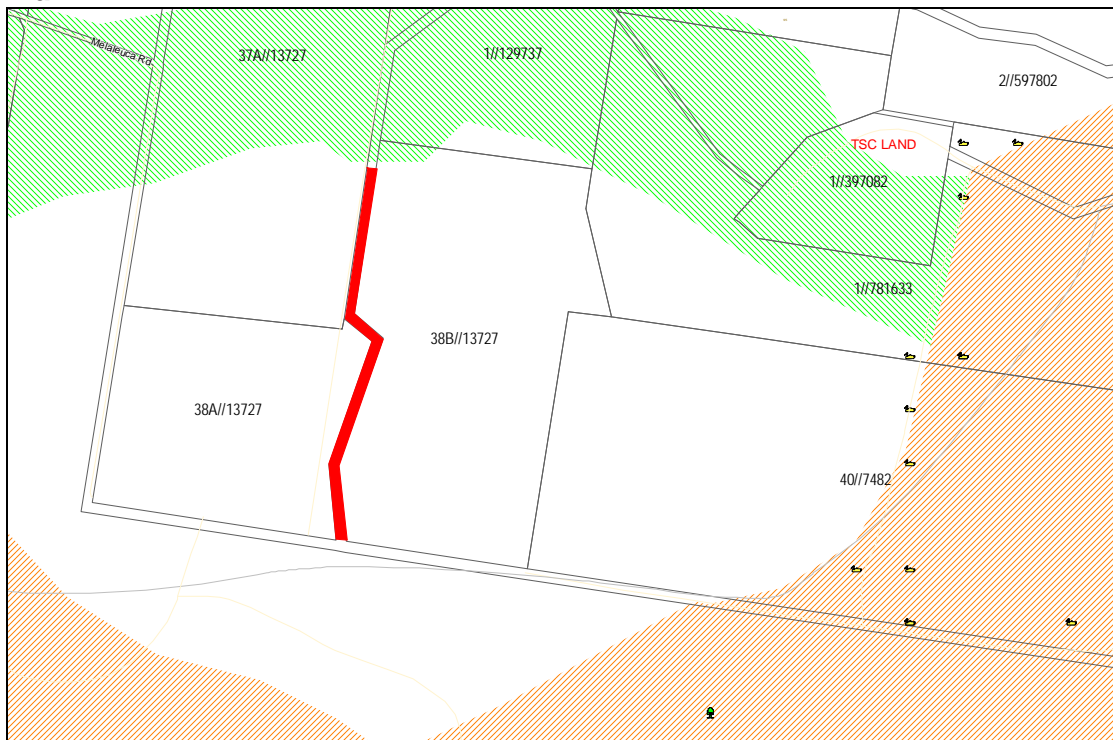
It is recommended that Council advises the Department of Lands of these concerns above and the need for them to be resolved through any approved Kings Forest Concept Plan.

Figure 2c



The remaining section of this road reserve running along the western boundary of Lot 38B in DP 13727 contains no wildlife corridors and does not impact on surrounding properties. There is no Council or other infrastructure located within it. Please refer to figure 2d below.

Figure 2d



Council's Road Closure Policy notes that applications will be considered for closure of roads which are demonstrably redundant in terms of access. On this basis it is recommended that Council does not object to the closure of this section of road reserve.

Road 2

This road was not included in the previous report and is a separate joint application with Road 1.

Road 2 was dedicated in a plan of subdivision in 1956 which also created the former night soil parcel, Lot 1 in DP 397082.

Road 2 was created as an alternate access from the north west to Lot 1 and of immediate concern is the potential loss of the unformed access road to Lot 1.

However, Council has lodged a development application to develop the parcel into sports fields which is currently under assessment. The application formalises access to the parcel off Depot Road on its eastern boundary, and thus removes the requirement to retain access from the north over Road 2, should consent issue for the sportsfields development.

In the event that the sportsfield development is not approved, public access will need to be created in the Village Centre approval. This will allow Road 2 to be closed. See plan below of the proposed Village Centre showing the sportsfields in relation to the Village Centre:

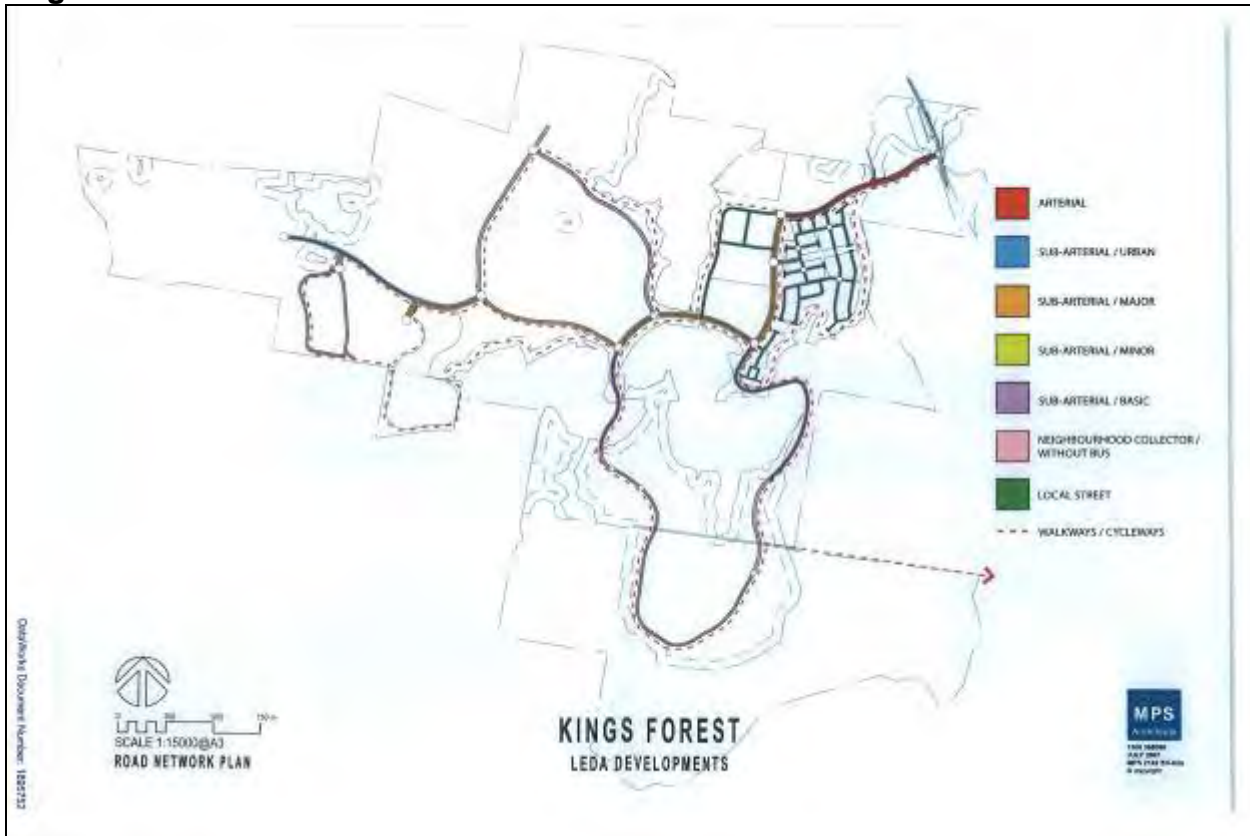


There is no public infrastructure within the road reserve, nor are there are objections arising from Council's Policy for Road Closure and Purchase excepting that the wildlife corridor covers the total area of the road reserve.

Discussion:

The roads proposed to be closed will form part of the Kings Forest development and will not form part of the proposed road network plan, see a plan of the network below:

Diagram 2



The roads subject of the application for closure are not shown, but are located to the northwest of the former night soil parcel, identified by its irregular shape.

Diagram 3

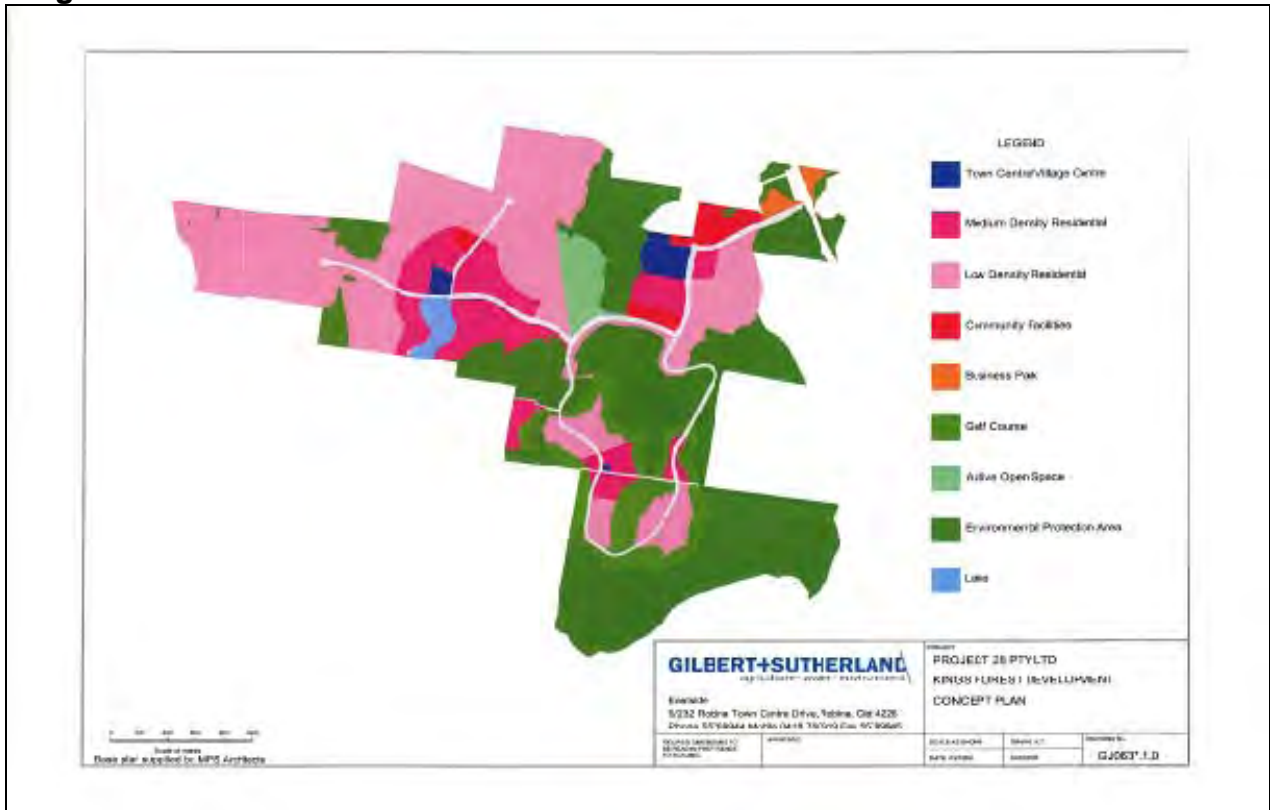


Diagram 3 shows the proposed development area and the area proposed to be dedicated as environmental protection, notably, in the northern area, including Road 2.

In the approval for the Concept Plan, NSW Planning have conditioned the approval on the establishment of a habitat and connectivity corridor, in the location identified by DECC as a sub-regional wildlife corridor. This requirement emanates from the Koala Plan of Management and the Vegetation Plan of Management comprised within the Concept Plan.

The proposed wildlife corridor required by the approval encompasses the area shown in Figure 2c which is over the north part of Road 1 and the whole of Road 2.

It could be argued that an approval to close Road 1 allows the developer to benefit from the land to incorporate as part of the low density development as shown in Diagram 3. However, the condition precludes this benefit from occurring.

A further consideration is that if the road closures were not approved, then there remains road reserves that are available for use by the public which have the potential to attract vehicular use of the roads, ultimately within a wildlife corridor established for the protection of wildlife and public vehicular access is not appropriate.

In this regard, it is recommended that both roads be approved for road closure on the basis that they will be incorporated into a wildlife corridor as per the approval for the Concept Plan approved by the Minister for NSW Planning On 19 August 2010.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES

43 [TCS-CM] Quarterly Budget Review - 31 December 2010

ORIGIN:

Financial Services

SUMMARY OF REPORT:

This is the second quarter statutory budget review for this financial year and summarises the estimated expenditure and income changes to the 2010/11 Budget.

This statutory report is prepared in accordance with the Local Government (General) Regulations 2005, regulation 202 and 203. Council will have a balanced budget as at 31 December 2010 in the General, Water and Sewer Funds.

RECOMMENDATION:

That the:

1. Quarterly Budget Review Statement as at 31 December 2010 be adopted.
2. Expenditure and income, as summarised below and detailed within the report, be voted and adjusted in accordance with the revised total expenditure and income for the year ending 30 June 2011.

Description	Change to Vote	
	Deficit	Surplus
General Fund		
<u>Expenses</u>		
Operating	676,500	0
Interest	0	0
Capital	13,277,670	0
Loan Repayments	0	0
Transfers to Reserves	0	0
	13,954,170	0
<u>Income</u>		
Rates, Charges and other Operating	0	22,000
Operating Grants & Conts	0	603,750
Capital Grants & Conts	0	5,376,295
Loan Funds	0	5,000
Recoupments	0	7,921,125
Transfers from Reserves	0	26,000
Asset Sales	0	0
	0	13,954,170

Description	Change to Vote	
	Deficit	Surplus
Net Surplus/(Deficit)		<u>0</u>
Water Fund		
<u>Expenses</u>		
Operating	0	2,499
Interest	0	0
Capital	0	395,000
Loan Repayments	0	0
Transfers to Reserves	2,260,158	0
	2,260,158	397,499
<u>Income</u>		
Rates, Charges and other Operating	0	0
Operating Grants & Conts	0	0
Capital Grants & Conts	0	0
Loan Funds	0	0
Recoupments	0	667,620
Transfers from Reserves	0	1,195,039
	0	1,862,659
Net Surplus/(Deficit)		<u>0</u>
Sewer Fund		
<u>Expenses</u>		
Operating	104,982	0
Interest	0	559,076
Capital	188,000	0
Loan Repayments	0	102,816
Transfers to Reserves	2,132,902	0
	2,425,884	661,892
<u>Income</u>		
Rates, Charges and other Operating	0	0
Operating Grants & Conts	0	0
Capital Grants & Conts	0	0
Loan Funds	0	0
Recoupments	0	1,180,875
Transfers from Reserves	0	583,117
Asset Sales	0	0
	0	1,763,992
Net Surplus/(Deficit)		<u>0</u>

SUPPORTING INFORMATION:

Budget Review 31 December 2010 (Quarterly Budget Review)

In accordance with regulation 203(1) of the Local Government (General) Regulation 2005, a Budget Review Statement and revision of the estimates of income and expenditure must be submitted to council within two months of the close of each quarter.

The Regulation requires that the quarterly financial review must include the following:

- A revised estimate for income and expenditure for the year.
- A report as to whether or not such statements indicate that the financial position of the Council is satisfactory and if the position is unsatisfactory, make recommendations for remedial action.

Report By Responsible Accounting Officer

The Quarterly Budget Review Reports are prepared to provide Council and the community with information in relation to Councils financial performance and proposed amendments to its budget and forward estimates. The reports are prepared under accrual accounting principles in accordance with the requirements of the Local Government Act 1993.

The Financial reports included in the Quarterly Budget Review are as follows:

1. Variations
 - a) Variations Proposed
 - b) Introduced During Quarter – By Council Resolution
2. Budget Summary – by fund
 - a) By Type (including Available Working Capital)
 - b) By Division

Variations

There are two variations reports included in the Quarterly Budget Review during this quarter:

- Variations Proposed
- Council Resolutions

The Variations Proposed report details all of the recommended changes to budget that have been put forward by management at this review for Councils consideration.

The Council Resolutions report is provided as information to the Council and the community to explain the adjustments that have been included in the Approved Budget during the quarter.

Income Statement

The Income Statement measures Council's financial performance over the period and shows whether or not Council has earned sufficient revenues to support its activities during that period, and whether or not surpluses have been created to fund additional or replacement assets to service community needs.

The statements show where Council's money comes from (Revenue) and how that revenue is consumed (Expenses) in providing the ordinary activities and services of the Council.

Statement of Funding Result Reconciliation

The Funding Statement provides information about the source of cash and "cash like" funds, and how they have been (or are budgeted to be) applied in the Management Plan.

The "source" of funds includes the surplus or deficit (a negative source) from ordinary activities of Council as expressed in the Income Statement. In other words all of the ordinary activities of Council including collection of rates and other general income and provision of services are netted off and the remainder is available to provide a source of funds for other expenditure such as asset acquisition, loan repayments and transfer to reserve for future expenditure programs.

The programs that have had an effect on revenue are:-

Description	\$	Comments
General Fund	Net Effect	
Cabarita Street Scaping Project	100,000	Additional contract works
Public Toilet Operation Expenses	100,000	Operating cost issue
Murwillumbah Pool Income	120,000	Decrease in estimated income - due to weather
Murwillumbah Pool Expenditure	(100,000)	Decrease in estimate expenditure
Kingscliff Pool Income	(83,000)	Increase in estimated income
Kingscliff Pool Expenses	133,000	Increase in estimated expenses - Admin setup
Stormwater Drain Application S68 Income	(10,000)	Approval process now done by BSU
On-Site Sewage Management - Approval to Operate	(35,000)	Increase in estimated income
Emergency Erosion Kingscliff	84,000	Protection of Coastal Assets - 2 Sandbag Walls
Misc Engineering Projects - Design	15,000	Survey & Design for Kingscliff Beach Erosion
Employee leave	(50,000)	Projected result lower than budget
Bank Charges	(20,000)	Projected result lower than budget
Museum	(45,000)	Projected result lower than budget
Banora Point Community Centre	(14,000)	Projected income higher than budget
Legal Fees	(5,000)	Projected result lower than budget
Capital Toilets	(100,000)	For toilets operating costs
Asset Management Levees & Floodgates	(20,000)	For Kingscliff erosion
Cabarita Streetscaping recurrent costs	(30,000)	For Cabarita expenditure
Pottsville North drainage outlet - Elanora	(40,000)	For Cabarita expenditure
	0	

Full details:

In / Ex	Item	Category	Description	Current Vote	Change to Vote	New Vote	Details / Comments
			1. General Variations				
Ex	1	Ex-Capital	Kirkwood Road	0	12,607,891	12,607,891	Stage 1 Construction
In	1	In-Recoup	Tweed Roads - CP 4	0	(7,251,846)	(7,251,846)	Funding for above
In	1	In-CG&C	RTA Contribution	0	(5,356,045)	(5,356,045)	Funding for above
Ex	2	Ex-Operating	NDRP Restoration of Council Assets	0	593,750	593,750	Kingscliff Beach Erosion
In	2	In-OG&C	National Disaster Relief Program	0	(593,750)	(593,750)	Funding for above
Ex	3	Ex-Operating	108 Reserve Creek Road	0	26,000	26,000	Demolition costs
In	3	In-TFR	Road Land Sale Reserve	0	(26,000)	(26,000)	Funding for above
Ex	4	Ex-Capital	Jack Evans Boat Harbour - Amenities Block	0	300,000	300,000	Design / Construction
In	4	In-Recoup	JEBH - Amenities Block - CP 26	0	(300,000)	(300,000)	Funding for above
Ex	5	Ex-Capital	Cabarita Street Scaping Project	570,692	100,000	670,692	Additional contract works
Ex	6	Ex-Operating	Public Toilet Operation Expenses	637,558	100,000	737,558	Operating cost issue
In	7	In-Operating	Murwillumbah Pool Income	(696,216)	120,000	(576,216)	Decrease in estimated income - due to weather
Ex	8	Ex-Operating	Murwillumbah Pool Expenditure	1,127,926	(100,000)	1,027,926	Decrease in estimate expenditure
In	9	In-Operating	Kingscliff Pool Income	(132,403)	(83,000)	(215,403)	Increase in estimated income
Ex	10	Ex-Operating	Kingscliff Pool Expenses	317,219	133,000	450,219	Increase in estimated expenses - Admin setup
In	11	In-Operating	Stormwater Drain Application S68 Income	(11,034)	(10,000)	(21,034)	Approval process now done by BSU
In	12	In-Operating	On-Site Sewage Management - Approval to Operate	(111,102)	(35,000)	(146,102)	Increase in estimated income
Ex	13	Ex-Operating	Emergency Erosion Kingscliff	50,000	84,000	134,000	Protection of Coastal Assets - 2 Sandbag Walls
Ex	14	Ex-Operating	Misc Engineering Projects - Design	11,500	15,000	26,500	Survey & Design for Kingscliff Beach Erosion
Ex	15	Ex-Operating	Flood Risk Floor Level Survey NDRGS 2010/2011	210,000	15,000	225,000	Additional Funding Approved
In	15	In-OG&C	Grant - Flood Mitigation NDRGS 2010/11	(140,000)	(10,000)	(150,000)	Funding for above
In	15	In-Loan Funds	Unexpended Loans - Flood Mitigation	(556,793)	(5,000)	(561,793)	Funding for above
Ex	16	Ex-Capital	Cudgen Creek Boat Ramp Upgrade	0	40,500	40,500	"Better Boating Program"
In	16	In-CG&C	NSW Maritime Authority - Infrastructure Program	0	(20,250)	(20,250)	Funding for above - 50% of Project Costs
Ex	16	Ex-Operating	Waterways Asset Management	26,600	(20,250)	6,350	Funding for above
Ex	17	Ex-Operating	Employee leave	7,954,102	(50,000)	7,904,102	Projected result lower than budget
Ex	18	Ex-Operating	Bank Charges	120,000	(20,000)	100,000	Projected result lower than budget
Ex	19	Ex-Operating	Museum	99,490	(45,000)	54,490	Projected result lower than budget
In	20	In-Operating	Banora Point Community Centre	(16,868)	(14,000)	(30,868)	Projected income higher than budget
Ex	21	Ex-Operating	Legal Fees	313,000	(5,000)	308,000	Projected result lower than budget
Ex	22	Ex-Capital	Capital Toilets		(100,000)	(100,000)	For toilets operating costs
Ex	23	Ex-Operating	Asset Management Levees & Floodgates	220,352	(20,000)	200,352	For Kingscliff erosion
Ex	24	Ex-Operating	Cabarita Streetscaping recurrent costs	30,000	(30,000)	0	For Cabarita expenditure

Council Meeting held Tuesday 15 February 2011

In / Ex	Item	Category	Description	Current Vote	Change to Vote	New Vote	Details / Comments
Ex	25	Ex-Capital	Pottsville North drainage outlet - Elanora	247,967	(40,000)	207,967	For Cabarita expenditure
Ex	26	Ex-Capital	Kingscliff drainage	0	369,279	369,279	Not included in budget
Ex	26	In-recoup	Recoup from CP7	0	(369,279)	(369,279)	Funding for above
					0		
Water Fund							
Ex	27	Ex-Operating	Various Operating Expenses		(2,499)		Minor adjustments
Ex	27	Ex-Capital	Various Capital Works		(395,000)		Minor adjustments
Ex	27	Ex-TTR	Transfers to Asset Replacement Reserve		2,260,158		Funding adjustments
In	27	In-TFR	Transfers from Asset Replacement Reserve		(1,195,039)		Funding adjustments
In	27	In-Recoup	Transfers from Capital Contributions Reserve		(667,620)		Funding adjustments
Sewer Fund							
Ex	28	Ex-Operating	Various Operating Expenses		104,982		Minor adjustments
Ex	28	Ex-Interest	Interest on loans		(559,076)		Deferred draw-down date for new loan
Ex	28	Ex-Loan Reps	Loan principal repayment		(102,816)		Deferred draw-down date for new loan
Ex	28	Ex-Capital	Various Capital Works		188,000		Minor adjustments
Ex	28	Ex-TTR	Transfers to Asset Replacement Reserve		2,132,902		Funding adjustments
In	28	In-TFR	Transfers from Asset Replacement Reserve		(583,117)		Funding adjustments
In	28	In-Recoup	Transfers from Capital Contributions Reserve		(1,180,875)		Funding adjustments
					0		
2. Variations Arising from Council Resolutions							
			Nil				
					0		
Summary of Votes by Type							
			General Variations		0		
			Council Resolutions		0		
			Carried forward		0		
					0		
Summary of Votes - by Category							
<u>Expenses</u>							
			Operating		778,983		
			Interest		(559,076)		
			Capital		13,070,670		
			Loan Repayments		(102,816)		
			Transfers to Reserves		4,393,060		
					17,580,821		
<u>Income</u>							
			Rates, Charges and other Operating		(22,000)		
			Operating Grants & Concs		(603,750)		
			Capital Grants & Concs		(5,376,295)		
			Loan Funds		(5,000)		
			Recoupments		(9,769,620)		
			Transfers from Reserves		(1,804,156)		
			Asset Sales		0		

In / Ex	Item	Category	Description	Current Vote	Change to Vote	New Vote	Details / Comments
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(17,580,821)

Net 0

Summary of Votes - by Division

Technology & Corporate Services	(70,000)
Planning & Regulation	(50,000)
Community & Natural Resources	25,000
Engineering & Operations	95,000
General Manager	0
	<u>0</u>

Budget Summary

	General Fund		Water Fund		Sewer Fund		Total
	<u>Original Budget</u>	<u>Revised Budget</u>	<u>Original Budget</u>	<u>Revised Budget</u>	<u>Original Budget</u>	<u>Revised Budget</u>	
<u>Income Statement</u>							
Operating Expenses							
Employee Costs	33,704	34,325	3,172	3,172	4,997	4,997	42,494
Borrowing Charges	5,728	5,728	4,902	4,902	2,037	1,478	12,108
Materials & Contracts	35,556	49,785	4,454	3,862	4,125	4,225	57,870
Depreciation	15,483	15,483	8,288	8,288	16,000	16,000	39,771
Other Operating Expenses	9,417	9,392	1,138	1,138	1,310	1,310	11,840
	99,888	114,713	21,954	21,362	28,469	28,010	164,083
Operating Revenue							
Rates & Annual Charges	52,491	52,547	3,260	3,260	17,657	17,657	73,464
User Charges & Fees	15,378	15,436	12,533	12,533	1,441	1,441	29,410
Interest	4,579	4,579	135	135	333	333	5,047
Other Revenues	1,295	1,295	195	195	19	19	1,509
Grants & Contributions for operating purposes	13,509	20,267	450	450	442	442	21,159
Grants & Contributions for capital purposes	11,067	15,305	2,189	2,189	1,052	1,052	18,546
	98,319	109,429	18,762	18,762	20,944	20,944	149,135
Surplus/(Deficit)	(1,569)	(5,284)	(3,192)	(2,600)	(7,525)	(7,066)	(14,948)

Funding Result Reconciliation

Add Back non-funded items:

Depreciation	15,483	15,483	8,288	8,288	16,000	16,000	39,771
Internal Transfers	6,870	6,870	(3,486)	(3,486)	(3,384)	(3,384)	0
	<u>20,784</u>	<u>17,069</u>	<u>1,610</u>	<u>2,202</u>	<u>5,091</u>	<u>5,550</u>	<u>24,823</u>
Transfers from Externally Restricted Cash	6,571	14,902	7,979	7,248	4,963	2,078	24,896
Transfers from Internally Restricted Cash	824	9,609	4,462	3,322	20,304	15,915	30,041
Proceeds from sale of assets	2,511	2,511				0	2,511
Loan Funds Utilised	3,847	12,759			20,429	30,000	42,759
Repayments from Deferred Debtors							
	<u>34,537</u>	<u>56,850</u>	<u>14,051</u>	<u>12,772</u>	<u>50,787</u>	<u>53,543</u>	<u>125,030</u>

Council Meeting held Tuesday 15 February 2011

	General Fund		Water Fund		Sewer Fund		Total
	<u>Original Budget</u>	<u>Revised Budget</u>	<u>Original Budget</u>	<u>Revised Budget</u>	<u>Original Budget</u>	<u>Revised Budget</u>	
<i>Funds were applied to:</i>							
Purchase and construction of assets	(21,403)	(43,830)	(9,510)	(9,206)	(41,511)	(27,092)	(79,733)
Repayment of principal on loans	(2,719)	(2,719)	(682)	(682)	(2,643)	(2,540)	(5,941)
Transfers to Externally Restricted Cash	(3,554)	(3,554)	(2,189)	(2,189)	(1,052)	(1,052)	(6,795)
Transfers to Internally Restricted Cash	(6,861)	(6,747)	(1,670)	(695)	(5,581)	(22,859)	(32,561)
Increase/(Decrease) in Available Working Capital	0	0	0	0	0	0	0
Available Working Capital Previous Financial Year	1,910	1,910	2,162	2,162	1,997	1,997	6,069
Available Working Capital as at 30 June 2011	1,910	1,910	2,162	2,162	1,997	1,997	6,069

Summary by Division

	<u>Original Budget</u>	<u>Revised Budget</u>
Surplus/(Deficit)		
Technology & Corporate Services	54,833,893	54,833,314
Planning & Regulation	(7,726,934)	(7,592,238)
Community & Natural Resources	(9,302,338)	(9,544,124)
Engineering & Operations	(37,809,188)	(37,589,931)
General Manager	4,567	(107,021)

General Fund

The General Fund is expected to remain as a "balanced budget".

Water Fund

The Water Fund is expected to remain as a "balanced budget".

Sewer Fund

The Sewer Fund is expected to remain as a "balanced budget".

**Statutory Statement – Local Government (General) Regulations 2005
(Sections 202 & 203) by “Responsible Accounting Officer”**

202 Responsible accounting officer to maintain system for budgetary control

The responsible accounting officer of a council must:

- (a) establish and maintain a system of budgetary control that will enable the council’s actual income and expenditure to be monitored each month and to be compared with the estimate of the council’s income and expenditure, and*
- (b) if any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.*

203 Budget review statements and revision of estimates

- (1) Not later than 2 months after the end of each quarter, the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the management plan that the council has adopted for the relevant year, a revised estimate of the income and expenditure for that year.*
- (2) A budget review statement must include or be accompanied by:*
 - (a) a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and*
 - (b) if that position is unsatisfactory, recommendations for remedial action.*
- (3) A budget review statement must also include any information required by the Code to be included in such a statement.*

Statutory Statement

I consider that the financial position of Council is satisfactory “having regard to the original estimate of income and expenditure”.



M A Chorlton
“Responsible Accounting Officer”
Manager Financial Services
Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

As discussed in the report.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

**44 [TCS-CM] Corporate Quarterly Report - 1 October to 31 December 2010
Incorporating the 7 Year Infrastructure and Services Plan**

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

The Corporate Quarterly Report for the period 1 October to 31 December 2010 is presented for consideration by Council.

The report details the progress for the first quarter of the reporting period to 31 December 2010 on activities identified being undertaken during 2010-2011 in the 2010-2013 Management Plan and has been produced utilising the new Performance Planning software that has been acquired to develop the reporting requirements associated with the Integrated Planning Framework.

RECOMMENDATION:

That Council receives and notes the Corporate Quarterly Report including progress on the 7 Year Infrastructure and Services Plan for the period 1 October to 31 December 2010.

REPORT:

As per summary.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Corporate Quarterly Report - Management Plan 2010-2013 - 1 October to 31 December 2010 (ECM 28333064).
 2. Corporate Quarterly Report - 7 Year Infrastructure and Services Plan - 1 October to 31 December 2010 (ECM 28333062).
-

45 [TCS-CM] Legal Services Report as at 31 December 2010

ORIGIN:

Corporate Compliance

SUMMARY OF REPORT:

The Legal Services Report as at 31 December 2010 monitors the status on legal instructions, for current or recently completed matters which have been issued to panel legal providers. The report includes payments to the various legal providers, but also payments for barristers and consultants where applicable.

The total amount paid for legal instructions for the period 1 July 2010 to 31 December 2010 is \$262,151.

Significant expenses have been incurred dealing with such matters as:

DA08/0966 – Those Best Placed Ltd	\$31,977
7 Year Special Rate Variation – T Sharples	\$18,555
Industrial Relations Matters	\$82,749
Compulsory land acquisition – Kyogle Road	\$7,012
DA10/0020 Enterprise Avenue offset by \$42,000 to be paid by Applicant	\$66,282

In some of the above matters, expenses have also been incurred in previous financial years, and that information is included in the attached register.

RECOMMENDATION:

That Council receives and notes the Legal Services Register as at 31 December 2010.

REPORT:

Expenditure incurred on legal instructions for the period 1 July 2010 to 30 September 2010 is as follows:

Category 1 Planning, Environmental & Local Government Law	Category 2 Commercial/Property Law	District/Local Court Stacks Only
\$149,254	\$109,381	\$3,517

A summary of payments to each of the Legal Service Providers including barristers and consultants where applicable, for current or recently completed matters is as follows:

Legal Service Provider	Category 1 Planning, Environmental, Local Government Law
HWL Ebsworth Lawyers	\$38,926
Lindsay Taylor Lawyers	\$8,483
Maddocks Lawyers	\$66,282
Marsdens Law Group	\$18,555
Sparke Helmore Lawyers	\$14,654
Wilshire Webb Staunton Beattie	\$2,214

Legal Service Provider	Category 2 Commercial/Property Law
HWL Ebsworth Lawyers	\$7,012
Lindsay Taylor Lawyers	\$82,749
Maddocks Lawyers	\$19,620
Marsdens Law Group	
Stacks – The Law Firm	
Wilshire Webb Staunton Beattie	

LEGAL SERVICES REGISTER AS AT 31 DECEMBER 2010

Service Provider	Category	Description of Matter	General Instructions	Costs to Date	Comments
CURRENT MATTERS					
HWL Ebsworth	1	Class 4 Appeal – DA08/0966 Refusal to determine Development Application and other issues impacting upon on-site sewerage management system at 49 Upper Crystal Road Crystal Creek	Defend the matter in the Land and Environment Court	09/10 48,763 10/11 31,977 80,740	In Progress – Land & Environment directions hearing held on 4 December 2009. Case heard on 4 February 2010. Case dismissed, costs awarded, Appeal dismissed by Supreme Court. Matter of recovering costs in progress.
HWL Ebsworth	1	File DA08/0966 Class 4 Appeal-DA09/0727 Noble Lakes Monarch Drive Kingscliff Section 96 Application refused by Joint Regional Planning Panel	Represent Council's interest in the Land and Environment Court	10/11 4,066	In Progress – Matter listed for hearing on 1 and 2 March 2011.
Marsdens	1	File DA09/0727 Second Avenue Strata Carparking	Provide advice in respect to ascertaining options for dealing with matter	10/11	In Progress – Advice provided 22 December 2010.
Sparke Helmore	1	BC10/0086 – Sanderson Place Dungay – Building Certificate application - deemed refusal- Class 1 appeal	Defend the matter in the Land and Environment Court	09/10 999 10/11 11,194 12,193	In Progress – Case heard on 4 November 2010. Commissioner reserved his decision.
Stacks	District/Local Court	File DA08/1056 Statement of Claim - DA04/1028- 207 Farrants Hill Road- building encroachment. File DA04/1028	Defend the matter in the District Court of NSW	07/08 7,594 08/09 34,534 09/10 2,242 10/11 3,517 47,887	In Progress –Case has been struck out in the District Court. Costs awarded to defendantis, matter of costs now to be determined.

Stacks	1	Appeal to Supreme Court of Appeal –M.W. Allen (Lizzio Subdivision – Condong) File GS4/95/73	Represent Council in the Supreme Court and engage counsel where appropriate	08/09 29,609 09/10 26,100 10/11 140 55,849	In Progress – second appeal in the Supreme Court heard 16 October 2009, Judge reserved his decision. Judge upheld the appeal, costs awarded to Council. Council instructions to pursue matter of costs and associated expenses.
Wilshire Webb Staunton Beattie	1	Appeal against imposition of conditions upon development consent File DA06/0897.01	Represent Council in the Land and Environment Court	10/11 2,214	In Progress –S.34 conference scheduled for 14 February 2011.
HWL Ebsworth	2	Compulsory acquisition of land for road purposes – Kyogle Road – B & L Hill File Land Acquisitions	Represent Council in the Land and Environment Court	09/10 20,924 10/11 7,012 27,936	COMPLETED – Without prejudice offer made – Council accepted the offer. Matter now finalised.
HWL Ebsworth	1	Unauthorised development – Tomewin Road	Provide advice in respect to ascertaining options for legal proceedings	10/11 2,883	COMPLETED – Advice provided. Issues reported to Council.
Lindsay Taylor Lawyers	1	Alleged breaches of Tweed LEP relating to vegetation clearing in contravention of TPO File Pottsville Employment Land	Provide advice in respect of ascertaining options for legal proceedings	09/10 4,375 10/11 358 4,733	COMPLETED – Advice provided. Issues reported to Council.
Lindsay Taylor Lawyers	1	Unauthorised clearing and earthworks – Tomewin Road Tomewin	Provide advice in respect of ascertaining options for legal proceedings	09/10 5,559 10/11 2,994 8,214	COMPLETED – Advice provided
Lindsay Taylor	2	Staffing Matters	Provide advices in relation to staffing matters	09/10 30,672 10/11 82,749 113,421	COMPLETED – Advices provided.

Lindsay Taylor	1	Chinderah Fig Tree	Provide advice in respect to appropriate dealing with matter	10/11 5,131	COMPLETED – Advice provided
Maddocks	2	Tweed Valley Respite Service Inc.	Provide advice in relation to preparation of loan deed agreement documents	10/11 6,743	COMPLETED – Advices provided
Maddocks	2	Tweed Regional Aquatic Centre	Provide advice in relation to preparation of contract documents	09/10 9,889 10/11 1,663 11,552	COMPLETED – Advices provided
Maddocks	1	DA.10/0020 – Enterprise Avenue – use of premises for Brothel File DA10/0020	Defend the matter in the Land and Environment Court	09/10 6,570 10/11 66,282 72,852	COMPLETED – Judgement handed down 22 November 2010, amended application approved. Applicant to pay Council's costs of \$42,000 by instalments. COMPLETED – Advices provided
Maddocks	2	Staffing Matters	Provide advices in relation to staffing matters	10/11 5,977	COMPLETED – Advices provided
Maddocks	2	General Advice Matters	Provide advice in relation to various matters	10/11 5,237	COMPLETED – Advices provided
Marsdens	1	Class 4 Appeal – 7 year Special Rate Variation File Budget/Management Plan	Defend the matter in the Land and Environment Court	07/08 24,446 09/09 280,956 09/10 79,879 10/11 18,555 403,836	COMPLETED – Land & Environment judgement handed down 30 December 2008, applicants claim was unsuccessful, part costs claim awarded, Court of Appeal case heard on 5 February 2010. Applicant was unsuccessful, part costs awarded. Matter of costs to be determined

Sparke Helmore	1	924 Tomewin Road- Construction of dwelling File DA5510/1260	Provide advice on dwelling entitlement	10/11 3,460	COMPLETED – Advice provided
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LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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46 [TCS-CM] In Kind and Real Donations - October to December 2010

ORIGIN:

Financial Services

SUMMARY OF REPORT:

Details of in kind and real donations for the period October to December 2010 are reproduced in this report for Council's information.

RECOMMENDATION:

That Council notes the total donations of \$12,336.41 for the period October to December 2010.

REPORT:

Council maintains a register of in kind and real donations. Details of these donations for the period October to December 2010 are reproduced as follows:

Financial Assistance			
Amount	Recipient	Donated Item	Date
\$270.00	Unity Festival Inc	Donation - Council Development Application Fees	26/10/2010
\$345.40	Uki Public Hall & Recreation Reserve Trust	Donation - Council Development Application Fees	26/10/2010
\$30.00	Uki public School	Donation - Citizenship Award	23/11/2010
\$500.00	2010 Far North Coast Festival of Ability	Budget Allocation	13/12/2010
\$200.00	Disable Surfers Association Far North Coast	Budget Allocation	13/12/2010
\$1,345.40			

Goods and/or Materials			
Amount	Recipient	Donated Item	Date
\$75.00	Pottsville Pre School	30 Trees & Shrubs	1/12/2010
\$75.00			

Provision of Labour and/or Plant & Equipment			
Amount	Recipient	Donated Item	Date
\$1,082.81	Street Christmas Decorations	Provision of Labour & Council Plant	10/12/2010
\$1,082.81			

Rates			
Amount	Recipient	Donated Item	Date
\$1,495.60	Legacy Club of Coolangatta /Tweed Heads	Council Rates 2010/2011	8/11/2010
\$4,210.00	Legacy Club of Coolangatta /Tweed Heads	Council Rates 2010/2011	8/11/2010
\$810.60	Murwillumbah Autumn Club Inc	Council Rates 2010/2011	8/11/2010
\$630.10	Twin Towns Police & Community Youth Club	Council Water Rates 2010/2011	24/12/2010
\$7,146.30			

Tweed Link Advertising			
Amount	Recipient	Donated Item	Date
\$45.90	Various Community Notices	Advertising	05/10/2010
\$91.80	Various Community Notices	Advertising	12/10/2010
\$91.80	Various Community Notices	Advertising	19/10/2010
\$216.00	Various Community Notices	Advertising	26/10/2010
\$102.60	Various Community Notices	Advertising	02/11/2010
\$94.50	Various Community Notices	Advertising	09/11/2010
\$162.00	Various Community Notices	Advertising	23/11/2010
\$121.50	Community Calendar of Events	Advertising	23/11/2010
\$243.00	Various Community Notices	Advertising	30/11/2010
\$70.20	Various Community Notices	Advertising	07/12/2010
\$116.10	Various Community Notices	Advertising	14/12/2010
\$121.50	Various Community Notices	Advertising	21/12/2010
\$1,476.90			

Room Hire			
Amount	Recipient	Donated Item	Date
\$29.00	Murwillumbah Theatre Company	Room Hire - Murwillumbah Civic Centre	13/12/2010
\$72.00	Tweed Heads Hospital - Memorial Service	Room Hire - Tweed Heads Civic Centre	18/11/2010
\$90.00	Christmas Day Lunch Committee	Room Hire - Tweed Heads Civic Centre	24/12/2010
\$370.00	Christmas Day Lunch Committee	Room Hire - Tweed Heads Civic Centre	25/12/2010
\$50.00	Blind & Vision Impaired Support Group	Room Hire - Coolamon Room Banora Pt Com Centre	11/10/2010
\$17.00	Banora Point Rate Payers Association	Room Hire - Coolamon Room Banora Pt Com Centre	11/10/2010
\$34.00	Blind & Vision Impaired Support Group	Room Hire - Coolamon Room Banora Pt Com Centre	18/10/2010
\$18.00	Banora Point Rate Payers Association	Room Hire - Coolamon Room Banora Pt Com Centre	01/11/2010
\$34.00	Blind & Vision Impaired Support Group	Room Hire - Coolamon Room Banora Pt Com Centre	15/11/2010
\$18.00	Banora Point Rate Payers Association	Room Hire - Coolamon Room Banora Pt Com Centre	06/12/2010
\$30.00	Twin Towns Friends	Room Hire - South Tweed HACC	13/10/2010
\$30.00	Twin Towns Friends	Room Hire - South Tweed HACC	10/11/2010
\$84.00	Tweed Heads Hospital Ladies Auxiliary	Room Hire - Tweed Heads Meeting Room	04/10/2010
\$82.00	South Sea Islanders Meeting	Room Hire - Tweed Heads Meeting Room	16/10/2010
\$84.00	Tweed Heads Hospital Ladies Auxiliary	Room Hire - Tweed Heads Meeting Room	01/11/2010
\$84.00	South Sea Islanders Meeting	Room Hire - Tweed Heads Meeting Room	13/11/2010
\$84.00	Tweed Heads Hospital Ladies Auxiliary	Room Hire - Tweed Heads Meeting Room	06/12/2010
\$1,210.00			
\$12,336.41	Total Donations 2nd Quarter (October, November, December 2010)		

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

47 [TCS-CM] Advice to Council on National Broadband Network

ORIGIN:

Information Systems & Technology

SUMMARY OF REPORT:

On 9 December 2010 the House of Representatives Standing Committee on Infrastructure and Communications established a "New Inquiry into the National Broadband Network". Primarily the inquiry has been established to investigate the capacity of the National Broad Band Network (NBN) to contribute to nine specific areas.

Due to the significance this infrastructure represents to the Tweed, as well as the Nation, it is considered essential that Tweed Shire Council put the position of the Tweed forward into this national forum.

Submissions are due before 25 February 2011. Any submission made to the Inquiry constitutes giving evidence and as a result, all submissions are to be kept confidential until such time as they are published by the Committee.

The Standing Committee on Infrastructure and Communications state:

"Please note that making a submission constitutes giving evidence and attracts parliamentary privilege. Once a submission has been provided to the Committee it cannot be withdrawn or altered without the Committee's permission. A submission should not be disclosed to any other person until its publication has been authorised by the Committee. When a submission has been formally authorised it will be published on the Committee's website."

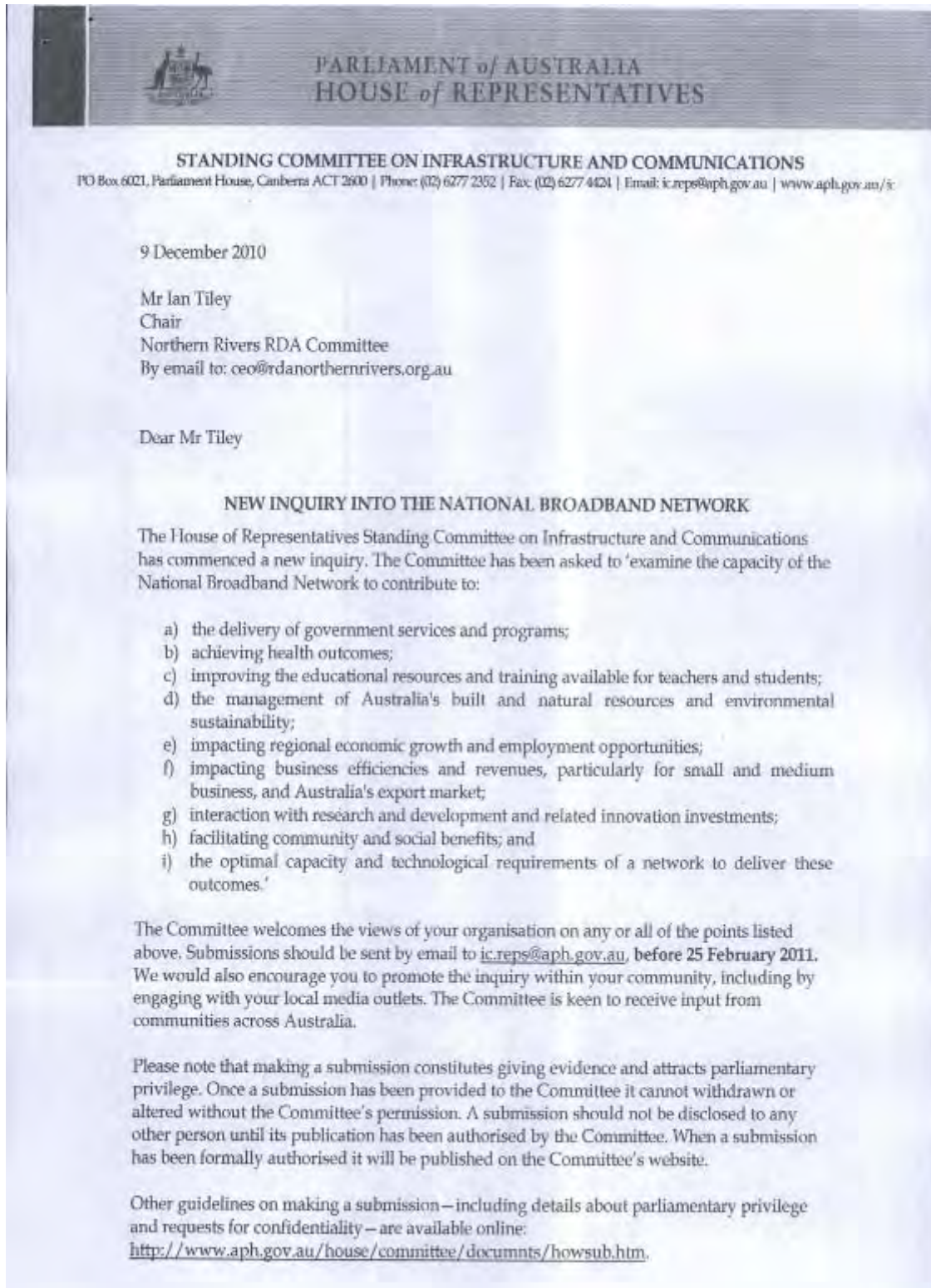
Council's submission to the Inquiry will be based on the information presented in the Confidential report. If endorsed, the report will be forwarded to the Inquiry as Council's submission. Unfortunately because of the terms of reference to the Inquiry, namely "A submission should not be disclosed to any other person until its publication has been authorised by the Committee" the Report will be considered as Confidential business in accordance with s10A(2)(e) of the Local Government Act 1993 "information that would, if disclosed, prejudice the maintenance of law" and Council is therefore required to maintain the confidentiality of its submission until the Committee has made the submission public via its website.

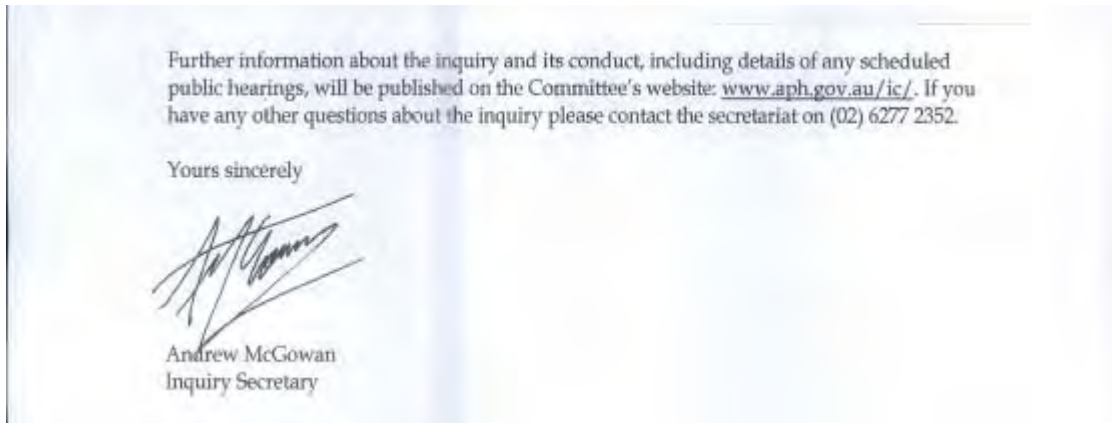
RECOMMENDATION:

That Council receives and notes that the submission to the House of Representatives Committee on Infrastructure and Communications will be considered in the Confidential Agenda.

REPORT:

Letter addressed to the General Manager from Regional Development Australia Northern Rivers with the enclosed advice from the Standing Committee on Infrastructure and Communications:





LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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48 [TCS-CM] Monthly Investment Report for Period Ending 31 January 2011

ORIGIN:

Financial Services

SUMMARY OF REPORT:

This report is provided to Council to advise details of monies Council has invested in accordance with Section 625 of the Local Government Act 1993.

There is a requirement by Council's investment consultant to allow at least 5 working days following the end of the month to provide the statistics for this report. Due to this time constraint there will be an addendum report provided to Council for consideration at its meeting on 18 January 2011.

RECOMMENDATION:

Refer to addendum report.

REPORT:

As per summary.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

49 [SUB-TCKAG] Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 30 November 2010

Venue:

Canvas and Kettle - Murwillumbah Civic Centre

Time:

1:20 pm

Present:

Cr Dot Holdom (TSC), Mark Kingston (TSC), Sandy Pimm (TSC), Steve Jensen (DoP), John Turbill (DECCW), Anita Mudge (community rep), Ralph Kraemer (community rep) Jennifer Hayes (Team Koala Inc), Lorraine Vass (Friends of Koala Inc.), Steve Phillips (Biolink Ecological Consultants), Marama Hopkins (Biolink Ecological Consultants).

Apologies:

Rhonda James (community rep), Simon Graham (community rep).

Minutes of Previous Meeting:

Moved: Lorraine Vass

Seconded: John Turbill

RESOLVED that the Minutes of the Tweed Coast Koala Advisory Group Committee meeting held Tuesday 5 October 2010 be accepted as a true and accurate record of the proceedings of that meeting.

Business Arising:

1. Tweed Coast Road koala fencing and underpass

Mark Kingston has discussed with Steve Paff but is yet to arrange a site visit

2. Tweed Catchment Catch-up update

Marama Hopkins (Biolink Ecological Consultants) provided an informative presentation and discussion on the status of koala issues on the Tweed at the Catchment Catch-up event held on 28th October 2010 at the Sustainable Living Centre (Kingscliff). The event was well attended with about 60 attendees from council and the general public.

3. SEPP 44 tree species list

Steve Jenson advised that the Department of Planning has no current plans to revise the SEPP 44 koala feed tree list. John Turbill noted that this is not a major barrier given the preparation of a comprehensive KPOM although it is a potential issue in the absence of a comprehensive KPOM; that is where SEPP 44 needs to be addressed for individual development applications. Sandy Pimm also noted that as a Vulnerable species, impacts on

koalas or their habitat must be assessed independently under the Threatened Species Conservation Act for individual development applications.

4. Council Resolution for a Koala Sanctuary

A meeting has been arranged for 14 December 2010 with Crs Polglase and Holdom and Council officers to clarify Cr Polglase's resolution.

Correspondence in:

1. Federal Senate Committee enquiry into status of Australia's Koala population

Submissions have been invited into the status of Australia's Koala population with reference to: (a) the iconic status of the koala and the history of its management; (b) estimates of koala populations and the adequacy of current counting methods; (c) knowledge of koala habitat; (d) threats to koala habitat such as logging, land clearing, poor management, attacks from feral and domestic animals, disease, roads and urban development; (e) the listing of the koala under the Environment Protection and Biodiversity Conservation Act 1999; (f) the adequacy of the National Koala Conservation and Management Strategy; (g) appropriate future regulation for the protection of koala habitat; (h) interaction of state and federal laws and regulations; and (i) any other related matters. Submissions are due by 8 February 2010.

Moved: Lorraine Vass

Seconded: Anita Mudge

RESOLVED that Council officers make a submission to the enquiry outlining the findings of the Tweed Coast Koala Habitat Study.

Agenda Items:

1. Discussion on Draft Koala Habitat Study

There was a wide-ranging discussion on the draft Tweed Coast Koala Habitat Study including: road mortality and potential ways to mitigate impacts (e.g. speed cameras); improved bushfire management (e.g. liaison with RFS and other stakeholders); site selection and the value of the additional field work; clarification of the roles of FOK and TVWC; meaning and extent of core koala habitat and the need to buffer current source populations; location of extant subpopulations the need for habitat linkages; minimum population size for long-term persistence and; the need for koala habitat protection measures, such as an expanded Tree Preservation Order, to be implemented prior to the completion of the Comprehensive Koala Plan of Management.

Steve Philips reiterated that very small increases (2-3%) in incidental mortality (above natural mortality rates), such as from roads, dogs and fire is sufficient to precipitate long-term population decline and that alleviation of threats from all sources should be the priority.

The Group was of the view that there were no major issues with the content of the report and endorsed each of its recommendations (subject to some minor editing) before making for following resolutions:

Moved: Ralph Kraemer

Seconded: Sandy Pimm

RESOLVED that the Tweed Coast Koala Advisory Group acknowledge and thank Biolink Ecological Consultants, in particular Ms Marama Hopkins and Dr Steve Philips, for their comprehensive work on the draft Tweed Coast Koala Habitat Study.

Moved: Lorraine Vass

Seconded: Jennifer Hayes

RESOLVED that Council officers liaise with the Tweed Coast Koala Advisory Group and the Consultants (Biolink Ecological Consultants) to complete the Tweed Coast Koala Habitat Study with any additional comments to be provided by 8 December 2010.

Moved: Anita Mudge

Seconded: Jennifer Hayes

RESOLVED that subject to the completion of the Tweed Coast Koala Habitat Study (resolution above), Tweed Coast Koala Advisory Group advises Council that it endorses the final Tweed Coast Koala Habitat Study.

Moved: Lorraine Vass

Seconded: Ralph Kraemer

RESOLVED that the final Tweed Coast Koala Habitat Study be forwarded to Council to be received and noted.

Moved: Jennifer Hayes

Seconded: Anita Mudge

RESOLVED that Council makes the Tweed Coast Koala Habitat Study available, and communicates its findings, to the public.

Moved: Lorraine Vass

Seconded: Jennifer Hayes

RESOLVED that the Tweed Coast Koala Advisory Group recommends that Council support interim protection of koala habitat on the Tweed coast as recommended in the final Tweed Coast Koala Habitat Study.

Moved: Lorraine Vass

Seconded: Jennifer Hayes

RESOLVED that the Tweed Coast Koala Advisory Group recommends that Council hold a workshop with the Tweed Coast Koala Advisory Group, Biolink Ecological Consultants and Council's Executive Management Team on the findings of the Tweed Coast Koala Habitat Study.

RECOMMENDATION:

That Council:

1. Receives and notes the Tweed Coast Koala Habitat Study.
2. Makes the Tweed Coast Koala Habitat Study available, and communicates its findings, to the public.

3. Supports interim protection of koala habitat on the Tweed coast as recommended in the final Tweed Coast Koala Habitat Study (and detailed in a separate report to Council), namely:

There is a need to implement interim protection measures in the intervening period, prior to preparation and adoption of a CKPoM, in order to address the ongoing sequential loss of koala habitat on the Tweed Coast. The preparation of a Tree Preservation Order (TPO) to facilitate the protection of high-quality koala habitat and/or individual preferred koala food trees should be considered by the KAG and Council as a matter of priority.

4. Holds a workshop with the Tweed Coast Koala Advisory Group, Biolink Ecological Consultants and Council's Executive Management Team on the findings of the Tweed Coast Koala Habitat Study.

2. Wildfires and koala population decline

John Turbill illustrated on some of the issues related to bushfire management with maps of bushfire history in relation to the location of the extant koala populations. This comparison strongly suggests that recent fires have had a major detrimental impact on the Tweed Coast koalas. There was considerable discussion of ways in which fire can be better managed and it was noted that there are many stakeholders (Council, DECCW, RFS, landholders etc) and causes of fire (hazard reduction, wildfire, arson etc) that need to be co-ordinated. There was general agreement that improved fire management is critical to the long-term survival of koalas on the Tweed Coast.

General Business:

1. Discussion with regard to options for securing Koala population

Further general discussion on ways in which the prospects for koalas can be improved particularly with respect to road mortality.

Next Meeting:

The next meeting of the Tweed Coast Koala Advisory Group Committee will be held on 8 February 2011. Time to be advised (possibly at 4:30pm after Council Workshop at 3:30pm).

The meeting closed at 3:30pm.

EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

Nil.

EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

Agenda Items:

1. Discussion on Draft Koala Habitat Study

As per the Committee's recommendation being:

" That Council:

- 1. Receives and notes the Tweed Coast Koala Habitat Study.*
- 2. Makes the Tweed Coast Koala Habitat Study available, and communicates its findings, to the public.*
- 3. Supports interim protection of koala habitat on the Tweed coast as recommended in the final Tweed Coast Koala Habitat Study (and detailed in a separate report to Council), namely:*

There is a need to implement interim protection measures in the intervening period, prior to preparation and adoption of a CKPoM, in order to address the ongoing sequential loss of koala habitat on the Tweed Coast. The preparation of a Tree Preservation Order (TPO) to facilitate the protection of high-quality koala habitat and/or individual preferred koala food trees should be considered by the KAG and Council as a matter of priority.

- 4. Holds a workshop with the Tweed Coast Koala Advisory Group, Biolink Ecological Consultants and Council's Executive Management Team on the findings of the Tweed Coast Koala Habitat Study."*
-

50 [SUB-TRRMAG] Minutes of the Tweed River Regional Museum Advisory Committee Meeting held Thursday 20 January 2011

Venue:

Coolamon Cultural Centre

Time:

4:05pm

Present:

Cr Barry Longland; Gary Corbett (Manager Community & Cultural Services); Joshua Tarrant (Senior Museum Curator); Max Boyd (Community); Gary Fidler (Community); Sandra Flannery (Community); Faye O'Keeffe (Community); Joan Smith (Tweed Heads Historical Society); Denise Garrick (Tweed Heads Historical Society); Helena Duckworth (Uki & South Arm Historical Society); Mary Lee Connery (Uki & South Arm Historical Society); Ron Johansen (Murwillumbah Historical Society); Beverley Lee (Murwillumbah Historical Society); Carol Piggott (Observer); Kirsty Andrew (Minutes).

Apologies:

David Oxenham, Yvonne Waddington

Minutes of Previous Meeting:

Moved: Helena Duckworth

Seconded: Joan Smith

RESOLVED that the Minutes of the Tweed River Regional Museum Advisory Committee meeting held Thursday 18 November 2010 be accepted as a true and accurate record of the proceedings of that meeting.

Business Arising:

Item from Meeting held 18 November 2010

GB 3. Museum brochure

As a volunteer, Fay O'Keeffe feels that each site should have its own professionally produced brochure, similar to the one that covers all branches.

To be discussed at the next meeting.

Faye O'Keeffe feels that the Tweed Heads Branch of the Museum should have its own professionally produced brochure, as tourists looking for activities in the Tweed Heads area need to have a document that clearly shows where the museum is.

Josh Tarrant replied that it is important to have unity within the Museum and to identify the Museum as being 1 entity with 3 sites, as the current Museum brochure does.

Joan Smith advised that the Historical Societies had provided input towards the creation of the Museum brochure, and are happy with it.

The general consensus was that the existing brochure is acceptable.

Faye O'Keeffe suggested that the brochure be placed in prominent places, such as the Art Gallery, Tourist Information Centres and libraries.

Agenda Items:

1. Senior Museum Curator's Report - January 20, 2011

Museum Building and Development Program

- Proposed Building Program

A workshop to discuss the progress of the Museum building projects took place in early December with the Museum Advisory Committee, Councillors, architect Paul Berkemeier, museum advisor Kylie Winkworth, and staff. The history of the project, progress, budget constraints, complimentary options (such as off site storage), and funding options were discussed. Further meetings with the Museum Advisory Committee regarding the Museum Building Program are planned for early 2011.

The Heritage Impact Statement for the extensions to the Murwillumbah site has been received from John Outram Heritage and Design. In his summary, John Outram supports the development, stating that he considers "...the proposed development is a well-considered and sympathetic expansion of the Museum that pays due regard to the relative significance of the elements". The statement has been forwarded to Douglas Jardine to be incorporated into the Development Application.

Investigations are also being made into potential off-site storage facilities.

- Works to Existing Buildings

Investigations are being made into dealing with groundwater and landscaping maintenance at the Murwillumbah site. The aim is to minimise risk of damage to the footings of the building from excessively damp conditions, and ensure that the grounds are presented in a tidy fashion.

To address some minor access issues, improvements have been made to the ramps into the RSL Building and the Courthouse building at the Tweed Heads site.

- Museum Staff Movements

With the appointment of Senior Curator being filled, Kathryn King will be returning to her position of Collections Assistant 2 days per week. After a handover period and the completion of some key projects, it is expected that Kathryn will be working at the sites on Thursdays and Fridays.

- Friends of the Museum

The Friends of the Museum 2011 calendar has received a spectacular response, with all 200 sold out before Christmas. Thanks to the Friends for their support through this vital fundraising activity.

Conservation / Collections

- Acquisitions and Deaccessions

No acquisitions or deaccessions to report this meeting.

Projects

- Migration Projects

- *Sea Change*: Migration Project 1970s and 1980s

The main text has been finalised, and has been forwarded to the proof reader for review. Most images have been selected, and permissions to reproduce are being finalised with their respective copyright owners. References to the Aboriginal Community have been forwarded to the Aboriginal Advisory Committee for approval at their next meeting in early February.

- Research IT files

Another meeting was held on 14 December to continue the review of electronic research files held on the shared network. The goal is to complete an inventory and assessment of all files, and then identify priority projects in relation to updating the electronic research files.

Other Upcoming Projects

A combination of recent staff shortages and obligations towards grant-funded special projects being undertaken has seen output in a number of core museum activities decline. Kathryn and Kirsty have nevertheless done an outstanding job in continuing the museums operations under such challenging circumstances. I would also like to thank all of the volunteers of the Historical Societies for their proactive assistance during this period.

As such projects are completed, I will be aiming at focusing our energies on the backlog of tasks, particularly acquisitions and collections management. There will be opportunities for volunteers to become involved.

Recommendation: That the Senior Museum Curator's report be received and noted by the Committee.

Moved: Josh Tarrant

Seconded: Mary Lee Connery

RESOLVED that the Senior Museum Curator's Report be received and noted by the Committee.

2. Murwillumbah Historical Society Report

Ron Johansen tabled, circulated and read the report.

Moved: Ron Johansen

Seconded: Beverley Lee

RESOLVED that the Murwillumbah Historical Society Report be received and noted by the Committee.

3. Tweed Heads Historical Society Report

Joan Smith tabled, circulated and read the report.

Moved: Joan Smith

Seconded: Denise Garrick

RESOLVED that the Tweed Heads Historical Society Report be received and noted by the Committee.

4. Uki and South Arm Historical Society Report

Helena Duckworth tabled, circulated and read the report.

Moved: Helena Duckworth

Seconded: Mary Lee Connery

RESOLVED that the Uki & South Arm Historical Society Report be received and noted by the Committee.

Joan Smith complimented Helena on her report and stated that the report echoed all their feelings.

General Business:

5. Tweed River Regional Museum building program

A meeting was held on Wednesday 19 January with Historical Society members, Max Boyd and Joshua Tarrant to discuss the current state of the building program.

Max Boyd summarised the situation as follows:

Tweed Heads:

- LEP still not gazetted and no date set for gazettal.
 - Native Title Claim on the site, which will need to be resolved before building can commence.
 - Tweed Shire Council does not have the \$9 million required for the building.
 - The \$1 million granted by the Federal Government is at risk of having to be handed back if it has not been spent. An option for this may be to transfer it to the Murwillumbah building project.
-

Murwillumbah:

- Very disheartening to hear of other sites being considered for the Museum.
- No applications have been made by Tweed Shire Council to secure Regional funding from the Federal Government.

Discussion followed on the best way to move forward with the project.

Moved: Max Boyd

Seconded: Denise Garrick

RESOLVED that the following recommendation be submitted to Tweed Shire Council.

RECOMMENDATION:

That Tweed Shire Council place a total of \$2 million in loan borrowings in the 2011/2012 budget for the Murwillumbah component of the Tweed River Regional Museum building program, as an indication of their commitment to meeting their obligations under the Memorandum of Understanding.

Moved: Max Boyd

Seconded: Denise Garrick

RESOLVED that copies of the Tweed River Regional Museum Strategic Plan and other relevant documents be forwarded to Councillors so that they can familiarise themselves with the Museum project.

Moved: Max Boyd

Seconded: Beverley Lee

RESOLVED that invitations be issued to all Councillors to visit all three sites of Tweed River Regional Museum.

When this visit occurs, all volunteers should be present and have information at hand on their activities and the value of their contribution to Council.

Moved: Max Boyd

Seconded: Helena Duckworth

Carried unanimously

RESOLVED that the following recommendation be submitted to Tweed Shire Council.

RECOMMENDATION:

That Tweed Shire Council engage a Consultant to complete the Development Application for the new Museum building on Flagstaff Hill, Tweed Heads.

Moved: Max Boyd

Seconded: Ron Johansen

Carried unanimously

RESOLVED that the following recommendation be submitted to Tweed Shire Council.

RECOMMENDATION:

That Tweed Shire Council engage architect Paul Berkemeier to supply detailed working drawings for both the proposed new building at Tweed Heads and the proposed extensions to the Murwillumbah site of Tweed River Regional Museum, in order to source accurate costings for these building works.

6. Staffing at Tweed River Regional Museum

Staffing should be a priority for the Museum as the current staff are stretched beyond capacity.

Moved: Mary Lee Connery

Seconded: Helena Duckworth

Carried unanimously

RESOLVED that the following recommendation be submitted to Tweed Shire Council.

RECOMMENDATION:

That Tweed Shire Council allocates sufficient funds in the 2011/2012 budget to employ an Assistant Curator for Tweed River Regional Museum.

Next Meeting:

The next meeting of the Tweed River Regional Museum Advisory Committee will be held Thursday 17 March 2011.

The meeting closed at 5:20pm.

EXECUTIVE MANAGEMENT TEAM COMMENTS:

5. Tweed River Regional Museum building program

Nil.

6. Staffing at Tweed River Regional Museum

Nil.

EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:

5. Tweed River Regional Museum building program

As per the Executive Management Team's recommendation being:

1) That Council considers the allocation of \$2m in loan funds for the Murwillumbah Museum project in its 2011/2012 budget deliberations.

2) That Council officers continue with the preparation of the Development Application for the proposed new museum building on Flagstaff Hill, Tweed Heads.

3) That Council:

a) Notes the request from the Museum Advisory Committee to engage the architect, Paul Berkemeier, to prepare detailed working drawings for Flagstaff Hill and Murwillumbah museums.

- b) *Advises the Museum Advisory Committee that until such time as the concept and budget for both projects is finalised, then the preparation of more detailed drawings is not appropriate.*"

6. Staffing at Tweed River Regional Museum

As per the Executive Management Team's recommendation being:

"That Council considers the allocation of sufficient funds in the 2011/2012 budget deliberations to employ a full time Assistant Curator for the Tweed River Regional Museum."

51 [SUBCOM] Minutes of Subcommittees/Working Groups not requiring a Council decision

1. Minutes of the Community Cultural Development Advisory Committee Meeting held Wednesday 15 December 2010 (ECM 27848818).

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ORDERS OF THE DAY

52 [NOM-Cr K Milne] Coal Seam Methane Gas Exploration in the Tweed Shire

NOTICE OF MOTION:

Councillor K Milne moves:

That Council brings forward a report on the existing and proposed Petroleum Exploration Licences in the Tweed Shire including maps of these areas and any environmental implications including for Council's Water Supply.

53 [NOM-Cr K Milne] Dual Reticulation for Cobaki

NOTICE OF MOTION:

Councillor K Milne moves:

That Council brings forward a report on the possibility of requiring the Cobaki development, under the current subdivision application, to install pipes to enable dual reticulation to be provided, and a discussion on how these developments meet the Australian Water Commission objectives and initiatives.

Council reports show that dual reticulation could be provided at a cost of \$1,131 per lot in greenfield developments (page 72 Demand Management Strategy).

54 [NOM-Cr K Milne] Independent Review of Council's Water Strategies

NOTICE OF MOTION:

Councillor K Milne moves:

That Council seeks an independent review of the Demand Management Strategy and Water Augmentation Strategy from the Institute of Sustainable Futures to provide a mechanism alleviate concerns raised by the community and the Community Water Group in these matters.

Council reports show that there could be further water savings available.

55 [NOM-Cr K Milne] Border Preservation for Green Space and Tourism

NOTICE OF MOTION:

Councillor K Milne moves:

That the Cobaki subdivision provide for a greater allocation of green space as environmentally protected or open space area along the NSW and Qld border, to enable this border area to be utilised for any future National Iconic Landscape or other tourism initiative for which it is proposed a border walk would have great appeal.

56 [NOM-Cr K Milne] Youth Activities

NOTICE OF MOTION:

Councillor K Milne moves:

That Council requires developments of an adequate scale to include a full line skate park and a full suite of youth activities including for the current Cobaki subdivision proposals.

57 [NOM-Cr K Milne] Boyd Street

NOTICE OF MOTION:

Councillor K Milne moves:

That Council brings forward a report on the effectiveness of previous management and mitigation measures designed for the Potoroo and other threatened species at the Boyds Street entry to Cobaki.

58 [NOM-Cr K Milne] Flood Information

NOTICE OF MOTION:

Councillor K Milne moves:

That Council brings forward a report on the potential for a major flood in the Shire especially during this La Nina year, including a discussion of the intensity of the recent floods in the region.

59 [NOM-Cr K Milne] Rubbish in Floods

NOTICE OF MOTION:

Councillor K Milne moves:

That Council brings forward a report on developing a policy or coordinating with relevant agencies to ensure that rubbish and toxic substances are not swept into waterways in times of flood.

60 [NOM-Cr K Milne] Audio and Visual Recording

NOTICE OF MOTION:

Councillor K Milne moves:

That Council enables discrete visual and audio recording by the public and media of the Council monthly meetings.

Other Councils such as Ballina have put in place processes to provide these visual recording of meetings on the internet or make them available through DVD. If Council does not wish to take such an initiative Council could at least allow the public the right to record these meetings.

61 [NOM-Cr K Milne] Art Deco Tourism

NOTICE OF MOTION:

Councillor K Milne moves:

That Council brings forward a report on developing a policy to promote the Tweed Shire as an Art Deco Capital and an appropriate Preservation Policy as a means to provide greater recognition of this valuable asset and as means to provide further tourism product, e.g. an Art Deco trail.

62 [NOM-Cr K Milne] Trampolines

NOTICE OF MOTION:

Councillor K Milne moves:

That Council brings forward a report on providing trampolines in selected open space areas.

New designs of trampolines now provide a much safer product.

63 [NOM-Cr J van Lieshout] Constitutional Referendum

NOTICE OF MOTION:

Councillor J van Lieshout moves that Council holds a Constitutional Referendum pursuant to Divisions 2 and 3 of the Local Government Act 1993 at the next election held by Council for any reason to determine the following:

Whether there should be a change in the way the Mayor is chosen so that the Mayor is elected by the people of the Tweed Shire by way of "popular" election.

QUESTION TIME

64 [QON-Cr K Milne] Flood Immunity in Construction Sites

QUESTION ON NOTICE:

Councillor K Milne asked:

What level of flood immunity are construction works required to be designed to ie a 1 in 2 year flood and what level is in place now at the Cobaki site?

65 [QON-Cr K Milne] Erosion Event at Cobaki

QUESTION ON NOTICE:

There was a significant erosion event in May 2010 at the Cobaki development. Councillor K Milne asked:

Can Council provide an estimate of the amount of sediment that was discharged?

Regardless of the developer apparently meeting the conditions the original consent and agreeing to take action to prevent this in the future, is it not the developers responsibility, by law to prevent such discharges and why has no fines or prosecutions been pursued?

What would Council do if I dumped two truckloads of sediment into the very sick Cobaki Broadwater and into a highly significant salt marsh area?

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CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE GENERAL MANAGER IN COMMITTEE

1 [GM-CM] Crown Land - Tweed Heads and Murwillumbah

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES IN COMMITTEE

2 [CNR-CM] Tree Preservation Order 2011

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(e) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (e) information that would, if disclosed, prejudice the maintenance of law
-

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE

3 [EO-CM] Tweed Valley Way, South Murwillumbah - Road Widening for Car Parking and Embellishment Purposes

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES IN COMMITTEE

4 [TCS-CM] National Broadband Network

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(e) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following:

- (e) information that would, if disclosed, prejudice the maintenance of law
-